

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GINNINE FRIED, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

JPMORGAN CHASE & CO., and JPMORGAN
CHASE BANK, N.A. d/b/a Chase,

Defendants.

Civil Action No.: 15-2512-MCA-JBC

**PRELIMINARY
APPROVAL ORDER**

Defendant JPMorgan Chase Bank, N.A. (“Chase” or “Defendant”) and plaintiff Ginnine Fried (“Plaintiff” or “Class Representative”), on behalf of herself and all members of the proposed Class, have entered into a Settlement Agreement and Release (dated 3/13, 2019) (the “Settlement Agreement”) to settle this Action, and Plaintiff has filed a Motion for Preliminary Approval.¹ The Settlement Agreement, the exhibits thereto, and the exhibits to the Motion for Preliminary Approval set forth the terms and conditions for a proposed settlement, release, and dismissal with prejudice of this Action.

Having reviewed the Settlement Agreement and its exhibits and the Motion for Preliminary Approval and its exhibits, and good cause appearing,

IT IS THIS 27 day of March, 2019

ORDERED as follows:

1. The Court preliminarily approves the Settlement and Settlement Agreement subject to the Final Approval Hearing for purposes of deciding whether to enter the Final Approval Order and Final Judgment.

¹ Capitalized terms shall have the meanings ascribed to them in the Settlement Agreement.

CONDITIONAL CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES

2. For settlement purposes only, the Court conditionally certifies the following

Settlement Class:

All customers of Chase-serviced mortgage loans for which the customers (i) entered into a loan modification, (ii) had a private mortgage insurance (“PMI”) Automatic Termination Date on or after April 1, 2013, and (iii) made one or more payments for PMI after their Automatic Termination Date and before the date, if any, that Defendant ceased servicing their loan, which payments were not refunded to the customer by the private mortgage insurer (a “PMI Overpayment”).

“Automatic Termination Date” means the date on which a mortgagor’s obligation to pay for private mortgage insurance would have automatically terminated under 12 U.S.C. § 4902(b) if automatic termination dates had been calculated and applied using the “original value” of the mortgaged property as defined in 12 U.S.C. § 4901(12), and not the updated at-modification value of the property. *See Fried v. JP Morgan Chase & Co.*, 850 F.3d 590 (3d Cir. 2017) (“Third Circuit Order”).

3. Specifically excluded from the Settlement Class are the following Excluded

Persons:

(i) the Settlement Administrator; (ii) any officers, directors, or employees of Defendant; (iii) any judge presiding over the Action and his or her immediate family members; and (iv) Persons who properly and timely opt out of the Settlement Class by requesting exclusion in accordance with the Settlement Agreement.

4. Where, as here, a court has not already certified a class, the Court must determine whether the proposed Settlement Class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. *Amchem v. Windsor*, 521 U.S. 591, 620 (1997). For settlement purposes only, conditional class certification is appropriate here because the Court provisionally finds that all four requirements of Rule 23(a) are met and the action also satisfies the requirements of Rule 23(b), as follows:

- a. The proposed class is comprised of over three thousand mortgagors. Thus, “[t]he class is so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1).
- b. In the context of the proposed Settlement, there are questions of law or fact common to Class Members, *see* Fed. R. Civ. P. 23(a)(2), because the Class Members’ claims arise from the same calculation methodology that allegedly resulted in PMI Overpayments. Furthermore, in the settlement context these common questions predominate over any questions affecting only individual members, and the proposed class action settlement is superior to other available methods of adjudication because it allows for efficient resolution of these common issues without unnecessary duplication of litigation. *See* Fed. R. Civ. P. 23(b)(3).
- c. Plaintiff’s claim is typical of those of the putative class she seeks to represent. *See* Fed. R. Civ. P. 23(a)(3).
- d. “[T]he adequacy inquiry under Rule 23 has two components designed to ensure that absentees’ interests are fully pursued. First, the adequacy inquiry tests the qualifications of the counsel to represent the class. Second, it seeks to uncover conflicts of interest between named parties and the class they seek to represent.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 532 (3d Cir. 2004) (internal quotation marks and citations omitted). Plaintiff and her counsel will fairly and adequately protect the interests of the Class Members. *See* Fed. R. Civ. P. 23(a)(4).

5. Accordingly, for settlement purposes only, the proposed Settlement Class will be conditionally certified; the Court appoints Plaintiff as Class Representative of the Settlement Class; and the Court designates the following as Class Counsel for the Settlement Class:

Antonio Vozzolo
VOZZOLO LLC
345 Route 17 South
Upper Saddle River, New Jersey 074578
Telephone: (201) 630-8820

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO PC
5 Becker Farm Road
Roseland, New Jersey 07068
Telephone: (973) 994-1700

PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT

6. Federal Rule of Civil Procedure 23(e) provides that a proposed settlement in a class action case must be approved by the Court. The Court is to determine whether it “will likely be able to find” the proposed settlement “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). “Before sending notice of the settlement to the class, the court will usually approve the settlement preliminarily.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995). “This preliminary determination establishes an initial presumption of fairness when the court finds that: (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *Id.*

7. The Court hereby preliminarily approves the Agreement and the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing. The Court finds on a preliminary basis that the Settlement as set forth in the Agreement falls within the range of reasonableness and was the product of informed, good faith,

arms' length negotiations between the Parties and their counsel, and therefore meets the requirements for preliminary approval.

8. The Court further preliminarily finds that the proposed distribution of the Class Payment Amount to Class Members set forth in Section 4 of the Settlement Agreement is fair, reasonable, adequate, and will be equitably distributed among the Class Members and hereby is preliminarily approved, subject to further consideration at the Final Approval Hearing.

NOTICE OF SETTLEMENT TO SETTLEMENT CLASS MEMBERS

9. The Court approves the Notice, the content of which is attached as Exhibit A to the Settlement Agreement.

10. The Court finds that the Notice and the Notice Plan implemented pursuant to the Settlement Agreement and as set forth in this Order (i) constitute the best practicable notice under the circumstances, (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to monetary and non-monetary relief, their right to object to or to exclude themselves from the Settlement Class, and their right to appear at the Final Approval Hearing, (iii) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive Notice, and (iv) meet all requirements of applicable law. Hence, when Notice is completed, it shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the applicable requirements of Rule 23 and due process.

11. The Court appoints KCC Class Action Services, LLC (the "Settlement Administrator") to supervise and administer the Notice Plan and provide settlement administration services set forth in Section 10 of the Settlement Agreement and as more fully set forth below.

12. The Court directs the Settlement Administrator to provide Notice to potential Class Members in accordance with the Notice Plan set forth in the Settlement Agreement. The Settlement Administrator will mail the Notice to members of the Settlement Class pursuant to procedures described in the Notice Plan and shall create a website including the Notice, the Settlement Agreement, and any orders of the Court relating to the Settlement. By no later than five (5) business days after the deadline for members of the Settlement Class to object to or exclude themselves from the Settlement, the Settlement Administrator shall file with the Court a Declaration of Notice Procedures, attesting to compliance with the Notice requirements.

13. All reasonable Notice and Administration Costs incurred in disseminating Notice and administering the Settlement shall be paid by Defendant, as set forth in Section 3.2 of the Settlement Agreement.

SETTLEMENT CLASS MEMBER EXCLUSION REQUESTS AND OBJECTIONS

14. Any member of the Settlement Class who wishes to be excluded from the Settlement (i.e., opt out) must send a written request for exclusion to the Settlement Administrator stating a request to “opt out” or be “excluded” from the Settlement Class within sixty (60) days after the Notice Date (the “Exclusion Deadline”). In order to be effective, the request must (i) be signed by the Person making the request; (ii) include the statement, “I wish to exclude myself from the Settlement Class” or “I wish to opt out of the Settlement Class”; (iii) include the case name, case number, and jurisdiction (*Fried v. JPMorgan Chase & Co.*, Civil Action No. 15-2512(MCA)(JBC) (D.N.J.)); and (iv) be received on or before the Exclusion Deadline. Each request for exclusion shall be made individually by the Person requesting the opt-out or exclusion; no generic or “mass” opt-outs shall be allowed. Members of the Settlement Class who exclude themselves from the Settlement will not be eligible to receive any benefits under the Settlement, will not be bound by any further orders or judgments entered for or against

the Settlement Class related hereto, and will preserve their ability independently to pursue any claims they may have against Defendant.

15. All members of the Settlement Class who do not properly and timely submit a written request for exclusion from the Settlement Class (*i.e.*, do not become an opt-out) on or before sixty (60) days after the Notice Date will be bound by all the terms and provisions of the Settlement Agreement and all proceedings, orders, and judgments in the Action, even if such Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release, whether or not such Class Member objected to the Settlement and whether or not such Class Member received consideration under the Settlement Agreement.

16. Any Settlement Class Member who does not opt out and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement or Settlement Agreement shall file with the Court and serve on Class Counsel and Defense Counsel no later than sixty (60) days after the Notice Date (the "Objection Deadline"), or as the Court may otherwise direct, a statement of the objection signed by the Settlement Class Member containing all of the following information:

(i) the name of the Action; (ii) the objector's full name, address and telephone number; (iii) all legal and factual grounds for the objection, including copies of any documents relied upon; (iv) whether the objector is represented by counsel, and if so the identity of such counsel; (v) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; (vi) the identity of any counsel who will appear at the Final Approval Hearing on the objector's behalf; (vii) a list of any witnesses the objector wishes to call to testify, or any documents or exhibits the objector or the objector's counsel may use, at the Final Approval Hearing; (viii) a list of the number of class actions (identifying each case by its caption or title) in which the objector or his or her counsel have filed an objection in the last five (5) years; and (ix) the objector's signature.

