

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

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 GRANTING UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

BEFORE THE COURT is Plaintiffs’ Unopposed Motion for Preliminary
Approval of Class Action Settlement (ECF No. 360). This matter was submitted
for consideration without oral argument. The Court has reviewed the record and
files herein, and is fully informed. For the reasons discussed below, Plaintiff’s

1 Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No.
2 360) is **GRANTED**.

3 **BACKGROUND**

4 This case arises from actions taken by Defendant Nationstar Mortgage LLC
5 affecting Washington homeowners' residential properties in default. ECF No. 2-4.
6 In her Second Amended Complaint, Plaintiff and Class Representative Laura
7 Zamora Jordan ("Ms. Jordan") asserted the following causes of action: trespass;
8 intentional trespass, RCW 4.24.630; violation of the Consumer Protection Act
9 (CPA), RCW 19.86 *et seq.*; and breach of contract. ECF No. 2-19 at 10-16. The
10 Chelan County Superior Court certified the Class under Washington Civil Rule 23
11 on May 19, 2014. ECF No. 1-3 (Ex. C). Thereafter, Defendant removed the action
12 to this Court and moved to decertify the Class. ECF Nos. 1; 119. This Court
13 denied Defendant's motion and certified a slightly different Class. ECF No. 207.

14 On November 25, 2017, Ms. Jordan moved for partial summary judgment on
15 liability. ECF No. 217. The Court granted partial summary judgment as to
16 liability for common law trespass and CPA violations for all class members who
17 had their properties rekeyed prior to foreclosure. ECF No. 262.

18 The parties entered into mediation on November 27, 2017, with the
19 assistance of Louis D. Peterson of Hillis Clark Martin & Peterson P.S. ECF No.
20 361 at ¶ 7. The parties did not reach a settlement during mediation, but continued

1 negotiations with Mr. Peterson’s assistance. *Id.* The parties reached an agreement
2 in principle just before trial was set to commence on December 18, 2017, but were
3 unable to reach a final agreement on several settlement terms. *Id.* at ¶ 8. The
4 Court set a new trial date of July 30, 2018, and the parties resumed litigation. *Id.* at
5 ¶ 9.

6 The parties had filed trial briefs and were set to start trial when they once
7 again reached a settlement, this time including final agreement on the remaining
8 disputed settlement terms. *Id.* In the instant motion, the parties seek preliminary
9 approval of their class action settlement and move the Court to schedule a final
10 fairness hearing. ECF No. 360.

11 DISCUSSION

12 A. Standard for Preliminary Approval of Class Action Settlement

13 Federal Rule of Civil Procedure 23(e) requires the district court to approve
14 any settlement of a certified class before such a settlement becomes final. Fed. R.
15 Civ. P. 23(e). Approval under Rule 23(e) involves a two-step process in which the
16 Court first determines whether a proposed class action settlement deserves
17 preliminary approval and then, after notice is given to class members, whether
18 final approval is warranted.

19 Regarding the first step in the settlement approval process, a court “must
20 make a preliminary determination on the fairness, reasonableness, and adequacy of

1 the settlement terms and must direct the preparation of notice of the certification,
2 proposed settlement, and date of the final fairness hearing.” Manual for Complex
3 Litigation, Fourth, § 21.632. The purpose of the preliminary fairness evaluation is
4 to determine whether the settlement is within the range of possible approval and
5 thus whether notice to the class is worthwhile. In making this determination, a
6 court’s role is to ensure that “the agreement is not the product of fraud or
7 overreaching by, or collusion between the negotiating parties, and that the
8 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
9 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (quoting *Officers*
10 *for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir.
11 1982)).

12 In evaluating a proposed settlement under Rule 23(e), “the universally
13 applied standard is whether the settlement is fundamentally fair, adequate and
14 reasonable.” *Officers for Justice*, 688 F.2d at 625; Fed. R. Civ. P. 23(e)(2). To
15 determine whether a proposed settlement agreement meets these standards, the
16 “court must carefully consider whether a proposed settlement is fundamentally fair,
17 adequate, and reasonable, recognizing that it is the settlement taken as a whole,
18 rather than the individual component parts, that must be examined for overall
19 fairness.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (internal
20 quotation marks and alterations omitted) (quoting *Hanlon*, 150 F.3d at 1026).

