

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

JOSHUA SOMOGYI, KELLY  
WHYLE SOMOGYI and STEWART  
SIELEMAN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

FREEDOM MORTGAGE CORP.,

Defendant.

Case No. 1:17-cv-06546-RMB-JS

CLASS ACTION

JURY TRIAL DEMANDED

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF  
PLAINTIFFS' MOTIONS FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND AN AWARD OF ATTORNEYS'  
FEES, REIMBURSEMENT OF EXPENSES, AND  
PAYMENT OF SERVICE AWARDS**

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In accord with the Court’s Preliminary Approval Order (Dkt. 96 ¶ 15),<sup>1</sup> Plaintiffs’ respectfully submit this reply memorandum in further support of their motions for final approval of the proposed class action Settlement (Dkt. 101) and an award of attorneys’ fees, reimbursement of expenses, and payment of Service Awards (Dkt. 102).

## I. Introduction

The overwhelming response of the Settlement Class supports both final approval of the Parties’ Settlement and an award of the requested attorneys’ fees, Litigation Expenses, and Service Awards in full. In particular, based on a Settlement Class of 1,524,198 putative members according to the Parties’ Settlement Agreement (*see* Dkt. 89-4 ¶¶ 1.27, 5.3):

- 77,471 timely submitted Proof of Claim forms seeking to share in the Settlement by the June 23, 2020 deadline, and an additional 1,859 submitted Proof of Claim forms after June 23, 2020 through August 27, 2020;
- only 24 submitted requests to be excluded from the Settlement Class, 17 of whom are represented by a single law firm;
- only two submitted objections, both of which voice only general objection and did not object to any specific term of the Settlement or the requested fees, expenses or Service Awards (Dkt. 103, 105); and

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<sup>1</sup> Unless otherwise stated, all capitalized terms used herein are as defined in the Stipulation and Agreement of Settlement filed with the Court on August 1, 2019 (Dkt. 89-4) (the “Settlement Agreement”); all citation to docket entries in the *Somogyi* action are to ECF rather than native page numbers; and all emphasis is added and internal quotation marks, citations and footnotes are omitted.

- no Settlement Class Member, including the two objectors, indicated that they intended to appear (in-person or otherwise) at the Final Approval Hearing concerning their objections or any other aspect of the Settlement or the requested fees, expenses or Service Awards.

Accordingly, the two objections are heavily outweighed by the overall positive reception of the Settlement Class, and do not come close to justify depriving other Settlement Class Members from sharing in the relief obtained. The objections are also unpersuasive on the merits. Neither objection challenges the adequacy of the \$9.5 million cash fund, the additional corporate remedial relief, the releases, the form or content of the Notice, or any other specific term of the Settlement; neither addresses the actual 31.58% attorneys' fee requested, the relatively modest 1.619 multiplier on Plaintiffs' Counsel's collective lodestar that fee represents (especially when the additional corporate remedial relief is considered), or the many other TCPA, Third Circuit and other rulings Plaintiffs cite that award even higher fees (*see* Dkt. 102-2 at 14, 36-43); and neither complains about Plaintiffs' contributions, the work Plaintiffs' Counsel undertook to achieve the Settlement, Plaintiffs' Counsel's time expended, hourly rates, expenses, or the amount of the Service Awards.

The Court should grant final approval to the Settlement and award the requested attorneys' fees, Litigation Expenses, and Service Awards in full.

## **II. The Settlement Class’s Response to the Settlement**

The deadline for putative members of the Settlement Class to object to, request exclusion from, or file a Proof of Claim seeking to share in, the Settlement was June 23, 2020. Dkt. 96 ¶ 15. This deadline was set forth in the Notice mailed to putative members of the Settlement Class. *See* Dkt. 101-13 at 24.

