

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PATRICIA CONNOR AND SHERI L. )  
BYWATER, individually and on behalf )  
of all others similarly situated, )

Plaintiffs, )

vs. )

JPMORGAN CHASE BANK, N.A., )  
CHASE BANK USA, N.A., AND )  
FEDERAL NATIONAL MORTGAGE )  
ASSOCIATION a/k/a/ FANNIE MAE, )

Defendants. )

Case No. 3:10-cv-01284-GPC-BGS

**FINAL JUDGMENT AND ORDER  
OF DISMISSAL**

1 Class Counsel have moved for an order for final approval of this class action  
2 settlement and request a final judgment and order of dismissal with prejudice. The  
3 Court heard argument regarding final approval at the Fairness Hearing held on  
4 December 4, 2014. Based upon all papers filed with the Court and oral argument at  
5 the Fairness Hearing, it is ORDERED, ADJUDGED, AND DECREED as follows:

6 1. The Settlement Agreement and Release, fully executed on January 13,  
7 2012, including its exhibits, and the Amendment to Settlement Agreement and  
8 Release, fully executed on March 20, 2014 (collectively, the “Settlement  
9 Agreement”), and the definitions of words and terms contained therein, are  
10 incorporated by reference in this Order. The terms of this Court’s Preliminary  
11 Approval Orders (Dkt. Nos. 55 and 113) are also incorporated by reference in this  
12 Order.

13 2. This Court has jurisdiction over the subject matter of this Action and  
14 over the Parties, including all members of the following Settlement Class and  
15 Subclass certified for settlement purposes in this Court’s Preliminary Approval  
16 Order:

17 Settlement Class: All present or former borrowers or co-  
18 borrowers as identified in JPMCB’s records whose  
19 residential mortgage loan or home equity line of credit is or  
20 was serviced or subserviced by JPMCB or Chase Home  
21 Finance LLC and either the borrower, co-borrower or both,  
22 were contacted on their cellular telephone(s) by JPMCB  
through the use of an automated dialer system and/or an  
artificial or prerecorded voice during the Class Period.

23 Subclass A: Those persons whose cell phones were actually  
24 called by JPMCB or Chase Home Finance LLC during the  
25 Class Period, and are thus entitled to a monetary payment.

26 The following persons are excluded from the Settlement Class:

27 Defendants, their parent companies, affiliates or  
28 subsidiaries, or any employees thereof, and any entities in

1 which any of such companies has a controlling interest, the  
2 Judge or Magistrate Judge to whom the Action is assigned  
3 and any member of those Judges' staffs and immediate  
4 families, as well as all persons who validly request  
5 exclusion from the Settlement Class.

6 3. The Court hereby finds that the Settlement Agreement is the product of  
7 arm's length settlement negotiations between the Parties.

8 4. The Court again finds that the Action satisfies the applicable  
9 prerequisites for class action treatment under Fed. R. Civ. P. 23, namely:

10 A. The Settlement Class Members are so numerous that joinder of all of  
11 them in the Action would be impracticable;

12 B. There are questions of law and fact common to the Settlement Class  
13 Members, which predominate over any individual questions;

14 C. The claims of the Plaintiffs appointed as Class Representatives are  
15 typical of the claims of the Settlement Class Members;

16 D. The Plaintiffs and Class Counsel have fairly and adequately  
17 represented and protected the interests of all the Settlement Class Members; and

18 E. Class treatment of these claims will be efficient and manageable,  
19 thereby achieving an appreciable measure of judicial economy, and a class action is  
20 superior to other available methods for a fair and efficient adjudication of this  
21 controversy.

22 5. The Court hereby finds and concludes that Settlement Notice was  
23 disseminated to members of the Settlement Class in accordance with the terms set  
24 forth in the Settlement Agreement, and that Settlement Notice and its dissemination  
25 were in compliance with this Court's Preliminary Approval Orders dated March 12,  
26 2012 (Dkt. No. 55) and May 30, 2014 (Dkt. No. 113).