17. The Settlement Administrator shall provide the opt-out list and all objections to Class Counsel and Defense Counsel, and Class Counsel shall file with the Court the opt-out list and all objections with an affidavit attesting to the completeness thereof, no later than five (5) business days after the Objection Deadline and Exclusion Deadline.

18. Any response to an objection shall be filed with the Court at least three (3) days prior to the Fairness Hearing.

19. Any member of the Settlement Class who does not file a timely written objection to the Settlement or who fails otherwise to comply with the requirements of Paragraph 9.3 of the Settlement Agreement shall be foreclosed from seeking any adjudication or review of the Settlement by appeal or by any other means.

20. Any attorney hired by a member of the Settlement Class for the purpose of objecting to the proposed Settlement, any Fee Award, or any Incentive Award and who intends to make an appearance at the Final Approval Hearing shall provide to the Settlement Administrator, Class Counsel, and Defense Counsel and file with the Court a notice of intention to appear no later than sixty (60) days after the Notice Date (*i.e.*, by the Objection Deadline) or as the Court may otherwise direct. Counsel who do not adhere to these requirements will not be heard at the Final Approval Hearing.

FINAL APPROVAL HEARING

21. The Motion for Final Approval of the Settlement shall be filed and served no later than forty-five (45) days following the Exclusion Deadline and Objection Deadline. Class Counsel shall file any motion seeking Court approval for a Fee Award or Incentive Award at least ten (10) days before the Objection Deadline and at least twenty one (21) days before the Final Approval hearing, in accordance with the terms set forth in Section 12 of the Settlement Agreement.

22. Neither Defendant nor the Chase-Related Parties shall have any responsibility for any motion for a Fee Award submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. At or after the Final Approval Hearing, the Court shall determine whether any motion for a Fee Award, and any Incentive Award to the Class Representative for her representation of the Settlement Class, should be approved.

23. The Final Approval Hearing on the Settlement Agreement shall be held before the Court on July 25, 2019, at 2:00~~2:00~~ p.m. [[at least 120 days from the date of entry of this Order]]. At the Final Approval Hearing, the Court will consider (i) the fairness, reasonableness, and adequacy of the Settlement and Settlement Agreement and whether the Settlement Agreement should be granted final approval by the Court; (ii) approval of the proposed distribution of the Class Payment Amount to Class Members; and (iii) entry of a Final Approval Order and Judgment including the Release. Class Counsel's application(s) for a Fee Award or Incentive Award shall also be heard at the time of the Fairness Hearing.

24. If the Settlement is finally approved, the Releasing Parties shall release the Chase-Related Parties from all Released Claims.

25. The Court preliminarily enjoins all members of the Settlement Class unless and until they have timely excluded themselves from the Settlement Class from (i) filing, commencing, prosecuting, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims; (ii) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any member of the Settlement Class who has not timely excluded himself or

herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims; and (iii) attempting to effect opt-outs of a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims. Any person or entity who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by Defendant or any other Released Parties as a result of the violation.

26. The Court reserves the right to adjourn or continue the Final Approval Hearing, or any further adjournment or continuance thereof, without further notice other than announcement at the Final Approval Hearing or at any adjournment or continuance thereof, and to approve the Settlement with modifications, if any, consented to by the Class Counsel and Defense Counsel without further notice.

27. All pretrial proceedings in the Action are stayed and suspended until further order of this Court.

28. In the event the Settlement Agreement is terminated as provided in Section 14 of the Agreement or is not approved in all material respects by the Court, or such approval is reversed, vacated *nunc pro tunc*, or modified in any material respect by the Court or by any other court, certification of the Settlement Class shall be deemed vacated; the Action shall proceed as if the Settlement Class had never been certified; and no reference to the Settlement Class, the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose in the Action or in any other action or proceeding.

29. By entering this Order, the Court does not make any determination as to the merits of this case.

30. Neither the Settlement Agreement nor the Release given therein, nor any consideration therefor, nor any actions taken to carry out the Settlement Agreement shall be deemed or construed to be an admission or concession of liability, or of the validity of any claim, defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Neither the Settlement Agreement, nor any of its provisions, nor any of the documents (including but not limited to drafts of the Settlement Agreement, this Preliminary Approval Order, or the Final Approval Order and Judgment), negotiations, or proceedings relating in any way to the Settlement, shall be construed as or deemed to be evidence of an admission or concession by any person, including Defendant, and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceeding except in an action brought to enforce its terms or except as may be required by law or Court order.



MADELINE COX ARLEO, U.S.D.J.