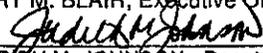


SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA STREET ADDRESS: 1100 Anacapa St MAILING ADDRESS: CITY AND ZIP CODE: Santa Barbara, CA, 93101 BRANCH NAME:	FILED SUPERIOR COURT of CALIFORNIA COUNTY of SANTA BARBARA JAN - 7 2009
PLAINTIFF: Canieva Hood et al DEFENDANT: Santa Barbara Bank & Trust et al	GARY M. BLAIR, Executive Officer BY  JUDITH M. JOHNSON, Deputy Clerk
ORDER AFTER HEARING	CASE NUMBER: 1156354

On January 7, 2009, a Civil Law and Motion Hearing was set before Judge James Brown on the following matter(s):

Matter(s):

12-23-08 Notice of Motion and Motion for Order 1) Preliminarily Approving Class Action Settlement; 2) Provisionally Certifying Class and Appointing Class Counsel; 3) Authorizing Distribution of Notice of Settlement; 4) Setting Schedule etc., HRG: 1/7/09 @ 1:30 pm SB4, Filed by Plaintiff

Issues Presented:

Preliminary Approval of Class Settlement; Preliminary Class Certification; Class Notice

Findings:

Background: Class representatives Canieva Hood and Tyree Bowman brought this class action to address disclosures made by defendant Santa Barbara Bank & Trust (SBBT) regarding cross-collection of federal tax refunds in conjunction with tax refund anticipation loans (RALs). SBBT has been marketing and selling RALs nationwide. An RAL is a short term loan secured by a consumer's expected tax refund from the United States Internal Revenue Service. SBBT has an agreement with Jackson Hewitt Tax Service, Inc. to sell RALs to consumers as part of the tax preparation process. SBBT and Jack Hewitt implemented a process whereby consumers who owe outstanding debts for prior RALs or tax preparation fees are identified and their tax refunds are collected to pay those debts. SBBT has agreements with other lending institutions, which are cross-defendants in this action, allowing them to collect each other's outstanding RAL debts from consumers' tax refunds. SBBT is a division of defendant Pacific Capital Bank, N.A.

Settlement: All parties, including cross-defendants, have reached a settlement after mediation of this lawsuit and a suit pending in the Montgomery (Ohio) Court of Common Pleas (Case No. 2003 CV 9160). Plaintiffs move for preliminary approval of the settlement. The parties have agreed to certification of a class consisting of all persons who, at any time from March 18, 1999 to September 1, 2008, applied for a RAL from SBBT through Jackson Hewitt and the application was denied and any portion of that person's tax refund was collected by SBBT to repay a debt owed to any cross defendant or Jackson Hewitt. Defendants and cross-defendants will pay \$8,500,000 into a Class Settlement Fund. The fund will be distributed as follows: 1) to each class member \$30 for RAL application fees paid and a minimum of 5.5% of the total amount of his/her tax refund that was collected by SBBT and paid to a creditor; 2) to class representatives Hood and Bowman \$15,000 and \$10,000 respectively; 3) costs of administering the class settlement fund (no estimate or cap), and 4) attorney fees not to exceed \$2,500,000. Any remaining amount of the class settlement fund, such as from uncashed checks, will be donated to one or more charities, subject to approval of the court. Attorney fees for five firms in this case and the Ohio action are based on a straight lodestar calculation with no multiplier and totaled \$2,184,061.05 as of the preparation of the motion. Costs totaled \$102,300.34. The settlement also provides for specific business practices to be followed. SBBT and cross-defendants will cease cross collection practice during the 2009 calendar year. Thereafter, Jackson Hewitt will provide a notice to every consumer who owes outstanding RAL debt that, if they apply for a RAL, some or all of their tax refunds will be collected to pay the debt and that, if he/she does not wish to repay the past debt, he/she should not apply for the RAL.

Class Certification: The parties have stipulated to class certification and have asked the court to certify the provisional settlement class pursuant to CRC 3.769(d). A class action may be maintained "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all

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before the court." CCP § 382. "The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 575 (citations omitted).

