

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE BEAR STEARNS MORTGAGE
PASS-THROUGH CERTIFICATES
LITIGATION

Case No. 1:08-cv-08093-LTS

ECF Case

CLASS ACTION

**MEMORANDUM OF LAW
IN SUPPORT OF LEAD COUNSEL'S UNOPPOSED
MOTION FOR ENTRY OF CLASS DISTRIBUTION ORDER**

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Counsel respectfully submit this memorandum of law in support of their motion for entry of the attached [Proposed] Class Distribution Order in the above-captioned action (the “Action”). The proposed plan for distribution of the Net Settlement Fund is set forth in the accompanying Declaration of Jennifer M. Veitengruber in Support of Motion for Approval of Distribution Plan (“Veitengruber Declaration” or “Veitengruber Decl.”), submitted on behalf of the Court-approved Claims Administrator, Garden City Group, LLC (“GCG”).

Pursuant to paragraph 27 of the Stipulation and Agreement of Settlement entered in this case (the “Stipulation” or “Stip.,” ECF No. 264), Lead Counsel provided reasonable notice of this Motion to Defendants. Defendants confirmed that they do not plan to oppose the Motion.¹

I. BACKGROUND

Following reasonable notice of the Settlement to the Class and a hearing, the Court granted final approval of the Settlement on May 27, 2015.² Pursuant to the terms of the Stipulation, on March 2, 2015, Defendants caused to be paid \$500 million in cash into an Escrow Account, and

¹ Unless otherwise indicated herein, all terms and initial capitalization shall have the meanings ascribed to them in the Stipulation or the Veitengruber Declaration.

² See Order and Final Judgment, ECF No. 288. The “Class” is defined as all Persons who: (i) prior to July 9, 2009, purchased or otherwise acquired offered RMBS pursuant or traceable to offerings BALTA 2006-5, BALTA 2006-6, BALTA 2006-7, BALTA 2006-8, BALTA 2007-1, BSARM 2006-4, BSARM 2007-1 (certificates backed by groups 1, 3 and 5 only), or BSARM 2007-3, and were damaged thereby; (ii) prior to August 20, 2008, purchased or otherwise acquired offered RMBS pursuant or traceable to offering BSMF 2006-AR1, and were damaged thereby; or (iii) prior to May 15, 2009, purchased or otherwise acquired offered RMBS pursuant or traceable to offerings BSMF 2006-AR2, BSMF 2006-AR3, BSMF 2006-AR4, BSMF 2006-AR5, BSMF 2007-AR1, BSMF 2007-AR3, SAMI 2006-AR4, SAMI 2006-AR5, SAMI 2006-AR6, SAMI 2006-AR7, SAMI 2006-AR8, SAMI 2007-AR1 (certificates backed by group 1 only), or SAMI 2007-AR2 (certificates backed by group 1 only), and were damaged thereby. Certain Persons are excluded from the definition.

the funds have been invested for the benefit of the Class. As of June 22, 2016, the current value of the Net Settlement Fund (including interest, less disbursements of Court-approved attorneys' fees and taxes, but before payment of tax preparation fees), is \$419,497,215.80.

In accordance with the Court's February 19, 2015 Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order," ECF No. 268), GCG was authorized to act as the Claims Administrator in connection with the Settlement of this Action. *Id.* ¶6. As set forth in the Veitengruber Declaration, as Claims Administrator, GCG has implemented the terms of the Settlement by, among other things: (i) mailing over 8,300 Notice Packets to potential Class Members or their nominees; (ii) creating and maintaining a toll-free hotline, creating and maintaining a case-specific website and posting case-specific documents on said website, and updating each accordingly during the course of the administration; (iii) causing the Summary Notice to be published in the *Investor's Business Daily* and in *The Wall Street Journal* and over the *PR Newswire*; (iv) providing, upon request, additional copies of the Notice Packet to brokers and nominees; (v) receiving requests for exclusion; and (vi) receiving and processing Proofs of Claim. In response, as set forth in the Veitengruber Declaration and discussed below, the Claims Administrator received and processed 2,764 Proofs of Claim.

Paragraph 27 of the Stipulation requires Lead Counsel to apply to the Court, with notice to Defendants, for a Class Distribution Order, *inter alia*: (i) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; and (ii) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

The Effective Date – the date by which the Order and Final Judgment has been entered and the time for appeal has expired – has now passed. Accordingly, Lead Counsel now seek approval of the distribution of the Net Settlement Fund to Authorized Claimants as determined by GCG.

II. SUMMARY OF CLAIMS PROCESSING

As detailed in the accompanying Veitengruber Declaration, GCG sent over 8,300 Notice Packets to potential Class Members and their nominees, and received 2,764 Claims. Veitengruber Decl. ¶¶4-5. Of the Claims initially submitted, over 80% were initially incomplete, improperly completed, not properly documented, or filed by a Claimant who was not a Class Member. *Id.* ¶¶22-25. To the extent that a Claim was wholly deficient (for example, if the Proof of Claim was missing documentation for the entire Proof of Claim or the Claimant did not provide enough information to calculate the Recognized Claim, or if the Proof of Claim was determined to have no Recognized Claim under the Court-approved Plan of Allocation), GCG mailed a rejection letter to the Claimant describing the defect(s) with the Proof of Claim and, if the defect(s) was curable, stating what was necessary to complete the Proof of Claim. *Id.* ¶26. GCG also sent rejection letters to each Claimant whose Proof of Claim was determined to be partially deficient (for example, if the Claimant was missing documentation for part of the Proof of Claim, or did not supply some required transactional information), advising the Claimant of the defect(s) in the Proof of Claim, stating what was necessary to cure such defect(s), and informing the Claimant that, unless the defect(s) were cured, the Proof of Claim would only be eligible to the extent it was complete and calculated to a Recognized Claim. *Id.* ¶27; *see also* Preliminary Approval Order, ¶17(c) (“For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency or rejection letter as appropriate, describing the basis on which the claim was so determined.”). The rejection letters also specifically advised the Claimant that he, she or

it had the right, within twenty (20) days after the mailing of the rejection letter, to contest the rejection of the Claim and request Court review of the disposition of the Claim. Veitengruber Decl. ¶¶26-27. Copies of the types of letters sent to notify Claimants of the deficiencies in or ineligibility of their Proofs of Claim are attached as Exhibit A to the Veitengruber Declaration. *See* Veitengruber Decl. ¶28.

GCG carefully reviewed Claimants' responses to rejection letters and worked with Claimants to resolve deficiencies where possible. After all responses to deficiency letters were received and processed, GCG contacted Claimants with still-deficient Proofs of Claim to assist them in curing the deficiencies. *Id.* ¶¶29-32.

As detailed further in the Veitengruber Declaration, of the 2,764 Proofs of Claim that GCG received, GCG has determined that 1,294 are acceptable in whole or in part, and that 1,470 should be wholly rejected because they are ineligible, wholly deficient, or have no Recognized Claim when calculated in accordance with the Court-approved Plan of Allocation. *Id.* ¶38. The most common reason for rejection of claims was that the Claim's transactions did not fit the Class definition (*e.g.*, the purchases were of securities not included in the Class definition, or the purchases were after the applicable Date of Suit as stated in the Class definition). *See id.* There are no Claimants requesting judicial review of GCG's administrative determinations with respect to their Claims. *Id.* ¶¶25, 30.

III. LATE, BUT OTHERWISE ELIGIBLE, CLAIMS

The Stipulation expressly contemplates that, as is customary in securities class action settlements, the Court may extend the deadline for Class Members to submit Claim Forms to be potentially eligible to participate in the Settlement recovery. *See* Stip. ¶25 ("All Claim Forms must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the

Notice, *unless such deadline is extended by order of the Court*. Any Class Member who fails to submit a Claim Form by such date shall be, absent a court order, forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (*unless, by court order, late-filed Claim Forms are accepted*)”) (emphasis added); *see also* Preliminary Approval Order ¶17(a) (“A properly executed Claim Form, substantially in the form attached as Exhibit A-2 to the Stipulation, must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than 120 calendar days from the Notice Date. *Such deadline may be further extended by Court order.*”) (emphasis added).

