

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

)
) Case Number: C 13-2858
)
BOBBIE PACHECO DYER and)
PATRICIA STALLWORTH, on behalf) **PLAINTIFFS' UNOPPOSED**
of themselves and all others similarly) **NOTICE OF MOTION AND**
situated,) **MOTION FOR AWARD OF**
) **ATTORNEYS' FEES AND COSTS**
Plaintiffs,) **AND ENHANCEMENT AWARDS**
) **AND MEMORANDUM OF POINTS**
) **AND AUTHORITIES**
vs.)
) Date: August 28, 2014
WELLS FARGO BANK, N.A.,) Time: 2:00 p.m.
) Judge: Honorable Jon S. Tigar
Defendant. Courtroom: 9

NOTICE OF MOTION AND MOTION

To all parties and their attorneys of record, please take notice that on August 28, 2014 at 2:00 p.m., in the United States District Court, Northern District of California, San Francisco Division, before the Honorable Jon S. Tigar, Plaintiffs Bobbie Pacheco Dyer and Patricia Stallworth, will and hereby do move for an Order awarding attorneys' fees and reimbursement of costs and expenses to Class Counsel and an enhancement award to the representative Plaintiffs.

Plaintiffs and Class Counsel seek an award of \$3,685,775.25 in attorneys' fees, costs and expenses, which represents 25% of the Gross Fund Value of the Settlement pursuant to Fed. R. Civ. P. 23(h) and in accordance with paragraph 10 of the parties' Joint Stipulation of Class Settlement and Release, for their efforts and risks litigating this action and the benefits obtained for the Class. Plaintiffs and Class Counsel also seek approval of the payment of

1 \$15,000.00 by Defendant to each Class Representative in accordance with paragraph 11 of the
2 Joint Stipulation of Class Settlement and Release.

3 This Motion is based upon this Notice of Motion and Motion, the accompanying
4 Memorandum of Points and Authorities, the Joint Stipulation of Class Settlement and Release,
5 the Declarations of John A. Yanchunis ("Yanchunis Decl.") and Geoffrey Miller ("Miller
6 Decl") filed concurrently herewith as Exhibits 1 and 2 respectively, pleadings and papers on
7 file in this action and other such evidence or argument as may be presented to the Court at the
8 hearing on this Motion.
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10 Defendant, Wells Fargo Bank, N.A., does not oppose this Motion.
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MEMORANDUM OF POINTS AND AUTHORITIES

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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 Award of Attorneys’ Fees and Costs and Incentive Awards.

Plaintiff Bobbie Pacheco Dyer filed this lawsuit on June 20, 2013 by filing the Class Action Complaint (Doc. 1). In her complaint, Plaintiff Dyer alleged that Defendant, Wells Fargo Bank, N.A. (“Defendant” or “Wells Fargo”), breached the terms of its Compensation Plans in effect in the years 2011 and 2012 which governed the payment of commissions to Wells Fargo home mortgage employees. Specifically, Dyer alleged that the Compensation Plans required Wells Fargo to pay standard commission rates of up to 63 basis points, rather than the flat rate of 43 bps which had been paid by Wells Fargo for originating certain specialty refinance loans. On August 26, 2013, Wells Fargo responded to the Complaint by filing its 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”), which Wells Fargo answered on December 11, 2013 (Doc. 29).

In its Answer, Wells Fargo vigorously denied that its Compensation Plans required it to pay standard commission rates of up to 63 bps for any specialty refinance loans, maintaining at all times that it intended – and agreed – to pay only 43 bps. In addition, Wells Fargo disputed the merits of Plaintiffs’ claims based upon several contractual defenses. Among other defenses, Wells Fargo contended that the Compensation Plan contained a provision setting forth a dispute resolution procedure, which required any contractual disputes about the amount of commission owed on a particular loan to be raised in the dispute resolution process within sixty days. Wells Fargo asserted also that Plaintiffs and the putative

1 class members were barred from seeking a contractual recovery of unpaid commissions if they
2 failed to exhaust the mandatory grievance procedures in a timely manner. Wells Fargo
3 asserted also that it had “full discretionary authority to administer, interpret and construe the
4 terms of the [Compensation] Plan.” Accordingly, pursuant to its discretionary authority,
5 Wells Fargo contended that it was entitled to enforce one conflicting provision over another
6 based upon its interpretation of the Compensation Plan.
7

8 In addition to its contractual defenses, Wells Fargo asserted that individualized issues
9 specific to each potential class member would preclude class certification. Specifically, Wells
10 Fargo contended that any issues regarding choice of law provisions and those challenging the
11 enforceability of the dispute resolution process provision in the Compensation Plan would
12 raise multiple individual issues under the laws of the different states with outcomes varying
13 on individual facts unique to each employee. Furthermore, Wells Fargo argued that the fact
14 that one of the named Plaintiffs (and possibly other putative class members) raised the
15 specialty refinance issue during her employment, was informed that it was Wells Fargo’s
16 intent to pay 43 bps for specialty refinance loans, and continued to originate such loans after
17 being given this information, creates individualized waiver issues that would make class
18 treatment untenable.
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21 After mediation before David Rotman, a highly skilled and experienced mediator with
22 a proven track record for resolving complex class action litigation, as well as additional arms-
23 length negotiations regarding the terms of the settlement, the parties reached a class-wide
24 settlement of this dispute. The total amount of the Settlement is \$14,743,101.00.
25

26 On May 12, 2014, this Court entered an Order preliminary approving the Settlement,
27 finding it to be fair, reasonable and adequate (Doc. 41). Following preliminary approval,
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1 Notice in the form approved by the Court was mailed to Class members on June 10, 2014.
2 Class members were provided a forty-five (45 days) period, to July 25, 2014, to request
3 exclusion from or to object to the Settlement. To date, no Class Member has objected to the
4 Settlement, and only one Class member has requested exclusion. (Yanchunis Decl. ¶ 18).

5 Plaintiffs and Class Counsel seek an award of \$3,685,775.25 for their reasonable
6 attorneys' fees, costs and expenses incurred in bringing this action. This amount represents
7 25% of the Gross Fund Value of \$14,743,101.00. This amount will fairly compensate Class
8 Counsel for their work performed in this case which they undertook on a contingency basis ,
9 as well as the work which remains to be done, including preparing and filing a motion for
10 final approval of the Settlement, attending the Final Fairness Hearing on August 28, 2014,
11 continuing to work with Class members to answer questions they have regarding the
12 Settlement, efforts to ensure that the Settlement is administered pursuant to its terms, and
13 defending the final judgment approving the settlement if an appeal is filed. The requested
14 amount of attorneys' fees (if costs and expenses are excluded) is slightly lower than the
15 benchmark of 25% applicable in the Ninth Circuit for common fund recoveries, given that the
16 amount requested includes not only attorneys' fees but reimbursement for Class Counsel's
17 costs and expenses. In addition, Plaintiffs and Class Counsel seek an enhancement award of
18 \$15,000 for each Class Representative for their efforts and risk in the litigation of this case.
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20 **II. SUMMARY OF LITIGATION AND SETTLEMENT NEGOTIATIONS**

21 In or about April 2013, Class Counsel began investigating a complaint from Bobbie
22 Dyer, a former Wells Fargo Producing Sales Branch Manager, regarding her claim that she
23 had not received the commissions that she was entitled to as a result of originating mortgages
24 during her employment with Wells Fargo. Class Counsel interviewed Dyer extensively on
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1 multiple occasions and gathered her facts and documents. Class Counsel also spoke to and
2 reviewed documents provided by other witnesses. Moreover, prior to conducting a factual
3 investigation, Counsel researched and analyzed legal issues in order to identify potential
4 claims that may be brought against Wells Fargo, as well as the merit of those claims and
5 potential defenses which they may face, and the appropriate jurisdictions to bring the suit.
6

7 Following their investigation, Class Counsel drafted the initial complaint which was
8 filed in this Court on June 20, 2013. While other potential claims were vetted, ultimately
9 Class Counsel determined to allege only a single count for breach of contract based on Wells
10 Fargo's alleged breach of a provision in its Compensation Plan which Plaintiffs believe
11 required Wells Fargo to pay standard commission rates up to 63 basis points, rather than a flat
12 rate of 43 basis points, to home mortgage employees who originated certain specialty
13 refinance loans. Following the filing of the initial complaint, Counsel continued to be
14 contacted by other employees of Wells Fargo who claimed they were not paid proper
15 commissions under the Compensation Plan, and Class Counsel continued their investigation
16 of the facts provided by these other employees and former employees. Following additional
17 interviews and gathering of additional documents, Class Counsel filed the Amended
18 Complaint on November 27, 2013, which added Patricia Stallworth, a former Wells Fargo
19 Home Mortgage Consultant, as a Class Representative and injected additional factual
20 allegations which broadened the scope of the claims alleged in the lawsuit.
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24 Following their Rule 26 conference, the parties each served Rule 26 disclosures. In
25 addition, each party served discovery requests. The parties agreed also to participate in
26 mediation to explore whether the case could be resolved without costly and protracted
27 litigation. Prior to the mediation, Plaintiffs served discovery on Wells Fargo limited to the
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1 merits of Plaintiffs' claims and the size and scope of the class. Wells Fargo responded to the
2 discovery request and produced documents, including the named Plaintiffs' personnel files,
3 commission reports, and data regarding the size of the class and estimate amount of alleged
4 damages. In addition, Plaintiffs conducted a Rule 30(b)(6) deposition of Wells Fargo's
5 corporate representative and Wells Fargo took the depositions of both Ms. Dyer and Ms.
6 Stallworth.
7

8 During the full day mediation which was conducted in San Francisco on January 23,
9 2014, the parties discussed in detail the strengths of Plaintiffs' claims and Wells Fargo's
10 defenses, as well the issue of class certification. Both Plaintiffs who reside in Florida traveled
11 to and attended the mediation with Class Counsel. During the mediation, the parties
12 exchanged offers and counteroffers and negotiated their respective positions vigorously. The
13 settlement was negotiated on an arms-length and non-collusive basis by counsel who are well
14 experienced in complex class actions and are familiar with the risks of class action litigation.
15 The mediation session resulted in the Settlement preliminarily approved by this Court.
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17 At the conclusion of the mediation session, the parties, through their counsel,
18 negotiated and prepared a Memorandum of Understanding (MOU) that memorialized the
19 terms of their agreement. The issues of the incentive awards which would be sought for
20 Plaintiffs and the subject of class counsel's attorneys' fees, costs and expenses and the amount
21 was not conducted until after the parties had reached agreement on the essential terms of the
22 settlement.
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25 Following mediation, the parties turned to the task of negotiating additional details
26 (several which were strongly contested) necessary to implement the substantive terms outlined
27 in the MOU. Discussions and negotiations over the following several weeks culminated in the
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1 final Stipulation of Class Settlement and Release. The parties also exchanged drafts of and
2 finalized the Class Notice.

3 In addition, subsequent to mediation, Wells Fargo conducted an internal analysis to
4 determine with precision the amount of alleged damages at issue. This analysis took Wells
5 Fargo almost three months. After their review of the information provided by Wells Fargo,
6 Counsel conducted confirmatory discovery. Wells Fargo produced a sworn declaration of
7 Scott Kilker, Wells Fargo's Finance Manager in its Bonus/Commission Accounting
8 Department, who oversaw Wells Fargo's internal analysis. Class Counsel conducted a
9 deposition of Mr. Kilker, in which Class Counsel examined him regarding the process
10 undertaken to identify Class members and to confirm the accuracy of the amount of alleged
11 damages of the Class. A declaration of Attorney Tamra Givens addressing the confirmatory
12 discovery undertaken has been filed with the Court (Doc. 42). In addition, in response to
13 various questions raised by Class members following dissemination of Notice to the Class,
14 Class Counsel requested and reviewed further documentation provided by Wells Fargo to
15 enable Class Counsel to respond to inquiries from Class members and to further assess the
16 accuracy of Wells Fargo's calculations of damages. (Yanchunis Decl. ¶ 19).
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20 Following the parties' execution of the Joint Stipulation of Class Settlement and
21 Release, Class Counsel prepared and filed the Motion for Preliminary Approval, which
22 included a number of supporting documents.
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24 After the Court preliminarily approved the Settlement, Class Counsel worked with
25 Wells Fargo's counsel and the Claims Administrator to finalize the Class Notice and ensure
26 that all of the information and dates in the Class Notice complied with the procedures set forth
27 in the Order of Preliminary Approval. Class Counsel also drafted content for their settlement
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website and worked with their web designer to have the content posted, including several revisions and updates to the content on the website. Class Counsel has also been in communication with a number of Class members who have called to ask questions regarding the Settlement, some of which have required follow up with defense counsel and review of additional data provided by Wells Fargo. (Yanchunis Decl. ¶ 19). This work continues to date and will continue through and beyond the time of final approval. In addition, Class Counsel will expend additional time preparing and filing their forthcoming motion for final approval and supporting documentation.

III. LEGAL ARGUMENT

A. CLASS COUNSEL'S FEE REQUEST IS REASONABLE WITHIN NINTH CIRCUIT PRECEDENT

Class Counsel seeks the approval of an attorneys' fee award in an amount less than 25% of the Gross Fund Value, \$14,743,101.00, created by the Settlement. When combined with costs and expenses, as well as the value of Wells Fargo's additional payment of class notice and administration, and its portion of employer's payroll taxes, the amount requested equals 25% of the common fund. An award of attorneys' fees as a percentage of a fund established by a settlement is well-established in Ninth Circuit jurisprudence. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal. 1989).

The "common fund" doctrine, under which attorneys who create a common fund or benefit for a class of persons may be awarded their fees and costs out of the fund, has long been recognized by courts as a basis for determining the amount of attorneys' fees to be

1 awarded to plaintiffs' counsel in class actions. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
 2 (1980); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970). "[A] lawyer who recovers a
 3 common fund for the benefit of persons other than ... his client is entitled to a reasonable
 4 attorney's fee from the fund as a whole." *Boeing*, 444 U.S. at 478. The common fund
 5 doctrine rests on the principle that attorneys should normally be paid by their clients and that
 6 unless attorneys' fees are paid out of the common fund where the attorneys' unnamed class
 7 member clients have no express retainer agreement, those who benefited from the fund
 8 without contributing to those who created in would be unjustly enriched. *Id.*

10 Federal courts, including the Ninth Circuit, have endorsed the percentage of the fund
 11 method as a fair way to calculate a reasonable fee when contingency fee litigation has
 12 produced a common fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (Under
 13 the common fund doctrine, "reasonable fee is based on a percentage of the fund bestowed on
 14 the class"); *Six Mexican Workers*, 904 F.2d at 1311 (Common fund fee is generally
 15 "calculated as percentage of the recovery"); *Graulty*, 886 F.2d at 272.