1 When weighing the fairness of a proposed settlement, courts look to the
2 following *Churchill* factors:

3 (1) the strength of the plaintiff's case; (2) the risk, expense,
4 complexity, and likely duration of further litigation; (3) the risk of
5 maintaining class action status throughout the trial; (4) the amount
6 offered in settlement; (5) the extent of discovery completed and the
7 stage of the proceedings; (6) the experience and view of counsel; (7)
8 the presence of a governmental participant; and (8) the reaction of the
9 class members of the proposed settlement.

10 *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934, 944 (9th Cir. 2015)
11 (quoting *Churchill Vill., L.L.C., v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).
12 Additionally, "the settlement may not be the product of collusion among the
13 negotiating parties." *Churchill*, 361 F.3d at 576.

14 **B. Preliminary Assessment of Settlement Terms**

15 For the reasons discussed below, the Court preliminarily concludes that the
16 proposed settlement satisfies the requirements of Rule 23(e).

17 **1. Terms of the Settlement Agreement**

18 The certified class in this case is comprised of:

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

ECF No. 207 at 25. The Class includes approximately 3,441 members who have
evidence of a lock change prior to foreclosure and approximately 1,687 members

1 who were charged for other property preservation services, but do not have
2 evidence of a lock change. ECF No. 361 at ¶ 11. The Class does not include four
3 persons who requested exclusion from it. ECF No. 361-1 at 2, II. ¶ 4 (Ex. 1).
4 Persons who request exclusion within the time provided by the Settlement
5 Agreement are not class members and are not bound by the Settlement Agreement.
6 *Id.* at 6, VII. ¶ 1 (Ex. 1).

7 Pursuant to the Settlement Agreement, Defendants shall pay a total of
8 \$17,000,000 to settle this action. ECF No. 361-1 at 4, III. ¶ 1 (Ex. 1). This
9 payment will create a “Settlement Fund” that will cover: (1) payments to all class
10 members for whom the Class Administrator has a deliverable address; (2)
11 payments to class counsel; (3) payments to the Class Administrator for notice and
12 settlement administration costs; and (4) an incentive award to the class
13 representative. *Id.* at 4-5 (Ex. 1). The Settlement Fund is non-reversionary. *Id.* at
14 4, III. ¶ 1 (Ex. 1). If any amounts remain in the Settlement Fund after distribution
15 is complete, the remaining funds shall be disbursed *cy pres* to the Northwest
16 Justice Project and Parkview Services. *Id.* at 5, III. ¶ 6 (Ex. 1).

17 The Settlement Agreement directs the Class Administrator to pay the
18 requested incentive award, as well as fees and costs, from the Settlement Fund. *Id.*
19 at 5, IV. ¶ 1-2 (Ex. 1). Regarding the incentive award, the Settlement Agreement
20 specifies that Ms. Jordan, as class representative, will receive a total incentive

1 award of \$20,000. ECF No. 361 at 5, IV. ¶ 1. The Settlement Agreement also
2 provides that attorneys' fees shall not exceed 25% of the Settlement Fund, or
3 \$4,250,000, plus approximately \$210,633 in litigation costs.¹ ECF Nos. 361 at ¶
4 13; 361-1 at 5, IV. ¶ 2 (Ex. 1). The Class Administrator has agreed to cap costs at
5 \$40,000. ECF No. 361 at ¶ 16.

6 The remainder of the Settlement Fund, approximately \$12,479,366, will be
7 distributed to all class members for whom the Class Administrator has an address.
8 ECF Nos. 361-1 at 4, III. ¶ 3 (Ex. 1); 360 at 17-18. Class members who do not
9 have evidence of a lock change will receive a \$75 payment. ECF No. 361-1 at 4,
10 III. ¶ 3 (Ex. 1). Class members who have evidence of a lock change will receive a
11 pro rata share of the remaining funds allocated to class members after all \$75
12 payments have been deducted. *Id.* The pro rata payment will be based on the
13

14 ¹ The Court notes that the Settlement Agreement, as attached to Beth E.
15 Terrell's declaration (ECF No. 361-1), lists attorneys' fees and expenses as "not to
16 exceed 33-1/3%" of the Settlement Fund, rather than the 25% specified in
17 Plaintiff's pending motion for preliminary approval (ECF No. 361) and Beth
18 Terrell's declaration in support of Plaintiff's motion (ECF No. 361). ECF No.
19 361-1 at 5, IV. ¶ 2 (Ex. 1). The Court assumes 25%, not 33-1/3%, is the correct
20 percentage.