### **A. The Proofs of Claim**

As of the June 23, 2020 deadline, the Settlement Administrator, Heffler Claims Group, LLC (“Heffler”), received a total of 28,615 Proof of Claim forms via the Settlement website, and 48,856 additional Proof of Claim forms in paper form (that is, via fax, email or the U.S. Postal Service). *See* Supplemental Declaration of David M. Kaufman of the Settlement Administrator (Heffler Claims Group, LLC) in Support of Final Approval (the “Supp. Kaufman Decl.”) ¶ 8.<sup>2</sup> Heffler also received an additional 533 Proof of Claim forms via the Settlement website, and an additional 1,326 Proof of Claim forms via fax, email or U.S. Postal Service after (or postmarked after) the June 23, 2020 deadline through August 27,

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<sup>2</sup> The Supp. Kaufman Decl. is attached to the Supplemental Declaration of Lawrence J. Lederer in Support of Plaintiffs’ Motions for Final Approval of Class Action Settlement and an Award for Attorneys’ Fees, Reimbursement of Expenses, and Payment of Service Awards filed herewith (the “Supp. Lederer Decl.”) as Exhibit 1.

2020. *Id.* Thus, in total through August 27, 2020, Heffler received 79,330 Proof of Claim forms seeking to share in the Settlement.<sup>3</sup>

Heffler has also advised that it is continuing to review the Proofs of Claim received; that, after eliminating any duplicative claims, all thus far qualify for membership in the Settlement Class; and that, subject to final approval by the Court, Heffler is prepared to mail checks and distribute the net Settlement proceeds to Authorized Claimants promptly after the Settlement is funded following the Effective Date as set forth in the Settlement Agreement. *See* Dkt. 89-4 ¶¶ 2.1, 9.1; Supp. Kaufman Decl. ¶ 9.

#### **B. The Requests for Exclusion**

As noted, Heffler received a total of 24 requests for exclusion from putative members of the Settlement Class, 17 of whom are represented by a single law firm. Supp. Kaufman Decl. ¶ 7. All such requests for exclusion were timely submitted by the June 23, 2020 deadline, and Heffler did not receive any requests for exclusion after the June 23, 2020 deadline. *Id.* A list of all 24 persons requesting exclusion is attached as Exhibit A to the Supp. Kaufman Decl.

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<sup>3</sup> Although as noted the Settlement Agreement states that the Settlement Class consists of 1,524,198 putative members (Dkt. 89-4 ¶¶ 1.27, 5.3), the putative Settlement Class consists of 1,523,970 members according to Heffler after eliminating 228 for duplicative addresses, and before the 23 requests for exclusion are subtracted. *See* Supp. Kaufman Decl. ¶ 6.

### **C. The Two Objections and Certain Other Responses**

Also as noted, two putative members of the Settlement Class, Jo Ann Yoon (Dkt. 103) and Nancy McAntosh (Dkt. 105), submitted objections. Both objections are attached to the Supp. Lederer Decl. as Exhibit 2.

Ms. Yoon stated in her objection that she is “a client of Freedom Mortgage”; that “Freedom Mortgage serviced my mortgage during the dates in question”; that “I do not recall being bothered by repeated calls from Freedom Mortgage”; and that “I’m against this settlement because penalizing Freedom Mortgage with a \$9.5 million fine will not really help those exercising their rights to this claim. In fact, it will probably make things worse. Freedom Mortgage will need to make up that \$9.5 million loss and will likely result in higher fees and rates for its clients.”

Ms. McAntosh stated in her objection that “my husband and I have been clients of Freedom Mortgage Corporation for several years now and have been serviced well by this company”; that “[w]e have never received unsolicited phone calls by or for this company”; that “I believe this lawsuit to be frivolous and solely a money-grab by the attorneys representing the plaintiffs”; that, “[a]ccording to their website, the average client receiving compensation if authorized through this settlement would receive around \$37, while the attorneys stand to make millions”; and that “I urge you to dismiss this claim for settlement and end this lawsuit. Thank you.”

