

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Feb 20, 2019**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LAURA ZAMORA JORDAN, as her  
separate estate, and on behalf of others  
similarly situated,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC, a  
Delaware limited liability company,

Defendant,

and

FEDERAL HOUSING FINANCE  
AGENCY,

Intervenor.

NO. 2:14-CV-0175-TOR

ORDER ACCEPTING SPECIAL  
MASTER'S FINAL REPORT AND  
DIRECTING NOTICE TO U.S.  
BANKRUPTCY TRUSTEES

BEFORE THE COURT is Special Master Bruce P. Kriegman's Final  
Report, as amended. ECF Nos. 381, 382, 384.

ORDER ACCEPTING SPECIAL MASTER'S FINAL REPORT AND  
DIRECTING NOTICE TO U.S. BANKRUPTCY TRUSTEES ~ 1

1 **BACKGROUND**

2 This case arises from actions taken by Defendant Nationstar Mortgage LLC  
3 affecting Washington homeowners' residential properties in default. ECF No. 2-4.  
4 In her Second Amended Complaint, Plaintiff and Class Representative Laura  
5 Zamora Jordan asserted causes of action for: trespass; intentional trespass, RCW  
6 4.24.630; violation of the Consumer Protection Act (CPA), RCW 19.86 *et seq.*;  
7 and breach of contract. ECF No. 2-19 at 10-16. This Court certified the following  
8 class:

9 All persons who own or owned real property in Washington subject to  
10 a deed of trust or a mortgage serviced or held by Nationstar, whose  
11 property Nationstar or its agents deemed vacant prior to the  
12 completion of a foreclosure sale and between April 3, 2008 and July  
13 31, 2016.

14 ECF No. 207 at 25.

15 Ms. Jordan moved for partial summary judgment on liability. ECF No. 217.  
16 The Court granted partial summary judgment as to liability for common law  
17 trespass and CPA violations for all class members who had their properties  
18 rekeyed prior to foreclosure. ECF No. 262. The parties later sought and this Court  
19 granted preliminary approval of a class action settlement and the Court scheduled a  
20 final fairness hearing. ECF No. 360.

The Class includes approximately 3,441 members who have evidence of a  
lock change prior to foreclosure and approximately 1,687 members who were

1 charged for other property preservation services, but do not have evidence of a  
2 lock change. ECF No. 361 at ¶ 11. The claims of class members whose locks  
3 were changed either prior to or during their bankruptcy proceedings typically  
4 belong to their bankruptcy estates. This involves 262 of the class members. *See*  
5 ECF No. 381 at 3, n.1. Their claims were analyzed by a Court appointed Special  
6 Master to determine whether unused exemptions would ultimately allow the debtor  
7 to receive the settlement amount or whether the settlement amount is economically  
8 substantial enough that the Bankruptcy Courts (e.g., the U.S. Trustees) should be  
9 notified so that it may be distributed through those Courts to the creditors and  
10 debtor.

11 The Special Master divided the 262 bankruptcy involved class members into  
12 seven categories, identified on Exhibits B - G of his report. ECF Nos. 381, 384.

13 Exhibit B is comprised of 144 class members whose unused exemptions  
14 would completely encompass the expected settlement award. In other words, if the  
15 settlement awards were sent to the trustees, the debtors could amend their  
16 exemptions and the full amount of the settlement award would be returned to the  
17 debtors, not their creditors.

18 Exhibit C is comprised of 64 class members whose settlement awards, after  
19 applying any unused exemptions, would net less than \$5,000.

1 Exhibit D is comprised of 8 class members where there was a 100%  
2 distribution to the creditors. This category does not account for the possibility that  
3 interest would still be owed if there were more assets to distribute.

4 Exhibit E is comprised of 26 class members whose settlement awards, after  
5 applying any unused exemptions, would be larger than \$5,000.

6 Exhibit F is comprised of 20 class members with open bankruptcy cases, but  
7 with unused exemptions which would completely encompass the expected  
8 settlement award.

9 Exhibit G is comprised of 6 class members with open bankruptcy cases with  
10 unused exemptions that do not cover the expected settlement award. In other  
11 words, there would be leftover money to distribute to the creditors.

12 Exhibit H is comprised of 6 class members whose chapter 13 cases have  
13 been dismissed. Thus, the settlement award would belong to the debtor.