Pursuant to the Preliminary Approval Order, the deadline for submitting Claims was July 6, 2015. Of the 2,764 Claims received, 58 were received after the deadline. GCG has processed all late Proofs of Claim, and determined that 22 of the 58 late Claims are otherwise eligible (the “Late, but Otherwise Eligible, Claims”). The aggregate Recognized Claims for the Late, but Otherwise Eligible, Claims represent only approximately one percent of the total Recognized Claims of all Claims recommended for payment. GCG has not rejected any Claim solely based on its late submission, and GCG believes no delay has resulted from the provisional acceptance of the Late, but Otherwise Eligible, Claims. Veitengruber Decl. ¶33. Lead Counsel agree that, when the equities are balanced, it would be unfair to prevent an otherwise valid Claim from participating in the Net Settlement Fund solely because it was submitted after the original filing deadline, if it was submitted while other Claims were still being processed.

However, there must be a final cut-off date after which no more Proofs of Claim will be accepted so that there may be a proportional distribution of the Net Settlement Fund. The processing and acceptance of any Proofs of Claim received after preparation of this Motion would necessarily require a delay in the distribution. Accordingly, it is also respectfully requested that

the Court order that no Proof of Claim received or modified after July 12, 2016, be eligible for payment.

Lead Counsel request that the Court approve GCG's administrative determinations accepting Claims (including the Late, but Otherwise Eligible, Claims) and rejecting Claims as set forth in the Veitengruber Declaration.

IV. DISTRIBUTION OF THE NET SETTLEMENT FUND

Lead Counsel respectfully request that the Court adopt the Distribution Plan for the Net Settlement Fund set forth in the Veitengruber Declaration which would authorize an Initial Distribution of the Net Settlement Fund to the Claimants listed in Exhibits B-1 (Timely Eligible Claims) and B-2 (Late, But Otherwise Eligible, Claims) to the Veitengruber Declaration. *Id.* ¶39.

In the Initial Distribution, GCG will determine a Distribution Amount for each Authorized Claimant based on the Authorized Claimant's *pro rata* share of the Net Settlement Fund. *See* Veitengruber Decl. ¶40. As provided for in the Court-approved Plan of Allocation, Authorized Claimants whose Distribution Amount is less than \$10.00 will receive no payment. *See* Plan of Allocation ¶17 ("If any Claimant's Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to such Claimant. The Recognized Claims of any Claimants whose Distribution Amounts would be less than \$10.00 are then excluded and the total Recognized Claims of all other Claimants are totaled to determine the *pro rata* Distribution Amounts for the Authorized Claimants who will receive \$10.00 or more.").

Authorized Claimants whose Distribution Amount is at least \$10.00 but less than \$100.00 will receive their full Distribution Amount in the Initial Distribution ("Claims Paid in Full"). Veitengruber Decl. ¶42(d)(i). Authorized Claimants whose Distribution Amount is \$100 or more will receive 90% of their Distribution Amount in the Initial Distribution, with the remaining 10%

retained in escrow to create a Reserve to address any claims that ultimately are determined to be eligible to participate in the Settlement, and for any other contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in subsequent distributions. *See id.* ¶42(d)(ii).

V. DISPOSITION OF ANY UNCLAIMED/UNCASHED BALANCE AND RESERVE

In order to encourage Authorized Claimants to cash their distribution checks promptly and to avoid or reduce future expenses relating to uncashed checks, GCG proposes that the distribution checks bear a notation “CASH PROMPTLY; VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED 90 DAYS AFTER ISSUE DATE.” In an effort to have as many Authorized Claimants as possible cash their checks, GCG will follow up with Authorized Claimants who initially fail to cash their distribution checks. *See Veitengruber Decl.* ¶42(e).

As to the funds that remain in the Net Settlement Fund after the Initial Distribution, GCG will conduct a second distribution of the Net Settlement Fund (the “Second Distribution”), pursuant to which any balance remaining in the Net Settlement Fund after the Initial Distribution (including the Reserve and the funds for all void stale-dated or returned checks) and after the payment of any escrow fees, taxes, tax expenses, or any other expenses authorized by the Stipulation, shall be re-distributed to Authorized Claimants from the Initial Distribution who (1) were not Claims Paid in Full, (2) cashed their distribution payment, and (3) are entitled to at least \$10.00 from the re-distribution based on their *pro rata* share of the remaining fund. *See Veitengruber Decl.* ¶42(g). If cost effective, subsequent distributions of funds remaining in the Net Settlement Fund will take place in six-month intervals. *Id.* ¶42(h)(i). At such time as GCG and Lead Counsel determine that further re-distribution is not cost-effective, Lead Counsel will seek direction from the Court with respect to the disposition of the balance of the Net Settlement

Fund, after the payment of any escrow fees, taxes, tax expenses, or any other expenses authorized by the Stipulation.³

This proposed distribution plan is virtually identical to the distribution plans approved and successfully implemented in other RMBS securities class actions. *See, e.g., Plumbers' & Pipefitters' Local #562 Supplemental Plan & Trust v. J.P. Morgan Acceptance Corp. I.*, No. 08-cv-1713 (PKC) (E.D.N.Y. Sept. 9, 2015), ECF No. 232; *In re Wells Fargo Mortgage-Backed Certificates Litig.*, No. 09-cv-01376-LHK (N.D. Cal. May 30, 2013), ECF No. 480; *see also In re Morgan Stanley Mortgage Pass-Through Certificates Litig.*, No. 09-cv-2137-KBF (S.D.N.Y. June 22, 2016), ECF No. 346.

VI. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR

Pursuant to paragraph 6 of the Stipulation, Defendants created a “Cost Fund” of up to \$5 million for payment of certain costs and expenses, including all of the Claims Administrator’s Notice and Administration Expenses. *See also* Stipulation ¶1(o). This is in addition to the \$500 million Settlement Amount. To date, the Notice and Administration Expenses of the Claims Administrator have not yet been paid.

Pursuant to paragraphs 7 and 13 of the Stipulation and the Court’s Preliminary Approval Order (¶22), without further approval from Defendants or order of the Court, Lead Counsel may

³ *Id.* ¶42(h)(ii). The Stipulation provides that, in the discretion of Lead Counsel, once it becomes no longer cost effective or efficient to re-distribute the amount to the Class, then such remaining funds, after payment of any further Court-approved fees, costs or expenses, shall be distributed to a nonsectarian non-profit charitable organization selected by Lead Plaintiffs in consultation with the Institutional Defendants and approved by the Court, or as otherwise directed by the Court. Stip. ¶11. Here, once re-distribution becomes no longer feasible, and in the event that residual funds remain, Lead Counsel will seek direction from the Court with respect to the disposition of the remainder of the Net Settlement Fund.

direct payment from the Cost Fund of all reasonable Notice and Administration Costs actually incurred.

In accordance with GCG's agreement with Lead Counsel to act as the Claims Administrator, GCG was responsible for, among other things, mailing the notice to the Class, publishing the summary notice, processing the Claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants. As set forth in paragraph 41 of the Veitengruber Declaration, at the inception of the Settlement, Lead Counsel negotiated a schedule for GCG's fees and expenses.

As reflected in the Veitengruber Declaration and invoices attached thereto as Exhibit C, the total amount of GCG's fees and out-of-pocket expenses incurred and expected to be incurred through the Initial Distribution is \$530,300.05. *Id.* ¶41. GCG has not received any payment to date. *Id.* Accordingly, Lead Counsel intend to direct the payment of \$530,300.05 to GCG from the Cost Fund for payment of Notice and Administration Costs through the Initial Distribution.

VII. RELEASE OF CLAIMS

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the amount allocated to Authorized Claimants, and to provide that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from any and all claims arising out of such involvement. *Cf.* Stip. ¶28 ("Payment pursuant to the Class Distribution Order shall be final and conclusive against any and all Class Members."). Accordingly, Lead Counsel request that the Court release and discharge all persons involved in the review, verification, calculation, tabulation,

or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, from any and all claims arising out of such involvement, and bar all Class Members, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Lead Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund beyond the amount allocated to Authorized Claimants.

VIII. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request that the Court enter the attached [Proposed] Class Distribution Order.

Dated: July 18, 2016
San Diego, California

Respectfully submitted,

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