

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JOHNATHAN AND TRUDE YARGER, a )  
married couple, DONNA INSALACO, )  
JEFFREY GERBITZ, and JOSHUA )  
RICHMAN, )

Plaintiffs, )

v. ) C.A. No. 11-154-LPS

CAPITAL ONE, N.A., successor by merger to )  
ING BANK, F.S.B., d/b/a ING DIRECT, )

Defendant. )

**REVISÉD PROPOSÉD ORDER GRANTING FINAL SETTLEMENT APPROVAL,  
AWARDING ATTORNEYS' FEES AND COSTS, APPROVING SERVICE AWARDS,  
AND FINAL JUDGMENT**

A Fairness Hearing was held before this Court on October 7, 2014, to consider, among other things, whether the Settlement Agreement executed on or about April 7, 2014 (the "Settlement Agreement") between Plaintiffs Johnathan and Trude Yarger ("Class Representatives"), Donna Insalaco, Jeffrey Gerbitz, and Joshua Richman ("Other Plaintiffs"; together with Class Representatives, collectively, "Settlement Class Representatives"), on behalf of themselves and the Settlement Class Members, and Defendant Capital One, N.A. ("Capital One"), successor by merger to ING Bank, fsb (collectively, the "Parties") represents a fair, reasonable, and adequate compromise of the Action, and the amount to be paid to Settlement Class Counsel as fees and litigation costs for prosecuting the Cases. Having considered the evidence and argument submitted by the Parties, and any objections to the Settlement submitted, **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

This Final Judgment incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used in this Final Judgment will have the same meanings as set forth in the Settlement Agreement, unless otherwise defined in this Final Judgment.

This Court has jurisdiction over the subject matter of this Action, the Class Representatives, the Settlement Class (defined below), and Capital One. Final approval of the settlement, and the request for entry of a final judgment and order of dismissal, is hereby **GRANTED**.

The Court finds that the Settlement Agreement is the product of good-faith, arm's-length negotiations by the Parties, each of whom was represented by experienced counsel.

The Court finds that the class proposed for purposes of the settlement meets the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), and hereby certifies a settlement class in the Action as follows:

All natural persons who either (a) obtained an Orange Mortgage or Easy Orange Mortgage from ING on or after October 1, 2005 and on or before May 31, 2009 or (b) obtained a loan from ING before October 1, 2005, and performed a Rate Renewal of an ING Orange Mortgage on or after October 1, 2005 and on or before May 31, 2009; provided, however, that the class shall not include any current or former legal representative, officer, director or employee of ING, the judge to whom the Action is assigned, or any member of such judge's immediate family (the "Settlement Class").

This Court approves all terms set forth in the Settlement Agreement and the Settlement reflected therein, and finds that such Settlement is, in all respects, fair, reasonable, adequate, and in the best interest of the Settlement Class Members, and the Parties to the Settlement Agreement are directed to consummate and perform its terms.

The Parties dispute the validity of the claims in the Cases, and their dispute underscores not only the uncertainty of the outcome but also why the Court finds the Settlement Agreement to be fair, reasonable, adequate, and in the best interests of the Settlement Class Members. Beyond facing uncertainty regarding the resolution of those issues, by continuing to litigate, Settlement Class Members would also face the challenge of surviving an appeal of any class certification order entered in this action, and any other rulings rendered during trial. Settlement

Class Counsel has reviewed the Settlement Agreement and finds it to be in the best interest of the Settlement Class Members. For all of these reasons, the Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the tremendous expense associated with it, weigh in favor of approval of the Settlement reflected in the Settlement Agreement.