17 Generally, under the percentage method, the Court assesses the amount of the common
 18 fund by determining the value of the benefits that the settlement confers upon the class and
 19 then awards a percentage of that value as attorneys' fees. *Staton v. Boeing Co.*, 327 F.3d 938,
 20 974-75 (9th Cir. 2003). In this case, unlike a case where there is unquantified injunctive relief
 21 that must be assigned a value, the value of the settlement is easy to ascertain. The Gross Fund
 22 Value, \$14,743,101.00, has been set aside by Wells Fargo to pay the Class members for their
 23 claims and attorneys' fees. In addition to the Gross Fund Value, Wells Fargo has agreed to
 24 separately pay the costs of class notice and administration of the Settlement, enhancement
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1 awards to the Class, representatives and the employers' portion of payroll taxes which will be
2 due as a result of the payments to the Class members.

3 In the Ninth Circuit, the typical range of reasonable attorneys' fees from a common
4 fund settlement is 20% to 33 1/3% of the total settlement value, with 25% considered to be the
5 "benchmark." *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). "This circuit has
6 established 25% of the common fund as a benchmark for attorney fees." *Hanlon v. Chrysler*
7 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1988). An award equaling 25% of the common fund is
8 presumptively reasonable. *Ching v. Siemens Industry, Inc.*, No. 11-cv-04838, 2014 WL
9 2926210, at * 7 (N.D. Cal. June 27, 2014) In most common fund cases, courts award more
10 than the 25% benchmark. *In re Omnivision Techs., Inc.* 559 F. Supp. 2d 1036, 1047 (N.D.
11 Cal. 2008). In this case, the fee requested is actually somewhat less than the 25% benchmark,
12 considering that the requested amount includes Counsel's costs and expenses, coupled with
13 the fact that the overall value of the settlement is somewhat more than the amount of the
14 Gross Fund Value, given that Wells Fargo has agreed to separately pay for the costs of class
15 notice and administration, enhancement awards and the employer's portion of payroll taxes in
16 addition to paying the Gross Fund Value. There is no justification for a downward adjustment,
17 and Class Counsel has not requested an adjustment upward. (Miller Decl. ¶¶ 26-27).

21 Ultimately, to ensure that the fee award is reasonable, "[s]election of the benchmark or
22 any other rate must be supported by findings that take into account all of the circumstances of
23 the case." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). These factors
24 include (1) the result achieved, (2) the risk involved in the litigation, (3) the skill required and
25 quality of work by counsel; (4) the contingent nature of the fee; and (5) awards made in
26 similar cases. *Ching*, 2014 WL at *7 (citing *Vizcaino*, 290 F.3d at 1048). Consideration of
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1 the *Vizcaino* factors demonstrates that Class Counsel's request for a fee in the amount of 25%
2 of the value of the settlement is more than reasonable.

3 **1. Class Counsel obtained an excellent result for the Class**

4 The results achieved by Class Counsel, and the speed and efficiency with which they
5 were achieved, are outstanding. The common fund created by the Settlement is
6 \$14,743,101.00 to compensate 8,695 people. Class members will receive their settlement
7 payment without the need to submit a claim. The fund is almost entirely non-reversionary.
8 The only portion which will revert to Wells Fargo are funds which would otherwise have been
9 paid to Class members who exclude themselves from the settlement. To date, only one Class
10 member has opted out, and that Class member's portion of the settlement fund was estimated
11 to be \$911.63. Thus, as of the date of this filing, all but \$911.63 of the settlement fund will be
12 paid out by Wells Fargo to satisfy the claims alleged in this lawsuit. Again, Class members
13 need not do anything to receive their share of the settlement fund.

14 The amount each Class member will recover is dependent on the volume of their
15 production of qualifying loans, but represents approximately one third of the potential
16 damages Class members may have received had they successfully litigated the case to
17 judgment. The Settlement provides substantial benefits to the Class. Given the risks and
18 uncertainty attendant in this litigation discussed in detail in Section III(A)(2), recovery was far
19 from certain and there was a significant risk that Class members may have received no
20 recovery at all had Plaintiffs continued to litigate this case.

21 In addition, the speed and efficiency with which Class Counsel resolved this case was
22 also remarkable. As the Ninth Circuit stated in *Vizcaino*, "We do not mean to imply that class
23 counsel should necessarily receive a lesser fee for settling a case quickly; in many instances, it
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1 may be a relevant circumstance that counsel achieved a timely result for class members in
2 need of immediate relief.” 290 F.3d at 1050 n.5. Indeed, the Ninth Circuit recognized that
3 using the lodestar method “creates incentives for counsel to expend more hours than may be
4 necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does
5 not reward early settlement.” *Id.*; see also *Glass v. UBS Financial Servs.*, No. C-06-4068
6 MMC, 2007 WL 221862, at *16 (N.D. Cal. Jan. 26, 2007) (approving 25% fee where early
7 settlement benefitted the class).
8

9 Moreover, although the case settled relatively early, Class Counsel had engaged in an
10 extensive factual investigation of the claims of the Class and worked actively and diligently in
11 analyzing the strengths and weaknesses of the case and attendant litigation risks. No stone
12 was left unturned. As discussed above, Class Counsel conducted extensive research and
13 investigation prior to filing the suit, pursued both formal and informal discovery, reviewed
14 documents produced by Defendant, defended the class representatives at their depositions,
15 reviewed took a Rule 30(b)(6) deposition of Wells Fargo, attended a full day arms-length
16 mediation and subsequent negotiations regarding the terms of the settlement, deposed Mr.
17 Kilker to verify the process and accuracy with which Wells Fargo mined its data to determine
18 Class member damages. The result of Class Counsel’s efforts was a Settlement which
19 provides a timely and certain recovery to the Class on claims that were far from certain.
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22 **2. The risks assumed by Class Counsel favor the fee award sought**

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24 Class Counsel assumed a very real risk in taking on this case. Plaintiffs, through
25 Class counsel, challenged the practices of the largest retail mortgage lender in the United
26 States, with respect to its payment of commissions to the employees who originate mortgages
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1 on Wells Fargo's behalf. Class Counsel took the case on a contingency basis, and invested
2 time, effort and money with no guarantee of any recovery.

3 Recovery in this case was far from certain. From the outset, Wells Fargo vigorously
4 denied liability. At all times, Wells Fargo maintained its steadfast position that it never
5 intended nor agreed to pay standard commission rates on specialty refinance loans. Wells
6 Fargo raised a number of contractual defenses to Plaintiffs' claims. Among these defenses
7 include that Plaintiffs failed to follow Wells Fargo's internal dispute resolution process and
8 exhaust contractual remedies; that interpretation of ambiguities within the compensation plan
9 lies within the sole discretion of Wells Fargo; and that they waived their rights by not
10 pursuing their dispute within the time period set forth in the compensation plan.
11

12
13 Even if Plaintiffs were successful on the merits, Wells Fargo also contended
14 throughout this case that class certification was highly improbable due to alleged
15 individualized issues not capable of common proof. To that end, Wells Fargo asserted that the
16 laws of all 50 states apply to Plaintiffs' and Class Members' claims and that there is variation
17 among state laws with regard to Wells Fargo's defenses such as waiver of contractual rights.
18 Wells Fargo also argued that disputes were handled on the regional, rather than national level,
19 precluding nationwide certification. At all times, Wells Fargo maintained that it would
20 introduce evidence that it never intended to pay greater than 43 bps for the specialty refinance
21 loans at issue and that many class members never believed they were entitled to higher rates
22 of commission. Moreover, Wells Fargo argued that the fact that one of the named Plaintiffs
23 (and possibly other putative class members) raised the specialty refinance issue during her
24 employment, was informed that it was Wells Fargo's intent to pay 43 bps for specialty
25 refinance loans, and continued to originate such loans after being given this information,
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created individualized waiver issues that would make class treatment untenable. Calculation of damages was also a difficult task which took Wells Fargo two to three months to complete and required it to write and revise a number of codes to query three different commission systems and mine archived data contained within systems no longer utilized by Wells Fargo as well as Wells Fargo's current commission system, and to then validate the data. (Givens Decl. ¶ 4) All of these issues posed substantial risk to any recovery by Plaintiffs and Class Members.

3. The result achieved is the result of the Class Counsel's exceptional skill and quality of work

The reasonableness of Class Counsel's requested fee is supported by Class Counsel's skill and experience as well as the high quality of their legal representation in this case. As evidenced by his declaration and attached resume, Lead Counsel John Yanchunis has many years of extensive experience representing consumers in class litigation and has served as lead, co-lead or class counsel in a number of prominent class action cases. (Yanchunis Decl ¶ 4.). 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* Yanchunis Decl. ¶4). As discussed above, Class Counsel has diligently investigated and prosecuted the claims in this matter, including interviews of former and present employees of Wells Fargo and review of 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 Scott Kilker, and defending depositions of both of the named plaintiffs. Lead Class Counsel and his law firm, along with other Class Counsel, have dedicated substantial resources to this case throughout both the litigation and administration of the settlement, and will continue to do so through the conclusion of this case.

"The quality of opposing counsel is important in evaluating the quality of Class Counsel's work." *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal.

2013) (citation omitted). Defendant, the largest retail mortgage lender in the United States, was represented by experienced and skilled attorneys from a large and highly reputable internationally known law firm. The result achieved by Class Counsel in litigation against a formidable opponent reflects highly on the quality of Class Counsel's representation.

4. The contingent nature of the litigation supports the requested fee award

Class Counsel took this case on behalf of Plaintiffs and the Class without any guarantee that they would receive any compensation for their work. "Courts have long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that might be paid nothing at all for their work. *Ching*, 2014 WL 2926210, at *8 (citations omitted). This practice encourages attorneys to assume this risk and allows plaintiffs who would otherwise not be able to hire an attorney to obtain competent counsel. *Kanawi v. Bechtel Corp.*, No. 06-05566 CRB, 2011 WL 782244, at *2 (N.D. Cal. March 1, 2011) (citing *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)). Class Counsel's representation of Plaintiffs and the Class on a contingent basis supports the fee award requested by Class Counsel.

5. The requested fee is justified by awards in similar cases.

As discussed above, the requested "benchmark" fee, 25% of the fund, is well within the range of acceptable attorneys' fees in Ninth Circuit cases. In the Ninth Circuit, the typical range of reasonable attorneys' fees from a common fund settlement is 20% to 33 1/3% of the total settlement value, with 25% considered to be the "benchmark." *Powers*, 229 F.3d 1249. In most common fund cases, courts award more than the 25% benchmark. *In re Omnivision Techs., Inc.* 559 F. Supp. 2d at 1047.

1 The requested fee in this case is slightly less than 25% considering that it includes
2 costs and expenses and that in addition to the Gross Fund Value, Class members benefitted
3 from Wells Fargo's agreement to separately pay for notice and costs of administration,
4 enhancement awards, and the employer's portion of payroll taxes in addition to the Gross
5 Fund Value. Class Counsel's requested fee is in line with fees awarded in other class cases in
6 this district brought by employees against their employers for failure to properly compensate
7 them. *See Glass*, 2007 WL 221862 (25%); *Chu*, 2011 WL 672645 (25%).

9 In addition, Class Counsel has submitted herewith the declaration of Geoffrey Miller,
10 an expert on the topic of attorneys' fee awards in class action cases. Professor Miller is a law
11 professor at New York University. He is a former law clerk to the Honorable Carl McGowan
12 of the United States Court of Appeals for the D.C. Circuit and to the Honorable Byron R.
13 White, Associate Justice of the United States Supreme Court. Professor Miller co-founded
14 the Society for Empirical Legal Studies, an organization of researchers who examine the
15 statistical impact of legal rules. He is one of HeirOnline Law Journal Library's top-100 most
16 cited authors of all time, and has been listed as one of America's top-50 most relevant law
17 professors in a recent empirical study of scholarly influence. (Miller Decl. ¶¶ 1-5).

20 Among Professor Miller's extensive writings, Professor Miller has co-authored several
21 statistical studies on fees in class action and shareholders derivative cases which are a leading
22 authority on that topic. (Miller Decl. ¶¶ 3-4; 6-7). Professor Miller co-authored an empirical
23 study in the March-April 2003 edition of *Class Action Reports* (CAR) which analyzed data
24 from cases ranging from 1974 to 2003. The results of the study concluded that the median fee
25 across all types of common fund class action cases was 30%, while the median fee award in
26 consumer cases was 25% and the median fee in employment cases was 25.7% (Miller Decl. ¶
27
28

29-30). In 2010, Professor Miller also co-authored a study published in the Journal of Empirical Legal Studies of fees in all published class actions settlements between 1993 and 2008, which found that the median fee in employment class actions was 25% and the mean fee was 27%. (Miller Decl. ¶ 32). For the period 1993 to 2008, both the median and mean fee awards in the Ninth Circuit were 25% of the class recovery, exactly the award requested in this case. (Miller Decl. ¶ 33). The empirical data analyzed by Professor Miller demonstrates that a 25% fee is both appropriate and in line with similar cases. (Miller Decl. ¶¶ 3-4; 7, 29-35).

IV. THE REQUESTED FEE IS ALSO REASONABLE UNDER THE LODESTAR CROSSCHECK

In determining the reasonableness of Class Counsel's fee under the percentage method, the Court may, but is not required to, conduct a lodestar crosscheck to compare the common fund percentage fee with Class Counsel's lodestar. *Glass*, 2007 WL at *16; *see also Vizcaino*, 290 F.3d at 1050 ([W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Should the Court perform a lodestar crosscheck, Class Counsel's requested fee represents a lodestar of \$1,196,572.50 with a multiplier of 3.08. (Yanchunis Decl. ¶ 21. The complexities of the case, the risks involved and the results obtained more than justify Plaintiffs' base lodestar. The contingent nature of Class Counsel's representation, combined with the excellent results obtained for the Class, the quality of Class Counsel's work, and work remaining to be done, supports the application of a multiplier. Indeed, the Ninth Circuit mandates an award of a risk multiplier to account for the risk of nonpayment "when (1) attorneys take a case with the expectation that they will receive a risk multiplier if they prevail, (2) their hourly rate does not reflect that risk, and (3) where there is evidence that

1 the case was risky.” *Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1008 (9th
 2 Cir. 2002) (citing *In re Wash. Public Power Supply Sys.*, 19 F.3d 1291, 1301-02 (9th Cir.
 3 1994)); see also *Florin v. Nationstar Bank of Georgia, N.A.*, 34 F.3d 560, 564 (7th Cir. 1994)
 4 (“A risk multiplier is not merely available in a common fund case but mandated, if the court
 5 finds that counsel ‘had no sure source of compensation for their services.’”).

