

FILED
2017 SEP 12 AM 11:08
CLERK
U.S. DISTRICT COURT

Tyler Ayres, USB 09200
AYRES LAW FIRM
12339 S. 800 East, Suite 101
Draper, UT 84020
(801) 255-5555 Phone
(801) 255-5588 Fax
tyler@ayreslawfirm.com

Counsel for Plaintiffs, Eric Allred and Scott Jensen.

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION**

ERIC ALLRED, ET AL., on their own
behalf and on behalf of a class of similarly
situated persons,

Plaintiffs,

v.

RECONTRUST COMPANY, N.A

Defendant.

**ORDER GRANTING MOTION TO
PRELIMINARILY CERTIFY A
SETTLEMENT CLASS**

Case No. 2:13-cv-1124-BSJ

Upon consideration of the Plaintiff's Motion For Preliminary Approval of a Settlement Class, Appointing Plaintiff as Class Representative, Appointing Plaintiff's Counsel as Class Counsel, Approving Notice to the Class and Setting a Final Approval Hearing and Other Dates and the pleadings, motions, and memorandum filed in this action, the Court finds that the Motion should be and hereby is GRANTED.

The Court has reviewed the requirements under Federal Rule 23 and finds that the proposed settlement class meets the requirement for certification. The class is numerous, consisting of 678 members. There is a common issue as to whether the Defendant's actions and inactions were in violation of Utah law when it acted as a

trustee with the power of sale in Utah non-judicial foreclosures and whether the class members are entitled to damages under § 57-1-23.5. The Plaintiff's claims are typical, and it is undisputed that he has the identical claim as the other class members.

Further, the Court finds that the Plaintiff and his Counsel will adequately represent the Settlement Class. Plaintiff has no interest adverse to the other class members. Similarly, the Court finds that Plaintiff's counsel, Scott C. Borison and Tyler Ayres, are adequate to serve as class counsel and hereby appoints Plaintiff Eric Allred as Class Representative and Scott C. Borison and Tyler Ayres as Class Counsel.

Further, the Court finds that certification of a class action for settlement purposes under Rule 23 (b)(3) is an appropriate and superior method to resolve the claims in this action. The class action also sets forth common issues of fact that predominate over any other potential issues in this action.

Accordingly, the Court preliminarily certifies the following class of persons under Rule 23(e) for settlement purposes only:

All owners of real property in the State of Utah that have had their property foreclosed on by the Defendant ReconTrust acting as trustee in a foreclosure sale after May 10, 2011, who have not already settled claims or litigated claims to a final judgment against any Released Person relating to ReconTrust having exercised the power of sale.

The claims to be addressed by the class are the claims pursuant to Utah Code § 57-1-23 and 23.5 as set forth in the Amended Complaint in this action.

The Court further preliminarily finds that the proposed Settlement of this action as reflected in the Class Action Settlement Agreement and Release is a fair, reasonable, and adequate compromise of the disputed claims herein given there remain legal issues and the relief obtained is substantial.

The Court approves the manner of notice and proposed notices to class of this Settlement, specifically the Notice of Class Action Settlement (the "Class Notice") provided to the Court by the parties. The Class Notice shall be printed and mailed to the last known addresses of the class members for which addresses are known no later than 30 days after entry of this order and it shall contain the following dates and information:

Deadline for election to be excluded: November 15, 2017.

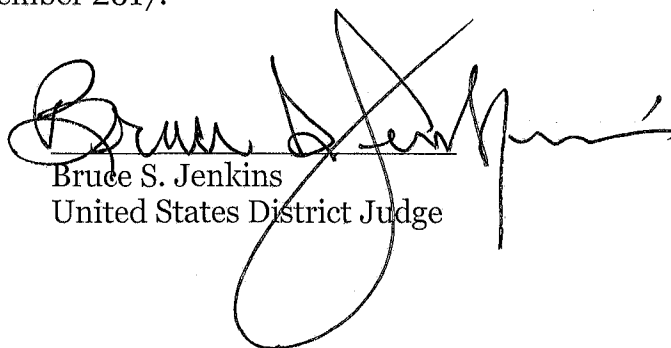
Deadline for objections to be filed: November 20, 2017.

Date and Time of Final Fairness Hearing: December 5, 2017

A Final Fairness Hearing concerning this Settlement shall take place beginning at 10:00 A.M. in Courtroom 7.200 of this Court. Plaintiff's Motion for Final Approval of this Settlement and Petition for Class Counsel Compensation, together with affidavits regarding notice and elections, shall be filed with the Court prior to the final fairness hearing.

This Order is subject to further consideration based on any objection posed by the Class following the distribution of Notice of the Settlement.