27 6. The Court further finds and concludes that the Settlement Notice and  
28 Claims submission procedures, as set forth in Sections 9.01-10.03 of the Settlement

1 Agreement and Release and Section 9.06 of the Amendment to Settlement  
2 Agreement and Release, fully satisfy Rule 23 of the Federal Rules of Civil Procedure  
3 and the requirements of due process, were the best notice practicable under the  
4 circumstances, provided individual notice to all persons in the Settlement Class who  
5 could be identified through reasonable effort, and support the Court's exercise of  
6 jurisdiction over the Settlement Class as contemplated in the Settlement and this  
7 Order.

8       7. This Court hereby finds and concludes that the notice provided by  
9 JPMCB pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

10       8. The Court hereby finally approves the Settlement Agreement and the  
11 Settlement contemplated thereby, and finds that the terms constitute, in all respects, a  
12 fair, reasonable, and adequate settlement as to all Settlement Class Members in  
13 accordance with Rule 23 of the Federal Rules of Civil Procedure, and directs  
14 consummation of the Settlement pursuant to its terms and conditions.

15       9. The Court hereby finally certifies for settlement purposes the Settlement  
16 Class and Subclass A of the Settlement Class and finds for settlement purposes that  
17 all requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) are satisfied.

18       10. This Court hereby dismisses the Action with prejudice and without costs  
19 to any party except as expressly provided for in the Settlement Agreement.

20       11. Upon entry of the Final Judgment and Order of Dismissal approving the  
21 Settlement (including, without limitation, the exhaustion of any judicial review, or  
22 requests for judicial review, from this Final Judgment and Order of Dismissal), the  
23 Plaintiffs and each and every one of the Settlement Class Members fully, finally, and  
24 forever release and discharge the Released Parties from the Released Claims. In  
25 addition, any rights of the Class Representatives and each and every one of the  
26 Settlement Class Members to the protections afforded under Section 1542 of the

1 California Civil Code and/or any other similar, comparable, or equivalent laws are  
2 terminated.

3 12. Each and every Settlement Class Member, and any person actually or  
4 purportedly acting on behalf of any Settlement Class Member(s), is hereby  
5 permanently barred and enjoined from commencing, instituting, continuing,  
6 pursuing, maintaining, prosecuting, or enforcing any Released Claims (including,  
7 without limitation, in any individual, class or putative class, representative or other  
8 action or proceeding), directly or indirectly, in any judicial, administrative, arbitral,  
9 or other forum, against the Released Parties. This permanent bar and injunction is  
10 necessary to protect and effectuate the Settlement Agreement, this Final Judgment  
11 and Order of Dismissal, and this Court's authority to effectuate the Settlement  
12 Agreement, and is ordered in aid of this Court's jurisdiction and to protect its  
13 judgment.

14 13. The Settlement Agreement, and any and all negotiations, documents,  
15 and discussions associated with the Settlement, shall not be deemed or construed to  
16 be an admission or evidence of any violation of any statute, law, rule, regulation, or  
17 principle of common law or equity, of any liability or wrongdoing, by JPMCB or  
18 Fannie Mae, or of the truth of any of the claims asserted by Plaintiffs in the Action,  
19 and evidence relating to the Settlement Agreement shall not be discoverable or used,  
20 directly or indirectly, in any way, whether in the Action or in any other action or  
21 proceeding, except for purposes of enforcing the terms and conditions of the  
22 Settlement Agreement, the Preliminary Approval Order, and/or this Final Judgment  
23 and Order of Dismissal.

