

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MAUDER and ALICE CHAO; DEOGENESO and GLORINA
PALUGOD, and MARITZA PINEL, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

AURORA LOAN SERVICES, LLC,

Defendant.

No. 10-cv-03118-SBA

NOTICE OF CLASS ACTION SETTLEMENT

**THIS IS A NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT**

This is an important notice from the United States District Court for the Northern District of California regarding a proposed class action settlement and upcoming hearing in the above-referenced class action lawsuit that may affect your rights. This notice is being sent to you because you have been identified as a potential class member in this lawsuit.

I. BACKGROUND AND SUMMARY OF LITIGATION

This class action lawsuit alleges that Defendant Aurora Loan Services LLC (“Aurora”) violated the legal rights of its customers in the following ways: (a) by sending defaulted California customers a Special Forbearance Agreement, also called a Workout Agreement or Foreclosure Avoidance Agreement (“SFA”), that was deceptive under the Rosenthal Unfair Debt Collection Practices Act; (b) by collecting the required payments under SFAs, but not offering customers a bona fide opportunity to cure the arrearages on their loans; and (c) by collecting additional payments after the completion of the term of the SFA, but not offering customers a bona fide opportunity to cure the arrearages on their loans. Aurora denies that it has done anything unlawful, but has agreed to enter into a settlement agreement to resolve these allegations.

The Court has certified the following classes for settlement purposes:

The Rosenthal Act Settlement Class

All California residential mortgage customers, to whom Aurora sent the “Workout Agreement,” later called the “Foreclosure Alternative Agreement,” or substantially identical correspondence on or after June 8, 2009.

The Restitution Settlement Class

All California residential mortgage customers to whom Aurora sent the “Workout Agreement,” later called the “Foreclosure Alternative Agreement,” or substantively identical correspondence on or after June 8, 2006, who made the trial payments required by their final Workout Agreement, did not thereafter enter into a repayment plan or HAMP trial payment plan, were not thereafter offered a loan modification by Aurora, and were thereafter foreclosed upon.

The Restitution Settlement Class contains the “**Excess Payment Subclass**” who made additional payments to Aurora after the term of their SFA expired.

II. SUMMARY OF THE PROPOSED SETTLEMENT TERMS

The Court certified the Settlement Class and preliminarily approved the settlement on September 5, 2014. The Settlement Agreement provides for the following relief:

Monetary Relief to Settlement Class Members and Distribution Formula

Pursuant to the Settlement Agreement, Aurora has agreed to establish a non-reversionary Gross Settlement Fund of Five Million, Two Hundred Fifty Thousand Dollars (\$5,250,000.00). This Fund will be used to provide monetary relief to all Settlement Class Members who do not timely opt out of the Settlement (“Eligible Class Members”). The following amounts will be deducted from the Gross Settlement Fund: any amounts approved by the Court for: (a) service awards for the Named Plaintiffs for their efforts in bringing and prosecuting this case (not to exceed \$7,500 each); (b) attorneys’ fees and costs to Class Counsel (not to exceed thirty percent of the Gross Settlement Fund and Class Counsel’s actual expenses); and (c) the costs of the Claims Administrator. The Court has not yet decided whether to award some or all of these amounts, but to the extent that any amounts are awarded, they will be deducted from the Gross Settlement Fund and the remainder will constitute the Net Settlement Fund.

The Net Settlement Fund shall be distributed by check to Eligible Class Members in proportion to each Eligible Class Member’s “Settlement Damages” as calculated by Class Counsel based upon the Class Data produced by Aurora and supplemented, if needed, by Eligible Class Members pursuant to this Notice. The Settlement Damages for Settlement Class Members is the sum of: (a) their Rosenthal Act Settlement Damages; and (b) their Restitution Settlement Damages.

