

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KENISHA BRANTLEY and)	CIVIL ACTION NO. 2:04-CV-00805-PMD
GREG BRANTLEY, On Behalf of)	
Themselves And All Others Similarly)	
Situated,)	
)	
Plaintiffs,)	ORDER PRELIMINARILY
)	APPROVING SETTLEMENT,
vs.)	PROVISIONALLY APPROVING
)	CLASS FOR SETTLEMENT
REPUBLIC MORTGAGE)	PURPOSES, AND WITH RESPECT TO
INSURANCE COMPANY,)	<u>CLASS NOTICE, COURT APPROVAL</u>
)	<u>HEARING AND ADMINISTRATION</u>
Defendant.)	
)	

These matters having come before the Court upon the joint Motion of Plaintiffs Kenisha Brantley and Greg Brantley, individually and on behalf of a class of persons, and Defendant Republic Mortgage Insurance Company (“RMIC”), for preliminary approval of a Settlement reached between the Parties, and upon consideration of the Parties’ Settlement Agreement dated November 29, 2006, and the Exhibits thereto, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Settlement Agreement is hereby incorporated by reference in this Order as if fully set forth herein. Capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning as in the Settlement Agreement.

2. Solely for the purpose of settlement in accordance with the Settlement Agreement, and pursuant to Fed. R. Civ. P. 23(a) and (b)(3) of the Federal Rules of Civil Procedure, this Court hereby provisionally approves the following Settlement class (“Settlement Class”):

All consumers throughout the United States who, from March 15, 2002, through December 31, 2006, had mortgage loans insured by borrower-paid mortgage insurance in Defendant's “A-Minus Program,” and whose credit score was reported to Defendant as 619 or less.

If, for any reason, the Settlement is not approved or does not become effective, this provisional approval shall be null and void, and shall not be used or referenced to for any purpose in these Actions or any other action or proceeding.

3. For settlement purposes only, and subject to further consideration at the Court Approval Hearing described in paragraph 12 below, the Settlement Class is found to meet the relevant requirements of Fed. R. Civ. P. 23 (a) and (b)(3).

4. For settlement purposes only, and after considering the relevant factors in Fed. R. Civ. P. 23, Representative Plaintiffs are conditionally designated as representatives of the Settlement Class and Class Counsel are conditionally appointed as counsel for the Settlement Class. The law firms and attorneys conditionally representing the Settlement Class are:

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JAMES, HOYER, NEWCOMER & SMILJANICH, P.A.
One Urban Centre, Suite 550
4830 West Kennedy Blvd.
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T. English McCutchen, III
William E. Hopkins, Jr.
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McCUTCHEM BLANTON JOHNSON & BARNETTE, LLP
1414 Lady Street
Columbia, SC 29201
(803) 799-9791
(803) 253-6084 (FAX)

5. Pursuant to Fed. R. Civ. P. 23, the terms of the Settlement Agreement, and Settlement provided for therein, are preliminarily approved as (a) fair, reasonable, and adequate in light of the relevant factual, legal, practical, and procedural considerations of the Actions, (b) free of collusion to the detriment of Class Members, and (c) within the meaning of possible final judicial approval,

subject to further consideration thereof at the Court Approval Hearing described at paragraph 12 of this Order. Accordingly, the Settlement Agreement and the Settlement are sufficient to warrant notice thereof, as set forth below, and a full hearing on the Settlement.

6. Pursuant to the terms of the Settlement Agreement, Defendant is hereby directed to prepare the Class Member List within ten (10) business days after (a) the Preliminary Approval Date or (b) January 31, 2007, whichever comes later, and shall provide a copy thereof to the Settlement Administrator. Defendant itself or through the Settlement Administrator shall obtain updates, if any, to the addresses in the Class Member List using the National Change of Address (NCOA) database maintained by the United States Postal Service. Pursuant to the procedures detailed in the Settlement Agreement, within thirty (30) days after updating addresses for the Class Member List, Defendant shall cause the Settlement Administrator to provide notice of the Settlement and of the Court Approval Hearing to each Class Member on the Class Member List by mailing to the address for the Class Member on the Class Member List, as updated through the NCOA database, a copy of the Class Notice, substantially in the form attached to the Settlement Agreement as Exhibit B, together with (a) a copy of the Claim Form, substantially similar to the form attached to the Settlement Agreement as Exhibit C, and (b) the Class Brochure, substantially similar to the form attached to the Settlement Agreement as Exhibit D. The Settlement Administrator shall have discretion to format the Class Notice, Claim Form, and Class Brochure in a reasonable manner to minimize mailing or administration costs. The Settlement Administrator shall also have discretion to revise the Class Notice, Claim Form, and Class Brochure before mailing, with the consent of Class Counsel.

7. If any Class Notice mailed pursuant to the Settlement Agreement and paragraph 6

above is returned by the United States Postal Service as undeliverable, then the Settlement Administrator shall re-mail the Class Notice, together with the Claim Form and Class Brochure, to the forwarding address, if any, provided on the face of the returned mail. If the returned mail does not reflect a forwarding address, then the Settlement Administrator shall have no other obligation to re-mail the Class Notice, Class Form, and/or Class Brochure.