Here, there appears to be a community of interest. There are common questions of law and fact because the purported class members all applied for RALs from SBBT through Jackson Hewitt and had all or a portion of their tax refund collected for past debts. The class representatives have claims representative of the purported class and they can adequately represent the class as they have employed qualified counsel and their interests are not antagonistic to the class. The size of the class is estimated to exceed 100,000 individuals. There is "no set number required as a matter of law for the maintenance of a class action." *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The class action statute "authorizes a representative suit even though it is practicable to join all the parties if those to be represented are 'many' and have a common or general interest in the questions presented by the complaint." *Bowles v. Superior Court* (1955) 44 Cal.2d 574, 587 (approving a class of 10 members). The court determines that there are "many" or "numerous" members of the purported class and it will certify the provisional settlement class pursuant to CRC 3.769(d).

The court will certify the provisional settlement class and appoint counsel for plaintiffs as class counsel.

Fairness of the Settlement and the Plan of Allocation: The court has broad discretion to determine whether the settlement is fair. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. Factors relevant to the court's determination include, but are not limited to, the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. *Id.* There is a presumption of fairness where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802.

This litigation has been ongoing since March 2003. (It was stayed for two years during an appeal.) There has been extensive law and motion activity and discovery. Experienced counsel on both sides reached an agreement after mediation with a neutral experienced in complex litigation. The settlement appears fair and reasonable.

There are, however, two items missing from the description of the settlement. First, the agreement and the description in the motion and class notice reflect that each class member shall receive a minimum of 5.5% of the amount of his or her tax refund that was cross-collected. However, nowhere in the agreement, notice or motion is it established how the actual amount is to be determined or under what circumstances the amount could be more than 5.5%. It appears that the amount to be distributed to class members on account of their cross-collected tax refunds is \$8,500,000 less up to \$2,500,000 in attorney fees and costs, less \$25,000 to class representatives, less costs of the settlement administrator, less \$30 per class member for the preparation fee (approximately \$3,000,000 if there are 100,000 class members). From the description of the settlement, the remainder will be no less than 5.5% of all the cross-collected tax refunds. It is not clear whether recoveries will be more than 5.5% in the event that the remainder of the class settlement fund is greater than expected or the number of class members that can be found is less than expected or some combination of both. The parties should make this clear to the court and to the class members.

Second, there is no estimated amount or maximum amount stated for the cost of the settlement administrator provided in § IV.B.1. of the settlement agreement. All of the other amounts to be paid out of the class settlement fund before payment to class members are in set amounts or have maximum caps.

Before the court addresses final approval of the settlement, plaintiffs must: 1) provide a description of how the actual amount to be distributed to each class member on account of his or her cross-collected tax refund is to be determined or under what circumstances the amount could be more than 5.5% of the amount cross-collected; and 2) quantify the cost of the settlement administrator.

Proposed Notice of Pendency of Class Action: Plaintiff asks the court to approve the proposed notice to be sent to the class notifying them of the settlement and final hearing thereon. "The notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.

The court finds the class notice is sufficient and approves it.

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Preliminary Approval of Attorney Fees: Plaintiff asks for a separate preliminary approval of attorney fees. There are provisions in the class settlement with respect to fees. Preliminary approval of the settlement will constitute preliminary approval of the fee provision in the agreement. The maximum amount of fees provided in the settlement agreement comes to about 29% of the class settlement fund and does not appear unreasonable. But plaintiff cites no authority for preliminarily approving the final amount of attorney fees which are not yet known. The court will not preliminarily approve the amount of attorney fees.

Ruling:

The court ORDERS as follows:

1. The court certifies the provisional settlement class and appoints counsel for plaintiffs as class counsel.
2. The court preliminarily approves the class settlement.
3. The court approves the proposed class notice.
4. The court establishes the following dates:
 - a. On or before January 21, 2009, defendants shall provide to the settlement administrator designated by plaintiffs' counsel all contact information for class members;
 - b. On or before February 10, 2009, the settlement administrator shall mail the class notice to class members;
 - c. On or before March 27, 2009, all objections to the settlement shall be mailed to the court and counsel designated in the class notice;
 - d. On or before March 27, 2009, written requests for exclusion from the settlement must be mailed to the settlement administrator
 - e. Notice of appearance for class members or objectors must be filed with the court on or before April 9, 2009;
 - f. The final approval hearing shall be on April 29, 2009 at 9:30 a.m.

Order:

SO ORDERED, PLAINTIFF shall give notice.

