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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

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: January 13, 2015
Time: 1:00 p.m.
Place: Courtroom 210
Judge: Hon. Saundra B. Armstrong

NOTICE AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 13, 2015, at 1:00 p.m., or as soon as the matter may be heard, in the United States District Court of the Northern District of California, Oakland Division, located at 1301 Clay Street, Oakland, CA 94612, Honorable Saundra B. Armstrong presiding, Plaintiff and Class Counsel will and hereby do move the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure for an order and judgment granting final approval to the class action settlement in this case.

This motion is supported by the Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 225) and associated filings, the Motion for Attorneys' Fees and Service Award (Dkt. No. 230) and associated filings, the memorandum below, and the following supporting declarations filed herewith:

1. Declaration of Kenneth Jue on Behalf of the Settlement Administrator; and
2. Declaration of Thomas E. Loeser, Esq.

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I. INTRODUCTION

This motion seeks final approval of a California class action settlement resolving allegations of abusive loan modification practices by Defendant Aurora Loan Services, LLC ("Aurora"). The settlement provides a $5,250,000 non-reversionary gross common fund for the benefit of the classes of Aurora borrowers: (1) sent Special Forbearance Agreements ("SFA") that are alleged to have violated the Rosenthal Fair Debt Collections Practices Act (the "Rosenthal Class"); and (2) who after being sent an SFA, made all required payments, were not offered a loan modification or repayment agreement or HAMP trial, and were foreclosed (the "Restitution Class"). The key events underlying this motion are summarized and incorporated as follows:

- In May 2014, the parties executed the Amended Settlement Agreement and Release (the "Settlement Agreement") memorializing the proposed settlement. *See* Dkt. No. 219-1.
- On September 5, 2014, this Court issued the Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order" or "Prelim. App."). *See* Dkt. No. 225.
- By October 15, 2014, the Settlement Administrator completed the initial mailing of the Court-approved Class Notice to each of the 15,135 unique Class Members identified through Aurora data. *See* Declaration of Kenneth Jue on Behalf of the Settlement Administrator (the "Jue Decl."), ¶ 9.
- On November 14, 2014, Class Counsel separately filed the Motion for Attorneys' Fees and Service Award (the "Fee Motion" or "Fee Mtn."), and sent it to the Settlement Administrator for it to be posted on the settlement website so that it was publicly accessible. *See* Declaration of Thomas E. Loeser ("Loeser Decl."), ¶ 2.
- December 15, 2014, was the deadline for Class Members to request exclusion or object. Dkt. No. 225. To date there have been no objections. There have been 26 timely requests for exclusion. *See* Jue Decl., ¶ 15.

Plaintiffs now seek an order and judgment granting final approval to the settlement, including the proposed allocation of the Settlement Fund, as follows:

Gross Settlement Fund	$5,250,000.00	100%
Attorneys' Fees	($1,575,000.00)	30%
Attorneys' Expenses	($185,833.00)	3.54%
Service Awards	($37,500.00)	0.71%
Settlement Administration	($85,000.00)	1.62%
Net Distribution to Class	**$3,366,617.00**	**64.13%**

II. SUMMARY OF ARGUMENT

The Court should approve the settlement as fair, reasonable, and adequate. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); FED. R. CIV. P. 23(e)(2). First, the procedural indicia of fairness are strong. The settlement is the product of informed, arm's-length negotiations overseen by an experienced mediator and conducted by highly resourced and experienced attorneys whose interests were well aligned with those of the Class. Second, the settlement result is empirically excellent. The $5,2250,000 Settlement Fund is non-reversionary and represents a significant return of SFA payments. The settlement also provides for direct claims-paid distribution. And the class definition and release are narrowly tailored to the litigation. Third, as of the date of this filing, the reaction of the Class supports the settlement. After implementation of a comprehensive notice plan, there are just 26 exclusion requests and no objections.

The Court should also certify the class for settlement purposes because it satisfies Rule 23. *See* FED. R. CIV. P. 23(a), (b) & (e). Class treatment is superior because the class is too numerous and their claims are too small for individual litigation. Common questions predominate because each class member's claims essentially turn on interpretation of the same California law and corporate practices and materially identical contractual forms. A classwide settlement is appropriate here because the claims of the representative plaintiffs are typical, and they and their counsel have fairly and adequately represented the interest of the class.