8. This Court finds that the Settlement Agreement's plan for class notice is the best notice practicable under the circumstances and satisfies the requirements of due process and Fed. R. Civ. P. 23. That plan is approved and accepted. This Court further finds that the Class Notice and Claim Form comply with Fed. R. Civ. P. 23 and are appropriate as part of the notice plan and the Settlement, and thus they are hereby approved and adopted. This Court further finds that no other notice other than that identified in the Settlement Agreement is reasonably necessary in these Actions.

9. Any Class Member who wishes to be excluded from the Settlement Class and not be bound by the Settlement Agreement must complete and mail a request for exclusion ("Opt-Out") to the Settlement Administrator postmarked no later than April 4, 2007. For a Class Member's Opt-Out to be valid, it must be timely (as judged by the postmark deadline set forth above) and (a) state the Class Member's full name, address, and telephone number; (b) contain information reasonably identifying the Loan(s) as to which the Class Member seeks exclusion; (c) contain the Class Member's original signature(s) (conformed, reproduced, facsimile, or other non-original signatures are not valid); and (d) unequivocally state the Class Member's intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all right to the benefits of the Settlement. In those cases where a Class Member includes persons who were obligors on the same Loan, the Class Member, including all obligors as to that

Loan, will be deemed to have requested exclusion from the Settlement and Settlement Class if any obligor as to that Loan timely and validly exercises his or her right to request exclusion from the Settlement Class, regardless of whether any other obligor submits an Opt-Out or Valid Claim Form. Any class Member who does not submit a timely Opt-Out, and otherwise comply with all requirements for requesting exclusion from the Settlement Class as set forth above and in the Class Notice, shall be bound by the Settlement Agreement, including the Release, as embodied in paragraphs 4.01 and 4.02 of the Settlement Agreement, and any Final Judgment entered in the Actions. Further, any Class Member who is a Successful Opt-Out will be deemed to have waived any rights or benefits under the Settlement, and will not have standing to object to the Settlement or to seek to intervene in the Actions.

10. On or before the date of the Court Approval Hearing, Class Counsel, Counsel for the Defendant, and the Settlement Administrator shall create and file with the Court under seal a comprehensive list of Successful Opt-Outs. The list shall be maintained by this Court and the Clerk under seal in order to protect the privacy interests of those persons identified thereon.

11. Any Class Member who is not a Successful Opt-Out and who wishes to object to the Settlement, in whole or in part, must file a written objection to the Settlement or Settlement Agreement (“Objection”) with the Court, and contemporaneously serve it upon Class Counsel and Counsel for the Defendant, no later than April 4, 2007. To be considered valid, each Objection must be timely (as judged by the filing deadline set forth above) and (a) set forth the Class Member’s full name, current address, and telephone number; (b) contain information reasonably identifying the Loan(s) of the Class Member upon which Defendant issued a mortgage insurance policy to a mortgage lender; (c) state that the Class Member objects to the Settlement, in whole or

in part; (d) set forth a statement of the legal and factual basis for the Objection; and (e) provide copies of any evidence or documents that the Class Member wishes to submit in support of his/her objection(s). Any Class Member who does not submit a timely and valid Objection in complete accordance with this Order, the Class Notice and the Settlement Agreement shall not be treated as having filed a valid Objection to the Settlement. Objections that are untimely and/or otherwise invalid will not be considered by this Court.

12. A hearing (the “Court Approval Hearing”) shall be held before the undersigned at 10 am. on April 25, 2007, in the United States District Court for the District of South Carolina, 85 Broad Street, Courtroom I, Charleston, South Carolina to determine, among other things, (a) whether the proposed Settlement should be approved as fair, reasonable and adequate, (b) whether the Actions should be dismissed with prejudice pursuant to the terms of the Settlement Agreement, (c) whether Class Members should be bound by the Release set forth in the Settlement Agreement, (d) whether Class Members should be subject to a permanent injunction that, among other things, bars Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise), any lawsuit, claim, demand or proceeding in any jurisdiction that is based on or related to, directly or indirectly, matters within the scope of the Release, (e) whether the Settlement Class should be finally certified, (f) the amount of the attorneys’ fees and costs to be awarded to Class Counsel, if any, and (g) the amount of the award to be awarded to Plaintiffs for their services as class representatives, if any. This hearing may be postponed, adjourned, or continued by order of the Court without further written notice to the Settlement Class.

13. Memoranda in support of the Settlement, applications for an Attorney Fee/Litigation Cost Award, and applications for a Class Representative Award to Representative Plaintiffs shall be filed with the Court no later than seven (7) days before the Court Approval Hearing.

