

D/F

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**MARGARITA DELGADO, et al.,**

**Individually and on Behalf of All Others  
Similarly Situated,**

**Plaintiffs,**

**v.**

**OCWEN LOAN SERVICING, LLC, et al.,**

**Defendants.**

Case No. 1:13 Civ. 04427 (NGG) (ST)

**CLASS ACTION**

**ORDER APPROVING PLAINTIFFS'  
UNOPPOSED  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

**THIS CAUSE** is before the Court on

Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. Having reviewed the motion and supporting papers including the Settlement Agreement, and the record in this case, and for good cause shown:

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

**Preliminary Approval of Settlement Agreement**

1. The Court finds for the purposes of preliminary approval, that the proposed settlement, as set forth in the Parties' Settlement Agreement, is fair, reasonable, adequate, and in the best interests of the Class. The Court further finds that the settlement was entered into at arm's length by highly experienced counsel. The Court therefore preliminarily approves the proposed settlement.

**Class Certification**

2. The Court conditionally certifies, for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), a Settlement Class defined as:

All current and former mortgage Ocwen, GMAC, and Homeward Residential customers who (a) were enrolled in one or more Cross

Country Home Services (“CCHS”) warranty or home service plans between August 6, 2009 and December 31, 2013 (“Plans”) after cashing or depositing one of CCHS’s check solicitations; (b) made one or more payments for a Plan; (c) never made a claim under a Plan, and (d) never received a full refund of all premiums paid for a Plan.

This Settlement Class includes some former GMAC and Homeward Residential customers whose loans were never serviced by Ocwen. Excluded from the Settlement Class are: Defendants, any entities in which they have a controlling interest, any of their parents, subsidiaries, affiliates, officers, directors, employees and members of such person’s immediate family and the presiding judge(s) in this case and their immediate family.

3. Pursuant to the Settlement Agreement, and for settlement purposes only, the Court finds as to the Settlement Class that:

- (a) the Class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the Class;
- (c) Plaintiffs’ claims are typical of the claims of the Class;
- (d) Plaintiffs will fairly and adequately protect the interests of the Class;
- (e) questions of law and fact common to Class Members predominate over any questions affecting only individual Class Members; and,
- (f) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

4. The Court finds Plaintiffs Margarita Delgado, William Sheppard, Geraldine Mahood, Kevin Chowning, Lya Chowning, Paul Emmert, Carolyn Toth, Brian Rafacz, Jennifer Hendricks, Cynthia Beniwal, Kimberly Kayes, Justin Wisnewski, Laurie Cheamitru, Dale Zimmer, Michael Benhamu, Meghan Fox, Dan Wilkinson, Kent Collier, Theresa McCullough, Ben Elliott, Jason Abt, Nathan May, Cami Peloza, and Terry Oliver

are adequate and appoints them as Representatives of the Settlement Class.

5. The Court finds Steven Wittels, J. Burkett McInturff and Tiasha Palikovic of Wittels Law, P.C., having previously been appointed Interim Class Counsel, and J. Christopher Jenson of Cowan, Liebowitz & Latman, P.C., are all skilled and capable attorneys for the Class, and they are hereby appointed full Class Counsel to represent the interests of the Class Members.

**Notice to Class Members**

6. The Court approves the form and content of the proposed Short Form Settlement Notice, Long Form Notice, and Claim Form (Exhibits A, B & E to the Settlement Agreement “SA” — collectively, “Class Notice”), and approves the Parties’ proposal (i) to disseminate the Short Form Settlement Notice by both first-class U.S. Mail and email, followed by a Reminder Notice, and (ii) to disseminate the Long Form Notice and Claim Form on a website established by the Claims Administrator, as set forth in the Settlement Agreement. The Court finds that the Parties’ proposal regarding notice to the Class constitutes the best notice practicable under the circumstances, and complies fully with the notice requirements of due process and Fed. R. Civ. P. 23. The Court further finds that both the Notice to Current Enrollees (Exhibit C to the SA), which will be sent to Class Members who are current CCHS customers, and the proposed IVR for the website (Exhibit F to the SA), are appropriate as described in the Settlement Agreement.