1 rental value damages that Plaintiff's expert has calculated in this matter. *Id.* All
2 Class Members with a deliverable address will receive a minimum of \$75 from the
3 Settlement Fund. *Id.*

4 In consideration for their monetary relief, Ms. Jordan and the class members
5 will irrevocably release and discharge Defendant, and its parents, subsidiaries,
6 successors, and insurers, for all known and unknown claims related to lock
7 changes and property preservation measures performed at class members' homes.
8 ECF No. 361-1 at 8, X. ¶ 1 (Ex. 1). The release also extends to agents or
9 independent contractors involved with property inspections and property
10 preservation measures on Defendant's behalf. *Id.*

11 Additionally, the Parties agree to certain confidentiality provisions. *Id.* at
12 10, XIII. ¶¶ 1-3 (Ex. 1).

13 **2. Preliminary Approval of Settlement**

14 At this stage of the proceeding, the Court determines that the proposed
15 settlement appears to be "fair, adequate and free from collusion," and therefore
16 within the range of possible approval. *Hanlon*, 150 F.3d at 1027.

17 In regards to the strength of Plaintiff's claims, Ms. Jordan and class counsel
18 acknowledge that they were confident the Class would prevail at trial when they
19 entered into mediation. ECF No. 360 at 12-13, 27. When the parties entered
20 mediation, this Court had denied Defendant's Motion to Decertify the Class (ECF

1 No. 207) and granted Plaintiff's motion for partial summary judgment as to
2 liability for common law trespass and CPA violations for class members who had
3 their properties rekeyed prior to foreclosure (ECF No. 262). The parties agree,
4 however, that important issues were left for trial, making the proposed settlement a
5 fair and adequate result for the Class. Specifically, the parties disputed the
6 appropriate measure of damages and whether certain class members were entitled
7 to any relief. ECF Nos. 360 at 27; 364 at 3. Plaintiff and the Class assert that they
8 are entitled to the full rental value of their home during the period of time that the
9 locks were changed. ECF No. 360 at 28. Defendant argues that the Class is only
10 entitled to a fraction of the damages calculated by Plaintiff's expert and retained
11 two experts to testify at trial about purported problems with Plaintiff's expert's
12 methodology and conclusions. ECF No. 364 at 6. If trial was necessary,
13 Defendant was also prepared to raise consent as an affirmative defense. ECF No.
14 364 at 6. In light of the uncertainty surrounding damages and how much each
15 class member may have recovered at trial, the Court concludes that the proposed
16 settlement agreement is fair and reasonable.

17 Turning to the risk, expense, complexity, and duration of further litigation, a
18 lengthy and expensive trial and appeals process seems likely in this case.
19 Regardless of the result at trial, an appeal by the losing party would be expected.
20 While Ms. Jordan and class counsel believe they have a strong case on the merits,

1 Defendants also believe they have strong defenses to Plaintiff's claims. ECF No.
2 364 at 6. At the time the parties reached the proposed settlement, Defendant was
3 prepared to appeal any significant award of damages on numerous grounds,
4 including liability, the propriety of adjudicating liability on a classwide basis,
5 and the measure of damages. ECF No. 364 at 6. Moreover, the risk, complexity,
6 and expenses involved in this litigation are further reflected in the many motions
7 briefed by the parties.

8 Regarding the extent of discovery completed, there is no question that both
9 parties have engaged in extensive discovery while actively litigating this case over
10 the past six years. Each party produced multiple sets of written discovery,
11 including over a million pages of documents provided by Defendant alone. ECF
12 No. 361 at ¶ 3. The parties took fourteen depositions. *Id.* at ¶ 4. Class counsel
13 took eight depositions of Defendant's employees and deposed both of Defendant's
14 expert witnesses. *Id.* The parties also engaged in significant expert work in
15 preparation for trial, with each side's experts producing at least two reports. *Id.* at
16 ¶ 5. At the time the parties reached the proposed settlement agreement, both sides
17 were well informed about the strengths and weaknesses of their case.

