

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

AMRISH RAJAGOPALAN, MARIE  
JOHNSON-PEREDO, ROBERT HEWSON,  
DONTE CHEEKS, DEBORAH HORTON,  
RICHARD PIERCE, ERMA SUE CLYATT,  
ROBERT JOYCE, AMY JOYCE, ARTHUR  
FULLER, DAWN MEADE, WAHAB  
EKUNSUMI, KAREN HEA, ALEX  
CASIANO, DECEMBER GUZZO, BEN  
PARKER, CHERYL ANDERSON, CARMEN  
ALFONSO, BETH JUNGEN, TANYA  
GWATHNEY, KEVIN DELOACH, SCOTT  
SNOEK, KELLY ENDERS, THOMAS  
LUDWICK, DONALD BOGAN, BILL  
KRUSE, JOYCE DRUMMOND, TAMARA  
COOPER, DEBRA MILLER, GEORGE  
LAWRENCE, CYNTHIA OXENDINE,  
MARTIN ANDERSON, ANGELA ROSS,  
ANDREA TOPPS, DEBRA FINAZZO,  
SHARRON BLACK, SYLVIA HADCOCK,  
AUDRIE LAWRENCE (POOLE), ADAM  
WARD, ISHULA MCCONNELL, ERICA  
CHASE, STEPHEN YOUNKINS, DAN  
WEDDLE, STILLMAN PARKER, TINA  
ROBERTS-ASHBY, BRANDON ASHBY,  
VALERIE NEWSOME, and RUSSEL  
TANNER, on behalf of themselves and others  
similarly situated,

Plaintiffs,

v.

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND, as Surety for Meracord LLC,

Defendant.

No. 3:16-cv-05147-BHS

ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

1 This matter comes before the Court on Plaintiffs' Motion for Preliminary Approval of  
2 Class Action Settlement, filed April 20, 2017 ("Preliminary Approval Motion"). Plaintiffs and  
3 Settlement Class Representatives<sup>1</sup> and Defendant Fidelity and Deposit Company of Maryland  
4 ("F&D") entered into a Class Action Settlement Agreement and Release, dated April 20, 2017  
5 ("the Settlement Agreement" or "the Settlement"), to settle the above-captioned lawsuit, as well  
6 as the actions captioned *Rajagopalan, et al. v. Fidelity and Deposit Company of Maryland and*  
7 *Platte River Insurance Company, as Sureties for Meracord LLC*, No. 2:15-cv-00957-BHS (W.D.  
8 Wash. Filed June 15, 2015); *Rajagopalan, et al. v. Fidelity and Deposit Co. of Maryland*,  
9 No. 3:16-cv-05739-BHS (W.D. Wash., Removed August 31, 2016); *Cheeks v. Fidelity and*  
10 *Deposit Company of Maryland and Platte River Ins. Co., as sureties for Meracord LLC*, No.  
11 4:13-cv-01854-DMR (N.D. Cal. Filed April 23, 2013); *Rajagopalan, et al. v. Meracord LLC*,  
12 No. 3:12-cv-05657-BHS (W.D. Wash.) ("*Meracord Action*"); and *Anderson v. Meracord, et al.*,  
13 No. 2:13-cv-02470 (D. Ariz.), *transferred, re-numbered* No. 2:15-cv-00957-BHS (W.D. Wash.),  
14 and *consolidated with* the *Meracord Action* (together, the "Lawsuits"). The Settlement  
15 Agreement sets forth the terms and conditions for a proposed Settlement and dismissal with  
16 prejudice of F&D.

17 The Court has carefully considered the Preliminary Approval Motion, and the associated  
18 Declarations, the Settlement Agreement, the arguments of counsel, and the record in this case,  
19 and is otherwise advised in the premises. The Court hereby gives its preliminary approval to the  
20 Settlement; finds that the Settlement is sufficiently fair, reasonable, and adequate to allow  
21 dissemination of notice of the Settlement to the Settlement Class and to hold a Fairness Hearing;  
22 orders that Class Notice be sent to the Settlement Class in accordance with the Settlement  
23 Agreement and this Order; and schedules a Fairness Hearing to determine whether the proposed

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24 <sup>1</sup> Cheryl Anderson (Arizona), Carmen Alfonso (Colorado), Beth Jungen (Connecticut), Kevin Deloach  
25 (Georgia), Donald Bogan (Indiana), Tamara Cooper (Kentucky), Cynthia Oxendine (Maryland), Andrea Topps  
26 (Missouri), Sylvia Hadcock (New Hampshire), Audrie Lawrence (Poole) (New York), Erica Chase (Moniz), Dan  
27 Weddle (Tennessee), Traci McCormick (Washington), Russel Tanner (Wyoming); Alex Casiano (Texas), Amrish  
28 Rajagopalan, Arthur Fuller, Dawn Meade (New Jersey), Deborah Horton, Donte Cheeks, Erma Sue Clyatt, Karen  
Hea (Michigan), Marie Johnson-Peredo (Pennsylvania), Richard Pierce (California), Robert Joyce, Amy Joyce,  
Robert Hewson (Pennsylvania), and Wahab Ekunsumi (Ohio) are collectively referred to as "Settlement Class  
Representatives." The claims of all other Plaintiffs in this action were previously settled in the Class Action  
Settlement with Platte River Insurance Company. Dkt. 41.

1 Settlement is fair, reasonable, and adequate.

2 IT IS HEREBY ORDERED AND ADJUDGED:

3 1. The Settlement Agreement is hereby incorporated by reference in this Order, and all  
4 terms and phrases used in this Order shall have the same meaning as in the Settlement  
5 Agreement.

6 2. This Court has personal jurisdiction over all Settlement Class Members and subject  
7 matter jurisdiction to approve the Settlement Agreement.

8 3. The Court preliminarily approves the Settlement Agreement and finds that the  
9 proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to  
10 the Settlement Class.

11 4. The Court preliminarily certifies for settlement purposes only the following  
12 Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3):  
13 all persons who had an account at Meracord from which Meracord  
14 deducted any fees related to debt settlement services (including  
15 mortgage assistance relief services) and who, while residing in a  
Settlement State, made payments to such account within the State  
Settlement Period of their state of residence.

16 Excluded from the Class are the Released Parties, Platte River, and Meracord, as well as their  
17 officers and directors, members of their immediate families and their legal representatives, heirs,  
18 successors, or assigns, and any entity in which any Released Parties, Platte River, or Meracord  
19 has or had a controlling interest.

20 5. The Released Parties shall retain all rights to assert that the Lawsuits may not be  
21 certified as a class action except for settlement purposes.

22 6. The Court finds, for purposes of preliminary approval and for settlement purposes  
23 only, that (a) Members of the Settlement Class are so numerous as to make joinder of all  
24 Settlement Class Members impracticable; (b) there are questions of law or fact common to  
25 Members of the Settlement Class; (c) the claims of the Settlement Class Representatives are  
26 typical of the claims of the Settlement Class Members; (d) Settlement Class Representatives and  
27 Class Counsel will fairly and adequately protect the interests of the Settlement Class Members;  
28 (e) questions of law or fact common to the Settlement Class Members predominate over

1 questions affecting only individual Settlement Class Members; and (f) a class action is superior  
2 to other available methods for the fair and efficient adjudication of the controversy.

3 7. The Court appoints the Settlement Class Representatives as representatives of the  
4 Settlement Class.

5 8. The Court appoints Hagens Berman Sobol Shapiro LLP and The Paynter Law Firm  
6 PLLC as Class Counsel.

7 9. The Court appoints Garden City Group, LLC (“GCG”) as the Administrator, which  
8 shall administer the Settlement in accordance with the terms and conditions of this Order and the  
9 Settlement Agreement.

10 10. Class Notice. The Court approves the proposed notice plan. Class Counsel, using  
11 their database expert and working with the Administrator, will attempt in good faith to identify  
12 Settlement Class Members’ last known mailing addresses and valid email addresses, primarily  
13 by reference to the Meracord Database. Class Counsel, by and through the Administrator, will  
14 provide Class Notice by (i) First-Class Mail (where available) notice substantially similar to the  
15 form attached as Exhibit E to the Agreement (“Summary Notice”); (ii) email notice substantially  
16 similar to the Summary Notice; and (iii) a content-neutral settlement website that will contain  
17 notice substantially similar to the form attached as Exhibit F to the Agreement (“Long-Form  
18 Notice”), as well as further information about the Settlement, including access to the Settlement  
19 Agreement and the pleadings (“Settlement Website”).

20 11. Class Counsel and the Administrator shall use their best efforts to complete the Class  
21 Notice process by the **Mailed Notice Date** listed in Paragraph 25 of this Order.

22 12. The Court finds that the procedures outlined in the Settlement Agreement for  
23 identifying potential Settlement Class Members and providing notice to them constitute  
24 reasonable and the best practicable notice under the circumstances and an appropriate and  
25 sufficient effort to locate current addresses for potential Settlement Class Members such that no  
26 additional efforts to do so shall be required.

27 13. The Court finds that the Class Notice plan, including the form, content, and method  
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1 of dissemination of the Class Notice to Settlement Class Members as described in the Settlement  
2 Agreement, (i) is the best practicable notice; (ii) is reasonably calculated, under the  
3 circumstances, to apprise Settlement Class Members of the pendency of the Lawsuits and of their  
4 right to object to and/or exclude themselves from the proposed Settlement; (iii) is reasonable and  
5 constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice; and  
6 (iv) meets all applicable requirements of Federal Rule of Civil Procedure 23 and due process.

7 14. Exclusions/Objections. The Court approves the procedures set forth in the  
8 Settlement Agreement and the Long-Form Notice for exclusions from and objections to the  
9 Settlement. Any Settlement Class Member who wishes to be excluded from the Settlement Class  
10 must comply with the terms set forth in the Settlement Agreement and the Long-Form Notice.  
11 Settlement Class Members who wish to exclude themselves from (“opt out of”) the Settlement  
12 must serve on the Administrator a written request for exclusion (“Exclusion Request”) by the  
13 **Exclusion/Objection Deadline** listed in Paragraph 25 of this Order, as provided in the Long-  
14 Form Notice. Class Counsel shall submit the name, city, and state of residence of all Settlement  
15 Class Members who submit Exclusion Requests to the Court at the time Class Counsel file their  
16 motion for final approval of the Settlement.

17 15. All Settlement Class Members will be bound by the Judgment dismissing the  
18 Lawsuits with prejudice unless such Settlement Class Members timely file a valid Exclusion  
19 Request. Any Settlement Class Member who submits a timely Exclusion Request shall be  
20 deemed to have waived any rights or benefits under the Settlement Agreement.

21 16. The Court preliminarily enjoins all Settlement Class Members, unless and until they  
22 submit a timely Exclusion Request pursuant to the Settlement Agreement, (i) from filing,  
23 commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member  
24 in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any  
25 jurisdiction based on the Released Claims; and (ii) from filing, commencing, or prosecuting a  
26 lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf  
27 of any Settlement Class Members, based on the Released Claims.  
28

1           17. Settlement Class Members who wish to object to any aspect of the Settlement must  
2 file with the Court a written statement containing their objection (“Objection”) by the  
3 **Exclusion/Objection Deadline** listed in Paragraph 25 of this Order, as provided in the Class  
4 Notice. Any Settlement Class Member who does not make his or her objection in the manner  
5 provided in the Class Notice shall be deemed to have waived such objection and shall forever be  
6 foreclosed from making any objection to the fairness or adequacy of the Settlement as set forth in  
7 this Settlement Agreement, to the Plan of Allocation, and/or to the award of attorneys’ fees and  
8 expenses to Class Counsel. At their sole discretion, Class Counsel shall be permitted to depose  
9 any Objector within 30 days of the filing of the objection. Such deposition shall occur within a  
10 reasonable distance of Objector’s residence and shall be limited to three hours.

11           18. Any attorney hired by, representing, or assisting (including, but not limited to, by  
12 drafting or preparing papers for a Settlement Class Member) a Settlement Class Member or  
13 governmental entity for the purpose of objecting to any term or aspect of the Settlement  
14 Agreement or to the proposed Settlement or intervening in the Lawsuits shall mail to the  
15 Administrator and file with the Clerk of the Court a notice of appearance no later than the  
16 **Exclusion/Objection Deadline** listed in Paragraph 25 of this Order.

17           19. The Court directs the Administrator promptly to furnish Class Counsel and Counsel  
18 for F&D copies of any and all objections, motions to intervene, notices of intention to appear,  
19 and other communications that come into its possession (except as otherwise expressly provided  
20 in the Settlement Agreement).

21           20. The Court orders that the certification of the Settlement Class and preliminary  
22 approval of the proposed Settlement are undertaken on the condition that they shall be vacated if  
23 the Settlement Agreement is terminated or disapproved in whole or in part by the Court, or any  
24 appellate court and/or other court of review, or if any of the Parties invokes the right to withdraw  
25 from the Settlement as provided in the Settlement Agreement, in which event the Settlement  
26 Agreement, the Settlement, the fact of their existence, any of their terms, any press release or  
27 other statement or report by the Parties or by others concerning the Settlement Agreement, the  
28

1 Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or  
2 documents executed pursuant to or in furtherance of the Settlement Agreement or the Settlement  
3 shall not be offered or received in evidence, or otherwise used by any party or witness for any  
4 purpose whatsoever, in any trial of these Lawsuits or any other action or proceedings, nor shall  
5 they be deemed to constitute any evidence or admission of liability or wrongdoing on the part of  
6 Settling Defendant or the other Releasees.

7 21. By the **Notice & Administration Funding Deadline** listed in Paragraph 25 of this  
8 Order, F&D shall pay into the Escrow Account, for the benefit of the Settlement Class, \$350,000  
9 for the Notice and Administration Fund. The Escrow Account shall be governed by the terms of  
10 the Settlement Agreement and the Escrow Agreement to be negotiated by the Parties.

11 22. The Court stays all proceedings against F&D in the Lawsuits until further order of  
12 the Court, except that the Parties may conduct such limited proceedings as may be necessary to  
13 implement the proposed Settlement or to effectuate its terms.

14 23. Class Counsel shall file a petition for fees, expenses, and incentive awards by the  
15 **Fee Petition Deadline** listed in Paragraph of this Order. Class Counsel shall file reply briefs and  
16 any other supplemental final approval papers by the **Fee Petition Reply Deadline** listed in  
17 Paragraph 25 of this Order.

18 24. The **Fairness Hearing** shall be held at the date and time listed in Paragraph 25 of  
19 this Order, for the purpose of determining (a) whether the Settlement is fair, reasonable, and  
20 adequate and should be finally approved by the Court; (b) the merit of any objections to the  
21 Settlement; (c) the requested Fee and Expense Award to Class Counsel; (d) the requested  
22 Incentive Awards to the Settlement Class Representatives; and (e) entry of the District Court  
23 Approval Order and Judgment approving the Settlement.

24 25. The Court directs that the following deadlines are established by this Order. The  
25 Court may, for good cause, extend any of the deadlines set forth in this Order without further  
26 notice to the Settlement Class:

- 27 a. **Mailed Notice Date:** 6/29/2017  
28 (within 30 days following entry of this Order)