This Court hereby finds and concludes that the notice provided to the appropriate State and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

The Court finds that the Notice provided for in the Order of Preliminary Approval of Settlement has been provided to the Settlement Class, and the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and was in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law. The Notice apprised the members of the Settlement Class of the pendency of the litigation; of all material elements of the proposed settlement, including but not limited to the relief afforded the Settlement Class under the Settlement Agreement; of the res judicata effect on members of the Settlement Class and of their opportunity to object to, comment on, or opt-out of, the Settlement; of the identity of Settlement Class Counsel and of information necessary to contact Settlement Class Counsel; and of the right to appear at the Fairness Hearing. Full opportunity has been afforded to members of the Settlement Class to participate in the Fairness Hearing. Accordingly, the Court determines that all Final Settlement Class Members are bound by this Final Judgment in accordance with the terms provided herein. In addition, any rights of the Settlement Class representatives and each and every one of the Settlement Class Members to the protections afforded under Section 1542 of the California Civil Code and/or any other similar, comparable, or equivalent laws, are terminated.

The Court has carefully considered the objections of Sheel Chand (D.I. 245), Janice Runge (D.I. 246), Dennis Skowronski (D.I. 238), Dennis Baker (D.I. 236), Scott McCullough (D.I. 244), and Lawrence Palmer (D.I. 234) to the Settlement. For the reasons set forth in

Plaintiffs' Reply Brief in Support of Final Approval of Class Action Settlement, Responding to the Six Objections (D.I. 255) and in Defendant's Response to Objections to Proposed Class Action Settlement (D.I. 257), the Court hereby **OVERRULES** these objections to the Settlement in their entirety.

This Action is dismissed with prejudice, and without costs to any party, except as provided for in the Settlement Agreement and in this Final Judgment.

Within three (3) days of the Effective Date, Settlement Class Counsel shall dismiss with prejudice *Gerbitz v. ING Bank, FSB*, Civil Action No. 12-cv-01670 LPS, United States District Court, District of Delaware, and *Richman v. ING Bank, FSB et al.*, Case No. 13-cv-01132-JAH-BLM, United States District Court, Southern District of California, in accordance with section 2.2 of the Settlement Agreement.

Having reviewed the submissions of Settlement Class Counsel, the Court finds that the sum of \$ 6,622,911.00 is reasonable compensation for Settlement Class Counsel's attorneys' fees and expenses. Capital One will pay this sum, as the Settlement Class Counsel Fees awarded by the Court, by wire transfer to Lieff Cabraser Heimann & Bernstein, LLP within fifteen (15) days of the latest of (a) the entry of this Final Judgment; (b) Settlement Class Counsel's delivery to Capital One of a stipulated undertaking and order, in the form attached as Exhibit 5 to the Settlement Agreement, requiring repayment to Capital One of all fees paid in the event this Final Judgment is reversed or the order approving the Settlement Class Counsel Fees, as contemplated by section 6.2 of the Settlement Agreement, is reversed or reduced on appeal; or (c) Lieff Cabraser Heimann & Bernstein, LLP's delivery to Capital One of a completed IRS form W-9.

Capital One will, within fifteen (15) days of the Effective Date, remit to the Settlement Administrator an amount equal to the Settlement Amount minus the Settlement Class Counsel Fees (the "Remaining Settlement Amount"). The Settlement Administrator will deposit such funds in a segregated account (the "Settlement Account").

Having reviewed the submissions of Settlement Class Counsel, the Court finds that the sum of \$ 3,500.00 per person is reasonable compensation for the services of the Class

Representatives (the Yargers) and Jeffrey Gerbitz in this matter. The Settlement Administrator shall pay these sums out of the Settlement Payment to the Class Representatives within fifteen (15) days of its receipt of the Remaining Settlement Amount in the manner prescribed by section 6.5 of the Settlement Agreement. The Court finds that the sum of \$ 1,500.00 per person is reasonable compensation for the services of Donna Insalaco and Joshua Richman in this matter. The Settlement Administrator shall pay these sums out of the Settlement Payment to the Other Plaintiffs within fifteen (15) days of its receipt of the Remaining Settlement Amount, in the manner prescribed by section 6.5 of the Settlement Agreement.

Within forty-five (45) days of the Effective Date, the Settlement Administrator shall mail out checks to Final Settlement Class Members in accordance with section 7.3.1 of the Settlement Agreement.