18 As for the amount offered in settlement, the proposed payment to class
19 members appears fair. The Settlement Agreement requires Defendants to pay
20 \$17,000,000 into the Settlement Fund. ECF No. 361-1 at 5, III. ¶ 1 (Ex. 1). Class

1 counsel estimates that class members will receive awards ranging between \$75 and
2 \$52,165.34. ECF No. 361 at ¶ 18. The variation in awards turns primarily on the
3 relative strength or weakness of the evidence supporting each class member's
4 claim for damages. The \$75 award will be paid to class members who do not have
5 evidence of a lock change or of property preservation measures involving entry
6 onto the class member's property. ECF Nos. 361-1 at 5, III. ¶ 3 (Ex. 1); 360 at 26.
7 Class members with evidence of a lock change will receive a pro rata payment
8 based on the rental value damages calculated by Plaintiff's expert. ECF No. 361-1
9 at 5, III. ¶ 3 (Ex. 1). The average estimated award for Class Members with
10 evidence of a lock change is \$3,589.92. ECF No. 361 at ¶ 18. The median
11 estimated award to all Class Members is \$1,033.51. *Id.* In view of the substantial
12 amount offered in settlement and the estimated range of awards, the Court
13 concludes that the settlement amount is fair and reasonable.

14 In addressing the experience of Plaintiffs' counsel, Defendant confirms that
15 Plaintiffs' counsel has extensive experience and approves the proposed settlement.
16 ECF No. 364 at 7.

17 Finally, as to the negotiation process, the Settlement Agreement appears to
18 be the result of an adversarial, non-collusive, and arms-length negotiation. The
19 parties initially entered into mediation on November 27, 2017 with the assistance
20 of Louis D. Peterson, who has substantial experience litigating and settling

1 complex civil cases. ECF No. 361 at ¶ 7. Although they reached an agreed
2 settlement, the parties were unable to agree on several settlement terms at that
3 time. The parties resumed litigation, but continued settlement discussions. ECF
4 No. 360 at 24. The parties had filed trial briefs and were set to start trial when they
5 once again reached a settlement with Mr. Peterson's assistance, this time including
6 final agreement on the remaining disputed settlement terms. ECF No. 361 at ¶ 9.
7 The Court finds no signs of collusion or bad faith in the parties' settlement
8 negotiation process.

9 A wrinkle was uncovered with respect to class members who filed
10 bankruptcy. Class members who filed bankruptcy but did not have evidence of a
11 lock change are expected to receive \$75. The Court is inclined to rule that these
12 \$75 awards are *de minimis* in relation to the expense necessary to process the claim
13 in bankruptcy court and shall be paid directly to the class member debtor. The
14 claims of class members whose locks were changed either prior to or during their
15 bankruptcy proceedings typically belong to their bankruptcy estates. This involves
16 264 class members. *See* ECF No. 368 at 2-4. Their claims will be analyzed by a
17 special master to determine whether any unused exemptions would apply to each
18 individual case and whether the Bankruptcy Courts (e.g., the U.S. Trustee) should
19 be notified to administer distribution of the claim settlement amount.

1 The Court also preliminarily concludes that the compromised amount for the
2 class representative's incentive award is reasonable. ECF No. 17 at ¶ 38 (Ex. 1).
3 "Incentive awards that are intended to compensate class representatives for work
4 undertaken on behalf of a class are fairly typical in class action cases." *Online*
5 *DVD-Rental*, 779 F.3d at 943. Incentive awards are generally approved so long as
6 the awards are reasonable and do not undermine the adequacy of the class
7 representatives. *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1164 (9th
8 Cir. 2013). In assessing the reasonableness of an incentive award, courts look to
9 the number of plaintiffs receiving incentive payments, the proportion of the
10 payments relative to the settlement amount, and the size of each payment. *Online*
11 *DVD-Rental*, 779 F.3d at 947.

