UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOBBIE PACHECO DYER and PATRICIA STALLWORTH, on behalf of themselves and all others similarly situated, Plaintiffs, vs. WELLS FARGO BANK, N.A., Defendant.	Case Number: C 13-2858 PLAINTIFFS' UNOPPOSED NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF Date: March 20, 2014 Time: 2:00 p.m. Judge: Honorable Jon S. Tigar Courtroom: 9

NOTICE OF MOTION AND MOTION

To all parties and their attorneys of record, please take notice that on March 20, 2014, at 2:00 p.m., in the United States District Court, Northern District of California, San Francisco Disvision, before the Honorable Jon S. Tigar, Plaintiffs Bobbie Pacheco Dyer and Patricia Stallworth, will move for an Order (1) conditionally certifying a class for purposes of settlement only; (2) granting preliminary approval of the proposed class action settlement (attached hereto as Exhibit "A"); (3) appointing Plaintiffs as class representatives, John Yanchunis as Lead Class Counsel and the other lawyers representing Plaintiffs as Class Counsel; (4) approving the proposed form and method of notice and authorizing dissemination of notice to the members of the class; and (5) setting a procedure and schedule for the final approval process.

Plaintiffs make their motion pursuant to Fed. R. Civ. P. 23(e). In support of their Motion, Plaintiffs submit their accompanying Memorandum of Points and Authorities; the Settlement Agreement and exhibits attached to this memorandum as Exhibit "A," Declaration of Scott Kilker, attached to this memorandum as Exhibit "B"; Declaration of John Yanchunis attached to this memorandum as Exhibit "C"; Declaration of the mediator David Rotman attached to this memorandum as Exhibit "D"; Declaration of Plaintiff Bobbie Dyer attached to this memorandum as Exhibit "E"; Declaration of Plaintiff Patricia Stallworth attached to this memorandum as Exhibit "F"; Transcript of Deposition of Todd Hauer and Exhibits, attached to this memorandum as Exhibit "G"; pleadings and papers on file in this action and other such evidence or argument as may be presented to the Court at the hearing on this Motion.

Defendant, Wells Fargo Bank, N.A., does not oppose this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page**

Statutes and Rules:

I. INTRODUCTION

Plaintiffs, Bobbie Pacheco Dyer and Patricia Stallworth ("Plaintiffs"), respectfully submit this Memorandum of Points and Authorities in Support of their unopposed Motion for Preliminary Approval of Settlement.

This case arises from a dispute regarding the calculation of commissions owed to Wells Fargo home mortgage employees under Defendant Wells Fargo Bank, N.A's ("Defendant" or "Wells Fargo") compensation plans in effect in 2011 and 2012.[1]

Bobbie Dyer was employed by Wells Fargo from 1994 to 2012 as a Producing Sales Branch Manager. Patricia Stallworth was employed by Wells Fargo from 2000 to 2013 as a Home Mortgage Consultant. Ms. Dyer and Mrs. Stallworth worked in the home mortgage lending division of Wells Fargo, known as Wells Fargo Home Mortgage ("WFHM"). Both the Producing Sales Branch Manager and Home Mortgage Consultant positions entailed the origination of mortgage loans. Plaintiffs were compensated a base salary plus commissions based upon their origination of mortgage loans which were ultimately funded. Their commission structure was governed by a written compensation plan which was amended by Wells Fargo on an annual basis. With regard to the incentive compensation dispute at issue in this litigation, the relevant provisions of the compensation plans for Producing Sales Branch Managers and Home Mortgage Consultants were materially identical. (Transcript of Deposition of Todd Hauer, taken pursuant to Fed. R. Civ. P. 30(b)(6), at 43:23-44:2, attached as Exhibit "G").

As set forth below, the parties' positions regarding interpretation of the compensation plans are sharply at odds with respect to multiple legal issues.

[1] Plaintiffs are only challenging the 2011 and 2012 Compensation Plans since Wells Fargo modified the 2013 Compensation Plan to eliminate the issue being litigated here.