In addition, another Settlement Class Member, Steven H. White, also submitted a letter to the Court following receipt of the Notice (Dkt. 98). Mr. White did not object to any aspect of the Settlement. Instead, Mr. White stated in his submission that he “got phone calls from Freedom Mortgage”; that “I was wondering why I was getting more phone calls from when I already paid a loan with them”; that “I kept saying no thank you”; that “I got this email” containing the Notice and “so I want my part of the Settlement also” and “I want [to] be part of the lawsuit[ ] and Settlement also[.]” A copy of Mr. White’s letter (redacted to exclude Mr. White’s social security and telephone numbers) is attached to the Supp. Lederer Decl. as Exhibit 3. Other Settlement Class Members have similarly advised that they also want to participate in the Settlement. *See, e.g.*, Dkt. 101-3 ¶ 60. Ultimately, with the assistance of counsel, Mr. White submitted a Proof of Claim form which Heffler has received and processed. *See* Supp. Lederer Decl. ¶ 7.

Further, and as Plaintiffs previously reported, no objections to any aspect of the Settlement or the requested fees, expenses or Service Awards were submitted by any federal or state official in response to the notice given pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. *See* Dkt. 101-14 (Defendant’s Certificate of Compliance with Class Action Fairness Act) ¶ 1.

**D. The Updated Lodestar, Litigation Expenses, and Notice Expenses**

Plaintiffs' original motion papers stated that Plaintiffs' Counsel collectively expended 2,727.10 hours in this litigation on behalf of the Settlement Class through May 31, 2020, representing a total lodestar of \$1,626,563.00 and, therefore, that a \$3 million fee would represent a multiplier of approximately 1.84%. *See* Dkt. 102-2 at 37; Dkt. 101-3 ¶¶ 61-62. Plaintiffs also noted that Plaintiffs' Counsel's lodestar will increase as additional work is performed after May 31, 2020 communicating with class members, overseeing claims administration, preparing for and attending the Final Approval Hearing and, assuming the Court grants final approval to the Settlement, overseeing distribution of the net Settlement proceeds. *See* Dkt. 102-2 at 39 n.8; Dkt. 101-3 ¶ 57.

Since June 1, 2020 and through August 27, 2020, Plaintiffs' Counsel expended 306 additional hours in this litigation, principally in connection with the ongoing proceedings concerning final approval of the requested Settlement, preparing for the Final Fairness Hearing, and coordinating with class members and Heffler.<sup>4</sup> *Supp. Lederer Decl.* ¶ 10. Accordingly, and based on these additional hours, an aggregate fee of \$3 million represents a requested multiplier of approximately 1.619% *Id.* Plaintiffs' Counsel anticipate they will continue to

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<sup>4</sup> As Plaintiffs' also reported in their original motion papers (Dkt. 101-3 ¶ 64 n.5), these additional hours do not include any time expended in connection with Plaintiffs' motion for attorneys' fees. *Supp. Lederer Decl.* ¶ 10 n. 3.

expend additional time going forward concerning final approval and coordinating with Heffler and overseeing claims administration and distribution assuming final approval. *Id.*

Plaintiffs also reported in their original motion papers that Plaintiffs' Counsel incurred \$60,658.30 in total Litigation Expenses through May 31, 2020. *See* Dkt. 102-2 at 46; Dkt. 101-3 ¶ 77. Since June 1, 2020 and through August 27, 2020, Plaintiffs' Counsel collectively incurred and disbursed \$540.45 in additional Litigation Expenses on behalf of the Settlement Class. *See* Supp. Lederer Decl. ¶ 11. The \$61,198.75 in total Litigation Expenses is still below the \$85,000 maximum amount set forth in the Notice. *See* Dkt. 101-13 at 24; Dkt. 102-2 at 46-48; Dkt. 101-3 ¶¶ 77, 82. The increase of \$540.45 is principally for computerized legal research in connection with the final approval proceedings. *See* Supp. Lederer Decl. ¶ 11.

The Notice to the Settlement Class also advised that "up to" \$500,000 would be paid from the Settlement Amount to Heffler for Notice and Administration Costs. *See* Dkt. 101-13 at 24; *accord* Dkt. 96 ¶ 13. Heffler estimates that its total fees and costs to provide notice to the Settlement Class, administer the Settlement and, if the Court grants final approval, distribute the net Settlement proceeds to Authorized Claimants, will be \$450,000.00, \$178,682.19 of which FMC has

already advanced and paid to Heffler in accordance with the Settlement

Agreement. *See* Dkt. 89-4 ¶ 5.11; Supp. Kaufman Decl. ¶ 10.

**E. The Updated Estimate of Distributions Assuming Final Approval of the Settlement**

The short-form Notice mailed to the Settlement Class stated that Plaintiffs' Counsel would seek a maximum of 33- $\frac{1}{3}$ % of the \$9.5 million fund for attorneys' fees, or \$3,166,666.67 total; up to \$85,000 in Litigation Expenses; up to \$15,000 in total Service Awards; and up to \$500,000 in total Notice and Administration Costs. *See* Dkt. 101-13 at 24. The long-form Notice also stated that, assuming an award of these maximum amounts and a 10% claims rate based on the originally-estimated 1,524,198 putative Settlement Class Members, Authorized Claimants would receive a cash payment of about \$37.61 per claim. *See* Dkt. 96 at 12, 14. *Accord* Dkt. 89-2 at 21 ("The proposed \$9.5 million recovery alone exceeds the results achieved in other TCPA class action settlements since it would result in payments of approximately \$37.61 per claimant assuming a 10% claims rate and an award of the maximum in fees and costs."); Dkt. 101-2 at 24; McAntosh objection. The long-form Notice also stated, however, that the actual cash payments per claim could be "significantly higher or lower depending on costs and fees and how many valid Claim Forms are filed ...." Dkt. 96 at 12.

Assuming the Court grants final approval to the Settlement and awards \$3 million, or approximately 31.58% of the Settlement fund, in total attorneys' fees,

\$61,198.75 in Litigation Expenses and \$15,000 total in Service Awards, and assuming \$450,000.00 in total Notice and Administration Costs and based on the actual 79,330 total Proof of Claim forms submitted through August 27, 2020, Authorized Claimants would receive approximately \$75.30 per claim. Supp. Kaufman Decl. ¶ 11; Supp. Lederer Decl. ¶ 15.<sup>5</sup>

### III. Argument

Where, as here, the response of a class indicates broad support for a proposed settlement, this factor favors final approval. *See, e.g., Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995) (courts evaluate “the number and vociferousness of” any objections); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, No. 08-cv-3610 CLW, 2015 WL 2383358, at \*5 (D.N.J. May 18, 2015), *aff’d*, 639 F. App’x 880 (3d Cir. 2016) (approving TCPA class settlement and 33- $\frac{1}{3}$ % attorneys’ fee; “The number of exclusions and objections

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<sup>5</sup> That is: \$9.5 million – \$3 million + \$61,198.75 + \$15,000.00 + \$450,000.00 = \$5,973,801.25 ÷ by 79,330 claimants = \$75.30 per claimant. These estimates will change depending, for example, on any interest earned by the Settlement fund and the number of duplicative and any new late claims Heffler may receive. Heffler recommends, and Plaintiffs’ Counsel agree, that late-filed Proof of Claim forms should be accepted for processing and not rejected merely for being late-filed. *See* Supp. Kaufman Decl. ¶ 8; Supp Lederer Decl. ¶ 16. The Parties’ Settlement Agreement specifically states that “late Proofs of Claim, but not objections or exclusions, if otherwise valid, may be accepted by the Settlement Administrator up to the Effective Date[ ].” Dkt. 89-4 ¶ 5.7.

are thus exceptionally small in relation to the size of the potential and confirmed class. Such a discrepancy weighs in favor of approval of the settlement.”); *In re Liquid Aluminum Sulfate Antitrust Litig.*, No. CV16MD2687MCAMAH, 2019 WL 7375288, at \*2 (D.N.J. Nov. 7, 2019) (accord); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd’s, London Members*, No. 08-cv-00235 (CCC), 2019 WL 4877563, at \*7 (D.N.J. Oct. 3, 2019) (“As the Third Circuit articulated in *In re Rite Aid Corporation Securities Litigation*, 396 F.3d 294, 305 (3d Cir. 2005), ‘a low level of objection is a ‘rare phenomenon.’”); *In re Ins. Brokerage Antitrust Litig.*, Nos. 04-5184 and 05-1079, 2007 WL 2589950, at \*5 (D.N.J. Sept. 4, 2007), *aff’d*, 579 F.3d 241 (3d Cir. 2009) (accord); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775, 2015 WL 5918273, at \*3 (E.D.N.Y. Oct. 9, 2015) (“That the overwhelming majority of the class members have elected to remain in the settlement class supports a finding that the settlement is fair, reasonable and adequate.”); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005) (“[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in our ... inquiry.”).

Although the overwhelming majority of the Settlement Class similarly favors approval of Plaintiffs’ motions here, the objections are also unpersuasive for additional reasons. First, both objectors seem to argue that, based on their own

individual experiences with FMC, the Settlement fund should be zero and that there should be no settlement at all. But unlike the Parties and counsel, however, they have not litigated this case for over three years or participated in any of the comprehensive briefing, motions to dismiss, discovery, mediations or settlement negotiations that took place, much less provide a basis to reject a Settlement that over 79,000 other Settlement Class Members have already affirmatively registered to participate in.

Second, objector Yoon's contentions that the Settlement "penaliz[es]" Freedom Mortgage, that it "will not really help those exercising their rights to this claim[.]" and that it "will likely result in higher fees and rates for its clients" are unsubstantiated and speculative. *See, e.g., In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 583 (N.D. Cal. 2015) ("An objector to a proposed settlement agreement bears the burden of proving any assertions they raise challenging the reasonableness of a class action settlement."). The Parties' proposed Settlement followed extensive litigation, comprehensive discovery and mediation, and an extended and well-informed analysis of the respective claims and defenses. *See, e.g.,* Dkt. 89-4 ¶¶ U, Y; Dkt. 101-3 ¶¶ 41-44. FMC agreed to the Settlement in its own business judgment to avoid the expense, inconvenience and inherent risk in further litigation, as the Settlement Agreement also states. *See* Dkt. 89-4 ¶ Z. In agreeing to the Settlement, FMC potentially saved the Company substantial

additional financial and other exposure. *See, e.g.*, Dkt. 101-2 at 33 (discussing FMC’s potential financial exposure). Speculation by one class member of potentially higher fees is heavily outweighed by the affirmative election of Plaintiffs and over 79,000 other Settlement Class Members who should be permitted to exercise their own respective rights.

Third, objector McAntosh’s argument that she “believe[s] this lawsuit to be frivolous and solely a money-grab by the attorneys representing the plaintiffs” ignores the overwhelming positive response of the Settlement Class; the bottom line fairness of the 31.58% requested fee and relative modesty of the 1.619 multiplier that fee represents, especially considering the additional corporate remedial relief; the fact that no other Settlement Class Member, or any federal or state attorneys general office, objected to the fee; and the many TCPA, Third Circuit and other precedents further supporting the reasonableness of the fee requested here. *See, e.g., Landsman & Funk, P.C.*, 639 F. App’x at 884 (affirming a 33- $\frac{1}{3}$ % fee award in a TCPA case contested by an objector); *In re Nat’l Football League Players’ Concussion Injury Litig.*, 814 F. App’x 678 (3d Cir. 2020) (holding that a multiplier of 2.96% “is well within the acceptable range in this Circuit”); Dkt. 102-2 at 36-41 (citing fee awards in additional Third Circuit, TCPA, and other class action cases).

## Conclusion

For the foregoing additional reasons, Plaintiffs respectfully request that the Court grant final approval to the Settlement and award the requested attorneys' fees, Litigation Expenses and Service Awards in full.

Dated: August 31, 2020

Respectfully submitted,

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