6
 7 In the Ninth Circuit, the presumptive acceptable range of multipliers is 1.0-4.0.
 8 *Vizcaino*, 290 F.3d at 1052 and n.6. For class action litigation of this size and complexity, a
 9 multiplier of 3.08 is appropriate. *See id.* (approving 3.65 multiplier); *see also Milliron v. T-*
 10 *Mobile USA*, 423 Fed. App'x 131, 135 (3d Cir. 2011) (“we have approved a multiplier of 2.99
 11 in a relatively simple case”); *City of Livonia Emples. Ret. Sys. v. Wyeth*, 2013 U.S. Dist.
 12 LEXIS 113658, 11 (S.D.N.Y. Aug. 7, 2013) (lodestar multiplier of 3.45); *In re Citigroup Inc*
 13 *Secs. Litig.*, 2013 U.S. Dist. LEXIS 108115 *9 (S.D.N.Y. Aug. 1, 2013) (approving 2.8
 14 lodestar multiplier over objection); *In re Cadence Design Sys., Inc. Sec. & Deriv. Litig.*, No.
 15 C-08-4966 SC, 2012 U.S. Dist. LEXIS 56785, at *5 (N.D. Cal. April 23, 2012) (awarding
 16 counsel “more than 2.88 times its lodestar amount”); *Been v. O.K. Indus., Inc.*, No. CIV-02-
 17 285-RAW, 2011 U.S. Dist. LEXIS 115151, at *11 (E.D. Okla. 2011) (citing a study
 18 “reporting average multiplier of 3.89 in survey of 1,120 class action cases” and finding that a
 19 multiplier of 2.43 would be “per se reasonable”); *In re Sumitomo Copper Litig.*, 74 F. Supp.
 20 2d 393, 399-400 (S.D.N.Y. 1999) (finding “multipliers of 3 to 4.5 to be reasonable”); *Van*
 21 *Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (“Multipliers in the 3-4
 22 range are common in lodestar awards for lengthy and complex class actions”); *In re Beverly*
 23 *Hills Fire Litig.*, 639 F. Supp. 915, 924 (E.D. Ky. 1986) (multiplier of 5).

V. The Class Representatives Should Receive the Requested Enhancement Award for their Efforts in Helping to Secure Settlement Benefits for the Class.

In accordance with paragraph 11 of the Stipulation of Class Settlement and Release, Ms. Dyer and Ms. Stallworth, the two Class Representatives, seek enhancement awards of \$15,000.00 each for their services provided on behalf of the Class.

“Incentive awards are fairly typical in class action cases, and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (citation omitted). Relevant factors in determining an enhancement award include “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, ... the amount of time and effort the plaintiff expended in pursuing the litigation ... and reasonabl[e] fear[s of] workplace retaliation.” *Staton*, 327 F.3d at 977 (citing *Cook v. Neidert*, 142 F.3d 1004, 1016 (7th Cir. 1998)) (approving \$25,000 incentive award for class representative who spent hundreds of hours with his attorneys and provided them with an “abundance of information” in a case which resulted in a \$13 million settlement); *see also Glass*, 2007 WL 221862, at *16-17 (approving \$25,000 enhancement awards); *Singer v. Becton Dickinson and Co.*, No. 08-CV-IEG (BLM), 2010 WL 2196104, at *9 (S.D. Cal. June 1, 2010) (\$25,000 incentive award where class representative spent over 165 hours participating in extensive informal discovery and day-long settlement negotiations).

In this case, the enhancement awards sought are appropriate. As evidenced by the declarations of Plaintiffs filed, in support of preliminary approval (Doc. 35-5 and 35-6,

1 respectively), the Class Representatives expended many hours in advancing this litigation
2 against a large and powerful adversary.

3 Ms. Dyer expended over 200 hours assisting in this case. She met with Class Counsel
4 in person and by phone on a number of occasions. She gathered hundreds of pages of
5 documents which she provided and explained to Class Counsel. She attended her deposition
6 as well as participated in the mediation in this matter which required her to travel from
7 Florida to California and miss several days of work. As the owner and president of her own
8 mortgage business, Ms. Dyer sacrificed much of her own time and lost income in order to
9 serve the interests of the Class. (Doc. 35-5).

10
11 Ms. Stallworth also actively participated in the case. She had extensive discussions
12 with Class Counsel regarding the facts of the case and assisted with reviewing and proposing
13 revisions to the Amended Complaint. She also prepared for and attended her deposition. Ms.
14 Stallworth, who is the sole caregiver to her 6-year old daughter, left her daughter for several
15 days to travel from Florida to California to participate in the mediation and assisted Class
16 Counsel by reviewing and making additions to the complaint and providing documents and
17 explaining them to Class Counsel.
18
19

20 In addition, both Ms. Dyer and Ms. Stallworth continue to be employed in the
21 mortgage business. In bringing this case, they risked their professional reputation as well as
22 the possibility of retaliation. Their commitment to this cause was both admirable and
23 unusual. (Miller Decl. ¶ 36-40). The requested enhancement award of \$15,000 to each of
24 these representatives in recognition of their service, risk and personal sacrifice on behalf of
25 the Class is appropriate.
26

27 VI. CONCLUSION

28

1 For the foregoing reasons, Class Counsel requests that this Court award attorneys' fees
2 to Class Counsel in the amount of \$3,685,775.25, 25% of the Gross Fund Value, and an
3 enhancement award of \$15,000.00 each to Ms. Dyer and Ms. Stallworth.

4
5 Dated: February ___, 2014

s/ John A. Yanchunis

6 John A. Yanchunis (*Pro Hac Vice*) FL 324681

7 jyanchunis@forthepeople.com

8 Tamra Givens (*Pending Pro Hac Vice*) FL 657638

9 tgivens@forthepeople.com

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21 **A PROFESSIONAL LAW CORPORATION**

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23 Sacramento, California 95825

24 Telephone (916) 924-3100

25 Facsimile (916) 924-1829

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July, 2014, I electronically filed PLAINTIFFS' UNOPPOSED NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND ENHANCEMENT AWARDS AND 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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WELLS FARGO BANK, N.A.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**BOBBIE PACHECO DYER, and
PATRICIA STALLWORTH on behalf of
themselves and all others similarly
situated,**

Case No.: C 13-2858

Plaintiffs,

vs.

WELLS FARGO BANK, N.A.,

Defendant.

**DECLARATION OF JOHN YANCHUNIS IN SUPPORT
OF MOTION FOR AN AWARD OF ATTORNEYS' FEES**

I, John A. Yanchunis, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am an attorney duly admitted to practice law in the state of Florida and I have been permitted to appear in this Court. I practice in the area of consumer class action, and I have focused my practice in this area for the past 19 years. Before that time, I specialized in complex business litigation, ranging from the representation of financial institutions to Fortune 500 companies. I also represented insurance companies in insurance coverage disputes, and was counsel for a very large insurance company handling coverage litigation for asbestos and environmental claims in the southeast United States. In one case in particular, I was lead counsel for 5 insurance companies in a multi-year trial where my client faced exposure for asbestos coverage in excess of a billion dollars.

2. I maintain my practice in Morgan & Morgan's Complex Litigation Group and lead the National Consumer Class Action and False Claims Act sections. Morgan & Morgan is the largest exclusively plaintiffs law firm in the state of Florida and one of the largest in the

United States, employing over 250 lawyers and 1600 support staff who populate offices in Florida, Georgia, Mississippi, Tennessee, Kentucky and New York. I and my firm have the financial resources and legal experience to equalize the playing field in furtherance of justice for our clients.

3. Prior to joining Morgan & Morgan in 2011, I was a senior partner at James, Hoyer, Newcomer, Smiljanich & Yanchunis, P.A., where I managed the firm's nationwide consumer class action department. Before entering private practice in 1982, I served for two years as a law clerk for the Honorable Carl O. Bue, Jr., a United States District Judge in Houston, Texas.

4. I am highly regarded nationally for my extensive involvement in class action litigation. I have served as co-lead counsel in the successful prosecution of the two largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, Case No. 03-61063-JEM (Fresco I), and *Fresco v. R.L. Polk*, Case 0:07-cv-60695-JEM (Fresco II) (Southern District of Florida). Additionally, I have served as lead, co-lead, or class counsel in numerous class actions in a wide variety of areas affecting consumers, including but not limited to anti-trust, defective products, life insurance, annuities, privacy, breach of contract, civil rights and unfair and deceptive acts and practices. I was also Lead Counsel in a successful nationwide class action wherein I represented securities brokers who had not been paid commissions from the sale of registered products.

5. Beginning in 2005, and while maintaining a private law practice, I served as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators in the state of Florida) in their investigations of the insurance industry over issues concerning possible antitrust activity, and other possible

unlawful activity and activities regarding the payment of undisclosed compensation to insurance brokers. The litigation and these investigations resulted in millions of dollars in restitution being paid to Florida consumers, and also resulted in significant changes in the way commercial insurance is sold in the state of Florida and across the country.

6. I lecture frequently on the area of class litigation, and I have served as an expert to The Florida Bar on the topic of the ethical obligations of a class counsel in class action litigation.

7. I have been honored with the prestigious “AV” rating by Martindale-Hubbell. A copy of my resume and the description and qualifications of the attorneys of Morgan & Morgan Complex Litigation Group’s National Consumer Class Action section is attached as composite Exhibit “A.”

8. This declaration is being submitted to support the motion for attorneys’ fees, costs and expenses. The declaration supports the professional time, costs and expenses incurred by my firm and my co-counsel in the representation of Plaintiffs and the Class, and is up to date as of the date of this declaration. The declaration does not cover, of course, the additional labor which will be required to respond to calls and inquiries from Class members, to prepare for and attend the fairness hearing now scheduled for August 28, 2014 before the Court, or any labor required after the fairness hearing, including if necessary, the defense of the Court’s Final Judgment on appeal if any are taken.

9. In or about April 2013, Class Counsel began investigating a complaint from Bobbie Dyer, a former Wells Fargo Producing Sales Branch Manager, regarding not receiving commissions she claimed she was entitled to as a result of originating mortgages during her employment with Wells Fargo. Class Counsel interviewed Dyer extensively on multiple

occasions and gathered her facts and documents. Class Counsel also spoke to and reviewed documents provided by other witnesses. In addition to conducting a factual investigation, Class Counsel researched and analyzed legal issues in order to identify potential claims that may be brought against Wells Fargo, as well as the merit of those claims and potential defenses which they may face.

10. Following their investigation, Class Counsel drafted the initial complaint, which was filed in this Court on June 20, 2013. While other potential claims were vetted, ultimately, Counsel determined to allege only a single count for breach of contract based on Wells Fargo's alleged breach of a provision in its Compensation Plan which Plaintiffs believe required Wells Fargo to pay standard commission rates up to 63 basis points, rather than a flat rate of 43 basis points, to home mortgage employees who originated certain specialty refinance loans. Following the filing of the initial complaint, Counsel continued to be contacted by additional employees of Wells Fargo who were not paid proper commissions under the Compensation Plan. Following additional interviews and gathering of additional documents, Counsel filed the Amended Complaint on November 27, 2013, which added Patricia Stallworth, a former Wells Fargo Home Mortgage Consultant, as a Class Representative and added additional factual allegations which broadened the scope of the claims alleged in the lawsuit.

11. Following their Rule 26 conference, the parties each served Rule 26 disclosures. In addition, 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.

12. 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 complex class actions and are familiar with the risks of class action litigation. The mediation session resulted in the Settlement preliminarily approved by this Court.

13. 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.

14. Following mediation, the parties turned to the task of negotiating additional details (several which were strongly contested) necessary to implement the substantive terms outlined in the MOU. Discussions and negotiations over the following several weeks culminated in the final Stipulation of Class Settlement and Release. The parties also exchanged drafts of and finalized the Class Notice.

15. In addition, subsequent to mediation, Wells Fargo conducted an internal analysis to determine with precision the amount of alleged damages at issue. This analysis took almost three months. After their review of the information provided by Wells Fargo, Counsel conducted confirmatory discovery. Wells Fargo produced a sworn declaration of Scott Kilker, Wells Fargo's position who coordinated and oversaw Wells Fargo's internal analysis. Counsel conducted a deposition of Mr. Kilker, in which Counsel examined him regarding the process undertaken to determine and verify the accuracy of the amount of alleged damages of the Class. A declaration of Attorney Tamra Givens addressing the confirmatory discovery undertaken has been filed with the Court (Doc. 42). In addition, in response to various questions raised by Class members following dissemination of Notice to the Class, Counsel has requested and reviewed further documentation confirming the accuracy of Wells Fargo's calculations of damages.

16. Following the parties' execution of the Joint Stipulation of Class Settlement and Release, Counsel prepared and filed the Motion for Preliminary Approval, which included a number of supporting documents.

17. After the Court preliminarily approved the Settlement, Class Counsel worked with defense counsel and the Class Administrator to finalize the Class Notice and ensure that all of the information and dates in the Class Notice complied with the procedures set forth in the Order of Preliminary Approval. Class Counsel also drafted content for their settlement website and worked with their web designer to have the content posted, including several revisions and updates to the content on the website. Class Counsel has also been in communication with a number of Class members who have called to ask questions regarding the Settlement, some of which have required follow up with defense counsel and review of additional data provided by Wells Fargo. This work continues to date and will continue through and beyond the time of final

approval. In addition, Class Counsel will expend additional time preparing and filing their forthcoming motion for final approval and supporting documentation.

18. I have been in contact with the Claims Administrator and have reviewed reports prepared by the Claims Administrator regarding its administration of the Settlement. To date, only one Class member has requested exclusion from the Settlement and there have been no objection made to the Settlement.

19. Since undertaking the representation of Plaintiffs, I, along with my co-counsel, have represented the Class in prosecuting the claims of the class, including discovery, mediation and the documentation of the settlement. These tasks have included, among other things, meeting with Plaintiffs and co-counsel who referred the case to me to gather the facts and analyze the potential claim; investigating the facts in support of the claims of Plaintiffs and researching the theories of recovery; developing a litigation plan; drafting the Complaint and Amended Complaint; communications with counsel for Defendant; preparing a case management report and attending a case management conference before the Court; propounding and engaging in discovery, including the review of documents; preparing for and taking the deposition of a corporate representative of Defendant; keeping Plaintiffs advised of the progress of the case, including face to face meetings with the client, and numerous phone calls and email exchanges with Plaintiffs; researching possible defenses and the law in Iowa, California and the Ninth Circuit; preparing for and attending the mediation; documenting the settlement agreement and documents in support of preliminary approval of the settlement; overseeing the implementation of the Notice program, communication with the Notice administrator; inquiries from Class members; conferences with co-counsel and Defendant's counsel relating to the issues of settlement; the Notice program and the approval of the settlement; development of a website to

provide information to the Class regarding the Settlement; legal research, drafting and preparation of the motion for attorneys' fees and costs and enhancement awards for the class representatives; preparation of a proposed order granting attorneys' fees and expenses and enhancement awards; communication with class members who contacted Class Counsel regarding the Settlement; reviewing documentation provided by Defendant's counsel with regard to inquiries raised by Class members; and conferences with the mediator and the notice administrator in order to assist in the timely filing of necessary declarations in support of the entry of the Final Judgment and Order in this cause.

20. The following is a compilation of professional time incurred by counsel representing Plaintiffs and the Class:¹

MORGAN & MORGAN COMPLEX LITIGATION GROUP

Attorney	Hours	Rate	Total	
John A. Yanchunis	925.50	\$900.00	\$832,500.00	
Tamra Givens	353.60	\$550.00	\$194,480.00	
			Lodestar	\$1,026,980.00
			Expenses	\$46,309.84
			Firm Total	\$1,073,289.84

CLAYEO C. ARNOLD, A PROFESSIONAL LAW CORPORATION

Attorney	Hours	Rate	Total	
Clayeo C. Arnold	117.69	\$600.00	\$70,630.00	
Christine Doyle	128	\$475.00	\$60,800.00	
Paralegal				
Connie McComb	12.2	\$110.00	\$1,342.00	
Jodie Danielson	16.3	\$110.00	\$1,793.00	
			Lodestar	\$134,565.00
			Expenses	\$2,365.16
			Firm Total	\$136,930.16

¹ In performing a lodestar crosscheck, the Court may rely on summaries submitted by the attorneys. *Ching v. Siemens Industry, Inc.*, No. 11-cv-04838, 2104 WL 2926210, at *7 (N.D. Cal. June 27, 2014); *Covillo v. Specialty's Cafe*, C-11-00594 DMR, 2014 WL 954516, at *6 (N.D. Cal. Mar. 6, 2014)

ZIES WIDERMANN & MALEK

Attorney	Hours	Rate	Total	
Mark R. Malek	106.7	\$326.52	\$34,840.00	
Paralegal				
Linda J. Marsden	1.50	\$125.00	\$187.50	
			Lodestar	\$35,027.50
			Expenses	\$37,666.58
			Firm Total	\$72,694.08

TOTAL FEES AND EXPENSES OF ALL PLAINTIFFS' COUNSEL

Lodestar	\$1,196,572.50
Costs	\$86,341.58

I assert that the attorneys' fees sought in the motion for attorneys' fee is reasonable and seeks fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the very substantial relief for Plaintiffs and the class.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of July, 2014 at Tampa, Florida.



JOHN A. YANCHUNIS, ESQ.

John A. Yanchunis Mr. Yanchunis practices in Morgan & Morgan's Complex Litigation Group and leads the National Consumer Class Action and False Claims Act sections. Prior to joining Morgan & Morgan in 2011, Mr. Yanchunis was a senior partner at James, Hoyer, Newcomer, Smiljanich & Yanchunis, P.A., where he managed the firm's nationwide consumer class action department. Before entering private practice in 1982, Mr. Yanchunis served for two years as a law clerk for the Honorable Carl O. Bue, Jr., a United States District Judge in Houston, Texas.

Mr. Yanchunis is highly regarded nationally for his extensive involvement in class action litigation. He has represented consumers in many privacy rights cases, beginning with a class case against Doubleclick, Inc. which was settled in 2002. He has served as co-lead counsel in the successful prosecution of the two largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, Case No. 03-61063-JEM, and *Fresco v. R.L. Polk*, Case 0:07-cv-60695-JEM (Southern District of Florida). These cases were filed against the world's largest data and information brokers, Experian, R.L. Polk, Acxiom, Reed Elsevier -which owns Lexis/Nexis, and others to protect the important privacy rights of consumers. Additionally, he was co-lead counsel in the successful resolution of the following privacy class actions: *Davis v Bank of America*, Case No. 05-80806-CIV (Southern District of Florida); *Kehoe v Fidelity Federal Bank and Trust*, (Southern District of Florida), *Pino v Warranty Acceptance Corporation*, Case No. 05-61576-CIV (Southern District of Florida) and *Burrows v Purchasing Power, LLC*, Case No. 1:12-CV (Southern District of Florida). In addition to class litigation against Target Corporation, he is lead counsel in pending privacy / data breach class litigation against the University of Miami (loss of medical and financial information), ChenMed, Inc. (loss of medical and financial information), and as class counsel in class cases against Michael's and Neiman Marcus (loss of financial information).

Before this Court, Mr. Yanchunis served as class counsel in a class action against Thrivent Financial, and along with Dick Lockridge and Ron Parry, he negotiated the settlement of the case which was approved by this Court in 2002. Retired Judge John Borg served as the mediator.

Additionally, he has served as lead, co-lead, or class counsel in numerous class actions in a wide variety of areas affecting consumers, including but not limited to anti-trust, defective products, life insurance, annuities and deceptive and unfair acts and practices. He has also handled complex litigation throughout his career, and recently litigated to a successful conclusion a claim for an employee against her employer under Sarbanes Oxley.

As a result of his experience in privacy and data breach litigation, he lectured on these areas at Target Data Security Breach Litigation – Harris Martin in March, 2014, Data Aggregation and Privacy on the Internet: The Blueprint to the Next Big Class Action Bubble, June, 2012, and has been invited to speak on the current status of data breach litigation at the Florida Bar Convention in June, 2014, and the ACI 9th Cyber & Data Risk Insurance conference in September, 2014.



Beginning in 2005, Mr. Yanchunis was assigned the role of lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators in the state of Florida) in their investigations of the insurance industry over issues concerning possible antitrust activity, other possible unlawful activity and activities regarding the payment of undisclosed compensation and commissions to insurance brokers. The litigation and these investigations resulted in millions of dollars in restitution being paid to Florida consumers, and resulted also in significant changes in the way commercial insurance is sold in the state of Florida and across the country.

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Mr. Yanchunis is actively involved in his profession. Because of his work in the area of consumer protection, he was appointed to his present position as Chair of The Florida Bar's Consumer Protection Law Committee. He was appointed by the Florida Supreme Court to serve as a member of The Florida Board of Bar Examiners (FBBE) where he served from 1997 to 2002, and continues to serve the FBBE as an Emeritus Member. He served on many subcommittees of the FBBE including the Committee on Character and Fitness, Chair of the Committee on Petitions, the Committee on Budget, the Committee on Questions, Chair of Committee on Abstracts of Practice, and Examination Grading.

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Chairperson (1998-1999), and the Task Force on the Unlicensed Practice of Law (1996). He has served as Chairperson (1995-1997), Vice Chairperson (1994-1995), and a member (1990-1994) of the Standing Committee on the Unlicensed Practice of Law. Mr. Yanchunis is a former member of the Standing Committee on Professionalism (1991-1993), the Continuing Legal Education Committee (1991-1992), the Public Relations Committee (1989-1990), and the Board of Governors of Young Lawyers Division of The Florida Bar, Sixth Circuit Representative (1988-1992). He was a member (1985) and the Chairperson (1986-1995) of the 6A Circuit Committee for the Unlicensed Practice of Law and the Chairperson of the 6B Circuit Committee (1995), and a member of the Florida Supreme Court's Judicial Management Council.

Mr. Yanchunis was a member of the St. Petersburg Bar Association and served on its Executive Committee (1996-1998 and 2003-2005). He was also a member of the St. Petersburg Law Library Board of Trustees (1997-1998), and of the Sixth Circuit Committee on Professionalism. He was a member of the Community Law Program of the St. Petersburg Bar Association.

In the community, Mr. Yanchunis served as a member of the Elder Law Board, College of Law and the Center for Excellence in Elder Law – Stetson University College of Law 003-2008), served as Vice President of the St. Vincent de Paul Society, St. Petersburg Downtown Conference (2001), was a National Council Member and Council Representative for the Boy Scouts of America (2005-2007), served in the West Central Family Council of the Boy Scouts of America as Council President (2005-2007), and was the Skyway District Chairman (2003-2004). Mr. Yanchunis presently serves as a member of the Executive Committee of the West Central Florida Council of the Boy Scouts of America. For his services as a Boy Scout Leader, Mr. Yanchunis received the Silver Beaver award in 2006 and the District Award of Merit for the Skyway District in 2005.

Mr. Yanchunis served on the Board of Directors of the FBI Tampa Bay Citizens' Academy Alumni Association, and completed Leadership St. Pete, sponsored by the St. Petersburg Chamber of Commerce.

Mr. Yanchunis is a member of The Florida Bar. Additionally, he is admitted to the United States Supreme Court, the United States Court of Appeals: Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits; the United States District Court: Southern, Northern, and Western Districts of Texas; the United States District Court: Eastern and Western Districts of Wisconsin; the United States District Court: Middle and Southern Districts of Florida, the United States District Court: Eastern District of Michigan, the United States District Court: Western District of Kentucky, the United States District Court: Northern District of Illinois, the United States District Court of Connecticut, and the United States District Court of Colorado.

Mr. Yanchunis has been honored with the prestigious "AV" rating by Martindale-Hubbell, the paramount national publication in the legal field. This is the highest rating attainable and is based upon evaluation by judges and other attorneys. In 2005, the Elder Law Section of the Florida Bar awarded his law firm its Chair's Honor Award for Mr. Yanchunis' handling with Jill Bowman of a Class Action against the state of Florida for violations of federal law in failing to deliver a benefit under Medicaid to appropriate 41,000 elderly residents of

nursing homes in Florida. He also received The Florida Bar Foundation's "President's Award for Excellence" in 2010. He has been continuously recognized as a Florida Super Lawyer. He is also the recipient of The Florida Bar Foundation President's Award for Excellence for his outstanding leadership in promoting the Foundation's mission to help provide legal assistance for the poor.

Mr. Yanchunis received his Bachelor's degree from the University of Florida in 1976, while at the University of Florida he was a member of Florida Blue Key and Omicron Delta Kappa. He received his Juris Doctor degree from the South Texas College of Law in 1980, where he graduated magna cum laude. During law school, Mr. Yanchunis was a member of the Order of the Lytae, and Associate Editor-in-Chief of the South Texas College of Law Journal.



Morgan & Morgan is the largest civil trial law firm in the United States representing plaintiffs in a wide variety of litigation clients nationwide. With over 200 lawyers, and over 1000 employees, Morgan & Morgan is well equipped to take on any company in America which has engaged in unlawful and harmful conduct. Morgan & Morgan's principal office is in Orlando, Florida, and has fully staffed offices throughout Florida and in Georgia, Mississippi, and Tennessee. Morgan & Morgan's experienced team of attorneys handles all personal injury claims, including car accidents, workers compensation, medical malpractice, nursing home abuse, product liability, slip and fall, denial of insurance benefits, Americans with Disabilities Act claims, employment discrimination claims, collection harassment, Social Security claims, and general negligence. In addition, Morgan & Morgan has a dedicated National Consumer Class Action and Mass Tort Department staffed with lawyers committed to representing large numbers of individuals in MDL proceedings and class action cases throughout the country. This department also handles False Claims Act litigation in State and Federal court. The members of this department are:

Scott Wm Weinstein Mr. Weinstein practices in Morgan & Morgan's Fort Myers, Florida office. Mr. Weinstein serves as the Managing Partner of the firm's National Consumer Class Action and Mass Tort Department, handling mass tort litigation, consumer class action litigation and complex commercial litigation nationwide. Mr. Weinstein has broad experience and is nationally known in the areas of consumer protection, pharmaceutical and medical device litigation, and cases involving food-borne illnesses. He has served in leadership positions in many consumer class actions in State and Federal Courts around the country as well as in Multi-District Litigation where he was appointed Co-Lead and Liaison Counsel in the case *In re: Denture Cream Products Liability Litigation*, MDL No. 2051 (Southern District of Florida) and to Plaintiffs' Steering Committees in numerous cases including *In re: Heparin Products Liability Litigation*, MDL No. 1953 (Northern District of Ohio); *In re: Digitek Products Liability Litigation*, MDL No 1968 (Southern District of West Virginia); *In re: Total Body Formula Products Liability Litigation*, MDL No. 1985 (Northern District of Alabama); *In re: Bayer Corp. Combination Aspirin Products Marketing and Sales Practices Litigation*, MDL No. 2023 (Eastern District of New York); *In re: Chinese-Manufactured Drywall Products Liability Litigation*, MDL No. 2047 (Eastern District of Louisiana), and most recently, *In re Black Farmers Discrimination Litigation*, Misc. No. 08-ML-0511-PLF (District Court for the District of Columbia).

Mr. Weinstein was educated at the University of Florida, earning a B.S. degree in 1982 and a Juris Doctorate degree in 1985. He was inducted into Florida Blue Key while at the University of Florida. He currently serves as a member of the Florida Bar Board of Governors. He is Past President of the Lee County (Florida) Bar Association, Past Chair of The Florida Bar Grievance Committee "A" Twentieth Judicial Circuit, a member of the Twentieth Judicial Circuit Peer Review Committee, and Past President of the Naples/Fort Myers Chapter, American Board of Trial Advocates ("ABOTA"). He is "AV" rated by Martindale-Hubbell and in 2009 and 2010 was selected as a member of the "Florida Legal Elite."

J. Andrew Meyer Mr. Meyer is located in Morgan & Morgan's office in Tampa, Florida. Mr. Meyer focuses his practice on consumer class action litigation. Prior to his joining Morgan & Morgan in 2009, Mr. Meyer was a partner at James, Hoyer, Newcomer & Smiljanich, a firm specializing in nationwide consumer class action cases. Prior to his association with the James Hoyer firm, Mr. Meyer was a partner with the law firm of Carlton Fields. Mr. Meyer also served as a law clerk to the Honorable Chris W. Altenbernd of the Florida Second District Court of Appeal.

Mr. Meyer served as Editor of the Corporate Counsel Newsletter, American Bar Association Section of Litigation, Corporate Counsel Committee from 2002 to 2004. He is Past Chair of the Florida Bar Unlicensed Practice of Law Committee "A" Sixth Judicial Circuit. Mr. Meyer has published several legal articles including co-authoring "Petitions for Extraordinary Relief," Chapter 17, A Defense Lawyer's Guide to Appellate Practice (DRI) (2004); "Extraordinary Writs," Florida Civil Practice Before Trial, Chapter 25, published by the Florida Bar (7th Ed. 2004); and "When It's Your Last Chance: Tips on Obtaining Discretionary Review," Vol. 27 No. 4, Litigation, 11 (Summer 2001).

Mr. Meyer was educated at the University of Florida, graduating in 1991 with a degree in Economics awarded with High Honors, and with a Juris Doctorate degree in 1995. While at the University of Florida, Mr. Meyer was inducted into Florida Blue Key and Phi Beta Kappa.

Mr. Meyer has prosecuted a number of putative nationwide class action cases on behalf of minorities, including cases alleging racial discrimination in the pricing of insurance and in the provision of mortgage loans in violation of the Fair Housing Act, as well as cases alleging discrimination in the employment context in violation of Title VII. Mr. Meyer been appointed by the court as counsel for plaintiffs in several nationwide consumer class action cases, including *DeHoyos v. Allstate Insurance Company*, Civil Action No. 5:01-1010 (Western District of Texas), *Healey v. Allianz Life Insurance Company*, Civil Action No. 2:05-8908 (Central District of California), and *Hill v. Countrywide*, Case No. A-0178441 (Texas 58th District Court, Jefferson County). Most recently, he has been appointed as class counsel in the case *In re Black Farmers Discrimination Litigation*, Misc. No. 08-ML-0511-PLF (District Court for the District of Columbia). Mr. Meyer is also a member of the Plaintiffs' Steering Committee in the case of *In Re: Apple iPhone 3G and 3GS "MMS" Marketing and Sales Practices Litigation*, MDL No. 2116 (Eastern District of Louisiana).

Michael Goetz Mr. Goetz practices in Morgan & Morgan's Tampa, Florida office. After graduating with honors from the University of Florida's College of Law in 1992, Mr. Goetz joined the international law firm of Holland & Knight LLP where his practice focused on the defense of claims involving product liability, medical negligence, and general liability, as well as complex commercial litigation matters. He became a Partner in the firm on January 1, 2000. In 2002, Mr. Goetz joined Morgan & Morgan, P.A., where his practice shifted to the prosecution of personal injury and wrongful death claims on behalf of individuals and consumer classes. He has represented hundreds of clients of the firm in cases involving automobile and premises liability, nursing home neglect and abuse, and environmental torts. Moreover, Mr. Goetz handles mass tort actions for the firm nationwide, including product liability claims involving recalled pharmaceuticals and medical devices. He was appointed to the Plaintiffs' Steering Committee in the case of *In Re: Total Body Formula Products Liability Litigation*, MDL No. 2051 (Northern District of Alabama) and he currently holds PSC subcommittee positions in a number of ongoing MDL's.

Mr. Goetz is "AV" rated by Martindale-Hubbell. In 2004, 2005, 2006, 2007, and 2008, he was designated by *Florida Trend's Magazine* as a "Florida Legal Elite" in the field of Civil Trial, and in 2007, 2008, 2009, and 2010, he was designated by *Law & Politics Magazine* as a Florida "Super Lawyer" in the field of personal injury.

Mr. Goetz was admitted to The Florida Bar in 1992. He is currently an active member in the American Association for Justice, The American Trial Lawyers Association, and the Hillsborough County Bar Association. Mr. Goetz earned his B.A. degree, *magna cum laude*, from Emory University in 1989, and was inducted into the Phi Beta Kappa Honor Society.

Frank M. Petosa Mr. Petosa is located in Morgan and Morgan's Davie office, heading the firm's South Florida personal injury practice and also working with the firm's National Consumer Class Action and Mass Tort Department. Mr. Petosa graduated from the University of Florida with a B.A. degree in 1989 and a Juris Doctorate degree with honors in 1992.

Mr. Petosa is a Past President of the Florida Justice Association and a Past Chair and Trustee of the Florida Justice Political Action Committee. In addition, he previously served as Chair of the Nursing Home and Auto Insurance Committees and Fundraising Chair for the Florida Justice Association. He also served as a member of the Florida Justice Association's Medical Liability and Arbitration Committees. Mr. Petosa has frequently lectured at Florida Justice Association and American Association for Justice seminars throughout the country on a variety of topics relating to medical malpractice, nursing home and personal injury litigation. He has also testified extensively before Florida Senate and House committees on a wide range of issues impacting the civil justice system and in opposition to tort reform. Mr. Petosa is also a Fellow of the American Bar Foundation, a member of the Southern Trial Lawyers Association and a member of the National Citizens Coalition for Nursing Home Reform. In 2009, Mr. Petosa was named a Florida Super Lawyer.

Pete Albanis Mr. Albanis has been a member of the firm's National Consumer Class Action and Mass Tort Department since March 2009. Mr. Albanis focuses his practice

on Chinese Drywall and defective denture cream litigation in addition to representing individuals in copyright and trademark infringement disputes. Prior to joining Morgan & Morgan, Mr. Albanis worked for seven years for a large commercial litigation firm in Chicago where he specialized in intellectual property, securities, and real estate litigation. Mr. Albanis graduated from The University of Chicago in 1999 and DePaul University College of Law in 2002. His office is in Fort Myers.

Tamra Givens Ms. Givens practices in the area of consumer class actions in Morgan and Morgan's Tampa office. Ms. Givens obtained her undergraduate degree in psychology from the University of Florida, with honors, in 2000, and earned her law degree from the University of Florida, cum laude, in 2003. During law school, Ms. Givens was a member of the Florida Law Review and published a case comment titled "Constitutional Law: Narrowing the Scope of the Fourth Amendment," 54 Fla. L. Rev. 567 (2002). Ms. Givens also completed an internship at the Florida Supreme Court where she served as an intern to Justice Harry Lee Anstead.

Prior to joining Morgan & Morgan, Ms. Givens was an associate at the law firm of James, Hoyer, Newcomer & Smiljanich, P.A., where she focused her practice on representing consumers in class action litigation. She is a former law clerk to the Honorable James D. Whittemore, United States District Judge, United States District Court for the Middle District of Florida.

Rachel L. Soffin Ms. Soffin practices in the area of consumer class actions in Morgan and Morgan's Tampa office. Ms. Soffin is originally from Detroit, Michigan. She moved to Florida in 1993 and later obtained her undergraduate degree in Finance, with honors, from The Florida State University. While in college, Ms. Soffin worked at the Florida Legislature for three sessions, where she worked closely with government leaders. Ms. Soffin's experience at the Florida Legislature further developed her interest in the law. Ms. Soffin earned her law degree from Stetson University College of Law, cum laude, where she served as a Digest Writer on the Stetson Law Review and was published multiple times in that capacity. In addition to being admitted to practice in the state courts of Florida and Georgia, Rachel is also admitted to practice in the United States District Court for the Middle District of Florida.

John A. Yanchunis Mr. Yanchunis practices in Morgan & Morgan's Tampa, Florida office. He works in the firm's National Consumer Class Action and Mass Tort Department, and focuses his practice on consumer class action litigation. Prior to joining Morgan & Morgan in 2011, Mr. Yanchunis was a senior partner at James, Hoyer, Newcomer & Smiljanich & Yanchunis, P.A., where he managed the firm's nationwide consumer class action department. Before entering private practice, Mr. Yanchunis was a law clerk for the Honorable Carl O. Bue, Jr., a United States District Judge in Houston, Texas.

Mr. Yanchunis is highly regarded nationally for his extensive involvement in class action cases. He has served as co-lead counsel in the successful prosecution of the two largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, Case No. 03-61063-JEM, and *Fresco v. R.L. Polk*, Case 0:07-cv-60695-JEM (Southern District of Florida).

Additionally, he has served as lead, co-lead, or class counsel in numerous class actions in a wide variety of areas affecting consumers, including but not limited to anti-trust, defective products, life insurance, annuities and unfair and deceptive acts and practices. He has also handled complex litigation throughout his career, and recently litigated to a successful conclusion a claim for an employee against her employer under Sarbanes Oxley.

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the United States District Court: Northern District of Illinois, the United States District Court of Connecticut, and the United States District Court of Colorado.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

)	
)	Case Number: C 13-2858
BOBBIE PACHECO DYER and PATRICIA)	
STALLWORTH, on behalf of themselves and)	
all others similarly situated,)	Complaint Filed: June 20, 2013
)	
Plaintiffs,)	
)	
vs.)	
)	
WELLS FARGO BANK, N.A.,)	
)	
Defendant.)	

DECLARATION OF GEOFFREY P. MILLER

I, GEOFFREY P. MILLER, declare:

1. I am over eighteen years of age, am competent to make this declaration, and have personal knowledge of the matters and facts recited herein.

Scope of Retention

2. I have been retained to review the facts and circumstances of this settlement with a view to analyzing the request for an award of attorneys' fees and expenses.

Qualifications

3. I am a *magna cum laude* graduate of Princeton University and a 1978 graduate of the Columbia Law, where I was Editor-in-Chief of the Law Review. I served as a law clerk to the Honorable Carl McGowan of the United States Court of Appeals for the District of Columbia Circuit and to the Honorable Byron R. White, Associate Justice of the United States Supreme Court. I was an attorney-adviser at the Office of Legal Counsel in the United States Department of Justice from 1980-1982. After practicing civil litigation with a Washington

1 D.C. law firm, I joined the faculty of the University of Chicago Law School in 1983, where I
 2 served as Kirkland & Ellis Professor and Associate Dean. I moved to New York University in
 3 1995 and thereafter was named the Stuyvesant P. Comfort Professor of Law. A copy of my
 4 resume is attached as Exhibit A.

5 4. I am a co-founder, former co-president, and board member of the Society for
 6 Empirical Legal Studies, an organization of researchers in the fields of law, economics,
 7 sociology, psychology, business, and political science whose work examines the statistical
 8 impact of legal rules.

9 5. I am one of HeinOnline Law Journal Library's top-100 most cited authors of all
 10 time.¹ A recent empirical study of scholarly influence lists me as one of America's top-50
 11 most relevant law professors.² In 2011 I was inducted as a Fellow in the American Academy
 12 of Arts and Sciences.

13 6. I have written extensively on class action and shareholders derivative cases. My
 14 articles on class action law have been cited by state and federal courts across the United
 15 States.³

16
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 18
 19
 20 ¹ See <http://www.heinonline.org/HOL/MostCitedAuthors?collection=journals>.

21 ² John Yoo & James Cleith Phillips, The Cite Stuff: Inventing a Better Law Faculty Relevance Measure, UC
 22 Berkeley Public Law Research Paper No. 2140944 (September 3, 2012), available at
 23 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2140944.

24 ³ *Eubank v. Pella Corp.*, ___ F.3d ___ (7th Cir. 2014); *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076 (7th Cir.
 25 2013); *Richardson v. L'Oreal USA, Inc.*, ___ F.Supp.2d ___ (D.D.C. 2013); *Boyd v. Coventry Health Care Inc.*,
 26 ___ F.R.D. ___ (D.Md. 2014); *Swift v. Direct Buy, Inc.*, 2013 WL 5770633 (N.D. Ind. 2013); *Scovil v. FedEx*
 27 *Ground Package System, Inc.*, 2014 WL 1057079 (D.Maine 2014); *Forsythe v. ESC Fund Management Co.*
 28 *(U.S.), Inc.*, 2013 WL 458373 (Del. Ch. 2013); *In re Processed Egg Products Antitrust Litigation*, 2012 WL
 2885924 (E.D.Pa. 2012); *Louisiana Municipal Police Employees' Retirement System v. Pyott*, ___ A.3d - ___,
 2012 WL 2087205 (Del.Ch. 2012); *Forsythe v. ESC Fund Management Co.*, 2012 WL 1655538 (Del.Ch. 2012);
Creative Montessori Learning Centers v. Ashford Gear LLC, 662 F.3d 913, (7th Cir. 2011); *In re Sauer-Danfoss*
Inc. Shareholders Litigation, 2011 WL 2519210 (Del.Ch. 2011); *Thorogood v. Sears, Roebuck and Co.*, 627 F.3d
 289 (7th Cir. 2010); *Ehrheart v. Verizon Wireless*, 609 F.3d 590 (3rd Cir. 2010); *In re Revlon, Inc. Shareholders*
Litigation, 990 A.2d 940 (Del.Ch. 2010); *Lubin v. Farmers Group, Inc.*, 2009 WL 3682602 (Tex.App. 2009);
Westgate Ford Truck Sales, Inc. v. Ford Motor Co., 2007 WL 2269471 (Ohio App. 2007); *Acosta v. Trans*
Union, LLC, 243 F.R.D. 377 (C.D.Cal. 2007); *Amalgamated Bank v. Yost*, 2005 WL 226117 (E.D.Pa. 2005);

7. A particular area of focus has been the empirical analysis of counsel fees in representative cases. My statistical studies on class action and shareholders derivative cases (co-authored with the late Professor Theodore Eisenberg of Cornell University) are a leading authority on that topic.⁴

Official Committee of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery, 330 F.3d 548 (3rd Cir. 2003); *Fruchter v. Florida Progress Corp.*, 2002 WL 1558220, (Fl. App. 2002); *In re Microstrategy, Inc.*, 172 F.Supp.2d 778 (E.D.Va. 2001); *In re Cendant Corp. Litigation*, 264 F.3d 201 (3rd Cir. 2001); *Scardelletti v. Debarr*, 265 F.3d 195 (4th Cir. 2001); *In re Auction Houses Antitrust Litigation*, 197 F.R.D. 71 (S.D.N.Y. 2000); *Lealao v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 97 Cal.Rptr.2d 797 (2000); *AUSA Life Ins. Co. v. Ernst and Young*, 206 F.3d 202 (2nd Cir. 2000); *Davis v. Carl Cannon Chevrolet-Olds, Inc.*, 182 F.3d 792 (11th Cir. 1999); *In re Baan Co. Securities Litigation*, 186 F.R.D. 214 D.D.C. 1999); *In re Quantum Health Resources, Inc.*, 962 F.Supp. 1254 (C.D. Cal. 1999); *Strong v. BellSouth Telecommunications, Inc.*, 173 F.R.D. 167 (W.D.La. 1997); *Howard v. Globe Life Ins. Co.*, 973 F.Supp. 1412 (N.D.Fla. 1996); *Kamilewicz v. Bank of Boston Corp.*, 100 F.3d 1348 (7th Cir. 1996); *In re Asbestos Litigation*, 90 F.3d 963 (5th Cir. 1996); *General Motors Corp. v. Bloyed*, 916 S.W.2d 949 (Tex. 1996); *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill.2d 235, 659 N.E.2d 909, 213 Ill.Dec. 563 (1995); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litigation*, 56 F.3d 295 (1st Cir. 1995); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768 (3rd Cir. 1995); *BTZ, Inc. v. Great Northern Nekoosa Corp.*, 47 F.3d 463 (1st Cir. 1995); *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304 (3rd Cir. 1993); *In re Oracle Securities Litigation*, 829 F.Supp. 1176 (N.D. Ca. 1993); *Gottlieb v. Wiles*, 150 F.R.D. 174 (D.Colo. 1993); *Durr v. Intercounty Title Co. of Illinois*, 826 F.Supp. 259 (N.D.Ill. 1993); *qad. inc. v. ALN Associates, Inc.*, 807 F.Supp. 465 (N.D.Ill. 1992); *Wesley v. General Motors Acceptance Corp.*, 1992 WL 57948 (N.D.Ill. 1992); *In re Verifone Securities Litigation*, 784 F.Supp. 1471 (N.D.Cal. 1992); *Davis v. Coopers & Lybrand*, 1991 WL 154460 (N.D.Ill. 1991).