24 14. If for any reason the Settlement terminates or Final Approval does not  
25 occur, then certification of the Settlement Class and Subclass A of the Settlement  
26 Class shall be deemed vacated. In such an event, the Parties will return, without  
27 prejudice, to the *status quo ante* as if no Settlement had been negotiated or entered  
28

1 into and the Settlement and its existence shall be inadmissible to establish any fact  
2 relevant to any alleged liability of the Released Parties for the matters alleged in the  
3 Action or for any other purpose. In that event, any amounts paid by either party for  
4 costs of notice and claims administration to date shall not be refunded.

5 15. In the event that any provision of the Settlement or this Final Judgment  
6 and Order of Dismissal is asserted by JPMCB or Fannie Mae as a defense in whole  
7 or in part to any Claim, or otherwise asserted (including, without limitation, as a  
8 basis for a stay) in any other suit, action, or proceeding brought by a Settlement Class  
9 Member or any person actually or purportedly acting on behalf of any Settlement  
10 Class Member(s), that suit, action or other proceeding shall be immediately stayed  
11 and enjoined until this Court or the court or tribunal in which the claim is pending  
12 has determined any issues related to such defense or assertion. Solely for purposes  
13 of such suit, action, or other proceeding, to the fullest extent they may effectively do  
14 so under applicable law, the Parties irrevocably waive and agree not to assert, by way  
15 of motion, as a defense or otherwise, any claim or objection that they are not subject  
16 to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or  
17 an inconvenient forum. These provisions are necessary to protect the Settlement  
18 Agreement, this Final Judgment and Order of Dismissal and this Court's authority to  
19 effectuate the Settlement, and are ordered in aid of this Court's jurisdiction and to  
20 protect its judgment.

21 16. By attaching the Settlement Agreement as Exhibit A and incorporating  
22 its terms herein, the Court determines that this Final Judgment complies in all  
23 respects with Federal Rule of Civil Procedure 65(d)(1).

24 17. Those persons who submitted valid and timely Requests for Exclusion  
25 from the Settlement Class and the Settlement are named on Exhibit B to this Order.<sup>1</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> Twenty-five additional Requests for Exclusion were submitted by bankruptcy  
28 trustees that cannot be identified on the Settlement Class List; regardless, these  
individuals are also included in Exhibit B to this Order.

1 The Court hereby excludes these individuals from the Settlement Class and the  
2 Settlement.


3 18. Settlement Class Members were given an opportunity to file Objections  
4 to the Settlement. After consideration of each of the Objections, the Court hereby  
5 overrules such Objections. The Court overrules the objection of Robert J. Michener,  
6 (ECF No. 130), and DENIES his motion to continue. The Court finds that Objector  
7 Michener has failed to establish good cause for a continuance because he has not  
8 proven that he actually sent correspondence to Gilardi and his lack of preparedness is  
9 not a basis for delaying the final approval hearing. As discussed above, the Court has  
10 found that the settlement is fair and reasonable. The Court approves Class Counsel's  
11 application for \$2,398,878.58 in attorneys' fees and costs, and for incentive  
12 payments in the amount of \$2,500 to each of the Class Representatives.  
13 Additionally, the Court approves a payment of \$1,392,238.39 to the Claims  
14 Administrator for its costs and fees incurred in connection with the notice and claims  
15 administration process, with \$811,738.39 to be paid from the Settlement Fund for  
16 Group 1 and \$580,500 to be paid directly by JPMCB for the Group 2 notice and  
17 claims administration process. The Court approves a payment of \$345,000 by Class  
18 Counsel to C. Benjamin Nutley, counsel for objector John W. Davis, payable from  
19 the fees awarded herein to Class Counsel.

20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28

1           19. Finding that there is no just reason for delay, the Court orders that this  
2 Final Judgment and Order of Dismissal shall constitute a final judgment pursuant to  
3 Rule 54 of the Federal Rules of Civil Procedure. The Clerk of the Court is directed  
4 to enter this Order on the docket forthwith.

5           IT IS SO ORDERED.

6  
7  
8 Dated: February 5, 2015

  
HON. GONZALO P. CURIEL  
United States District Judge

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28