The proposed allocation of the Net Settlement Fund (after attorneys' fees, expenses, and a service award, which are discussed in the Fee Motion) among the Class Members is also fair. Unless they opt-out, all Rosenthal Settlement Class Members will automatically be sent an equal

share of the statutory maximum class recovery under the Rosenthal Act (net of a proportional share of the fees, expense, service awards and administration costs). Unless they opt-out, all members of the Restitution Settlement Class will receive a pro-rata share of the net Restitution Settlement Fund based on the SFA payments that such Class Members paid to Aurora. There will be a second distribution if more than 5% of the Net Settlement Fund remains after the first distribution. Any final residual will be escheated to the State of California, or provided to such other *cy pres* recipient as the Court approves. No settlement funds will ever revert to Aurora.

III. STATEMENT OF THE CASE, SETTLEMENT, AND CLASS NOTICE

A. The Preliminary Approval Motion and Order, and Separately-Filed Fee Motion, Detail the Background of the Case and Settlement

The procedural history, facts, and law of this case are set forth in the Preliminary Approval Motion (Dkt. No. 218, *et seq.*) and Fee Motion (Dkt. No. 230, *et seq.*) as further detailed and affirmed in the supporting declarations filed therewith by Thomas Loeser (Dkt. Nos. 219, 231), as well as the Court's Order Granting Preliminary Approval of Class Settlement (Dkt. No. 225). These pleadings are incorporated by reference and cited herein as indicated.

B. Summary of the Settlement Agreement and Allocation Plan

The intent of the settlement is to resolve claims concerning Aurora's Special Forbearance Agreements that were sent to California borrowers during the statutory limitations periods for (1) the Rosenthal Act (on or after June 8, 2009); and (2) the California Unfair Competition Law ("UCL") (on or after June 8, 2006). *See* Settlement Agreement, Dkt. No. 219-1. Importantly, borrowers who are members *only* of the Rosenthal Act Settlement Class will release *only* their Rosenthal Act claims. The Settlement Classes are:

> The "**Rosenthal Act Settlement Class**," which consists of "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."
>
> And
>
> The "**Restitution Settlement Class**," which consists of "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."

Settlement Agreement, ¶ 2(bb) and (cc).

There is also the "Excess Payment Settlement Subclass" which contains: "All members of the Restitution Settlement Class who made additional payments to Aurora after the term of the Workout Agreement had expired." Settlement Agreement, ¶ 2(n).

The Agreement provides for a non-reversionary (*i.e.*, no amount will ever revert to Aurora under any circumstances) Gross Settlement Fund of Five Million, Two Hundred Fifty Thousand Dollars ($5,250,000.00). Agreement, ¶ 2(q) (defining "Gross Settlement Fund"). This Fund will be used to provide monetary relief to all Settlement Class Members who do not timely opt-out of the Settlement ("Eligible Settlement Class Members"), after deducting any amounts approved by the Court for (a) service awards for the Named Plaintiffs for their efforts in bringing and prosecuting this matter; (b) attorneys' fees and costs to Class Counsel; and (c) the fees and costs of the Claims Administrator (the "Net Settlement Fund"). Agreement, ¶ 2(r) (defining the "Net Settlement Fund").

The Agreement provides that the Net Settlement Fund shall be distributed to Eligible Settlement Class Members as each Eligible Class Member's "Settlement Damages" as calculated by Class Counsel based upon the Class Data. The Settlement Damages is the sum of: (a) Rosenthal Act Settlement Damages; and (b) Restitution Settlement Damages. Agreement, ¶ 22.

Rosenthal Settlement Class members shall each receive an equal share of the Net Rosenthal Act Settlement Fund. The amount to be divided (if the Court approves the attorneys' fees, expenses, service awards and administration costs) is: $320,630.19.[1] As there are 13,516 members of the Rosenthal Act Settlement Class, 26 of whom excluded themselves, 13,490 remaining Rosenthal Act Settlement Class members will be sent checks.