7. The Court approves the Settlement Agreement’s schedule for dissemination of the Class Notice, requesting exclusion from the Settlement Class or objecting to the settlement, submitting papers in connection with Final Approval, and the Final Approval Hearing.

**Claims Administration**

8. The Court approves the appointment of Heffler Claims Group as the Claims Administrator, with the responsibilities set forth in the Settlement Agreement.

9. As described in the Settlement Agreement, Class Members will have 60 days to file their claims from the date on which Class Notice is disseminated to the Class. Any Member may opt out of the Class by mailing a completed request for exclusion to the Claims Administrator and all counsel within 60 days after the date on which Class Notice is disseminated to the Class. Persons or entities that request exclusion from the Class shall not be bound by any judgment. Opt-Out requests must be signed by the Class Member who is requesting exclusion; include the full name, address, phone number(s), and email(s) of the Class Member requesting exclusion; and include the following statement: “I/We request to be excluded from the Settlement Class and Settlement in the Delgado Action.” No Class Member, or any person acting on behalf of or in concert or participation with that Class Member, may exclude any other Class Member from a Settlement Class. So-called “mass” or “class” opt-outs shall not be allowed and shall be deemed invalid.

10. Any potential member of the Class that does not properly and timely opt out of the settlement shall be included in the Class and shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such class member shall have objected to the Settlement.

11. Any objecting Class Member must file with the Court a written objection, postmarked on or before the Claim Deadline. If any objecting Class Member who timely filed a written objection also intends to appear at the Final Approval Hearing, he or she must also file with the Court a notice of intention to appear before the Court at the Final Approval Hearing, postmarked on or before the Claim Deadline. Any objection and/or a notice of intention to appear must be served on Class Counsel, Defendants’ counsel, and the Settlement Administrator. To be effective, any Objection must contain all the following information:

- a. a reference at the beginning to *Delgado v. Ocwen Loan Servicing, LLC.*, No. 1:13-cv-04427-NGG-SLT (Eastern District of New York);
- b. the objector's full name, address, telephone number, and email address;
- c. the Objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the Objection;
- d. copies of any papers, briefs, or other documents upon which the Objection is based;
- e. a list of all persons who will be called to testify in support of the Objection;
- f. a statement of whether the objector intends to appear at the Final Approval Hearing. If the objector intends to appear at the Final Approval Hearing through counsel, the Objection must also state the identity of all attorneys representing the objector who will appear at the Final Approval Hearing, and all such attorneys representing the objector must enter an appearance concurrently with serving the Objection, whether or not the objector's counsel will appear at the Final Approval Hearing or whether or not admitted in New York;
- g. a statement of his, her, or its membership in the Settlement Class, including all information required by the Claim Form;
- h. a detailed list of any other Objections and any orders pertaining to the prior objections pertaining to the objector or his or her Counsel submitted or entered in any court, whether state or federal, in the United States in the previous five (5) years. If the Settlement Class Member or his, her, or its counsel has not objected to any other class action settlement in any court in the United States in the

previous five (5) years, he, she, or it shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement.

**Final Approval Hearing**

12. A Final Approval Hearing is hereby scheduled to be held before the undersigned on July 26, 2019, at 11:00 A.M., to consider the fairness, reasonableness and adequacy of the Settlement Agreement, the entry of a Final Order and Judgment in the case, proposed service awards to Plaintiffs, an application for attorneys' fees, costs and reimbursement of expenses made by Class Counsel, and any other related matters that are brought to the attention of the Court in a timely fashion.

13. Any member of the Class that has not filed a request for exclusion may appear at the Final Approval Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness, and adequacy of the settlement; provided, however, that no person shall be heard in opposition to the settlement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, in accordance with the deadlines above, such person: (a) filed with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the settlement, and any documentation in support of such opposition; and (b) serves copies of such notice, statement, and documentation upon all counsel.

14. The date and time of the Final Approval Hearing shall be set forth in the Notice but shall be subject to adjournment by the Court without further notice to Class Members other than which may be posted on the Court's Electronic Case Filing (ECF) system or the website created pursuant to the Settlement Agreement.

SO ORDERED.

Dated: Brooklyn, New York  
February 15, 2019

s/Nicholas G. Garaufis  
~~NICHOLAS G. GARAUFIS~~  
United States District Judge