In accordance with section 7.3.1 of the Settlement Agreement, all Initial Benefit Checks issued to Final Settlement Class Members shall bear a legend stating that the check is not valid ninety (90) days after the date of issuance. The Settlement Administrator will effect the distribution of the sum of any settlement checks that remain uncashed 150 days after the mailing of the last of the Initial Benefit Checks in accordance with section 7.4 of the Settlement Agreement. Any charitable distributions made pursuant to section 7.4 of the Settlement Agreement shall be distributed to Habitat For Humanity.

Within thirty (30) days of the date when all other obligations set forth in the Settlement Agreement have been completed, the Parties shall jointly file with the Court a notice stating that they have complied with all requirements set forth in the Settlement Agreement, the Order of Preliminary Approval of Settlement, and this Final Judgment.

Upon entry of the Final Judgment, the Class Representatives, Other Plaintiffs, and all Final Settlement Class Members, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged ING of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses, and

remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate in any way to ING's conduct, omissions, or duties relating to, based upon, resulting from, or arising directly or indirectly out of Rate Renewal, including, but not limited to, (a) any advertising, marketing or communications relating to or concerning Rate Renewal, (b) any collection of charges for Rate Renewal, (c) any changes in the price charged for Rate Renewal, (d) any decision on the part of a Final Settlement Class Member not to seek a Rate Renewal, (e) any non-performance of a Rate Renewal, or (f) any alleged right to Rate Renewal; provided, however, that nothing in this paragraph shall modify any rights or obligations established by any Rate Renewal Addendum executed by a Final Settlement Class Member in connection with documenting their Loan Account; provided further, however, that this Release does not include liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses, and remedies that exclusively result from, arise out of, are based upon, and relate to ING's advertising or marketing relating to or concerning Rate Renewal after May 31, 2009.

Upon entry of this Final Judgment, the Class Representatives, the Other Plaintiffs, and Final Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs, in any proceeding against ING or based on any actions taken by ING that are authorized or required by this Agreement or by the Final Judgment. The Settlement may be pleaded as a complete defense to any proceeding subject to this section.

Neither this Final Judgment nor the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be: (1) construed as an admission or concession by Capital One of the truth of any of the allegations in the Cases, or of any liability, fault or wrongdoing of any kind; or (2) construed as an admission by Class Representatives or the Settlement Class as to any lack of merit of the claims or this action.

If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason whatsoever, (a) this Final Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; (b) the Preliminary Approval Order and

any other orders entered pursuant to the Settlement Agreement shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion or for any other purpose; (c) the Settlement Agreement will become null and void and the fact of the Settlement, that Capital One did not oppose the certification of any class under the Settlement, or that the Court preliminarily approved the certification of a settlement class, shall not be used or cited thereafter by any person or entity for any purpose, including in any contested proceeding relating to the certification of any class; (d) the Second Amended Complaint filed in the Action following entry of this order shall be automatically deemed withdrawn by the Plaintiffs; and (e) the fact that the Plaintiffs filed the Second Amended Complaint, and/or that Capital One stipulated to the filing thereof for purposes of effectuating this Settlement, shall not be used or cited thereafter by any person or entity for any purpose, including in the event that the Plaintiffs subsequently attempt to amend the Complaint in this Action.

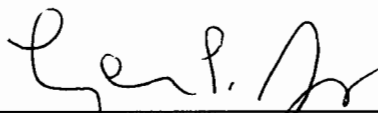
Any person or entity wishing to appeal this Final Judgment shall post a bond with this Court in the amount of \$ 5,000.00 as a condition to prosecuting the appeal.

Without affecting the finality of this Final Judgment in any way, this Court retains continuing jurisdiction for the purpose of enforcing the Settlement Agreement and this Final Judgment, and other matters related or ancillary to the foregoing.

The Parties having so agreed, good cause appearing, and there being no just reason for delay, it is expressly directed that this Final Judgment and order of dismissal with prejudice be, and hereby is, entered as a final and appealable order.

IT IS SO ORDERED.

Date: October 7, 2014

  
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HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE