



AlaFile E-Notice

01-CV-2018-902504.00

Judge: BRENETTE BROWN GREEN

To: HOFFMANN JONATHAN PAUL
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

MARY KOVACH V. COMPASS BANK
01-CV-2018-902504.00

The following matter was FILED on 8/24/2018 3:45:20 PM

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ANNE-MARIE ADAMS
CIRCUIT COURT CLERK
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JEFFERSON COUNTY, ALABAMA
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**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
 BIRMINGHAM DIVISION**

KOVACH MARY,)	
BELLISSIMO LARA,)	
Plaintiffs,)	
)	
V.)	Case No.: CV-2018-902504.00
)	
COMPASS BANK,)	
Defendant.)	

Preliminary Approval Order

This matter having come before the Court on Plaintiffs' Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (the "Motion"), the Court having reviewed in detail and considered the Motion and memorandum in support of the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiffs Mary Kovach and Lara Bellissimo and Defendant Compass Bank d/b/a BBVA Compass ("Compass Bank") (together, the "Parties"), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel.
3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Alabama Rule of Civil Procedure 23 – including numerosity, commonality, typicality, predominance, and adequacy – have been preliminarily satisfied.
4. The Court hereby conditionally certifies, pursuant to Alabama Rule of Civil Procedure 23, and for the purposes of settlement only, the following Settlement Class consisting of:

All persons in the United States who received collection calls from Compass Bank from June 21, 2014 through and including the date of the Preliminary Approval Order (“Settlement Class Period”) (a) where the call was directed to a phone number assigned to a cellular telephone service, (b) whose phone number appears in the records of Compass Bank in association with a “wrong number” code (unless a subsequent Right Party Contact occurred in the records of Compass Bank), (c) who were not a Compass Bank customer who provided such phone number to Compass Bank, (d) which calls were placed using an automatic telephone dialing system or artificial or prerecorded voice technology. Excluded from the Class are: (1) governmental agencies, entities, or judicial officers; and (2) any person or entity which properly executes and submits a timely request for exclusion from the Class.

5. For settlement purposes only, Plaintiffs Mary Kovach and Lara Bellissimo are hereby appointed as Class Representatives.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

Myles McGuire	Scott A. Morgan
Evan M. Meyers	Morgan Law Firm, LTD.
Eugene Y. Turin	55 W. Wacker Dr., 9th Fl.
McGuire Law, P.C.	Chicago, IL 60137
55 W. Wacker Dr., 9th Fl.	
Chicago, IL 60601	

7. The Court recognizes that, pursuant to the Settlement Agreement, Compass Bank retains all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court’s preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Long Form Class Notice, Short Form Class Notice, and Notice Plan, attached to the Settlement Agreement as Exhibits 1, 2, and 4, respectively, and finds that they meet the requirements of Alabama Rule of Civil Procedure 23(c)(2) and 23(e) and satisfy Due Process.

9. The Court finds that the Notice Plan as set forth in the Settlement Agreement meets the requirements of Alabama Rule of Civil Procedure 23(c)(2) and 23(e) and constitutes the best notice practicable under the circumstances, including through a dedicated website and through publication in a national newspaper and by direct individual notice by postcard to

potential Settlement Class Members, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. Tilghman & Co., P.C. is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement and the Notice Plan.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form in accordance with the instructions provided in the Class Notice on or before **January 21, 2019**. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement as Exhibit 3.

13. All Claim Forms must be mailed to the Settlement Administrator and postmarked, or sent by email, no later than **January 21, 2019**. Settlement Class Members who do not timely submit a Claim Form deemed to be valid in accordance with Sections 1.5 and 2.6(a) of the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

14. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion in accordance with Section 3.2 of the Settlement Agreement shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against Compass Bank or the Released Parties relating to the claims released under the terms of the Settlement Agreement.

15. Any Person within the Settlement Class may request exclusion from the Settlement Class by expressly stating his/her request in a written exclusion request in accordance

with Section 3.3. of the Settlement Agreement. Such exclusion requests must be received by the Settlement Administrator at the address specified in the Class Notice in written form, by first class mail, postage prepaid, and postmarked, no later than **October 23, 2018**.

16. In order to exercise the right to be excluded, a Person within the Settlement Class must timely submit a written request for exclusion to the Settlement Administrator providing his/her name and address, the cellular telephone number that received the subject call or calls (if known), the carrier of that cellular telephone number, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class. Any request for exclusion must be personally signed by the person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

17. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Order and Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees, costs and expenses, as well as any Incentive Awards for the Class Representatives, no later than **October 9, 2018**.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees and expenses that Class Counsel intends to seek and the payment of any Incentive Awards, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 20 of this Order, with the Clerk of the Court, and served upon Class Counsel, Compass Bank's counsel, and the Settlement Administrator no later than **October 23, 2018**. Addresses for Class Counsel, Compass Bank's Counsel, the Settlement Administrator, and the Clerk of Court are as follows:

Class Counsel:
Myles McGuire

Compass Bank's Counsel:
Gregory C. Cook

Evan M. Meyers
 Eugene Y. Turin
 McGuire Law, P.C.
 55 W. Wacker Dr., 9th Fl.
 Chicago, IL 60601

Balch & Bingham LLP
 1901 Sixth Ave. N., Suite 1500
 Birmingham, AL 35203

Settlement Administrator:

Tilghman & Co., P.C
 3419 Independence Drive, Ste. 102
 Birmingham, AL 35209

Clerk of Court:

Clerk of the Circuit Court of
 Jefferson County
 Birmingham Division
 Jefferson County Courthouse
 716 N. Richard Arrington Blvd.
 Birmingham, AL 35203

20. Any Settlement Class Member who has not requested exclusion and who intends to object to this Agreement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: his/her full name, address and email; the telephone number(s) at which he or she received an automated call(s) made by Compass Bank; the telephone carrier associated with each such identified telephone number; whether each such identified phone number was at the time of the call(s) a cellular phone or a residential landline; the identification of any other objections he or she has filed, or had filed on his or her behalf, in any other class action cases in the last four years; and all grounds for the objection along with factual and legal support for the stated objection. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of any Incentive Awards, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement, may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Class Counsel's Fee and Expense Application and/or the request for Incentive Awards to the Class Representatives are required to

indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates his/her intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his/her written objection the identity of any witnesses he/she may call to testify, and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Order and Judgment.

23. All papers in support of the final approval of the proposed Settlement shall be filed no later than fourteen (14) days before the Final Approval Hearing.

24. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

25. A hearing (the "Final Approval Hearing") shall be held before the Court on **December 6, 2018 at 2:30 p.m.**, at the Jefferson County Courthouse, 716 N. Richard Arrington Blvd., Courtroom 550, Birmingham, Alabama 35203 (or at such other time or location as the Court may without further notice direct) for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under Alabama Rule of Civil Procedure 23 have been met;

(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including a bar order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;

(d) to consider the application for an award of attorneys' fees, costs and expenses of Class Counsel;

(e) to consider the application for any Incentive Awards to the Class Representatives;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Judgment and Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

27. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

28. All discovery and other proceedings in the Litigation as between Plaintiffs and Compass Bank are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

29. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

Class Notice Mailed by:	21 days from Date of Preliminary Approval, by September 14, 2018.
Publication Notice by:	21 days from Date of Preliminary Approval, by September 14, 2018.
Settlement Website launched by:	21 days from Date of Preliminary Approval, by September 14, 2018.
Fee and Expense Application: Deadline:	14 days prior to Objection/Exclusion by October 9, 2018.
Deadline for Objections/Exclusions:	60 days from Date of Preliminary Approval, by October 23, 2018.
Final Approval Motion:	14 days prior to Final Approval Hearing, by November 20, 2018.

Final Approval Hearing:

December 6, 2018 at 2:30 p.m.

Claims Deadline:

**45 days after Final Approval,
by January 21, 2019.**

DONE and ORDERED this 24th day of August, 2018.

/s/ BRENETTE BROWN GREEN

CIRCUIT JUDGE