⁴ See *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, ___ F.Supp.2d ___ (E.D.N.Y. 2014); *Haggart v. United States*, 116 Fed.Cl. 131 (U.S. Court of Claims 2014); *Richardson v. L'Oreal USA, Inc.*, ___ F.Supp.2d ___, 2013 WL 5941486 (D.D.C. 2013); *Swift v. Direct Buy, Inc.*, 2013 WL 5770633 (N.D. Ind. 2013); *Singleton v. Domino's Pizza, LLC*, ___ F.Supp.2d ___, 2013 WL 5506027 (D.Md. 2013); *In re Schering-Plough Corp. Enhance Securities Litigation*, 2013 WL 5505744 (D.N.J. 2013); *In re Vioxx Products Liability Litigation*, 2013 WL 5295707 (E.D.La. 2013); *Evans v. TIN, Inc.*, 2013 WL 4501061 (E.D.La. 2013) ("The data sets in the empirical study conducted by Professors Eisenberg and Miller are commonly used by district courts in this circuit"); *Silverman v. Motorola Solutions, Inc.*, ___ Fed.Appx. ___, 2013 WL 4082893 (7th Cir. 2013); *City of Pontiac General Employees' Retirement System v. Lockheed Martin Corp.*, ___ F.Supp.2d ___, 2013 WL 3796658 (S.D.N.Y. 2013); *Gortat v. Capala Bros.*, ___ F.Supp.2d ___, 2013 WL 2566622 (E.D.N.Y. 2013); *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387 (E.D.Tenn. 2013); *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (Or. 2013); *Heekin v. Anthem, Inc.*, 2012 WL 5878032 (S.D.Ind. 2012); *Espenscheid v. DirectSat USA, LLC*, 688 F.3d 872, 877 (7th Cir. 2012); *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011); *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739, 760 (11th Cir. 2004) (Judges Tjoflat and Birch, dissenting from denial of en banc review); *Strawn v. Farmers Ins. Co. of Oregon*, 353 Or. 210, 297 P.3d 439 (2013); *In re Amaranth Natural Gas Commodities Litig.*, No. 07-6377, 2012 U.S. Dist. LEXIS 82599, at *7 n.12 (S.D.N.Y. June 11, 2012); *Board of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09-686, 2012 U.S. Dist. LEXIS 79418, at *5 n.12 (S.D.N.Y. June 7, 2012); *Lane v. Page*, No. 06-1071, 2012 U.S. Dist. LEXIS 74273, at *161 (D.N.M. May 22, 2012); *Silverman v. Motorola, Inc.*, No. 07-4507, 2012 U.S. Dist. LEXIS 63477, at *15 (N.D. Ill. May 7, 2012); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, MDL No. 09-2046, 2012 U.S. Dist. LEXIS 37326, at *94, *116 (S.D. Tex. Mar. 20, 2012) ("The tables included in the [Eisenberg and Miller] study are good indicators of what the market would pay for class counsel's services because the tables show what attorneys have been paid in similar cases, and thus what class counsel could have expected when they decided to invest their resources in this

8. Based upon my education, experience and peer-reviewed writings, I believe I am qualified to opine on the comparability and reasonableness of Class Counsel's fee request as well as the request for incentive awards to the representative plaintiffs.

9. I am being compensated for my services in this matter on an hourly basis at my usual billing rate.

Materials Reviewed

10. In developing my opinions in this matter I have discussed this case with Class

case.”); *Walsh v. Popular, Inc.*, No. 09-1552, 2012 U.S. Dist. LEXIS 32991, at *24 (D.P.R. Mar. 12, 2012); *Am. Int'l Group, Inc. v. Ace Ina Holdings, Inc.*, No. 07-2898, 2012 U.S. Dist. LEXIS 25265, at *59 (N.D. Ill. Feb. 28, 2012); *Ebbert v. Nassau County*, 05-5445, 2011 U.S. Dist. LEXIS 150080, at *41 (E.D.N.Y. Dec. 22, 2011); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1336 n.4 (S.D. Fla. 2011); *Latorraca v. Centennial Techs., Inc.*, No. 97-10304, 2011 U.S. Dist. LEXIS 135435, at *11 (D. Mass. Nov. 22, 2011); *In re Ky. Grilled Chicken Coupon Mktg. & Sales Litig.*, 2011 WL 5599129 (N.D. Ill. Nov. 16, 2011); *Pavlik v. FDIC*, No. 10-816, 2011 U.S. Dist. LEXIS 126016, at *11 (N.D. Ill. Nov. 1, 2011); *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 461 (D.P.R. 2011); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011); *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 652 (E.D. La. 2010); *Velez v. Novartis Pharms Corp.*, 04-09194, 2010 U.S. Dist. LEXIS 125945, at *60-61 (S.D.N.Y. Nov. 30, 2010); *Braud v. Transport Serv. Co. of Illinois*, No. 05-1898, 2010 U.S. Dist. LEXIS 93433, at *27-30 (E.D. La. Aug. 17, 2010); *In re Lawnmower Engine Horsepower Mktg. & Sales Prac. Litig.*, 733 F. Supp. 2d 997, 1013 (E.D. Wis. 2010); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010); *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 541 (N.Y. Sup. Ct. 2010); *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010); *In re Marsh Erisa Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010); *Strawn v. Farmers Ins. Co.*, 226 P.3d 86, 99 (Or. Ct. App. 2010); *Hall v. Children's Place Retail Stores, Inc.*, 669 F. Supp. 2d 399, 403 n.35 (S.D.N.Y. 2009); *In re Trans Union Corp. Privacy Litig.*, No. 00-4729, 2009 U.S. Dist. LEXIS 116934, at *22-25, *39 (N.D. Ill. Dec. 9, 2009); *Loudermilk Serv., Inc. v. Marathon Petroleum Co. LLC*, 623 F. Supp. 2d 713, 724 (S.D. W.Va. 2009) (“Because the Eisenberg and Miller study was a far more comprehensive analysis of similar cases than this Court could hope to achieve in a reasonable time, the Court accepts their results as a benchmark on which to judge a reasonable fee in this case.”); *Rodriguez v. West Publ'g Co.*, 563 F.3d 948, 958 (9th Cir. 2009); *In re OCA, Inc. Sec. and Deriv. Litig.*, No. 05-2165, 2009 U.S. Dist. LEXIS 19210, at *63-66 (E.D. La. Mar. 2, 2009); *In re Enron Corp. Secs., Deriv. & ERISA Litig.*, 586 F. Supp. 2d 732, 800 (S.D. Tex. 2008); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 755 n.2 (S.D. Ohio 2007); *In re Tyco Int'l., Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 269 (D.N.H. 2007); *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 388 (C.D. Cal. 2007); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 853, 862-64, 866, 870 (E.D. La. 2007) (“[T]he Court will look to Eisenberg and Miller's data sets to determine an average percentage for cases of similar magnitude”); *Silberblatt v. Morgan Stanley*, 524 F. Supp. 2d 425, 435 n.6 (S.D.N.Y. 2007); *Fireside Bank v. Superior Court*, 155 P.3d 268, 281 n.7 (Cal. 2007); *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 38, 42 (D.N.H. 2006); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1209, 1211 (S.D. Fla. 2006); *In re Educ. Testing Serv. Praxis Principles of Learning and Teaching Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 629-32 (E.D. La. 2006); *Hicks v. Morgan Stanley*, No. 01-10071, 2005 U.S. Dist. LEXIS 24890, at *25 (S.D.N.Y. Oct. 24, 2005); *In re Lupron Mktg. and Sales Prac. Litig.*, 01-10861, 2005 U.S. Dist. LEXIS 17456, at *18 (D. Mass. Aug. 17, 2005); *In re HPL Techs., Inc. Sec. Litig.*, 366 F.Supp.2d 912, 914 (N.D. Cal. 2005); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 80-81 (D. Mass. 2005); *In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 286 (D. Mass. 2004).

1 Counsel and have reviewed the materials listed in Appendix B of this Declaration.

2 **Summary of Opinion**

3 11. My opinion is that Class Counsel's request for an award of attorneys' fees and
4 expenses is within the range of reason when judged against the standards articulated by the
5 Ninth Circuit as well as results in similar cases. The requested incentive awards for the
6 representative plaintiffs are appropriate in light of the unusual commitment and contribution
7 made by these individuals, as well as the demands and risks associated with being a
8 representative plaintiff in litigation such as this.
9

10 **The Litigation**

11 12. This case arises out of a dispute between Wells Fargo Bank, N.A. ("Defendant" or
12 "Wells Fargo") and certain of its employees regarding commissions owed on home mortgage
13 originations. Defendant allegedly paid 43 basis points for disputed loans whereas the
14 employees claim that they are entitled to as much as 63 basis points.
15

16 13. Defendant disputed Plaintiffs' interpretation of the contract, asserted that
17 Plaintiffs had failed to exhaust contractual remedies, and argued that it had full discretionary
18 authority to interpret the contracts in question.
19

20 14. Plaintiffs sought class action treatment for these claims. Defendant asserted that
21 class treatment was inappropriate because its affirmative defenses raised individualized issues
22 and because the contracts in question would be interpreted under the laws of multiple states.
23 Defendant also argued that the claims of one representative plaintiff were not typical of the
24 class due to the fact that the individual had continued to originate mortgages even after
25 attempting and failing to persuade Defendant to provide more in compensation.
26

27 15. Plaintiffs conducted discovery on class action issues and, together with
28

1 Defendant, engaged in mediation before an experienced professional mediator. After
2 vigorous arms-length bargaining the parties reached a settlement agreement which was
3 embodied in a memorandum of understanding.

4 16. The parties did not discuss the issues of incentive awards to class representatives
5 and attorneys' fees and expenses for counsel were not discussed until they had hammered out
6 an agreement on all essential terms of the merits settlement.
7

8 17. The parties thereafter drafted the final settlement agreement ("Agreement") which
9 is now before this Court.

10 The Settlement

11 18. The Agreement will create approximately a \$14.7 million cash fund for the
12 benefit of the class. Class members who do not opt out will be able to receive a proportionate
13 share of this fund, net of attorneys' fees, costs and expenses.
14

15 19. Class members need not file claim forms in order to obtain relief under this
16 settlement; the information needed to determine eligibility for relief is contained in
17 Defendant's records. For this reason, the Agreement will result in essentially all of the relief
18 (net of fees and expenses) being distributed to class members. None of the funds made
19 available under this settlement will revert to the Defendant, with the exception of funds that
20 would have otherwise been payable to Class members who exclude themselves from the
21 settlement. To date, only one Class member has submitted a request for exclusion.
22

23 20. In addition to funding the cash component of this settlement, Defendant agrees to
24 separately pay the employers' portion of payroll taxes otherwise due on the settlement
25 benefits.
26

27 21. Defendant also agrees to pay the costs of notice and settlement administration --
28

1 items that could otherwise be the responsibility of the class -- as well as incentive payments
2 for the two representative plaintiffs, as ordered by the Court, in an amount not to exceed
3 \$15,000 per plaintiff.

4 22. The Agreement contemplates that an award of attorneys' fees, costs and expenses
5 will be deducted from the settlement fund in an amount not to exceed 25% of the fund value.

6
7 Discussion

8 23. I am aware that approval of a class action settlement is a matter reserved for the
9 Court and that an expert's role is necessarily limited. I believe, however, that my knowledge
10 of class action litigation equips me to provide a perspective that may be of assistance in the
11 Court's deliberations.

12
13 24. Courts in the Ninth Circuit recognize 25% of the class recovery as a "benchmark"
14 for a reasonable attorneys' fee in class action cases. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d
15 1370, 1376 (9th Cir. 1993); *Paul, Johnson, Alston & Hunt v. Grawly*, 886 F.2d 268, 272 (9th
16 Cir. 1989). Counsel's request for 25% of the class recovery in the present case is essentially
17 identical to this benchmark figure.⁵

18
19 25. The requested fee is, accordingly, putatively reasonable under the law prevailing
20 in this Circuit. Any downward deviation from the benchmark would be appropriate only in
21 the presence of special circumstances calling for a lower award. No such circumstances are
22 present here.

23
24 26. In evaluating whether any basis exists for a downward adjustment, I have taken
25 account of the following facts and circumstances:

26 (a) Unlike many settlements, where class members may forfeit their right to relief

27
28 ⁵ The request is actually somewhat below the benchmark because the request includes payments for costs and expenses as well as counsel fees.

1 because they fail to file a claim, all class members who do not opt out will receive the class
2 benefits without taking any affirmative steps to participate.

3 (b) Nearly the entire amount of the settlement fund will be used either to fund the class
4 recovery or to pay items that would otherwise be the responsibility of the class, such as
5 attorneys' fees. Only funds that would have otherwise been payable to Class members who
6 exclude themselves from the settlement will revert to the Defendant. To date, only one Class
7 member has submitted a request for exclusion.
8

9 (c) Unlike many class action settlements, the Agreement does not include items of
10 uncertain (and possibly inflated) value, such as consumer coupons or unquantified injunctive
11 relief.
12

13 (d) The Agreement is the product of vigorous bargaining between the parties. The
14 adversarial nature of the process helps to ensure that counsel achieved real and substantial
15 value for the class and also makes it clear that there was no possibility of collusion between
16 Defendant and class counsel.⁶
17

18 (e) This case posed significant risks for class counsel. These included the risk that the
19 court would agree with Defendant's interpretation of the contract or conclude that Plaintiffs
20 needed to exhaust their contractual remedies. Class certification also posed a risk: given that
21 many of the contracts at issue did not contain choice of law clauses, it was possible that the
22 laws of numerous states would be deemed to control the claims of different class members,
23 raising doubts about the manageability of the case on a class-wide basis.
24

25 (f) Plaintiffs' counsel adequately researched the facts and law of this case and, assisted
26

27 ⁶ In this respect, I am impressed by the Declaration of mediator David Rotman, who described the settlement as
28 "the product of extensive, hard-fought, and arms-length adversarial negotiations between the parties," and
observed that "I never sensed any collusiveness between the parties or their respective counsel." Rotman
Declaration ¶ 6.

by information learned through discovery and voluntary disclosures by Defendant, as well as confirmatory discovery taken to verify facts disclosed to Plaintiffs, developed a record sufficient to support the conclusion that the settlement was adequate and in the best interests of the class.

(g) Class counsel, including lead counsel John Yanchunis, are highly qualified and capable attorneys who worked effectively to advocate for an excellent result for their clients.

(h) Counsel commendably followed “best practice” of settlement negotiation by delaying any discussion of either the attorneys’ fee request or the proposed incentive award until after reaching an agreement in principle on the merits relief.

27. Based on the foregoing, it is my opinion that there are no facts and circumstances of this case that suggest the need for a downward departure from the “benchmark” 25% award.⁷ Accordingly, it is my opinion that the requested 25% award is reasonable and appropriate under the standards established in this Circuit.

28. A 25% fee award is also consistent with awards in class action cases throughout the country.

29. A large-scale study on fees is found in the March-April 2003 edition of *Class Action Reports* (CAR), which contains data on cases extending back to 1974. Table 1 reports the CAR data broken down by type of case:

Table 1: Fee-Award Percent Summary by Case Category

<i>Category</i>	<i>Mean</i>	<i>Median</i>	<i>Std. Dev.</i>	<i>Number</i>
Antitrust	26.8	28.4	7.1	31
Consumer	24.3	25.0	8.5	48
Civil rights	23.5	25.5	11.0	4

⁷ If anything, the facts and circumstances recounted above might support an upward adjustment from the benchmark, even though counsel is not requesting such an adjustment in the present case.

<i>Category</i>	<i>Mean</i>	<i>Median</i>	<i>Std. Dev.</i>	<i>Number</i>
Derivative	33.3	33.3	—	1
Employment	25.5	25.7	7.6	17
Environmental	30.5	30.5	7.8	2
Government regulation	29.7	29.7	—	1
Labor/wage/pension	22.9	26.4	10.6	30
Mass tort	17.6	17.0	6.9	8
Securities	27.9	30.0	7.4	483
Taxpayer	3.5	3.5	—	1
Utilities	20.3	20.3	1.7	2
Social welfare/entitlements	16.9	16.9	4.4	2
Total	27.0	30.0	7.9	630

Sources: Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 *Journal of Empirical Legal Studies* (2003), analyzing data from Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., Attorney Fee Awards in Common Fund Class Actions, 24 *Class Action Rep.* 169 (2003).

30. Table 1 discloses that the median fee across the range of cases in the study was 30%, and that the median fee award in consumer cases was 25%. The requested percentage fee of 25% is clearly reasonable in light of this study.

31. More recent empirical studies confirm that attorney's fees have not decreased since the time the foregoing studies were conducted. For example, in a study of fees in settled securities fraud litigation, Eisenberg, Miller and Perino found that the mean and median fees across all circuits in the years prior to 2000 was 27.63% and 30%, while the mean and median award in the years 2000-2007 was 26.06% and 26.94% – results consistent with the fee requested in the present case. Theodore Eisenberg, Geoffrey Miller & Michael Perino, Empirical Research on Decision-Making in the Federal Courts: A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions After *Goldberger v. Integrated Resources, Inc.*, 29 Washington University Journal of Law & Policy 5-35 (2009).

32. The requested fee is consistent with the results of Eisenberg and Miller's large

1 scale study of fees in all published class action settlements between 1993 and 2008. These
2 authors find that the median fee in employment class actions was 25% and the mean fee was
3 27%. The requested fee of 25% is clearly consistent with this finding. Theodore Eisenberg
4 and Geoffrey Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008, 7
5 Journal of Empirical Legal Studies 248 (2010).

6
7 33. The requested fee is also consistent with Eisenberg and Miller's data on fee
8 awards in the Ninth Circuit alone. For the period 1993-2008, both the median and mean fee
9 awards in the Ninth Circuit were 25% of the class recovery – exactly the award requested in
10 the present case. Id.

11
12 34. The reasonableness of the requested fee is confirmed by a recent study by
13 Professor Brian Fitzpatrick of Vanderbilt University. Based on a study of all federal class
14 action settlements in 2006-2007, Professor Fitzpatrick finds that the mean attorneys' fee for
15 consumer class action cases was 23.5% of the class recovery and the median fee was 24.6% of
16 the recovery. Brian Fitzpatrick, An Empirical Study of Class Action Settlements and Their
17 Fee Awards, 7 Journal of Empirical Legal Studies 811 (2010). The requested award of 25%
18 of the class recovery is within the range of reason when judged against Fitzpatrick's study.
19

20 35. In short, the extensive empirical research on attorneys' fees on common fund
21 cases overwhelmingly supports the reasonableness of the requested fee of 25% of the \$14.7
22 million common fund.
23

24 36. I turn now to the proposed incentive awards for the representative plaintiffs. In
25 my opinion, based on my extensive research into incentive awards in courts around the
26 country, these proposed awards are appropriate in light of the services provided by the
27 representative plaintiffs.
28

1 37. Unlike some class actions, the representative plaintiffs in this case were far more
2 than figureheads or “keys to the courthouse door.” Each plaintiff incurred substantial
3 inconvenience and expended many hours assisting in the litigation. Plaintiff Bobbie Dyer
4 assisted in the preparation of documentation, advised counsel regarding the nature of the case,
5 and attended a deposition as well as several days of travel to attend the mediation in San
6 Francisco. Dyer Declaration ¶ 6. Overall, she expended more than 200 hours working on this
7 case. Id. Representative plaintiff Patricia Stallworth also attended a deposition as well as the
8 mediation in San Francisco, reviewed case documents, participated in settlement
9 deliberations, and helped to educate counsel on many aspects of the case from her personal
10 experience. Stallworth Declaration ¶¶ 7-9.
11

12
13 38. In litigation such as this one, involving a relatively small number of class
14 members (8,695 people) with relatively substantial claims, it is important that the
15 representative plaintiffs assume a leadership role in order to encourage other class members to
16 “buy in” to the litigation. Dyer and Stallworth provided this service to the class.
17

18 39. Also of note is the fact that both Dyer and Stallworth have spent their careers in
19 the mortgage business and continue to be employed in that field. People who serve as
20 representative plaintiffs in the relatively small world of mortgage origination face possible
21 risks of retaliation, especially when the adversary is a powerful financial institution such as
22 Wells Fargo. While there is no evidence that either representative plaintiff has suffered
23 retaliation for their participation in this case to date, they did not know this at the time they
24 agreed to represent the class. It is appropriate that any incentive award take account of this
25 risk.
26


27 40. The unusual and admirable commitment these representative plaintiffs made to
28

1 the case, their substantial expenditure of time and energy, and their willingness to stand up to
2 a large and powerful adversary, all counsel for an award that suitably compensates them for
3 their services to the class and incentivizes representative plaintiffs to come forward in similar
4 cases in the future. The requested incentive award of \$15,000 per representative plaintiff is
5 appropriate under the facts and circumstances of this case.
6

7 **Conclusion**

8 41. For the reasons set forth above, it is my opinion that an award for fees and
9 expenses equal to 25% of the common fund is consistent with the standards outlined by the
10 Ninth Circuit and well within the range of reason when judged against awards in similar
11 cases. The suggested incentive awards of \$15,000 per representative plaintiff are appropriate
12 in light of the substantial contribution that each made to the success of this litigation.
13

14 Dated this 9th day of July, 2014:

15
16 
17 Geoffrey P. Miller
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28

Appendix A: Resume

GEOFFREY P. MILLER

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New York, New York 10012
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Work Experience

New York University Law School (1995-present)
Stuyvesant P. Comfort Professor of Law
Director, NYU Center for the Study of Central Banks and Financial Institutions (1994-present)
Co-Director, NYU Center for Law, Economics and Organization (2006-present)
Co-Founder and Co-President, Society for Empirical Legal Studies (2006-2007)
Chair, Academic Personnel Committee (1999-2000; 2004-2006)
Chair, Promotions and Tenure Committee (2007-2009)

University of Chicago Law School (1983-1995)
Kirkland & Ellis Professor (1989-1995)
Editor, Journal of Legal Studies (1989-1995)
Director, Program in Law and Economics (1994-1995)
Director, Legal Theory Workshop (1989-1993)
Associate Dean (1987-1989)
Professor of Law (1987-1989)
Assistant Professor of Law (1983-1987)

Distinguished Visiting Professor, Vanderbilt Law School 2014
Visiting Professor, University of Frankfurt 2013
Faculty Member, Study Center Gerzensee, Switzerland, Spring 2012
Visiting Lecturer, University of Genoa Department of Law, 2011
Visiting Lecturer, Collegio Carlo Alberto (Moncalieri Italy), 2011, 2013, 2014
Visiting Scholar, European University Institute, Florence Italy, Fall/Winter 2010
Visiting Chair on Private Actors and Globalisation, Hague Institute for the Internationalisation of Law, Fall/Winter 2010
Robert B. and Candace J. Haas Visiting Professor of Law, Harvard Law School, Fall 2009
Max Schmidheiny Guest Professor, University of St. Gallen, Switzerland Summer 2009

Faculty Member, NYU-NUS in Singapore, 2009, 2011, 2014
 Fresco Endowed Professor of Law, University of Genoa, Italy, Summer 2008,
 Spring 2009, Summer 2010
 Visiting Scholar, University of Minnesota Law School, Spring 2008
 Visiting Lecturer, University of Bolzano, Italy, Summer 2007
 Commerzbank Visiting Professor, Institute for Law & Finance, University of
 Frankfurt, Germany, Summer 2004, Summer 2005, Summer 2010
 Visiting Professor, Columbia Law School, Fall 2001
 Visiting Professor, University of Sydney, Australia, Summer 2002; Summer 2006;
 Spring 2009
 Zaeslin Visiting Professor, University of Basel, Switzerland, Summer 2001, 2002, 2003,
 2004, 2005, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014
 Visiting Scholar, CentER for Economic Research, Tilburg, Holland, Summer 1996
 John M. Olin Visiting Scholar, Cornell University Law School, Summer 1992,
 Spring 1996; Winter 1997, Summer 2005, Spring 2008, Spring 2009, Spring 2010
 Visiting Scholar, Bank of Japan, Spring 1995
 Visiting Professor, New York University Law School, Fall 1994
 Visiting Scholar, New York University Law School, Fall 1993
 Simpson Grierson Butler White Visiting Professor, University of Auckland,
 New Zealand, Summer 1993

Associate, Ennis, Friedman, Bersoff & Ewing
 Washington, D.C. (1982-83)

Attorney Adviser, Office of Legal Counsel
 U.S. Department of Justice (1980-82)

Clerk, Hon. Byron R. White
 Supreme Court of the United States (1979-80)

Clerk, Hon. Carl McGowan
 U.S. Court of Appeals, District of Columbia (1978-79)

Corporate Service

Member of the Board of Directors, State Farm Bank (2010) – board and committee service for
 nontraditional thrift institution with approximately \$15 billion in assets.

Education

Columbia Law School, J.D. (1978)
 Editor-in-Chief, Columbia Law Review (1977-78)
 Princeton University, A.B. *magna cum laude* (1973)

Publications

Books

The Law of Governance, Risk Management and Compliance (Wolters Kluwer Law and Business 2014)

The Governance of International Banking (co-authored with Fabrizio Cafaggi, with Tiago Andreotti, Maciej Borowicz, Agnieszka Janczuk, Eugenia Macchiavello and Paolo Saguato) (Edward Elgar 2013)

Ways of a King: Legal and Political Ideas in the Bible (Vandenhoeck & Ruprecht 2011)

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28 J as Constitutionalist: A Legal-Economic Interpretation of Exodus 17:8-16 and Related Texts,
70 Chicago-Kent Law Review 1829 (1995)

Verbal Feud in the Hebrew Bible: Judges 3:12-30 and 19-21, 55 Journal of Near Eastern
Studies 105 (1995)

Contracts of Genesis, 22 Journal of Legal Studies 15-45 (1993)

Ritual and Regulation: A Legal-Economic Analysis of Selected Biblical Texts, 22 Journal of Legal Studies 477 (1993)

Law and Society

Parental Bonding and the Design of Child Support Obligations, in William S. Comanor, ed., The Law and Economics of Child Support Payments 210-240 (Edward Elgar 2004)

The Legal Function of Ritual, 80 Chicago-Kent Law Review 1181 (2005)

Handicapped Parking, 29 Hofstra Law Review 81 (2000) (with Lori S. Singer)

Custody and Couvade: The Importance of Paternal Bonding in the Law of Family Relations, 33 Indiana Law Review 691 (2000)

Norm Enforcement in the Public Sphere: The Case of Handicapped Parking, 71 George Washington Law Review 895-933 (2004)

Norms and Interests, 32 Hofstra Law Review 637 (2003)

Female Genital Mutilation: A Cultural-Legal Analysis (manuscript)

Circumcision: A Legal-Cultural Analysis, 9 Virginia Journal of Social Policy and the Law 498-585 (2002), pre-published as New York University Public Law and Legal Theory Working Paper Series, Working Paper 5 (2000)

Law, Pollution, and the Management of Social Anxiety, 7 Michigan Women's Law Journal 221-289 (2001)

Other:

2. Richard Posner, 61 N.Y.U. Annual Survey of American Law 13 (2004)

Introduction: The Law and Economics of Risk, 19 Journal of Legal Studies 531 (1990) (with Richard A. Epstein)

Law School Curriculum: A Reply to Kennedy, 14 Seton Hall Law Review 1077 (1984) (under pen name of Chris Langdell)

Book Reviews

Defusing the Banks' Financial Time Bomb, BusinessWeek (Mar. 11, 2010) (review of Robert

Pozen, Too Big to Save? How to Fix the U.S. Financial System

Love & Joy: Law, Language and Religion in Ancient Israel, by Yochanan Muffs, 58 Journal of Near Eastern Studies 144-45 (1999)

Jesus and the Jews: The Pharisaic Tradition in John; The Trial Of Jesus; Jesus And The Law, by Alan Watson, 1 Edinburgh Law Review 273 (1997)

No Contest: Corporate Lawyers and the Perversion of Justice in America, by Ralph Nader and Wesley J. Smith, Washington Post (October 13, 1996)

The Rise and Fall of the Classical Corporation: Hovenkamp's Enterprise and American Law: 1836-1937, 59 University of Chicago Law Review 1677 (1993)

Property Rights and the Constitution: A Review of James W. Ely, Jr.'s The Guardian of Every Other Right, 37 American Journal of Legal History 378 (1993)

Anatomy of A Disaster: Why Bank Regulation Failed, 86 Northwestern University Law Review 742 (1992)

The Glittering Eye of Law, 84 Michigan Law Review 1901 (1986)

A Rhetoric of Law, 52 University of Chicago Law Review 247 (1985)

Major Lectures

Revelation as a Source of Legal Authority (Keynote Address, Conference on Religious Liberty, Touro Law School 2013)

Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Fresco Chair Lectures in Law and Finance, June 2010)

A Simple Theory of Takeover Regulation in the United States and Europe; Intellectual Hazard (Commerzbank Lectures, University of Frankfurt, May 2010)

The European Union's Takeover Directive and Its Implementation in Italy (University of Rome III, 2008)

Catastrophic Financial Failures: Enron, HIH and More (Ross Parsons Lecture, Sydney, Australia, 2002)

Das Kapital: Solvency Regulation of the American Business Enterprise (Coase Lecture, University of Chicago Law School, 1993)

Banking in the Theory of Finance; The Simple Economics of Litigation and Settlement; The Economic Structure of Corporation Law (University of Auckland, New Zealand, 1993)

Journal Referee Reports

American Law and Economics Review
Journal of Legal Studies
Journal of Law, Economics and Organization
Review of Law and Economics

Conferences Organized or Sponsored

ETH-NYU Law and Banking Conference 2014 (New York, New York)

Global Economic Policy Forum (New York 2013) (keynote speakers included Federal Reserve Bank of New York President William Dudley and former Governor of the Bank of England Baron King of Lothbury).

The Good Bank Debate (New York 2013) (co-sponsored with Mazars)

ETH-NYU Law and Banking Conference 2013 (Zurich, Switzerland)

ETH-NYU Law and Banking Conference 2012 (New York, New York)

ETH-NYU Law and Banking Conference 2011 (Florence, Italy)

NYU Global Economic Policy Forum 2012

NYU Global Economic Policy Forum 2010

Judicial Dialogue on Mass Litigation, Florence Italy, October 15-16, 2010 (co-organizer of conference co-sponsored by NYU Law School, the American Law Institute, and the European University Institute)

Finlawmetrics 2010: Central Banking, Regulation & Supervision after the Financial Crisis (co-sponsor and member of steering committee)

Finlawmetrics 2009: After The Big Bang: Reshaping Central Banking, Regulation and Supervision (Milan, Italy, Spring 2009) (co-sponsor and member of steering committee)

NYU Global Economic Policy Forum 2009: The Future of Regulation and Capital Markets (November 5, 2009) (co-organized with Professor Alan Rechtschaffen and with the NYU Law School Alumni Association)

Third Annual Conference on Empirical Legal Studies (Cornell University, Ithaca, New York, Fall 2008) (co-organizer)

1 NYU Global Economic Policy Forum (April 14, 2009). Major conference on economic
2 policy. Keynote address by Jean Claude Trichet, President of the European Central Bank;
3 presentations by Tevi Troy, Deputy Secretary of the Department of Health and Human
4 Services; Kevin Warsh, Member of the Board of Governors of the Federal Reserve System;
5 and Donald B. Marron, Jr., Senior Economic Advisor, President's Council of Economic
6 Advisors. Co-organized with Professor Alan Rechtschaffen.