The 2011 and 2012 compensation plans (collectively referred to herein as the "Compensation Plan") at issue contained a standard commission schedule which set forth generally applicable commission rates. According to the Compensation Plan, "[t]hese standard commission rates apply unless a different, specific rate applies. Commission rate for any loan types described below shall be according to the provisions below in lieu of this Standard Commission Schedule." Under the Standard Commission Schedule, in any given month, the employee was to be paid a commission rate based upon the greater of the number of loans funded and the total dollar volume of funded loans. The minimum commission rate under the Standard Commission Schedule was 43 basis points ("bps"), but employees could be eligible to receive a higher commission rate up to a maximum of 63 bps.

Section IV(B)(1) of the Compensation Plan, which sets forth the Standard Commission Schedule, stated that for purposes of determining the purchase and refinance commission rate, WFHM to WFHM refinanced loan commission rates are a flat 43 bps. Based upon this provision, Wells Fargo paid a commission rate of 43 bps on all WFHM to WFHM refinanced loans. Thus, if an existing Wells Fargo loan was refinanced into another Wells Fargo loan, Wells Fargo paid the originating employee a commission rate of 43 bps for that loan.

Section IV(B)(4) of the Compensation Plan, however, set forth Specialty Refinance Rates for various types of specialty refinanced loans. By way of example, in the 2012 Incentive Compensation Plan for Home Mortgage Consultants, under Specialty Refinance Rates, the Compensation Plan states that "WFHM loan of a Fannie Mae to Fannie Mae Refi Plus refinance loan commission credit rates are per the standard commission schedule." Therefore, Plaintiffs contend that the commission provision describing this loan type trumped

the prior contractual provision that WFHM to WFHM refinanced loan commission rates are a flat 43 bps. Instead of receiving a flat 43 bps, Plaintiffs' position is that the commission should have been paid pursuant to the Standard Commission Schedule, which could pay up to 63 bps.

In addition to Wells Fargo's position that the Compensation Plan should be interpreted to require Wells Fargo to pay only 43 bps on the disputed loans, Wells Fargo contends that it will prevail on the merits because of several contractual defenses. Among other defenses, Wells Fargo contends that the Compensation Plan contained a provision setting forth a dispute resolution procedure, which required that any contractual disputes about the amount of commission owed on a particular loan must be raised in the dispute resolution process within sixty days. Wells Fargo contends that Plaintiffs and the putative class members are barred from seeking a contractual recovery of unpaid commissions if they failed to exhaust the mandatory grievance procedures in a timely manner. Wells Fargo also asserts that it had "full discretionary authority to administer, interpret and construe the terms of the [Compensation] Plan." Accordingly, pursuant to its discretionary authority, Wells Fargo contends that it was entitled to enforce one conflicting provision over another based upon its interpretation of the Compensation Plan. Since the specialty refinance loans are also considered "Wells Fargo to Wells Fargo" refinance loans, Wells Fargo contends that it always intended to pay 43 bps on all Wells Fargo refinance loans, including specialty refinance loans.

In addition to its contractual defenses, Wells Fargo asserts that class certification is not appropriate here given Wells Fargo's affirmative defenses, which will raise individualized issues specific to each potential class member. Specifically, Wells Fargo contends that any issues regarding choice of law provisions and those challenging the enforceability of the

dispute resolution process provision in the Compensation Plan will raise multiple individual issues under the laws of the different states with outcomes varying on individual facts unique to each employee.[2] Furthermore, Wells Fargo believes that the fact that one of the named Plaintiffs (and possibly other putative class members) raised the specialty refinance issue during her employment, was informed that it was Wells Fargo's intent to pay 43 bps for specialty refinance loans, and continued to originate such loans after being given this information, creates individualized waiver issues that will preclude class treatment.

The ultimate success of this litigation would require Plaintiffs to prevail on all of these intensely contested issues. Indeed, Wells Fargo's success on any of these issues could have resulted in no relief to the Class.

Plaintiffs and Class Counsel, based upon their evaluation of the facts, applicable law, and their recognition of the substantial risk and expense of continued litigation, submit that the proposed settlement is an excellent result and is in the best interests of the class. The proposed settlement was negotiated at arm's length by highly skilled and experienced counsel for each party following extensive factual and legal investigation and substantial negotiation, including a full day of in-person mediation before David Rotman, a highly skilled and experienced mediator with a proven track record for resolving complex class action litigation, as well as additional negotiations to complete the terms of the settlement.