DATED this 12th day of September 2017.


Bruce S. Jenkins
United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND RELEASE OF CLAIMS

A federal court authorized this notice. This is not a solicitation from a lawyer.

IF RECONTRUST COMPANY, N.A. CONDUCTED A NONJUDICIAL FORECLOSURE ON YOUR PROPERTY IN UTAH, YOUR LEGAL RIGHTS MAY BE AFFECTED, AND YOU MAY BE ENTITLED TO BENEFITS FROM A PROPOSED CLASS ACTION SETTLEMENT

This Notice informs you about a class action lawsuit and proposed settlement. Currently pending in the United States District Court for the District of Utah is an action entitled *Allred v. ReconTrust Company, N.A.*, Case No. 2:13-cv-01124-BSJ (“Action”). Without admitting liability, ReconTrust Company, N.A. (“ReconTrust”) has agreed to a settlement with plaintiff and the class (“Settlement”). On August 29, 2017, Judge Bruce S. Jenkins tentatively approved a proposed Settlement in the Action. This Notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a Settlement Class Member, and notifies you that a Fairness Hearing will be held on December 5, 2017, to approve the Settlement.

WHAT IS THE ACTION ABOUT?

1. What are the allegations? On December 6, 2013, Plaintiff Eric Allred filed this Action asserting individual and class-wide claims for injunctive relief and unjust enrichment. The Action contends that ReconTrust (“Defendant”) lacked the authority to conduct nonjudicial foreclosures in Utah. It seeks damages for property owners on whose property ReconTrust conducted nonjudicial foreclosures on or after May 10, 2011.

2. Who are the Class Members? On August 29, 2017, for purposes of settlement only, the Court preliminarily certified a class defined as: All owners of real property in the State of Utah that have had their property foreclosed on by the Defendant ReconTrust acting as trustee in a foreclosure sale after May 10, 2011, who have not already settled claims or litigated claims to a final judgment against any Released Person relating to ReconTrust having exercised the power of sale.

WHAT ARE THE TERMS OF THE SETTLEMENT?

1. What does the Settlement provide? The Settlement provides that ReconTrust will pay one million, two hundred forty-two thousand, five hundred dollars (\$1,242,500) to settle the class action (the “Settlement Amount”). Each Class Member who does not timely opt out of the Settlement will be entitled to receive a “Class Member Award.”

The parties have also agreed that, subject to the Court’s final approval, the lead plaintiff shall be entitled to an award of up to seven thousand, five hundred (\$7,500) as an incentive award in recognition of the amount of time and effort expended by him in acting as class representative. Additionally, subject to the Court’s final approval, Class Counsel shall be entitled to an award of attorneys’ fees and costs of up to 33% of the Settlement Amount. The Plaintiff’s incentive award and Class Counsel’s fees will be deducted from the total \$1,242,500 Settlement Amount.

The exact amount of each Class Member’s award will depend upon the number of class members who opt out of the Settlement. The amount will be determined as follows: (i) the Administrator, which is Simpluris, Inc., will determine the total number of members of the class who do not opt out; and (ii) the Administrator will divide the Settlement Amount remaining after attorney’s fees and the lead plaintiff’s award by the number of members of the class.

Release of Claims. If the Settlement is finally approved, each Class Member who has not opted out of the Settlement Class will be deemed to have completely released and forever discharged Defendant and its affiliates, and each and every one of their past, present, and future parents, predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the “Released Persons”), from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including, without limitation, (i) those known or unknown or capable of being known, (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any of the Released Persons, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until the Final Approval Date (collectively, the “Released Rights”), that arise out of and/or concern (a) Released Rights that were asserted, or attempted to be asserted, in the Class Action; (b) all claims or defenses based on ReconTrust’s alleged lack of authority to exercise the power of sale, in connection with any litigation, eviction proceeding, or foreclosure proceeding; (c) all claims against or defenses as to any third party who purchased the affected properties based on ReconTrust’s alleged lack of authority to exercise the power of sale on a Utah property; and (d) all claims or defenses premised on the invalidity of a trustee’s deed issued by ReconTrust; (e) any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions described in this paragraph 4.01 (a)-(d) above. You may review the entire release in the Settlement Agreement, which you can find at [WEBSITE](#).

Impact on Bankruptcy Proceedings. If you are currently in a bankruptcy proceeding or have been in a bankruptcy proceeding since May 2011, receiving a settlement payment could impact that bankruptcy proceedings. To learn more about this subject, review paragraph 6.21 of the settlement agreement, which you can find at [WEBSITE](#).