12 Here, Ms. Jordan is the sole named plaintiff to receive an incentive payment.
13 The requested incentive payment—\$20,000—makes up roughly .12% of the total
14 settlement award. Although the incentive payment is noticeably greater than the
15 \$1,033.51 median estimated award for all unnamed class members, Ms. Jordan has
16 expended significant time and effort assisting class counsel in this case over the
17 past six years. ECF No. 362 at 2-3. Ms. Jordan participated in responding to
18 discovery, she was deposed by Defendant, and she prepared for both the December
19 2017 and July 2018 trials. *Id.* Notably, in 2013, Ms. Jordan rejected a settlement
20 offer from Defendant of \$25,000 because it would have provided no relief to the

1 Class. *Id.* at 3, ¶6. The Court concludes that the requested incentive award of
2 \$20,000 is reasonable.

3 Regarding the amounts requested for attorneys' fees and costs, the Court
4 preliminarily concludes that these too are reasonable and not excessive. In
5 scrutinizing a proposed class action settlement, the Court must ensure that fees to
6 be paid class counsel are not unreasonably high. *Stanton*, 327 F.3d at 964. In
7 common fund cases, the Court has discretion to use either the percentage-of-the-
8 fund or the lodestar method to calculate a reasonable attorneys' fee. *Vizcaino v.*
9 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Under the percentage
10 award method, 20-30% is the typical range of acceptable attorney fees, with 25%
11 considered the benchmark award. *Id.* Here, Class counsel seek 25% of the
12 Settlement Fund, which amounts to \$4,500,000, to compensate them for the work
13 already performed and the work to be performed in connection with the settlement.
14 ECF No. 361 at ¶ 13. Class counsel worked on this case for more than five years
15 on a purely contingency basis and achieved substantial success for the Class. ECF
16 No. 361 at ¶ 15. In light of the facts and circumstances of this case, the Court
17 preliminarily concludes that the 25% award is reasonable. The Court also finds
18 that the requested litigation costs of \$210,633 and the \$40,000 administration fee
19 are reasonable. ECF No. 361 at ¶¶ 14, 16.

1 Accordingly, this Court determines that the proposed Settlement Agreement
2 is within the range of reasonableness and fairness.

3 **C. Proposed Notice Program**

4 Rule 23(c)(2) requires that the Court “direct to class members the best notice
5 that is practicable under the circumstances, including individual notice to all
6 members who can be identified through reasonable effort.” Fed R. Civ. P.
7 23(c)(2)(B). The best notice practicable is that which is “reasonably calculated,
8 under all the circumstances, to apprise interested parties of the pendency of the
9 action and afford them an opportunity to present their objections.” *Mullane v.*
10 *Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The notice must
11 “clearly and concisely state in plain, easily understood language” the following:
12 (1) the nature of the action; (2) the definition of the class certified; (3) the class
13 claims, issues, or defenses; (4) each class member’s option to enter an appearance
14 through an attorney; (5) each class member’s option to be excluded from the class
15 action, upon request; (6) the time and manner for requesting exclusion; and (7) the
16 binding effect of the class judgment on members. Fed. R. Civ. P. 23(c)(2)(B)(i)-
17 (vii).

18 The Court approves the proposed manner of distributing notices. Class
19 counsel has proposed to notify settlement class members within **30 days** after this
20 Court grants preliminary approval. ECF No. 361-1 at 6, VI. ¶ 3 (Ex. 1). The Class

1 Administrator will send a Notice Letter to each class member via U.S. mail. *See*
2 ECF No. 368-5 (Ex. D). The Class Administrator will use the National Change of
3 Address database, or a similar database, to confirm each class member's most
4 recent address and skip tracing to identify addresses for all class members whose
5 Notice Letters are returned undeliverable. *Id.* at 6, ¶ 3 (Ex. 1); ECF No. 360 at 34.
6 Additionally, within **fourteen days** after this Court grants preliminary approval,
7 the Class Administrator will establish and maintain a settlement website, which
8 will display, at a minimum, the operative Complaint, Notice Letter, Website
9 Notice, Settlement Agreement, opt-out form, and the Preliminary Approval Order.
10 ECF Nos. 361-1 at 6, VI. ¶ 3 (Ex. 1); 268-5 (Ex. D); 368-6 (Ex. E).

11 In order to elect not to participate in the Settlement, a class member must
12 return a request for exclusion within **90 days** after this Court grants preliminary
13 approval. ECF No. 361-1 at 6, VIII. ¶ 1 (Ex. 1). Class members may request
14 exclusion either in writing or through the Settlement Website. *Id.* All written
15 requests must be signed, and if mailed, must be postmarked no later than the opt-
16 out deadline. Any class member who does not submit a valid request for exclusion
17 will be bound by the claims release of the Settlement Agreement and will receive
18 an individual settlement payment. *Id.* If the Settlement Agreement is finally
19 approved by the Court, the Class Administrator will send settlement award checks
20 by first class mail to each class member whose Notice Letter was not returned

1 undeliverable. *Id.* at 4, III. ¶ 4 (Ex. 1). Settlement award checks will be valid for
2 ninety days from the date on the check. *Id.* Settlement award checks that are not
3 cashed within ninety days after the date on the check will be voided. *Id.*

4 Having reviewed the content of the proposed notices, the Court finds that
5 they satisfy the requirements of Rule 23(c)(2)(B). The notices are written in plain
6 language that advise class members of their rights in a clear and concise manner.
7 Accordingly, the Court approves the proposed notice program.

8 **D. Appointments and Administration of Settlement**

9 The Court appoints Garden City Group (GCG) as Class Administrator.
10 ECF No. 361 at ¶ 16. The Class Administrator will update class members' contact
11 information, prepare and issue the Notice Letter, establish and maintain a
12 settlement website, process any exclusion request forms, and issue checks to
13 qualified class members. *Id.*

14 The Court appoints Bruce Kriegman to serve as a special master in the
15 administration of this settlement. Mr. Kriegman shall evaluate the files of the 264
16 class members whose locks were changed either prior to or during their bankruptcy
17 proceedings to determine whether unused exemptions would ultimately allow the
18 debtor to receive the settlement amount or whether the settlement amount is
19 economically substantial enough that the Bankruptcy Courts (e.g., the U.S.
20 Trustees) should be notified so the settlement amount may be distributed through

1 those Courts to the creditors and debtor. The Court anticipates ruling that a *de*
2 *minimis* settlement amount would not economically warrant transfer of funds to the
3 Bankruptcy Courts for further administration by trustees and those Courts. Thus,
4 this Court seeks Mr. Kriegman's professional analysis regarding only these 264
5 files.

6 **E. Final Fairness Hearing**

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

12 Any settlement class member who wishes to object to the proposed
13 Settlement Agreement must file with the Court and serve on counsel for the parties
14 a written statement objecting to the Settlement. Such written statement must be
15 filed with the Court and served on counsel for the parties no later than 90 calendar
16 days after this Court grants preliminary approval.

17 **ACCORDINGLY, IT IS ORDERED:**

18 1. Plaintiffs' Unopposed Motion for Preliminary Approval of Class
19 Action Settlement (ECF No. 360) is **GRANTED**.

1 2. The Court preliminarily approves the Settlement Agreement and the
2 terms set forth therein, including the relief afforded to the settlement class
3 members, the incentive award, the payment of attorneys' fees and costs to class
4 counsel, and the Class Administrator's fee.

5 3. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the
6 Court previously certified the following Class:

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

10 ECF No. 207 at 25.

11 4. The Court appoints Garden City Group (GCG) as Class
12 Administrator, who shall fulfill the functions, duties, and responsibilities of the
13 Class Administrator as set forth in the Settlement Agreement and this Order.

14 5. The Court approves the form and content of the proposed written
15 Notice Letter, ECF No. 368-5 (Ex. D), and the proposed Website notice, ECF No.
16 368-6 (Ex. E).

17 6. The Class Administrator is directed to issue the Notice Letter directly
18 to the settlement class members by U.S. mail upon entry of this Order and activate
19 the Website with the appropriate information.

1 7. The Court appoints Bruce Kriegman to serve as a special master to
2 assist in the administration of this settlement. Mr. Kriegman shall evaluate the
3 files of the 264 class members whose locks were changed either prior to or during
4 their bankruptcy proceedings to determine whether unused exemptions would
5 ultimately allow the debtor to receive the settlement amount or whether the
6 settlement amount is economically substantial enough that the Bankruptcy Courts
7 (e.g., the U.S. Trustees) should be notified so the settlement amount may be
8 distributed through those Courts to the creditors and debtor. On or before **50**
9 **calendar days** after this Court grants preliminary approval, Mr. Kriegman shall
10 report his recommendations to the Court. Notwithstanding the notice, opt-out and
11 objection procedures provided to class members, this Court reserves further
12 procedures to facilitate resolution of these 264 claims.

13 8. On or before **60 calendar days** after this Court grants preliminary
14 approval, class counsel shall file and serve an application for an award of
15 attorneys' fees (including the Special Master fees) to be paid from and not to
16 exceed 25% of the Settlement Fund and costs. The application shall be posted on
17 the Settlement Website within twenty-four hours after the day it is filed.

18 9. The Court approves the request for **Exclusion** procedure. Any
19 settlement class member who wishes to **opt-out** of the Settlement must send a
20 request for exclusion to the Class Administrator either through an online **Opt-Out**

1 form or by mailing a written request no later than **90 calendar days** after this
2 Court grants preliminary approval. All written requests must be signed, and if
3 mailed, must be postmarked no later than the opt-out deadline.

4 10. Any Settlement Class Member who desires to object to the fairness of
5 this settlement must file a written **Objection** with the Court no later than **90**
6 **calendar days** after this Court grants preliminary approval. The **Objection** must
7 provide the objector's name; current address; the address of the property subject to
8 a deed of trust or mortgage serviced by Nationstar Mortgage LLC, which property
9 was deemed vacant before a foreclosure sale; and the reason(s) for the Objection.

10 11. On or before **fourteen (14) calendar days** prior to the Final Approval
11 Hearing, class counsel shall file and serve a motion for final approval and
12 responses to any objections. All memoranda and other submissions in support of
13 the Final Approval Order and Final Judgment and this settlement shall be filed no
14 later than **fourteen (14) calendar days** prior to the Final Approval Hearing,
15 including proof of compliance with the notice provisions of the Class Action
16 Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

17 12. Anyone who properly objects to the Settlement, as described herein,
18 may appear at the Final Approval Hearing, including through an attorney hired at
19 the objector's expense. Such objectors or their attorneys intending to appear at the
20

1 Final Approval Hearing must file a notice of appearance with this Court no later
2 than **ten (10) calendar days** prior to the Final Approval Hearing.

3 13. Defendant's counsel also may file responses to the motions,
4 objections and statements, but no later than **seven (7) calendar days** prior to the
5 Final Approval Hearing.

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

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

14 16. Pending final determination of whether the Settlement Agreement
15 should be ultimately approved, the Court preliminarily enjoins all settlement class
16 members (unless and until the class member has submitted a timely and valid
17 exclusion request) from filing or prosecuting any new claims, suits, or
18 administrative proceedings regarding claims to be released by the Settlement
19 Agreement.

1 17. If the Court fails to approve the Settlement, or if any appellate court
2 fails to approve the Settlement, (1) the Settlement Agreement shall have no force
3 and effect, and no party shall be bound by any of its terms; (2) Defendant shall
4 have no further obligation to make any payments to the settlement class members
5 or class counsel based on this Settlement; (3) any preliminary approval order, final
6 approval order, and judgment, including any order regarding class certification,
7 shall be vacated; and (4) the Settlement Agreement and all negotiations,
8 statements, proceedings, and data relating thereto shall be protected by Federal
9 Rule of Evidence 408 and shall be without prejudice to the rights of any of the
10 Parties, all of whom shall be restored to their respective positions in the action
11 prior to the Settlement.

12 18. The following timeline shows the deadlines governing proceedings
13 through the Final Approval Hearing:

DEADLINE	EVENT
<u>December 10, 2018</u> (14 calendar days after entry of this Order)	Deadline to make the settlement website available
<u>December 26, 2018</u> (30 calendar days after entry of this Order)	Deadline to mail notice
<u>January 15, 2019</u> (50 calendar days after entry of this Order)	Deadline for Special Master to notify Court of recommendation concerning 264 Bankruptcy files
<u>January 25, 2019</u> (60 calendar days after entry of this Order)	Deadline for Class Counsel (including the Special Master) to file

DEADLINE	EVENT
	their motion for attorneys' fees and costs
February 25, 2019 (90 calendar days after entry of this Order)	Deadline for Class Members to submit exclusion requests or objections
March 7, 2019 (14 calendar days before Final Approval Hearing)	Deadline for Class Counsel to file responses to objections and motion for final approval
March 10, 2019 (10 calendar days before Final Approval)	Deadline for objectors and/or their attorneys to file notice of appearance
March 14, 2019 (7 calendar days before Final Approval)	Deadline for Defendant to file responses to motions and objections
March 21, 2019 at 1:30 p.m., Thomas S. Foley U.S. Courthouse Courtroom 902, 920 West Riverside Avenue Spokane, Washington	Final Approval Hearing

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

DATED November 26, 2018.



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