Given the myriad of risks associated with continued litigation, coupled with the great benefit to the Class achieved by the Settlement, the Settlement reflects a fair compromise of competing interests, which is in the best interest of the Class.

[2] The employment agreements executed by both Plaintiffs contained a choice of law provision providing that disputes were to be decided under Iowa law. However, subsequent to Plaintiffs' dates of hire, Wells Fargo omitted the choice of law provision from its employment agreement. As a result, a large portion of class members do not have choice of law provisions in their contracts. Accordingly, Wells Fargo argues that their disputes would be governed by the law of the state they were employed in by Wells Fargo.

II. PROCEDURAL HISTORY

Plaintiff Bobbie Pacheco Dyer instituted this breach of contract action on June 20, 2013 by filing the Class Action Complaint (Doc. 1). On August 26, 2013, Wells Fargo responded to the Complaint by filing an Answer and Affirmative Defenses (Doc. 14). Patricia Stallworth was added as a named plaintiff by amendment of the complaint on November 27, 2013 (Doc. 27) ("Amended Complaint"),[3] which Wells Fargo answered on December 11, 2013.

Following their Rule 26 conference, each party served discovery requests but agreed to abate formal responses to such discovery and to participate in mediation to explore whether the case could be resolved without costly and protracted litigation. Prior to the mediation, Plaintiffs served discovery on Wells Fargo limited to the merits of Plaintiffs' claims and the size and scope of the class. Wells Fargo responded to the discovery request and produced documents, including the named Plaintiffs' personnel files, commission reports, and data regarding the size of the class and estimate amount of alleged damages. In addition, Plaintiffs conducted a Rule 30(b)(6) deposition of Wells Fargo's corporate representative and Wells Fargo took the depositions of both Ms. Dyer and Ms. Stallworth.

During the full day mediation which was conducted in San Francisco on January 23, 2014, the parties discussed in detail the strengths of Plaintiffs' claims and Wells Fargo's defenses, as well the issue of class certification. Both Plaintiffs who reside in Florida traveled to and attended the mediation. During the mediation, the parties exchanged offers and counteroffers and negotiated their respective positions vigorously. The settlement was negotiated on an arms-length and non-collusive basis by counsel who are well experienced in

[3] Plaintiff also added Melissa Edmunds. However, since she signed an arbitration agreement with an express class action waiver, on December 12, 2013, Plaintiffs voluntarily dismissed her from the case.

complex class actions and are familiar with the risks of class action litigation. The mediation session resulted in the settlement now before this Court for consideration.

At the conclusion of the mediation session, the parties, through their counsel, negotiated and prepared a Memorandum of Understanding (MOU) that memorialized the terms of their agreement. The issues of the incentive awards which would be sought for Plaintiffs and the subject of class counsel's attorneys' fees, costs and expenses and the amount was not conducted until after the parties had reached agreement on the essential terms of the settlement. Thereafter, the parties turned to the task of negotiating additional details (several which were strongly contested) necessary to implement the substantive terms outline in the MOU, culminating in the final settlement agreement, attached hereto as Exhibit "A".

In addition, subsequent to mediation, Wells Fargo conducted an internal analysis to determine with precision the amount of alleged damages at issue, and provided its results to Plaintiffs. (Declaration of Scott Kilker, attached hereto as Exhibit "B").

III. THE SETTLEMENT AGREEMENT

A. The Proposed Settlement Class

Pursuant to the Settlement Agreement, the parties have agreed to the following settlement class:

> All home mortgage employees of Wells Fargo Bank, N.A. who were paid 43 basis points ("bps"), but who otherwise would have been paid standard commission rates, for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs, from April 1, 2011 to January 1, 2013, excluding all employee and partner referral loans.

B. Substantive Relief Provided to Plaintiffs and Class Members

The Settlement Agreement provides for monetary relief for the benefit of Plaintiffs

and the Settlement Class. Wells Fargo will create a fund consisting of $14,743,101.00 to fund the settlement. Class members will not be required to do anything affirmative, i.e., submit a claim form in order to receive benefits under the Settlement. Class members who do not opt out will be entitled to receive a proportional share of the fund, less attorneys' fees, costs and expenses. Due to the fact that Class Members are not required to submit claim forms in order to receive payment under the settlement, the settlement is virtually an all-in settlement, with no reversion of funds to Defendant as a result of receiving releases by class members who do not take an affirmative step to claim in.[4] In addition, Defendant is separately responsible for the payment of the employer's portion of payroll taxes resulting from their payment of claims to Class members, and employer payroll taxes will not be deducted from the settlement fund. Defendant is also separately responsible for payment of the costs of notice to the class and administration of the settlement.

The negotiated amount of the fund is based on Wells Fargo's preliminary estimate of the actual impact on commission rates resulting from Wells Fargo paying 43 basis points on the Wells Fargo to Wells Fargo specialty refinances at issue in this lawsuit. The parties negotiated that class members would be paid 32.7% percent of the sum that they would receive if Plaintiffs were to try the case and prevail on their theory of the case.

Attorneys' fees, costs and expenses will be paid out of the settlement fund not to exceed twenty five per cent (25%) of the value of the settlement fund. In addition, Class Counsel will request an incentive award not to exceed $15,000 for each of the two class

[4] Wells Fargo will only receive back unclaimed funds earmarked for Class Members who are ultimately excluded from the Settlement by virtue of submitting requests to opt out and who therefore do not release their claims against Wells Fargo. All Class Members who release their claims against Wells Fargo will receive compensation under the Settlement.

representatives, which will be paid by Wells Fargo separately and not from the settlement fund.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE PROPOSED SETTLEMENT CLASS AS THE REQUIREMENTS OF RULE 23 HAVE BEEN SATISFIED.

For purposes of conditionally certifying a Rule 23(b)(3) settlement class, the Manual for Complex Litigation (Fourth) § 21.632 advises:

> If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rules 23(b).

This comports with the Supreme Court's holing in *Amchem Products, Inc. v. Windsor*, *that* "[s]ettlement is relevant to class certification," but the requirements of Rule 23(a) and b(3) must still be met. 521 U.S. 591, 619-20 (1977). When the Court is "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems." *Id.*

In this case, all of the requirements for Rule 23(a) have been met. Rule 23(a) requires that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Numerosity. Wells Fargo has confirmed that there are 7,800 class members. The numerosity requirement of Rule 23(a)(1) is easily satisfied. *See Breeden v. Benchmark Lending Group, Inc.,* 229 F.R.D. 623, 628 (N.D. Cal. 2005) (236 potential class members

sufficient to satisfy numerosity requirement); *Sullivan v. Chase Inv. Servs., Inc.*, 79 F.R.D. 246, 257 (N.D. Cal. 1978) (a class consisting of 1,000 members satisfies numerosity).

Commonality. The commonality requirement of Rule 23(a)(2) is met in this case. "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). In *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2451 (2011), the Supreme Court opined that in order to find commonality, the plaintiff's claims must "depend on a common contention" which "must be of such a nature that is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 2551.

Here, Plaintiffs' Amended Complaint presents numerous questions of fact and law common to the Class, including, among other things: whether the Compensation Plan required Wells Fargo t to pay standard commission rates rather than a flat 43 bps for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs; whether Wells Fargo had a corporate practice of failing to pay standard commission rates for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs; whether Wells Fargo breached the terms of the Compensation Plan for failing to pay standard commission rates for originating specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs; and whether Wells Fargo failed to pay amounts due under the Compensation Plan. This non-exhaustive list of

common issues are more than sufficient to meet the commonality requirement of Rule 23(a)(2).

Typicality. Typicality requires the court to determine "whether other [class] members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same conduct." *Hanon v. Dataproducts Corp.,* 976 F.2d 497, 508 (9th Cir. 1992). The Ninth Circuit interprets typicality permissively. *Hanlon*, 150 F.3d at 1020. It is sufficient for the named plaintiff's claims to arise from the same remedial and legal theories as the class claims. *Arnold v. United Artists Theater, Inc.*, 158 F.R.D. 439, 449 (N.D. Cal. 1994).

Here, the claims of Plaintiffs and each class member arise from Wells Fargo's failure to pay them standard commission rates rather than a flat 43 bps for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs, in alleged breach of uniform provisions in Wells Fargo's written Compensation Plan which covered all members of the class. Hence, all of Plaintiffs' and Class Members' claims arise from the same nucleus of facts and all hinge upon the same theory of liability. Accordingly, the typicality prong of Rule 23(a)(3) is satisfied.