FAIRNESS HEARING

The federal district court overseeing the action has preliminarily approved the proposed Settlement as fair, adequate, and reasonable. **The Court will hold a Fairness Hearing on December 5, 2017 to determine whether to give final approval to the proposed Settlement.**

QUESTIONS? VISIT [WEBSITE](#)

If finally approved, the Settlement will provide payment to members of the Class. **You are not required to attend the hearing in order to participate in the Settlement.**

WHAT CAN YOU DO?

- 1. Do Nothing.** You may take no action in response to this Notice. If you take no action, and the Settlement is approved, you will receive payment pursuant to the Settlement and you will be deemed to have released ReconTrust and the other Releasees as described above and more fully at [WEBSITE](#).
- 2. Opt Out of the Settlement Class.** If you would not like to be a part of the Settlement Class, you may opt out. To exclude yourself from the Settlement and the Class, you must send or deliver a written request clearly stating your decision to the Administrator at the following address: [ADDRESS](#). You must include your name and the last four digits of your social security number; the request must be personally signed and dated by you and received by the Administrator **no later than November 15, 2017**; and the request must also state that you understand that you will receive no money from the Settlement. Class Members who do not opt out will be bound by the proposed Settlement and judgment, including the release of claims described above. Class Members who opt out will not be bound by the proposed Settlement or judgment, including the release of claims described above, and will not be entitled to any of the benefits of the proposed Settlement.
- 3. Object to the Settlement.** If you are a member of the Class, you may comment upon or object to the terms of the Settlement or any motion for a class representative service award or an award of attorneys' fees and expenses. If you want your comment or objection to be considered by the Court, you must send a letter that contains (i) the name of the lawsuit; (ii) a statement that you object to or wish to comment upon the Settlement or the Adjustments; (iii) a statement of the specific legal and factual basis for each objection; (iv) a statement, and documentation, demonstrating you are a Class Member; (v) identification, with specificity, of each instance in which you or your counsel has objected to a class action settlement in the last five years; (vi) if you (or your lawyer) want to appear and speak at the Fairness Hearing, a statement that you wish to appear and speak; **and** (vii) the identity of any witnesses you want to call to testify at the Fairness Hearing. You do not need to appear in court to object or comment. **Your objection must be personally signed by you and must be received by the Court no later than November 20, 2017.** The Court's address is: D. Mark Jones, United States Courthouse, 351 South West Temple, Room 1.100, Salt Lake City, Utah 84101. Copies of your objection must also be mailed to the following lawyers and postmarked **no later than November 20, 2017**:

Scott C. Borison
Legg Law Firm LLP
5235 Westview Dr. Suite 100
Frederick MD 21703
Borison@legglaw.com
Class Counsel

Brian E. Pumphrey
McGuireWoods LLP
Gateway Plaza
800 E. Canal St.
Richmond, VA 23219
ReconTrust's Counsel

Class members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be entitled to be heard at the Fairness Hearing. If the Court overrules your objection and approves the Settlement, you will still be bound by the terms of the Settlement, and you may still participate in the Settlement.

- 4. When will the Court decide whether to approve the Settlement?** The Court will hold a final approval hearing on December 5, 2017. The hearing will be held before Judge Bruce S. Jenkins. You may attend, but you do not have to.
- 5. What should I do if my address is different or I move?** Please remember that you must immediately notify the Administrator of any change of address after you receive this Notice. You can contact the Administrator, Simpluris, by writing to [ADDRESS](#).

DO I NEED A LAWYER?

- 1. Do I have a lawyer in this case?** The Court decided that Scott C. Borison and Tyler Ayres are qualified to represent the Class Members. They are called "Class Counsel." They can be reached at Scott C. Borison, 301-620-1016 or e mail Borison@legglaw.com. Please reference the Allred Action.
- 2. Can I get my own lawyer?** You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you may hire one who to represent but it will be your responsibility to pay. For example, you can ask him or her to appear in Court for you, if you want someone other than Class Counsel to speak for you.
- 3. How will the lawyers be paid?** Class Counsel will be paid from any recovery or as otherwise allowed by the Court.

GETTING MORE INFORMATION

- 1. Are there more details about the lawsuit and Settlement available?** This Notice summarizes the lawsuit and Settlement. If you have any questions, you can call the Administrator at [PHONE NUMBER](#). More details are in the pleadings and other documents filed in this lawsuit. You can read these documents on the PACER federal court website or at the Office of the Clerk, D. Mark Jones, United States Courthouse, 351 South West Temple, Room 1.100, Salt Lake City, Utah 84101. Further information can also be found at [WEBSITE](#).

Please do not contact the Clerk or the Court, as they cannot answer any questions about the lawsuit or the Settlement.

QUESTIONS? VISIT [WEBSITE](#)