Restitution Settlement Class members will receive a *pro rata* share of the Net Restitution Settlement Fund based upon their payments to Aurora under the SFA and following the SFA (for subclass members) as a share of the total payments to Aurora of all Restitution Settlement Class

[1] Pursuant to the Agreement, this amount was calculated as the ratio of the Net Settlement Fund to the Gross Settlement Fund (here $3,366,617/$5,250,000 = .64126), multiplied by the maximum Rosenthal class action damages under the Statute ($500,000), which yields $320,630.19.

members. The total payments to Aurora of all Restitution Settlement Class members who did not exclude themselves is $28,746,642.62.[2] The Net Restitution Settlement Fund (if the Court approves the attorneys' fees, expenses, service awards and administration costs) is: $3,045,986.81.[3] As such, Eligible Restitution Settlement Class members will each receive back approximately 11% of the amount that they paid to Aurora during and after their SFAs. The amount of each Restitution Class member's restitution damages is set forth by loan number in Exhibit A to the 12/30/14 Loeser Declaration.

Eligible Class Members will be sent a check for the sum of their Rosenthal Act Settlement Damages and their Restitution Settlement Damages. Eligible Class Members will have 120 days from the date of mailing to cash their check. Agreement, ¶ 27. If the remaining funds after this process exceed 5% of the Rosenthal Act Net Settlement Fund or the Restitution Net Settlement Fund, the Claims administrator will make a second distribution to Eligible Class Members who cashed their settlement checks on a *pro rata* basis based on each such Eligible Class Members' Settlement Damages in proportion to the total amount remaining in the respective Net Settlement Fund. Agreement, ¶ 28. All unclaimed monies in the Rosenthal Act Net Settlement Fund or the Restitution Net Settlement Fund after the second distribution or if, after the first distribution, there is less than five percent (5%) of either Net Settlement Fund remaining, shall be escheated to the State of California. No unclaimed funds will revert to Aurora. Agreement, ¶ 29.

C. Summary of Class Notice

The Settlement Administrator is an expert in class notice and settlement administration programs. *See* Jue Decl., ¶¶ 5-6. Following preliminary approval, it dutifully performed the notice plan in accordance with the Settlement Agreement and Preliminary Approval Order. *See id.*, ¶¶ 7-12. The data that Aurora provided as both the class list and basis for damages computations

[2] This amounts include payments made by Restitution Settlement Class Members as reflected in Aurora's records ($27,081,691.69) as well as Settlement Class Members whose disputes were approved after review by Class Counsel (107 Class members with $1,664,950.93 in payments).

[3] Pursuant to the Agreement, this amount is calculated as the Net Settlement Fund (here $3,366,617) less the Net Rosenthal Act Net Settlement Fund ($320,630.19), which is $3,045,986.81.

originally consisted of 15,372 records of potential Class Members,[4] including loan numbers and contact information. *See id.*, ¶ 8. After consolidating and de-duplicating the records, the Settlement Administrator determined that the data represented 15,135 unique potential Class Members. *See id*. The Settlement Administrator sent the Court-approved Class Notice to each of them via first class mail. *See id.*, ¶ 9. It also set up a toll free number and an email inquiry system, and published the Class Notice and other important case documents and information on a dedicated settlement website. *See id.*, ¶¶ 11-12. From this initial mailing, the postal service returned 2,110 notices as *undeliverable* without any forwarding address. *See id*., ¶ 10. For these, the Settlement Administrator conducted additional searches pursuant to the Settlement Agreement and based upon commercially available "skip trace" databases. *See id.* This resulted in updated contact information for 1,946 Class Members, to whom the Class Notice was promptly re-mailed. *See id.* There were, therefore, 156 potential Class Members who did not receive class notice by mail, and there whereabouts remain unknown ("Undeliverables").

In accordance with the Preliminary Approval Order, the Class Notice instructs recipients to send requests for exclusion or objections to the Settlement Administrator postmarked by December 15, 2014. *See id.*, ¶ 14. As of the date of this filing, the Settlement Administrator has received 26 requests for exclusion and no objections. *See id*., ¶ 15. Through the dispute process built into the notice, 238 disputes were received from potential Class Members. Class Counsel reviewed each of these disputes to determine whether the disputing borrower should be included in either Settlement Class. As a result of this review, 107 borrowers were added to the restitution Settlement Class with payments to Aurora totaling $1,664,950.93.

[4] These were *potential* Class Members because it included every person in California who was sent an SFA who could possibly have been a member of the Restitution Settlement Class or Rosenthal Settlement Class, even where Aurora's records did not indicate that they were members. Such potential Class Members were each told whether Aurora's records indicated class membership, and were given the opportunity to dispute their status and the payments Aurora's records indicated that they made. Through this process, 238 disputes were received by the Settlement Administrator (Jue Decl., ¶ 13), resulting in 107 Class Members being added to the Restitution Settlement Class.

Including those added through the dispute process, there are 13,492 individual members of the Rosenthal Settlement Class; and there are 2116 members of the Restitution Settlement Class whose collective payments to Aurora under and following their SFAs total $28,539,387.22.

IV. LAW AND ARGUMENT

A. The Court Should Grant Final Approval of the Settlement

1. The settlement is fair, reasonable and adequate.

Final approval should be granted because "the settlement taken as a whole is fair, reasonable, and adequate." *In re Bluetooth*, 654 F.3d at 946; FED. R. CIV. P. 23(e)(2). "Courts have long recognized that settlement class actions present unique due process concerns for absent class members." *Id.* (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)) (internal quotation marks omitted). Generally speaking, the central concern is that class counsel may – consciously or unconsciously – collude with the defendants by tacitly reducing the overall settlement in return for a higher attorney's fee. *See id.*

"To guard against this potential for class action abuse, Rule 23(e) of the Federal Rules of Civil Procedure requires court approval of all class action settlements, which may be granted only after a fairness hearing and a determination that the settlement taken as a whole is fair, reasonable, and adequate." *Id.* "The factors in a court's fairness assessment will naturally vary from case to case, but courts generally must weigh:

> (1) the strength of the plaintiff's case;
> (2) the risk, expense, complexity, and likely duration of further litigation;
> (3) the risk of maintaining class action status throughout the trial;
> (4) the amount offered in settlement;
> (5) the extent of discovery completed and the stage of the proceedings;
> (6) the experience and views of counsel;
> (7) the presence of a governmental participant; and[5]
> (8) the reaction of the class members to the proposed settlement."

Id.

[5] The participation of a governmental entity presumably "serves to protect the interest of the class members." *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977). But where, as here, "[t]here is no indication that any governmental entity participated in the settlement of the instant action … this factor favors neither approval nor disapproval of the settlement." *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *15 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 Fed. App'x 452 (9th Cir. 2009).

"This list is not exclusive and different factors may predominate in different factual contexts." *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). Ultimately, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *Hanlon*, 150 F.3d at 1027. Accordingly, where a "settlement is a product of informed, arms-length negotiations," it is entitled to a "presumption of fairness." *In re Toys "R" Us-Del., Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 450 (C.D. Cal. 2014) (citing *Rodriguez*, 563 F.3d at 965-66 ("[w]e put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution")).

Here, factors 4-6 weigh heavily in favor of the settlement because they encompass the evidence that the settlement is: (a) the product of vigorous, informed, arm's-length negotiations; (b) conducted by highly experienced, resourced, and regarded Class Counsel; (c) who represented the interests of the Class in a procedurally sound manner; and (d) thus obtained a proposed gross settlement of $5,250,000. *See* Dkt. Nos. 218-19. Moreover, collusion concerns are minimized in this case because the attorney fee sought is 30% of the common fund, which is favored precisely because it helps "ensure faithful representation by tying together the interests of class members and class counsel." *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1178 (9th Cir. 2013). In fact, the fee sought in this case is under two-thirds of the amount actually expended in this hard-fought four-year litigation. Under such circumstances, there is no cause to second guess Class Counsels' decision in favor of the settlement. *See Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 453-454 (E.D. Cal. 2013) ("even in class action contexts … the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel"); *see also Rodriguez*, 563 F.3d at 965.

Factors 1-3 also weigh heavily in favor of the proposed settlement. Loan modification litigation is complex, expensive, and risky, and has resulted in numerous dismissals and denials of

class certification in numerous cases nationwide.[6] Here, Aurora was a formidable defendant with virtually unlimited resources to engage in litigation of extreme duration. Factors 1-3 strongly favor the settlement because this case could have been litigated for much longer to reach the same (or a worse) result. In fact, this case could have been litigated until the point that Aurora simply no longer existed and had no resources with which to pay any amount in settlement or following a judgment.

Factor 8, the reaction of the Class Members, also strongly favors the settlement. The "absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of [the settlement] are favorable to the class members." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). In this case, another exceptionally strong indication of the fairness of the settlement is that there have been just 26 requests for exclusion and no objections submitted by Class Members.

2. The Settlement Class should be certified for settlement purposes.

The Settlement Class should be certified for settlement purposes because it meets the requirements of Rule 23(a) and (b). "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* FED. R. CIV. P. 23(b)(3)(D), for the proposal is that there be no trial. But other specifications of the rule--those designed to protect absentees by blocking unwarranted or overbroad class definitions--demand undiluted, even heightened, attention in the settlement context." *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). Application of this standard to the elements – numerosity, commonality, typicality, adequacy, predominance, and superiority – shows settlement certification is appropriate. *See* FED. R. CIV. P. 23(a) & (b).

A class action is vastly superior because the class is far too numerous and their claims are far too small for joinder or individual litigation. It is superior in this case because no "other means for putative class members to adjudicate their claims [exists]." *Leyva v. Medline Indus.*, 716 F.3d 510, 515 (9th Cir. 2013). Common questions of fact and law predominate in this case because each Class Member's claims essentially turn on interpretation of the same state law and uniform corporate

[6] *See, e.g., In re Bank of Am. Home Affordable Modification Program (HAMP) Contract Litig.*, 2013 U.S. Dist. LEXIS 126028 (D. Mass. Sept. 4, 2013).

practices, and on substantively identical contractual language. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022 (quoting *Amchem*, 521 U.S. at 623).

A classwide settlement is therefore appropriate in this case because the claims of the representative plaintiffs are typical, and they and their counsel have fairly and adequately represented the interest of the class. "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. This element is satisfied because Aurora sent the same SFA to every member of the Classes. Each of the representative plaintiffs made all the payments required under the SFA, did not get a loan modification, repayment plan or HAMP plan, and were foreclosed upon. *See* Loeser Decl., ¶ 3.

Adequacy is satisfied because Class Counsel are adequate, and because neither they nor the representative plaintiffs are in conflict with the class. "To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them." *Hanlon*, 150 F.3d at 1020. "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Id.* at 1020.

Both adequacy prongs are satisfied here. The representative plaintiffs have no conflicts with the settlement class. *See* Loeser Decl., ¶ 4. On the contrary, their interests are well aligned because they have no actual conflicts and seek the same relief for the same legal injury. *See id.* Similarly, Class Counsel have no conflicts with the settlement class. *See id.*, ¶ 5. On the contrary, their interests were well aligned with those of the class because they were representing them on a contingency basis and seek a percentage of the cash recovery. *See id.* The evidence shows that the representative plaintiffs and their counsel vigorously prosecuted the action on behalf of the class. *See* Loeser Decl. ISO Fee Motion, ¶¶ 7-10 (Dkt. No. 231).

Finally, this settlement raises no adequacy concerns like those in *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157 (9th Cir. 2013). *See* Fee Mtn., pp. 17-19.[7] There, when several named plaintiffs disagreed with a proposed settlement, class counsel withdrew from their representation, and had different named plaintiffs execute a settlement agreement that provided for service awards only to those "serving as class representatives in support of the Settlement." *See id.* at 1162. The Ninth Circuit held that such "conditional incentive awards" created a structural conflict that rendered the class representation inadequate. *See id*. at 1164-65, 1168. Here, the Settlement Agreement does not provide for conditional incentive awards, and Class Counsel never otherwise sought to use incentive awards to pressure or bribe class representatives to accept the proposed settlement. *See* Settlement Agreement at ¶ 32; Loeser Decl. ISO Fee Mtn., ¶¶ 14-15; Oldham Decl. ISO Fee Mtn., ¶¶ 14-15 (Dkt. No. 232); Abtahi Decl. ISO Fee Mtn., ¶¶ 11-12 (Dkt. No. 234); A. Chao Decl. ISO Fee Mtn., ¶¶ 24-25 (Dkt. No. 238); M. Chao Decl. ISO Fee Mtn., ¶¶ 6-7 (Dkt. No. 293); G. Palugod Decl. ISO Fee Mtn., ¶¶ 25-27 (Dkt. No. 236); D. Palugod Decl. ISO Fee Mtn., ¶¶ 6-7 (Dkt. No. 237); Pinel Decl. ISO Fee Mtn., ¶¶ 24-25 (Dkt. No. 235).

3. Class Notice satisfied Rule 23 and due process.

The Class Notice satisfies Rule 23 and due process in this case. Under Rule 23(e), a "class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." FED. R. CIV. P. 23(e). Under Rule 23(c),

> the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

FED. R. CIV. P. 23(c)(2)(B).

[7] *Radcliffe* is discussed in greater detail in the Fee Motion.

Here, in accordance with this legal standard, the Court approved the form and plan of Class Notice in connection with its preliminary approval of the settlement. *See* Prelim. App., pp. 5-6. The Settlement Administrator has now conscientiously completed implementation of the same. *See* Jue Decl., ¶¶ 7-12. Thus, the best practicable notice to the Settlement Class has been achieved and due process satisfied.

B. The Court Should Approve the Plan of Allocation

The Court should approve the planned allocation of the net settlement proceeds among the Class Members because it too is fair, reasonable, and adequate. Approval of a plan to allocate settlement proceeds is governed by the same standard for approving a settlement as a whole. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284-85 (9th Cir. 1992). "An allocation formula need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel." *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002). "A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable." *In re Oracle Sec. Litig.*, 1994 U.S. Dist. LEXIS 21593, at *3 (N.D. Cal. June 16, 1994). Here, the planned allocation is reasonable because its design and effect is to (1) provide all Class Members with shares of the settlement fund that are proportionate to their damages claims to the extent possible, and (2) maximize the distribution to the settlement class. *See* Settlement Agreement, ¶¶ 18-29; Loeser Decl., ¶ 6.

C. The Court Should Approve Escheatment of Settlement Residue or Designate a *Cy Pres* Recipient

The Settlement Agreement stated that any residue from the Net Settlement Fund would be escheated to the State of California. However, should the Court desire the parties to designate instead a non-profit that does work in the housing sector, Class Counsel proposes, subject to Court approval, to designate as *cy pres* Habitat For Humanity. Habitat For Humanity is a non-profit organization that Class Counsel selected based on its housing related mission and involvement in providing assistance after floods. *See* www.habitat.org/disaster.

V. CONCLUSION

For the reasons set forth above and in the Fee Motion, Plaintiff and Class Counsel respectfully request that the Court enter the single proposed order and judgment submitted herewith granting final approval to this Settlement as requested herein.

Dated: December 30, 2014

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Thomas E. Loeser
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

CLASS ACTION

[PROPOSED] ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS COUNSEL ATTORNEYS' FEES, EXPENSES AND SERVICE AWARDS

Date: January 13, 2015
Time: 1:00 p.m.
Place: Courtroom 210
Judge: Hon. Saundra B. Armstrong

This matter came before the Court for hearing on January 13, 2015, pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Order Granting Preliminary Approval of Class Action Settlement (Dkt. No. 225) ("Preliminary Approval Order"). Plaintiffs seek final approval of the Settlement Agreement and Release ("Settlement Agreement") (Dkt. No. 219-1), including fee and expense awards to Class Counsel and service awards to the representative plaintiffs. Adequate notice having been given of the settlement as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings held, and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates and approves the Settlement Agreement as fair reasonable and adequate in all respects, and the terms used herein shall have the same meaning as set forth in the Settlement Agreement.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to this Action, including all Settlement Class Members, as such term is defined in the Settlement Agreement.

3. The Court appoints Plaintiffs Mauder and Alice Chao (husband and wife); Deogeneso and Glorina Palugod (husband and wife), and Maritza Pinel, as representatives of the Settlement Class.

4. The Court finds that the requirements of Rule 23 are satisfied with respect to the Settlement Class: (a) the members of the Settlement Class are so numerous that joinder of all of them is impracticable; (b) there are questions of law and fact common to the Settlement Class, which predominate; (c) Plaintiffs' claims are typical of the claims of the Settlement Class; and (d) Plaintiffs and Class Counsel have and will fairly and adequately represent the Settlement Class.

5. The Settlement Class is certified as the following Settlement Classes:

A. The "**Rosenthal Act Settlement Class**," which consists of "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."

And

B. The "**Restitution Settlement Class**," which consists of "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." Settlement Agreement, ¶ 2(bb) and (cc).

There is also the "Excess Payment Settlement Subclass" which contains: "All members of the Restitution Settlement Class who made additional payments to Aurora after the term of the Workout Agreement had expired." Settlement Agreement, ¶ 2(n).

6. The Class Notice mailed to Settlement Class Members fully and accurately informed Settlement Class Members of all material elements of the proposed settlement, and the mailing constituted valid, due, and sufficient notice to all Settlement Class Members, and the best notice practicable under the circumstances.

7. The Court finds that the persons identified in Exhibit C of the Declaration of Kenneth Jue filed herewith made timely and valid requests for exclusion from the Settlement Class pursuant to the Class Notice.

8. The Court finds there are no objections to the settlement plan following the class notices.

9. The Court approves service awards in the amount of $7,500 to Plaintiff Mauder Chao, $7,500 to Plaintiff Alice Chao, $7,500 to Plaintiff Deogeneso Palugod, $7,500 to Glorina Palugod, and $7,500 to Plaintiff Maritza Pinel, for their services as class representatives in accordance with the Settlement Agreement. The Court finds that such awards are fair, reasonable, and appropriate in this case, especially in light of the four years of vigorous litigation, which included Plaintiffs' depositions and their attendance at and involvement in the mediation, and orders that such service awards be paid from the Gross Settlement Fund in accordance with the Settlement Agreement.

10. Plaintiffs' attorneys, Hagens Berman Sobol Shapiro LLP, the Law Office of Andrew Oldham, Abtahi Thigpen, LLP, and Richardson, Patrick, Westbrook & Brickman, LLC are approved and appointed as Class Counsel.

11. Class Counsel are awarded attorneys' fees of 30% of the Gross Settlement Fund ($1,575,000) plus expense reimbursements of $185,833.00. The Court finds that such awards are fair and reasonable and orders that they be paid from the Gross Settlement Fund in accordance with the Settlement Agreement. The attorneys' fees awarded by the Court shall be allocated to Class Counsel at their discretion.

12. The Court approves the Claims Administrator's fees and costs of $85,000.00 to be paid promptly from the Gross Settlement Fund as they are incurred. All such funds not yet expended shall be held in reserve from the Gross Settlement Fund to cover the actual fees and costs the Claims Administrator will incur in mailing settlement payments. Should a second distribution be required per the terms of the Settlement Agreement, the fees and costs associated with such second distribution will be paid from the funds to be distributed in such second distribution. The Court finds that such fees and costs are reasonable and orders that they be paid from the Gross Settlement Fund in accordance with the Settlement Agreement.

13. The Court orders the parties to the Settlement Agreement and Claims Administrator to perform their obligations thereunder pursuant to the terms of the Settlement Agreement and the plan of allocation of the Net Settlement Fund described therein.

14. The Court orders that Judgment be entered on the terms of the Settlement Agreement as set forth in this Order and Judgment and dismisses the complaint in this case and all claims and causes of action asserted therein, on the merits and with prejudice, as to the Class Representative and all Settlement Class Members. This dismissal is without cost to any party except as specifically provided in the Settlement Agreement.

15. The Court adjudges that the Class Representatives and all Settlement Class Members who did not request exclusion shall, to the extent provided by the Settlement Agreement, conclusively be deemed to have released and discharged Released Parties, as that term is used in the Settlement Agreement, from any and all Released Claims, as that term is defined in the Settlement Agreement.

16. Without affecting the finality of this Order and Judgment, the Court retains jurisdiction over: (1) implementation and enforcement of the Settlement Agreement pursuant to

further orders of the Court, until such time as the final judgment contemplated hereby has become effective and each and every act agreed to be performed by the parties hereto shall have been performed pursuant to the Settlement Agreement, including all payments set forth thereunder; (2) any other action necessary to conclude this settlement and implement the Settlement Agreement; and (3) the enforcement, construction, and interpretation of the Settlement Agreement including, but not limited to, any dispute concerning Settlement Class Members' release of Released Claims.

17. The Court finds that no just reason exists for delay in entering this Judgment and the Clerk is hereby directed forthwith to enter it.

IT IS SO ORDERED, ADJUDGED AND DECREED

DATED: _____, 2014

Hon. Saundra B. Armstrong
United States District Judge