## 14 DISCUSSION

15 This Court has previously recognized that the bankruptcy trustees are the  
16 real parties in interest when a claim or cause of action is part of the bankruptcy  
17 estate. ECF No. 262 at 10-11. The bankruptcy code endows the bankruptcy  
18 trustee with the exclusive right to sue on behalf of the estate. *Estate of Spirtos v.*  
19 *One San Bernardino Cty. Superior Court Case Numbered SPR 02211*, 443 F.3d  
20 1172, 1176 (9th Cir. 2006). “[A] trustee, as the representative of the bankruptcy

1 estate, is the proper party in interest, and is the only party with standing to  
2 prosecute causes of action belonging to the estate.” *Parker v. Wendy’s Int’l, Inc.*,  
3 365 F.3d 1268, 1272 (11th Cir. 2004). “Section 541 of the Bankruptcy Code  
4 provides that virtually all of a debtor’s assets, both tangible and intangible, vest in  
5 the bankruptcy estate upon the filing of a bankruptcy petition.” *Id.* citing 11  
6 U.S.C. § 541(a)(1) (providing that the bankruptcy estate includes “all legal or  
7 equitable interest of the debtor in property as of the commencement of the case”).  
8 “Such property includes causes of action belonging to the debtor at the  
9 commencement of the bankruptcy case.” *Id.* “On request of a party in interest and  
10 after notice and a hearing, the court may order the trustee to abandon any property  
11 of the estate that is burdensome to the estate or that is of inconsequential value and  
12 benefit to the estate.” 11 U.S.C. § 554(b). “At the close of the bankruptcy case,  
13 property of the estate that is not abandoned under § 554 and that is not  
14 administered in the bankruptcy proceedings remains the property of the estate.”  
15 *Parker*, 365 F.3d at 1272 (citing 11 U.S.C. § 554(d)).

16 As the Special Master has observed, a determination of what constitutes  
17 “property of the estate” is a much more nuanced and complex determination  
18 impacted by timing and accrual principles. ECF No. 373 at 7-9.  
19  
20

1           Where an action is originally brought by a party other than the real party in  
2 interest, Rule 17 provides that a court “may not dismiss an action for failure to  
3 prosecute in the name of the real party in interest until, after an objection, a  
4 reasonable time has been allowed for the real party in interest to ratify, join, or be  
5 substituted into the action.” Fed. R. Civ. P. 17(a)(3). If the real party in interest  
6 ratifies, joins, or is substituted, the “action proceeds as if it had been originally  
7 commenced by the real party in interest.” *Id.*; *Copelan v. Techtronics Industries*  
8 *Co., Ltd.*, 95 F.Supp.3d 1230, 1234 (S.D.Cal. 2015).

9           The trustees of the 262 bankruptcy cases will thus be provided notice and an  
10 opportunity to ratify, join or be substituted. The trustees will also be required to  
11 indicate whether the identified bankruptcy estates desire to **opt-out** of the  
12 Settlement or **object** to the Settlement. But most importantly, the bankruptcy  
13 trustees will be required to indicate whether they **ratify** the Settlement and **direct**  
14 that the settlement award be sent to the bankruptcy court for administration and  
15 disbursement.

16           Absent timely affirmative conduct on the part of the bankruptcy trustees, the  
17 Court preliminarily determines that all settlement awards for the bankruptcy class  
18 members in categories B, C, and H, should be sent directly to the debtors. The  
19 Court finds that Category H members’ chapter 13 cases were dismissed, so the  
20 settlement proceeds belong to the debtors.

1 The Court finds that Category B members have sufficient unused  
2 exemptions to cover the entire settlement award. It would not be economically  
3 feasible for the bankruptcy courts to administer the funds for no positive purpose  
4 other than to allow the debtors to amend their exemption schedule.

5 The Court finds that Category C members expect less than \$5,000 net  
6 proceeds after any unused exemptions are used and that it would not be  
7 economically feasible for the bankruptcy courts to administer the funds, and that  
8 the costs, fees, and expenses would consume the award for no positive purpose.

9 Finally, absent affirmative opt-out or ratification by the U.S. Bankruptcy  
10 Trustees, all 262 bankruptcy class members settlement awards will be disbursed to  
11 those debtors directly, and the Court will conclude that the trustees abandoned the  
12 claims.

13 **ACCORDINGLY, IT IS ORDERED:**

14 1. The Court **ACCEPTS** Special Master Bruce P. Kriegman's Final  
15 Report, as amended, ECF Nos. 381, 382, 384.

16 2. The Court has previously preliminarily approved the Settlement  
17 Agreement and the terms set forth therein, including the relief afforded to the  
18 settlement class members, the incentive award, the payment of attorneys' fees and  
19 costs to class counsel, and the Class Administrator's fee. ECF No. 369.

1           3.     The Clerk of Court is directed to serve by First Class U.S. Mail the  
2 following U.S. Trustees with a copy of: this Order; a copy of the Special Master's  
3 Final Report, with attachments as amended, ECF Nos. 381, 382, 384 (including  
4 amended Exhibits B through H; and a copy of the Order Granting unopposed  
5 Motion for Preliminary Approval of Class Action Settlement, ECF No. 369.

6 GREGORY M. GARVIN  
7 ACTING UNITED STATES TRUSTEE (REGION 18)  
8 700 STEWART STREET, SUITE 5103  
9 SEATTLE, WA 98101

10 GARY W. DYER, ASSISTANT U.S. TRUSTEE  
11 920 WEST RIVERSIDE, ROOM 593  
12 SPOKANE, WA 99201

13 JONAS V. ANDERSON, ACTING ASSISTANT U.S. TRUSTEE  
14 620 SW MAIN STREET, SUITE 213  
15 PORTLAND, OR 97205-3026

16 ILENE J. LASHINSKY  
17 UNITED STATES TRUSTEE (REGION 14)  
18 230 N. 1ST AVE., SUITE 204  
19 PHOENIX, AZ 85003

20 LAURIE CAYTON, ACTING ASSISTANT U.S. TRUSTEE  
405 SOUTH MAIN STREET, SUITE 300  
SALT LAKE CITY, UT 84111

PATRICK S. LAYNG  
UNITED STATES TRUSTEE (REGION 19)  
BYRON G. ROGERS FEDERAL BUILDING  
1961 STOUT STREET, SUITE 12-200  
DENVER, CO 80294

1 LISA M. PENPRAZE, ASSISTANT U.S. TRUSTEE (for Vermont & NDNY)  
11A CLINTON AVENUE, ROOM 620  
2 ALBANY, NY 12207

3 CHARLES W. TUCKER, ASSISTANT U.S. TRUSTEE  
200 W. CAPITOL AVE., SUITE 1200  
4 LITTLE ROCK, AR 72201

5 TIFFANY CARROLL  
ACTING UNITED STATES TRUSTEE (REGION 15)  
6 880 FRONT STREET THIRD FLOOR, SUITE 3230  
SAN DIEGO, CA 92101

7 CHARLES R. STERBACH, ASSISTANT U.S. TRUSTEE  
8 400 W. WASHINGTON ST., SUITE 1100  
ORLANDO, FL 32801

9 DAVID W. NEWMAN, ASSISTANT U.S. TRUSTEE  
10 720 PARK BLVD., SUITE 220  
BOISE, ID 83712

11 JOSEPH A. GUZINSKI, ASSISTANT U.S. TRUSTEE  
12 115 S. UNION STREET, ROOM 210  
ALEXANDRIA, VA 22314

13 NICHOLAS STROZZA, ASSISTANT U.S. TRUSTEE  
14 300 LAS VEGAS BOULEVARD, S, ROOM 4300  
LAS VEGAS, NV 89101

15 DANIEL J. CASAMATTA  
16 ACTING UNITED STATES TRUSTEE (REGION 13)  
400 EAST 9TH STREET, ROOM 3440  
17 KANSAS CITY, MO 64106

18 JOSEPH S. SISCA, ASSISTANT U.S. TRUSTEE  
LIBERTY CENTER  
19 1001 LIBERTY AVENUE, SUITE 970  
PITTSBURGH, PA 15222

1 DAVID W. NEWMAN, ASSISTANT U.S. TRUSTEE  
301 CENTRAL AVENUE, SUITE 204  
2 GREAT FALLS, MT 59401

3 PETER ANDERSON  
UNITED STATES TRUSTEE (REGION 16)  
4 915 WILSHIRE BLVD., SUITE 1850  
LOS ANGELES, CA 90017

5 ROBERT B. RASCHKE, ASSISTANT U.S. TRUSTEE  
6 1015 U.S. COURTHOUSE, 300 SOUTH 4TH STREET  
MINNEAPOLIS, MN 55415

7  
8 4. On or **before March 15, 2019**, the U.S. Trustees, on behalf of each  
9 of the bankruptcy estates, may **opt-out** or **object** to the Settlement. The U.S.  
10 Trustees must file any **opt-out** or **objection** in writing with this Court (at the  
11 address below) and provide the debtor's name, bankruptcy case number, and the  
12 reason(s) for any objection.

13 Clerk of Court  
P.O. Box 1493  
14 Spokane, WA 99210

15 5. On or **before March 15, 2019**, the U.S. Trustees, on behalf of each of  
16 the bankruptcy estates, may **ratify** the Settlement and direct that the settlement  
17 award be sent to the bankruptcy court for administration and disbursement. The  
18 U.S. Trustees must file any **ratification** and **direction** to forward the settlement  
19 award in writing with this Court (at the address above noted) and provide the  
20 debtor's name and bankruptcy case number.

1           6.       Absent affirmative opt-out or ratification by the U.S. Bankruptcy  
2 Trustees, the 262 bankruptcy class members settlement awards will be disbursed to  
3 those debtors directly, and the Court will conclude that the claims have been  
4 abandoned.

5           7.       The Final Fairness Hearing shall be held before this Court on **March**  
6 **21, 2019, at 1:30 p.m., Thomas S. Foley U.S. Courthouse, Courtroom 902, 920**  
7 **West Riverside Avenue, Spokane, Washington.** The parties should be prepared  
8 to discuss final approval of the settlement for the certified class, including payment  
9 of attorneys' fees and costs, any objections and all other matters prerequisite to  
10 entry of a final order.

11           8.       The Court reserves the right to adjourn and/or continue the date of the  
12 Final Fairness Hearing without further notice to settlement class members.

13           The District Court Executive is directed to enter this Order and provide  
14 copies to counsel.

15           **DATED** February 20, 2019.



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20

*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge