

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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 JOANNE BERGEN, ANDREW C. MATTELIANO, :
 NANCY A. MATTELIANO, KEVIN KARLSON, :
 BARBARA KARLSON, ROBERT BRADSHAW, :
 on Behalf of Themselves and Others Similarly Situated, :
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 Plaintiffs, :
 :
 vs. :
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 WASHINGTON MUTUAL INCORPORATED, :
 WASHINGTON MUTUAL BANK, F.A., :
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 Defendants. :
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Case No. 02-CV-6571CJS(F)

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING CLASS FOR SETTLEMENT PURPOSES, AND
WITH RESPECT TO NOTICE, SETTLEMENT HEARING AND ADMINISTRATION**

Plaintiffs Joanne Bergen, Andrew C. Matteliano, Nancy A. Matteliano and Robert Bradshaw having moved for an order preliminarily approving the stipulation of settlement entered into between them and defendants on or about February 1, 2006 and certain other relief, and the Court having reviewed the Stipulation, the declaration of Michael R. Law in support of the motion, and plaintiffs' and defendants' memoranda of law, it is hereby ORDERED:

1. **Preliminary Class Certification.** Case No. 02-CY-6571CJS(F), styled *Joanne Bergen et al. v. Washington Mutual Incorporated et al*, is certified as a class action, for settlement purposes only, on behalf of the "Class" as defined in the Stipulation as follows:

all persons, other than Excluded Persons, with a residential home loan mortgage owned by or serviced by the Bank for which the Bank managed an escrow account for the payment of real estate taxes:

- (1) whose residential home loan mortgage was for property located in the State of New York;
- (2) whose residential home loan mortgage servicing records were maintained in the Bank's "client 908" database, which is the database into which the records for the loan portfolios of The PNC

Financial Services Group, Inc. (“PNC”) or Bank United Corporation (“Bank United”) were converted following the Bank’s acquisition of PNC and Bank United in 2001; and

- (3) whose real estate taxes were not paid by the Bank on or before the deadline to avoid a penalty during the Class Period.

2. **Class Representatives; Class Counsel.** Joanne Bergen, Andrew C. Matteliano, Nancy A. Matteliano, and Robert Bradshaw are appointed as class representatives and Phillips Lytle LLP is approved as Class Counsel to represent the Class.

3. **Claim Administrator.** Within twenty-one days from the entry of this order, the parties shall submit the name of the proposed Claim Administrator to the Court for approval and for an appropriate order governing the Claim Administrator’s duties and authority.

4. **Proposed Settlement.** The Court finds that the proposed settlement between the Class and the defendants is approved preliminarily as fair, reasonable and adequate to the Class, subject to further consideration thereof at the Fairness Hearing described at paragraph 6 of this Order.

5. **Notice, Opt-Outs and Claims.** The form of the notice and the claim form agreed to by the parties and attached to plaintiff’s motion [#75] as Exhibits B and C is hereby approved.

- a. Within thirty (30) business days of this order, defendants shall provide to the Claim Administrator the Potential Class Member List as defined in section III.B.1 of the Stipulation. The Claim Administrator shall engage a professional service to confirm the validity of the addresses on the Potential Class Member List, and for those addresses that the service determines are no longer valid, the Claim Administrator shall have the service make one attempt to locate a new address.

- b. As soon as practicable thereafter, the Claim Administrator shall mail the Class Notice and the Claim Form to each address on the updated potential Class Member List and, if returned, re-mail once to any forwarding address on the returned notice. The Court finds that notice in compliance with this Order and the Stipulation is the best notice practicable under the

circumstances, and constitutes due and sufficient notice of this Order and of the proposed settlement to all persons affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

- c. Any Class Member who wishes to elect not to participate in the settlement must complete an individual, written, and signed notice of intention to opt out of the settlement and mail it first class, U.S. Mail to the Claim Administrator at the address set forth in the Class Notice. Any such election to opt out must be postmarked no later than **June 9, 2006**, and must set forth (i) the Class Member's full name, current address, and telephone number; (ii) provide information identifying the loan(s) as to which the Class Member seeks exclusion; (iii) contain the signatures of each Class Member who was a party to the promissory note as to that loan; (iv) unequivocally state an intent not to participate in the settlement and to waive all rights to the benefits given in the settlement.
- d. Each Class Member may make a claim against the settlement fund only by submitting a Valid Claim Form to the Claim Administrator no later than six months after the mailing date of the Class Notice. The form must be accompanied by proof that (i) penalties or interest charges were paid to the Class Member's taxing authority as a result of a late or missed tax payment between June 1, 2001 and May 31, 2002; (ii) the penalties or interest charges were paid from or charged to the Class Member's escrow account; and (iii) the penalties or interest charges were not reimbursed to the Class Member's escrow account or to the Class Member.

6. **Objections and Fairness Hearing.** A hearing shall be held before the undersigned in Courtroom 1560 of the United States Courthouse, 100 State Street, Rochester, New York 14614 at **3:00 p.m. on the 13th day of July 2006** to consider whether the settlement

should be given final approval and to consider an application by Class Counsel for attorneys' fees and costs.

- a. Objections by Class Members (who do not timely elect to exclude themselves from the class) to the proposed settlement must be in writing and mailed first class, U.S. Mail to Class Counsel and Defendants' counsel at their addresses set forth in the Notice. Any such objection must be postmarked no later than **June 9, 2006**, and must set forth (i) the Class Member's full name, current address, and telephone number; (ii) state that the Class Member objects to the settlement, in whole or in part; (iii) set forth a statement of the legal and factual basis for the objection; and (iv) provide copies of any documents that the objector wishes to submit in support of his or her position. Any Class Member who does not submit a timely objection in complete accordance with this Order shall not be treated as having filed a valid objection to the settlement, and it shall not be considered by the Court.
- b. Any Class Members who wish to appear at the hearing, whether *pro se* or through counsel, must file a notice of appearance in the case with the Clerk of the Court, 100 State Street, Rochester, NY 14614, and serve the notice and any other pleadings upon Class Counsel and Defendants' Counsel no later than **June 9, 2006**. No Class Member shall be permitted to raise matters at the hearing that he or she could have raised in an objection, but failed to do. Any Class Member who fails to comply with this Order cannot appear or be heard at the hearing
- c. Any Class Member who wishes to intervene in the above referenced matter must file a motion or application to do so with the Clerk of the Court and serve copies on Class Counsel and Defendants' Counsel within the time permitted above for the filing of objections.

- d. No later than **June 23, 2006**, Defendants' Counsel shall file a report with the Court on the number of timely and valid objections received and a report from the Claim Administrator on the number of timely and valid notices of intent to opt out received. In addition, Defendants' Counsel shall attach to the report copies of any and all materials received from potential Class Members in connection with notices of intent to opt out and objections.
- e. Class Counsel and Defendants' Counsel should be prepared at the hearing to respond to objections filed by such Class Members and to provide other information, as appropriate, bearing on whether or not the settlement should be approved.

7. Further Actions. All other events contemplated under the Stipulation to occur after this Order and before the Fairness Hearing shall be governed by the Stipulation and the Notice to the extent not inconsistent herewith. The Claim Administrator, as well as Defendants' Counsel and Class Counsel, shall take such further actions as are required under the Stipulation.

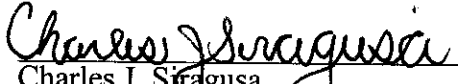
8. Non-Material Changes. The Parties to the Stipulation shall be authorized to make non-material changes to the Class Notice or Claim Form so long as Defendants' Counsel and Class Counsel agree, and one of the Parties files a notice thereof with the Court prior to the Fairness Hearing.

9. Litigation Stay. All proceedings in the Action, other than such as may be necessary to carry out the terms and conditions of the Stipulation or the responsibilities related or incidental thereto are stayed and suspended until further order of this Court.

10. Failure to Consummate. If Final Approval of the settlement does not occur, or if the Stipulation is terminated for any reason whatsoever, the settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the parties to the Action before the Stipulation was executed, and all Orders issued pursuant to the settlement reflected in the Stipulation shall be vacated. In such an event, the settlement

reflected in the Stipulation and all negotiations concerning it shall not be used or referred to in this Action for any purpose whatsoever.

DATED: FEB. 14, 2006


Charles J. Siragusa
United States District Judge