14. Any Class Member who wishes to appear at the Court Approval Hearing, whether *pro se* or through counsel, must file a notice of appearance in the Actions, and contemporaneously serve the notice on Class Counsel and Counsel for the Defendant, on or before April 4, 2007. No Class Member shall be permitted to raise matters at the Court Approval Hearing that the Class Member could have raised in an Objection, but failed to do so. Any Class Member who fails to comply with this Order, the Class Notice and/or the Settlement Agreement shall be barred from appearing at the Court Approval Hearing.

15. Any Class Member who wishes to intervene in the Actions or seek other relief from the Court must file with the Court, and contemporaneously serve on Class Counsel and Counsel for Defendant, an appropriate motion or application, together with all supporting pleadings or documentation, on or before April 4, 2007.

16. The postmark deadline for the submission of Valid Claim Forms shall be May 25, 2007. The validity of Claims Forms otherwise shall be governed by the terms stated in the Settlement Agreement.

17. All other events contemplated by the Settlement Agreement to occur after this Order and before the Court Approval Hearing shall be governed by the Settlement Agreement, to the extent not consistent herewith.

18. Defendant and Counsel for Defendant are hereby authorized: (a) to establish the means necessary to administer the Settlement; and (b) to retain a Settlement Administrator to assist in effectuating the terms of, and administering the Settlement. This Court hereby authorizes and appoints Tilghman & Company, P.C. of Birmingham, Alabama to serve as Settlement Administrator in the Actions.

19. All proceedings in the Actions, other than such as may be necessary to carry out the terms and conditions of the Settlement Agreement or the responsibilities related or incidental thereto, are stayed and suspended until further order of this Court.

20. If Final Approval of the Settlement is not achieved, or if the Settlement is terminated for any reason, the Settlement and all proceedings had in connection therewith shall be without prejudice to the *status quo ante* rights of the parties to these Actions for any person whatsoever. This Order shall be of no force or effect if Final Approval does not occur for any reason, and nothing in this Order shall be construed or used as an admission, concession, or declaration by or against Defendant, of any fault, wrongdoing, breach, or liability. Nor should this Order be construed by or against Representative Plaintiffs or the Class Members that their claims lack merit or that the relief requested by these Actions is inappropriate, improper, or unavailable, or as a waiver by any Party of any defense it may have. Nor shall this Order be construed or used to show that certification of one or more classes would or would not be appropriate if these actions were to be litigated rather than settled.

21. Neither the Settlement nor the Settlement Agreement constitutes an admission, concession, or indication by the Parties of the validity of any claims or defenses in the Actions; or of any wrongdoing, liability, or violation of law by the Defendant, which vigorously denies all of the claims and allegations raised in the Actions. Defendant's Agreement and the positions taken in connection with this Settlement shall not constitute an admission as to any of the elements of class certification, and these proceedings shall not be interpreted as giving rise to an estoppel as to class certification in the event the issue is later litigated.

22. The Court reserves the right to approve the Settlement with such modifications, if any, as may be agreed to by Class Counsel and Counsel for the Defendant and without future notice

to the Class Members.

23. No Class Member, or any other person acting on behalf of or in concert with a Class Member, may exclude any other Class Member from the Settlement Class. All Class Members who have not timely and validly excluded themselves from the Settlement Class and all persons acting on behalf of or in concert with any such Class Members are hereby permanently enjoined from, directly or indirectly: (i) commencing, prosecuting, participating in (as a class member or otherwise), and/or assisting in any lawsuit or other proceeding against RMIC that asserts or purports to assert claims that (a) were asserted, attempted to be asserted, or could have been asserted in the Actions, and/or (b) are within the scope of the Release, as embodied in paragraphs 4.01 and 4.02 of the Settlement Agreement; and (ii) organizing or soliciting Class Members or opt-outs into a separate class for purposes of pursuing, as a purported class action, a lawsuit or other proceeding on behalf of Class Members or opt-outs that asserts or purports to assert claims that (a) were asserted, attempted to be asserted, or could have been asserted in the Action, and/or (b) are within the scope of the Release, as embodied in paragraphs 4.01 and 4.02 of the Settlement Agreement.

24. Except as set forth in this Order and the Settlement Agreement, no person or entity, including but not limited to Plaintiffs' Counsel, Counsel for the Defendant, Representative Plaintiffs, or Defendant, shall be permitted to initiate communications with Class Members, whether by written correspondence, notices, advertisements, Internet postings, or other media, concerning the Settlement or its terms without prior approval from the Court upon prior notice to Class Counsel and Counsel for Defendant.

25. Except as set forth in this Order and the Settlement Agreement, the Parties (and Plaintiffs' Counsel and Counsel for the Defendant) shall not issue any public, mass, or generalized

communications about the Settlement (other than disclosures required by law), whether by press release or any other means, without prior approval of the Court and/or the express written consent of the other Party.

26. This Court has reviewed the form of the Consent Order attached to the Settlement Agreement as Exhibit E and hereby preliminarily approves it as a fair, reasonable, adequate, and appropriate part of the Settlement, subject to further consideration at the Court Approval Hearing.



HONORABLE P. MICHAEL DUFFY
U. S. District Court Judge

December 12, 2006