Dated: January 7, 2009

JAMES W. BROWN

James W. Brown
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

I am over the age of eighteen years and not a party to this action. I am a resident of the State of California and am employed in the County of San Francisco. My business address is The Sturdevant Law Firm, 354 Pine Street, Fourth Floor, San Francisco, California 94104. On **January 8, 2009**, I served a true and correct copy of the document(s) described below on the parties and/or their attorney(s) of record to this action in the manner indicated:

• ORDER AFTER HEARING

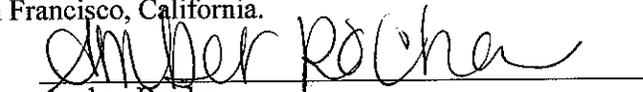
U.S. MAIL: I am employed in the county where the mailing occurred. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence is deposited with the United States Postal Service in a sealed envelope or package that same day with first-class postage thereon fully prepaid. On the date indicated above, I placed the document(s) listed above in a sealed envelope or package with first-class postage thereon fully prepaid, and placed the envelope or package for collection and mailing today with the United States Postal Service at San Francisco, California addressed as set forth on the attached service list. The address(es) shown on the attached service list is (are) the same as shown on the envelope or package. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit. CCP §§ 1013(a)-(b), 1013a, FRCP § 5(b), FRAP §§ 5(c)-(d).

OVERNIGHT DELIVERY SERVICE: I am readily familiar with this firm's practice for the collection and processing of overnight delivery correspondence. In the ordinary course of business, such correspondence is placed in a sealed envelope or package and is deposited with the overnight courier that same day with fees thereon fully prepaid. On this date, I placed the document(s) listed above in a sealed envelope or package designated by the overnight delivery service with delivery fees paid or provided for, for delivery the next business day to the party(ies) as set forth on the attached service list and deposited this package in a box or facility regularly maintained by said overnight delivery service or delivered it to a courier or driver authorized by said overnight delivery service to receive documents. The address(es) set forth on the attached service list is (are) the same as shown on the envelope or package. CCP §§ 1013(c)-(d), N.Dist. Civil L.R. 5-5, FRAP §§ 5(c)-(d).

ELECTRONIC SERVICE VIA LEXIS-NEXIS (E-MAIL): Based on a court order or an agreement of the parties to accept service by electronic transmission ("e-mail"), I transmitted the document(s) listed above to the LexisNexis *File and Serve* website (<https://fileandserve.lexisnexis.com>) for electronic service to be sent to the persons at the e-mail address(es) posted on the LexisNexis *File and Serve* website for the parties set forth on the attached service list. The document(s) listed above was (were) served electronically and the transmission was reported as complete and without error. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. CCP § 1010.6(a)(6), CRC 2060, FRCP § 5(b), N.Dist. Civil L.R 5-5.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. 28 U.S.C. § 1746.

Executed on **January 8, 2009**, at San Francisco, California.


Amber Rocha

SERVICE LIST

Via Lexis-Nexis File & Serve

ADDRESSEE(S)	PARTY(IES) REPRESENTED
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Julia B. Strickland, Esq. Stephen J. Newman, Esq. Deborah E. Barack, Esq. Stroock & Stroock & Lavan 2029 Centry Park East, Suite 1800 Los Angeles, CA 90067-3086 Phone: (310) 556-5800 Fax: (310) 556-5959	Cross-Defendants Household Bank, F.S.B.; Beneficial National Bank; Household Tax Masters, Inc.; Bank One, N.A.; and Republic First Bank
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<p>John F. Dienelt, Esq. DLA Piper US LLP 1200 Nineteenth Street, N.W. Washington, D.C. 20036-2412 Phone: (202) 861-3900 Fax: (202) 223-2085</p>	<p>Defendants, Jackson Hewitt Inc.; Cendant Corp.; and Tax Services of America</p>
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<p>Michael Heumann, Esq. Nossaman, Guthner, Knox & Elliott, LLP 445 S. Figueroa Street, 31st Floor Los Angeles, CA 90071-1602 Phone: (213) 612-7800 Fax: (213) 612-7801</p>	<p>Cross-Defendant First Security Bank of Mackinaw, IL</p>
<p>Brendan Macaulay, Esq. Nossaman, Guthner, Knox & Elliott, LLP 50 California Street, 34th Floor San Francisco, CA 94111-4799 Phone: (415) 398-3600 Fax: (415) 398-2438</p>	<p>Cross-Defendant First Security Bank of Mackinaw, IL</p>

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