The Net Settlement Fund shall be distributed to Eligible Class Members as follows:

- a. The Net Settlement Fund shall be divided into the “Rosenthal Act Net Settlement Fund” and the “Restitution Net Settlement Fund.”
- b. Rosenthal Act class-wide damages are capped by California law at \$500,000. As a result, the Rosenthal Act Net Settlement Fund shall be \$500,000 multiplied by the ratio of the Net Settlement Fund to the Gross Settlement Fund. By way of example only, if the Net Settlement Fund is \$3,600,000, then the Rosenthal Act Net Settlement Fund would be $\$500,000 * (\$3,600,000/\$5,250,000) = \$342,857$.
- c. The Restitution Net Settlement Fund shall be the Net Settlement Fund less the Rosenthal Act Net Settlement Fund. By way of example only, and carrying forward the assumptions immediately above, if the Net Settlement Fund is \$3,600,000 and the Rosenthal Act Net Settlement fund is \$342,857, then the Restitution Net Settlement Fund would be $\$3,600,000 - \$342,857 = \$3,257,143$.
- d. “Rosenthal Act Settlement Damages” for Eligible Rosenthal Act Settlement Class Members shall be an equal share of the Rosenthal Act Net Settlement Fund. By way of example only, if the Rosenthal Act Net Settlement Fund is \$342,857 and there are 12,000 Eligible Rosenthal Act Settlement Class Members, then Rosenthal Act Settlement Damages shall be $\$342,857 / 12,000 = \28.57 .
- e. “Restitution Settlement Damages” for Eligible Restitution Settlement Class Members shall be based *pro rata* upon each Eligible Restitution Settlement Class Members’ payments to Aurora under their Workout Agreement, and (for Excess Payment Subclass Members) following the term of their Workout Agreement. By way of example only, if the Restitution Net Settlement Fund is \$3,257,143, and an Eligible Restitution Settlement Class member paid \$8,000 to Aurora under their Workout Agreement, and paid \$8,000 to Aurora following their Workout Agreement, and the total of all payments to Aurora by Eligible Restitution Settlement Class Members was \$28,000,000, then that Eligible Restitution Settlement Class Member would have Restitution Settlement Damages of:
 $((\$8,000 + \$8,000) / \$28,000,000) * \$3,257,143 = \$1,861.22$.
- f. Settlement Damages for each Settlement Class Member shall be the sum of their Rosenthal Act Settlement Damages and their Restitution Settlement Damages.

III. Release of Claims

In exchange for the monetary relief provided by the Settlement Agreement, all Settlement Class Members who do not timely exclude themselves by opting out of the settlement will release Aurora Loan Services LLC and each of its past, present and future parents, subsidiaries, members, divisions, affiliates, affiliated companies and corporations, joint venturers, directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, legal representatives, consultants, representatives, predecessors, successors, independent contractors, or related entities, and each and all of their executors, predecessors, successors and assigns, from all claims actually made or that could have been made on behalf of Settlement Class Members based on the facts asserted in the Second Consolidated Amended Complaint through September 5, 2014 (“Released Claims”). Releasing Parties who are only members of the Rosenthal Act Settlement Class (*i.e.*, are not members of the Restitution Settlement Class) shall only release, resolve, relinquish and forever discharge their right and ability to bring claims under or based on the California Rosenthal Act against the Released Parties.

Specifically, the Settlement Agreement sets forth the Class Release as follows:

RELEASES

The “Released Parties” are: Aurora Loan Services LLC and each of its past, present and future parents, subsidiaries, members, divisions, affiliates, affiliated companies and corporations, joint venturers, directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, legal representatives, consultants, representatives, predecessors, successors, independent contractors, or related entities, and each and all of their executors, predecessors, successors and assigns. The Released Parties include, by way of example but not limitation: Aurora Loan Services, LLC, Aurora Commercial Corp., and Aurora Bank FSB.

The “Releasing Parties” are: the Named Plaintiffs and each Settlement Class Member (except those who timely opt out of the Settlement) and his or her assigns, heirs, successors and personal representatives.

The “Released Claims” are: any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters from the beginning of time up through and including Preliminary Approval Date that were or could have been asserted or alleged in the Action, including, without limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, arising out of or in any way related to Aurora’s use of, or policies and practices in connection with, Aurora’s Workout Agreements or Special Forbearance Agreements.

The Released Claims include, by way of example but not limitation, any and all claims concerning: (a) whether Aurora provided or had any obligation to provide Settlement Class Members an opportunity to cure in connection with the Workout Agreement; (b) whether Aurora rendered or had any obligation to render a modification decision during the term of the Workout Agreement; (c) whether Aurora provided or had any obligation to provide cure information, including reinstatement or pay off figures, to Settlement Class Members in connection with the Workout Agreement; (d) whether Aurora notified or had any obligation to notify Settlement Class Members at least five days before the foreclosure sale that their request for a loan modification or other workout plan

was denied; (e) whether Aurora provided or had any obligation to provide Settlement Class Members a loan modification or other workout option at the conclusion of a Workout Agreement; (f) whether Aurora told or had any obligation not to tell Settlement Class Members to continue making payments after the end of the Workout Agreements; (g) fees charged by Aurora in connection with Workout Agreements; (h) whether Aurora complied with California's deficiency judgment statute (e.g., Cal. Code Civ. Proc. § 580b) in connection with Workout Agreements; (i) whether Aurora complied with California law concerning postponing and scheduling foreclosure sales (e.g., Cal. Civ. Code § 2994g), in connection with Workout Agreements; (j) whether Aurora complied with the California Rosenthal Fair Debt Collection Practices ("Rosenthal Act"), Cal. Civil Code §§ 1788, *et seq.* in connection with Workout Agreements; (k) whether Aurora complied with the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.* in connection with Workout Agreements; (l) whether Aurora "dual tracked" Settlement Class Members in connection with Workout Agreements; and (m) whether Workout Agreements are fraudulent, unconscionable, or violate any California law, whether statutory, common law, or any other.

Class Release. Upon the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released, resolved, relinquished, and forever discharged the Released Parties of and from the Released Claims, provided, however, that Releasing Parties who are only members of the Rosenthal Act Settlement Class (*i.e.*, are not members of the Restitution Settlement Class) shall only release, resolve, relinquish and forever discharge their right and ability to bring claims under or based on the California Rosenthal Act against the Released Parties.

The Releasing Parties may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of this Agreement, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to the Released Claims. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in this Agreement, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she does not receive actual notice of the Settlement or does not receive a distribution of funds from the Settlement.

Waiver of California Civil Code Section 1542. Without limiting the foregoing, the Released Claims specifically extend to claims that Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained therein, becomes effective. This paragraph constitutes a waiver of, without limitation to any other applicable law, all rights under California Civil Code Section 1542 with respect to the Released Claims. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

As such, the Participating Class Members understand and agree that they are providing the Released parties with a full and complete release with respect to the Released Claims.

If the proposed settlement is approved, a judgment will be entered by the Court following the Final Fairness Hearing that will dismiss with prejudice the Released Claims as set forth above.

IV. Your Legal Rights and Options

You are receiving this notice because Aurora's records indicate you were sent a Workout Agreement on or after June 8, 2006. But this does not necessarily mean you are in any Settlement Class. You are in the Rosenthal Act Settlement Class only if you were sent a Workout Agreement on or after June 8, 2009. You are in the Restitution Settlement Class only if you made the trial payments required by your final Workout Agreement, did not thereafter enter into a repayment plan or HAMP trial payment plan, were not thereafter offered a loan modification by Aurora, and were thereafter foreclosed. The enclosed "Payment Documentation Form" states whether, according to Aurora's records, you are in the Rosenthal Act Settlement Class and/or the Restitution Settlement Class.

If you are not in either the Rosenthal Act Settlement Class or the Restitution Settlement Class, then you will not receive any benefits under this settlement and you will not release any claims you may have against Aurora. If you are not in one or both of the Settlement Classes, but you believe you should be because you meet the criteria, you may complete and return the "Payment Documentation Form," along with the required documentation, and you will be considered for addition to one or both Settlement Classes.

If you are in either the Rosenthal Act Settlement Class or the Restitution Settlement Class and you wish to participate in this settlement, you do not need to sign or return any documents in order to be considered part of the class or classes and to receive your portion of the Settlement Fund.