Adequacy of Representation. Adequacy requires that the class representatives fairly and adequately protect the interests of the class. Fed. R. Civ. P 23(a)(4). Adequacy of representation requires that the class representatives do not have conflicts of interests with other class members and that the named plaintiffs and their counsel will prosecute the action vigorously on behalf of the class. *Hanlon,* 150 F.3d at 1020.

Ms. Dyer and Ms. Stallworth are members of the proposed Settlement Class. They, like the Class Members they seek to represent, were paid a flat 43 bps instead of standard commission rates for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs, in contravention of Wells Fargo's uniform Compensation Plan. Ms. Dyer and Ms. Stallworth do not possess any interests antagonistic to the Class and understand their fiduciary duty as class representatives, and both have faithfully discharged their duty and remain willing to do so going forward. As evidenced by their declarations, attached hereto as Exhibits "E" and "F", respectively, Ms. Dyer and Ms. Stallworth have at all times been actively involved in this litigation and acted in the best interests of the Class. Both Plaintiffs have remained fully informed regarding the progress of the case and in frequent contact with Plaintiffs' counsel, have produced numerous documents to their counsel in support of their claims and the claims of the Class, have had their depositions taken, and have traveled from Florida to California to attend a full day mediation on behalf of the Class. Both Plaintiffs have gone above and beyond their duties as class representatives, and undoubtedly meet the adequacy requirement of Rule 23(a)(4).

In addition, as demonstrated by the declaration of John Yanchunis attached as Exhibit "C", proposed Lead Class Counsel is highly experienced in class action litigation. Mr. Yanchunis, along with the other lawyers representing the Plaintiffs, has represented the Plaintiffs and putative class members vigorously and zealously to date and will continue to do so should the Court certify a settlement class. Therefore, the Court should find that proposed Lead Counsel and other Class Counsel will fairly and adequately represent the class.

Common Questions of Fact and Law Predominate. For purposes of satisfying Rule 23(b)(3), which require common issues to predominate over individual issues, the "predominance inquiry tests whether proposed class members are sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022 (quoting *Amchem*, 521 U.S. at 623). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis. *Id.* (citation omitted). When evaluating Rule 23(b)(3) predominance with respect to a settlement class, individualized factual issues and legal variation among the laws of the states which implicate the manageability aspect of predominance are not considered. *Amchem*, 521 U.S. at 623.

In this case, and in the context of the proposed settlement, common questions of fact and law predominate over questions of fact and law affecting only individual members of the Class. Wells Fargo is alleged to have, as a national corporate policy, failed to pay standard commission rates for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs, in contravention of its written and uniform Compensation Plan. All Class Members were subject to compensation agreements that contained the same provisions with regard to the payment of commissions for specialty refinance loans and Wells Fargo uniformly paid a flat 43 bps instead of specialty refinance rates for originating the specialty refinance loans at issue. In proving their individual claims, Plaintiffs would have to address and answer the very same factual and legal questions that would need to be adjudicated in every other class member's case. Accordingly, the predominance element of Rule 23(b)(3) is satisfied.

Superiority. The superiority requirement of Rule 23(b)(3) "requires the plaintiff to show that a class action is superior to other methods available for the adjudication of the parties' dispute. Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation. In considering whether a class action is superior, the court must focus on whether the interests of "efficiency and economy" would be advanced by class treatment (internal quotations omitted). *In re Wells Fargo Home Mortgage Overtime Pay Litig.*, 527 F. Supp. 2d 1053, 1068-69 (N.D. Cal. 2007) (finding that efficiency was better served by class treatment because many of the issues in the litigation focused on Wells Fargo's policies and practices and that individual class members had little bearing on those issues). In this case, multiple individual issues would be judicially inefficient given the size of the class and that common questions of law and fact regarding Well Fargo's policies and practices that are predominant in this litigation. Moreover, as aforementioned, any difficulties of management of the class need not be considered in the settlement context. *Amchem*, 521 U.S. at 620. Accordingly, a class action is superior to other means of resolution of the present matter.

V. PLAINTIFFS' COUNSEL SHOULD BE APPOINTED AS COUNSEL FOR THE PROPOSED SETTLEMENT CLASS

Under Rule 23, "a court that certifies a class must appoint class counsel … [who] must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). In making this determination, the Court is to consider counsel's (1) work in identifying or investigating potential claims; (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).

As discussed above, proposed Lead Class Counsel has extensive experience in prosecuting class actions and other complex litigation of a similar nature, scope and complexity as the present case. See Declaration of John Yanchunis, attached as Exhibit "C". Furthermore, proposed Lead Class Counsel has diligently investigated and prosecuted the claims in this matter, including reviewing thousands of pages of documents provided to them by the class representatives and other witnesses and documents produced by Wells Fargo, preparing for and taking the deposition of a corporate designee of Wells Fargo, and defending depositions of both of the named plaintiffs. Lead Class Counsel and his law firm, along with other counsel for Plaintiffs, have dedicated substantial resources to this case and will continue to do so if appointed Lead Class Counsel. Finally, Lead Class Counsel has successfully negotiated a settlement of this matter that provides significant benefits to the Settlement Class. Accordingly, the Court should appoint John Yanchunis as Lead Class Counsel and the other lawyers representing the Plaintiffs as Class Counsel.

VI. THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE, ADEQUATE AND WITHIN THE RANGE OF POSSIBLE APPROVAL

Federal Rule of Civil Procedure 23(e) requires court approval for any compromises of a class action. *Amchem*, 521 U.S. at 617. "The purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). In order to grant approval to a class settlement, the court must find that the settlement is "fundamentally fair, adequate and reasonable." *In re Heritage Bond Litig.*, 546 F.3d 667, 674–75 (9th Cir. 2008). Preliminary approval of a class settlement is appropriate if the "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not

improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citation omitted). In evaluating the fairness of a class settlement, the Court must consider the settlement as a whole, rather than its components, and lacks the authority to delete, modify or substitute terms." *Hanlon*, 150 F.3d at 1026. The Ninth Circuit maintains a strong judicial policy in favor of the settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Keirsey v. eBay, Inc.*, No.12-cv-01200-JST, 2013 WL 5755047, at *4 (N.D. Ca. Oct. 23, 2013).

In the present case, the parties' Settlement Agreement more than meets the threshold for preliminary approval. To begin with, as to the process by which settlement was reached, the Settlement Agreement is manifestly not the product of collusion. The parties arrived at an agreement in principal only after hard-fought negotiations and a full-day mediation session with David Rotman, a highly skilled and experienced mediator. A memorandum of understanding executed at the conclusion of the mediation, and further negotiations as to specific terms, was subsequently memorialized in the Settlement Agreement. As detailed by the declaration of the mediator, attached hereto as Exhibit "D", the Settlement Agreement was negotiated at arms-length, with no collusiveness between the parties or their respective counsel.

In addition, Plaintiffs' counsel possessed adequate information concerning the strengths and weaknesses of the litigation against Wells Fargo after extensive research and investigation and focused discovery and information sharing between the parties, including depositions of both of the named representatives and a corporate representative deposition. From this information, counsel was able to make a skilled assessment of the likelihood of

success at trial, including whether a class action would be maintained, and the range of possible recovery. Plaintiffs' counsel was more than adequately informed so as to be able to assess the reasonableness of the present settlement.

Turning to the substance of the proposed settlement, it provides substantial and appropriate relief to the proposed Settlement Class Members. Wells Fargo has agreed to a common fund of $14,743,101.00 to fund the Settlement Agreement in this case. Class Members will receive monetary compensation for the loans they originated for which Plaintiffs allege they were underpaid in contravention of Wells Fargo's written and uniform compensation plans. Class Members will receive these benefits without having to file a claim form or take any other affirmative step.

Under the terms of the Settlement Agreement, there is no preferential treatment of Class Members. The monetary benefits available to all Class Members will be calculated based upon the same formula. Class Members will be paid on a proportional basis, 32.7% percent, by dividing the actual impact on each individual Class Member's commission rates resulting from Wells Fargo paying 43 basis points on Wells Fargo to Wells Fargo specialty refinances at issue in the lawsuit during the class period, by the total actual impact on commission rates as to all Class Members for originating such loans, and then multiplying that sum by the total net fund to determine the Class Member's settlement payment. In other words, if a Class Member would have been entitled to $1,000 if Plaintiffs were to prevail on their theory of the case, the Class member will receive approximately $327.00 as a result of the settlement.

In addition, Wells Fargo has agreed to pay the costs of notice and administration separately and in addition to the amounts due to Class Members.

The Settlement fund, $14,743,101.00, represents approximately one-third of the amount Plaintiffs believe they and the Class were undercompensated. Given the hurdles Plaintiffs would have to overcome if they were to litigate this case to verdict and oppose a likely appeal, and the benefits provided by the Settlement, approving the Settlement is in the best interests of the proposed Settlement Class. Unquestionably, Plaintiffs' and Class Members' claims are replete with risks and uncertainty. Plaintiffs would have to overcome the defenses raised by Wells Fargo. Among others, these defenses include that Plaintiffs failed to follow Wells Fargo's internal dispute resolution process and exhaust contractual remedies; that interpretation of ambiguities within the compensation plan lies within the sole discretion of Wells Fargo; and that they waived their rights by not pursuing their dispute within the time period set forth in the compensation plan. The continued litigation of this matter would also require the Court to resolve whether individual issues and legal variations among the laws of the states preclude class certification. Wells Fargo will argue that the laws of all 50 states apply to Plaintiffs' and Class Members' claims and that there is variation among state laws with regard to Wells Fargo's defenses such as waiver of contractual rights. Wells Fargo will also argue that disputes were handled on the regional, rather than national level, precluding nationwide certification. Moreover, Wells Fargo maintains, and would introduce evidence, that it never intended to pay greater than 43 bps for the specialty refinance loans at issue, that many class members never believed they were entitled to higher rates of commission, and that the ambiguity in the compensation plans should be resolved in Wells Fargo's favor. All of these issues pose significant risk to any recovery by Plaintiffs and Class Members. In addition, Plaintiffs would incur substantial additional expense in order to litigate the claim to conclusion, with no assurance of success. In light of the complexity of legal issues both on

the merits and on certification, and the attendant risks of each, the benefits to the Class represent a fair, reasonable and adequate resolution of class claims.

VII. THE FORM AND METHOD OF CLASS NOTICE ARE REASONABLE

Pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, when approving a cass action settlement, the district court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 137-77 (1974); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

The Settlement Class is ascertainable through Wells Fargo's records, as the Class consists of current and former employees of Wells Fargo who worked for the company in relatively recent years, 2011 and 2012. The Settlement Agreement contemplates direct notice by first-class mail to each Class Member's last known address. If the Notice is returned undeliverable, the Claims Administrator will perform a skip trace to attempt to obtain an updated address. If an updated address is available, the Claims Administrator will re-mail the Notice to the updated address.

The parties have negotiated a form of Notice to be issued to proposed Class Members, attached as Exhibit "A" to the Settlement Agreement. The Notice is written in plain and straightforward language consistent with Rules 23(c)(2)(B) and 23(e)(1). The Notice objectively and neutrally apprises Class Members of the nature of the action, the definition of the Class sought to be certified for purposes of the Settlement, the Class claims and issues, that Class Members may enter an appearance through an attorney if they so desire, that the Court will exclude from the Class any Class Member who requests exclusion, and the binding effect of a class judgment on Class Members under Rule 23(c)(3)(B). Importantly, the Notice also apprises each Class Member of the estimated monetary amount they will receive under

the Settlement, what claims are being released by the Settlement, and how to receive payment, opt out or object.

VIII. CONCLUSION

For the foregoing reasons, the Settlement reached in this matter is fair, reasonable, adequate and within the best interests of the Class and the range of possible approval. Plaintiffs respectfully request that this Court preliminarily approve the terms of the Settlement Agreement reached by the parties; conditionally certify the Settlement Class; appoint Plaintiffs as class representatives, John Yanchunis as Lead Class Counsel and the other lawyers representing Plaintiffs as Class Counsel; approve the form and method of the Notice of Settlement and direct that such Notice be disseminated to the Class; and set dates and procedures for the Final Fairness Hearing, including deadlines for Class Members to submit requests for exclusion from the Settlement or to file any objections.

Dated: February 26, 2014

s/ John A. Yanchunis
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2014, I electronically filed PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed on the attached Service List.

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