Further, if you are in either the Rosenthal Act Settlement Class or the Restitution Settlement Class, but the payment information from Aurora's records set forth on the "Payment Documentation Form" is incorrect, you may complete and sign the "Payment Documentation Form" and provide documentation of payments that you made to Aurora under your SFA and after the term of your SFA expired. Note that under the terms of the settlement you must have made at least all of the payments required under your SFA to be a member of the Restitution Settlement Class. For example, if your SFA required three payments and you only made two or fewer payments, or if your SFA required six payments and you only made five or fewer payments, then you are not a member of the Restitution Settlement Class even though you may have made substantial payments to Aurora under your SFA. In addition, if after you completed an SFA, you were placed into a HAMP trial modification or an Aurora repayment plan that would have brought your loan current, or you were offered a loan modification, then you are not a member of the Restitution Settlement Class even though you may have made substantial payments to Aurora under your SFA. If you are not a member of the Restitution Settlement Class then you

will not release claims you may have against Aurora related to your SFA, except you will release claims under the California Rosenthal Act if you are in the Rosenthal Act Settlement Class and you do not opt-out of the settlement.

The Settlement Administrator will accept documentation of payments to Aurora if your Payment Documentation Form has been completed and signed and you have provided one of the following for each claimed payment that matches the amount of payment required under your SFA: (1) cancelled check; (2) credit card or debit card receipt or charge slip; (3) money order or cashiers' check receipt; (4) bank account statement showing a payment to Aurora; (5) credit card statement showing a payment to Aurora; or (6) a receipt or acknowledgment of payment from Aurora.

If you are in either the Rosenthal Act Settlement Class or the Restitution Settlement Class and you do not wish to participate in this settlement, in which case, you will not receive any portion of the Settlement Funds and you will not be bound by the release set forth above, then you must submit a written statement requesting exclusion from the settlement ("opt-out") postmarked no later than December 15, 2014. Your written request for exclusion must contain your name, address, telephone number and email address, and be personally signed by you. No opt-out request may be made on behalf of a group of Settlement Class Members. The opt-out request must be sent by mail to the Claims Administrator at Aurora Workout Agreement Settlement Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060 and must be timely postmarked as set forth above. Any Settlement Class Member who requests exclusion from (opts out of) the settlement will not receive any money from the settlement and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.

If you wish to object to the settlement, you must mail a written statement of your objection to the Claims Administrator at Aurora Workout Agreement Settlement Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060 postmarked no later than December 15, 2014. You must include the basis for your objection, as well as your name, address, telephone number, and email address, and the objection must be personally signed by you. In addition, you must identify any previously filed objections by you or your counsel in any state or federal court. This listing must contain (a) the name of the case; (b) the case number; and (c) the court in which the objection was filed. The postmark date of the mailing envelope is the exclusive means that will be used to determine whether an objection is timely submitted. Settlement Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement.

V. The Final Fairness Hearing

On January 13, 2015, at 1 pm before the Honorable Sandra B. Armstrong at the United States District Court, located at 1301 Clay Street, 2nd floor, Oakland, CA 94612, the Court will hold a Final Fairness Hearing to determine whether to grant final approval to the proposed settlement and determine the appropriate amount of compensation to be awarded to Class Counsel and the Class Representatives out of the Gross Settlement Fund. You may, but are not required to attend this hearing. You may also enter an appearance in the case through your own attorney, if you so desire.

You may review a copy of the Settlement Agreement and other documents that are pertinent to this case, including Class Counsel's Motion for Attorneys' Fees and Costs (when it is filed), at the settlement website, www.auroraworkoutagreementsettlement.com. You may also review a copy of the Settlement Agreement at the Clerk's Office at the Court (1301 Clay Street, Oakland, CA 94612).

VI. How to Obtain Additional Information

This Notice of Class Action Settlement provides a summary of the proposed Settlement Agreement. If you have any questions concerning this settlement, you should visit the settlement website, www.auroraworkoutagreementsettlement.com. If you have further questions after visiting the settlement website, you may call the Claims Administrator at 1-888-283-7346, or mail or email your inquiry to the Claims Administrator at the address below:

Aurora Workout Agreement Settlement Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8060
San Rafael CA 94912-8060
Email: info@auroraworkoutagreementsettlement.com

You may also contact Class Counsel, as follows:

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PLEASE DO NOT CONTACT THE COURT