7
8 Second Annual Conference on Empirical Legal Studies (New York, New York, November
9 10-11, 2007). Major conference (425 participants) exploring all aspects of the empirical study
10 of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael
11 Heise.

12
13 NYU Global Economic Policy Forum (April 11, 2007). Major conference on economic
14 policy. Keynote address by Ben S. Bernanke, Chairman of the Board of Governors of the
15 Federal Reserve System; presentations by Stanley Druckenmiller, Founder of Dusquesne
16 Capital, Tevi Troy, Domestic Policy Advisor for President George W. Bush, and Jeffrey
17 Rosen, Vice Chair of Lazard. Co-organized with Professor Alan Rechtschaffen.

18
19 First Annual Conference on Empirical Legal Studies (Austin, Texas, October 2006). Major
20 conference exploring all aspects of the empirical study of law. Co-organized with Jennifer
21 Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

22
23 Conference on Legal Aspects of the International Activities of Central Banks, Lima Peru,
24 October 1997. This conference, co-sponsored by the central bank of Peru, brought together
25 leaders in the legal and economic issues facing central banks in the management of their
26 external reserves.

27
28 Conference on the Governance of Institutional Investors (New York, New York, February 14,
1997). This conference, sponsored by the NYU Stern School of Business Salomon Center in
association with the New York University Law School Center for the Study of Central Banks,
brought together top executives, attorneys, scholars and others interested in the management
and organization, both economic and legal, of the nation's large institutional investors,
including its mutual fund industry.

Conference on Bank Mergers and Acquisitions (New York, New York, October 11, 1996).
This conference, sponsored by the NYU Stern School of Business Salomon Center in
association with the New York University Law School's Center for the Study of Central
Banks, brought together leading academics, lawyers, and investment bankers to discuss some
of the broader implications of bank mergers and acquisitions. Co-organizer of this conference
was Professor Yakov Amihud of the Stern School's Finance Department.

Conference in Central Banks in Latin America (Bogota, Colombia, February, 1996). This
conference, co-sponsored by the central bank of Colombia with technical assistance from the
Legal Affairs Department of the International Monetary Fund, brought together leaders of
Latin American central banks, the international financial community, and scholars from a
variety of disciplines, to discuss issues related to the independence of central banks and

1 economic development.

2 Conference on Central Banks in Asia (Shanghai, China, October, 1995). This conference, co-
3 sponsored with KPMG-Peat Marwick, brought together leaders from commercial banks,
4 investment banks, and industrial firms, as well as central bankers, to discuss Asian central
5 banks to address issues such as the proposed law granting a degree of independence to the
6 central bank of China.

7 Conference on Ancient Law (Berkeley, California, March 1995). This conference, organized
8 with Professors James Lindgren of Chicago-Kent Law School and Laurent Mayali of the
9 University of California at Berkeley Law School, brought together important figures from a
10 variety of disciplines interested in Ancient Law.

11 Conference on Central Banks in Eastern Europe and the Newly Independent States (Chicago,
12 Illinois, April 1994). This conference brought together the Prime Minister of Estonia, three
13 present or former Ministers of Finance of Eastern European states (including Boris Fyoderov,
14 former Finance Minister of the Russian Republic), the heads of the central banks of eleven
15 nations in Eastern Europe and the Newly Independent States, together with a wide variety of
16 highly-placed officials from these countries and from the west, to discuss issues related to the
17 independence of central banks and economic development.

18 Professional Memberships and Positions

19 New York State Bar

20 District of Columbia Bar

21 American Bar Association

22 American Law Institute (1988-1996)

23 Member, Paolo Baffi Centre Scientific Advisory Board, Milan, Italy (2008- present)

24 Member, International Academic Council, University of St. Gallen,

25 Switzerland (2004-present)

26 Chairman, Section on Business Associations, American Association of Law
27 Schools (1995)

28 Member of the Board of Directors, American Law and Economics Association
(1995-1998)

Member of the Foreign Advisory Committee, Latin American Law and
Economics Association (1995-2000)

Member of the Foreign Advisory Board, Universidad Torcuato Di Tella School of Law,
Buenos Aires, Argentina (1992-1999)

Member of the Editorial Board, Supreme Court Economic Review

Member of the Editorial Board, The Independent Review

Member of the Advisory Board, Yearbook of International Financial and
Economic Law

Member of the Advisory Board, University of Hong Kong Faculty of Law Asian Institute
of International Financial Law (2001-present)

Member of the Advisory Board, LSN Comparative Law Abstracts

Courses

Legal Profession (1985-93; 1996-98; 2003-2007; 2013 (scheduled))
 The Crisis of 2008 (2009, 2010)
 Reading Class: Restructuring Finance (2009)
 Property (1986-87)
 Corporations (1985-88; 1991-93; 1997-2000; 2005; 2008; 2012)
 Seminar on Separation of Powers (1985, 1987)
 Civil Procedure (1983-84; 2004-2005; 2011; 2013)
 Federal Regulation of Banking (1983, 1989-93; 1995-97; 2003, 2006-2010; 2012)
 Law and Business of Banking (2012; with Gerald Rosenfeld)
 Land Development (1984-85)
 Securities Law (1990-91)
 Workshop in Legal Theory (1989-91)
 Seminar on Financial Institutions (1992-93 (with Merton Miller); 1996-97)
 Ethics in Class Action Practice (Continuing Legal Education Seminar 2002-2005)
 Law and Economics (University of Basel, Switzerland 2005, 2007, 2008; 2009; 2010; 2011; 2012)
 Advanced Seminar on Law and Economics (University of Genoa, Italy 2008)
 Banking and the Financial Crisis (University of Genoa, Italy 2009)
 Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Italy, 2010)
 International Banking (University of Sydney, Australia, 2002, 2006)
 Introduction to Banking Law (University of Basel, Switzerland 2001, 2002, 2003, 2004, 2009, 2010; 2011; 2012)
 Banking in the Theory of Finance (University of Frankfurt, Germany 2004, 2005)
 Banking Regulation in Crisis (University of Frankfurt, Germany, 2010)
 Banking: Law and Economics Issues after the Financial Crisis (Study Center Gerzensee, 2012)

Litigation and Alternative Dispute Resolution

Brief and Reply Brief for Plaintiff-Appellant, Glancy v. Taubman Centers, Inc. No. 03-1609 (6th Cir. 2003).

Amicus Brief for American Bankers Association, et al., In Re: Visa Check/Mastermoney Antitrust Litigation, 280 F.3d 124 (2d Cir. 2001) (of counsel)

Briefed and argued Moran v. Household Finance Corp. (the "Poison Pill" case) in the Supreme Court of Delaware (1985)

Briefed cases in the U.S. Supreme Court, U.S. Court of Appeals, U.S. District Courts, and state trial and appellate courts. Conducted depositions and other pretrial discovery. (1982-1983)

Briefed and argued Hodges v. Metts, 676 F.2d 1133 (6th Cir. 1982), on behalf of the United States.

Conducted trial of American Psychological Association v. Birch Tree Press, et al. (U.S. District Court, Washington, D.C. 1983).

Deposit Insurance for Thailand. Prepared a draft deposit insurance law for Thailand, at the request of the International Monetary Fund (1999)

Schatz v. Blanchard. Neutral arbitrator in a commercial arbitration (2000)

Expert Witness Testimony (past five years)

EM Ltd. and NML Capital, Ltd. v. The Republic of Argentina and Banco de La Nación Argentina, No. 08 Civ 7974 (TPG), United States District Court for the Southern District of New York (declaration and responsive declaration on whether a state-owned financial institution is an alter-ego of the government) (2009); second supplemental declaration (2010)

Tucker v. Scrushy, et al., Nos. CIV-02-5212, CV 03-3522, CV 03-2023, CV 03-2420, CV 98-6592, Circuit Court of Jefferson County, Alabama, 2008 (affidavit on fees) (2009)

In Re: 2007 Wildfire Class Litigation, Master Case No. 2008-00093086, Superior Court of California, County of San Diego (2009) (affidavit and deposition on certification)

In re: Columbia Hospital for Women Medical Center, Inc., Case No. 09-00010 (Teel, J.), United States Bankruptcy Court for the District of Columbia (declaration on fees) (2009)

In re Vioxx Products Liability Litigation, Civil Action No. 2:05-MD-01657-EEF-DEK, United States District Court, Eastern District of Louisiana (affidavit on fee-capping order) (2009)

State of Missouri v. SBC Communications, Inc., No. No. 044-02645, Circuit Court of the City of St. Louis, Missouri (2009) (affidavit on fees)

Alexander v. Nationwide Mutual Insurance Co., No. CV-2009-120-3, Circuit Court of Miller County, Arkansas (2009) (affidavit on fees)

Peterman v. North American Company for Life and Health Insurance, Case No. BC357194, Superior Court of the State of California, County of Los Angeles (2009) (declaration on fees)

Holman v. Student Loan Xpress, Inc., Case No. 8:08-cv-00305-SDM-MAP (Middle District of Florida, Tampa Division) (2009) (declaration on fees)

Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase, No. 09-00686 (Southern District of New York) (2010) (declaration on class certification)

1 Polion v. Wal-Mart Stores, Inc., No. 01-03645 (Superior Court of Massachusetts,
2 Commonwealth of Massachusetts) (2010) (declaration on fees; supplemental declaration on
3 fees and motion to strike counsel)

4 In re MoneyGram International, Inc. Securities Litigation, No. 08-883 (DSD/JJG),
5 United States District Court, District of Minnesota (2010) (declaration on fees)

6 Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A.,
7 No. 09-cv-00686 (SAS) (DF), United States District Court for the Southern District of New
8 York (2010) (declaration and deposition on certification)

9 Coffey v. Freeport-McMoran Copper & Gold, Inc., No. CJ-2008-68, District Court of
10 Kay County, State of Oklahoma (2010) (affidavit on certification)

11 In Re Puerto Rican Cabotage Antitrust Litigation MDL Docket No. 3:08-md-1960
12 (DRD), United States District Court for the District of Puerto Rico (2010) (declaration on
13 fees)

14 In re XTO Energy Shareholder Class Action Litigation, No. 352-242403-09, District
15 Court of Tarrant County, Texas, 352nd Judicial District (2010) (affidavit on fees)

16 The Board of Trustees of the Southern California IBEW-NECA Defined Contribution
17 Plan v. Bank of New York Mellon, Civil Action No. 09-Cv-06273, Southern District of New
18 York (2011) (declaration on certification)

19 Iorio v. Asset Marketing Systems, Inc., Case No.: 05-CV-0633-JLS (CAB), Southern
20 District of California (2011) (declaration in fees)

21 Villaflor v. Equifax Information Services, LLC, Case No.: 3:09-cv-00329-MMC,
22 Northern District of California (2011) (declaration on fees)

23 Feely v. Allstate Insurance Company, Case No. CV-2004-294-3A, Circuit Court of
24 Miller County, Arkansas (2011) (affidavit on settlement and fees)

25 Keegan v. American Honda Motor Co., Inc., Case Number: 2:10-cv-09508-MMM-
26 AJW, United States District Court for the Central District of California (2011) (declaration on
27 certification)

28 Compusource Oklahoma v. BNY Mellon, N.A., Case No: CIV 08-469-KEW, United
States District Court for the Eastern District of Oklahoma (2011) (declaration on certification)

ABN Amro Bank v. Dinallo, Index No.: 601846/09 (New York State Supreme Court)
(declaration and deposition on corporate restructuring/administrative law issue)

In re Checking Account Overdraft Litigation, Case No.: 1:09-MD-02036-JLK, United
States District Court for the Southern District of Florida (2012) (Bank of America case;

1 declaration and supplemental declaration on fees)

2 In re Checking Account Overdraft Litigation, Case No.: 1:09-MD-02036-JLK, United
3 States District Court for the Southern District of Florida (2012) (Bank of Oklahoma case;
4 declaration on fairness of settlement and fees)

5 In re Cell Therapeutics Inc. Securities Litigation, Master Docket No. C10-414 MJP,
6 United States District Court for the Western District of Washington (2012) (declaration on
7 fees)

8 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April
9 20, 2010, MDL NO. 2179, Eastern District of Louisiana (2012) (declarations on economic and
10 medical benefits class settlements)

11 Freudenberg v. eTrade Financial Corporation, Case No.: 07-CV-8538, United States
12 District Court for the Southern District of New York (2012) (declaration on fees)

13 LaCour v. Whitney Bank, Case No. 8:11-cv-1896-VMC-MAP (United States District
14 Court for the Middle District of Florida (2012) (declaration on settlement and fees)

15 In re Checking Account Overdraft Litigation, Case No.: 1:09-MD-02036-JLK, United
16 States District Court for the Southern District of Florida (2012) (Union Bank case; declaration
17 on fees)

18 Smith v. American Bankers Insurance Company of Florida, Case No.: 2:11-cv-02113-
19 PKH, Western District of Arkansas (2012) (declaration on class certification)

20 Blankenship v. RBS Citizens, N.A., Case No. 1:10-cv-22942-JLK, Southern District
21 of Florida (2012) (declaration on fees)

22 Mazzadra, et al. v. TD Bank, N.A., Case No. 1:10-cv-21870-JLK, Southern District of
23 Florida (2012) (declaration on fees)

24 In re Citigroup Inc. Securities Litigation, Case No. 07-civ-9901-SHS, Southern
25 District of New York (2013) (declaration on fees)

26 Rubery v. E*Trade Financial Corporation, Case No. 07-CV-8612 (JPO), Southern
27 District of New York (2013) (declaration and supplemental declaration on fees)

28 Chieftain Royalty Co. v. QEP Energy Co., Case No. 11-cv-00212-R (Western District
of Oklahoma 2013) (declaration on fairness of settlement and fees)

Drummond v. Range Resources Corp., Case No. CJ-2010-510, District Court of Grady
County, Oklahoma (2013) (declaration on fairness of the settlement and fees)

Landman Partners Inc. v. Blackstone Group LP, Case No. 08 Civ. 3601 (HB)(FM),

1 Southern District of New York (2013) (declaration on fees)

2 White v. Experian Information Solutions, Inc., Case No. 05-cv-1070 DOC, Central
3 District of California (2013) (declaration on fees)

4
5 Other Activities

6 Member, Board of Directors, American Law and Economics Association (1996-1999)

7 Member, Board of Advisors, The Independent Review (1996-present)

8 Member, Board of Advisors, Asian Institute of International Financial Law (2001-present)

9 Member, Editorial Advisory Board, Supreme Court Economic Review (1995-present)

10
11 Member, Editorial Advisory Board, The Brookings-Wharton Papers on Financial Policy
12 (1997-present)

13 President, Section on Financial Institutions and Consumer Financial Services, American
14 Association of Law Schools (1999)

15 President, Section on Business Associations, American Association of Law Schools (1995)

16 Member, Board of Contributors, American Bar Association Preview of Supreme Court Cases
17 (1985-1993)

18 Consultant, Administrative Conference of the United States (1988-89; 1991-1992)

19 Board of Directors and Volunteer Listener, D.C. Hotline (1980-83)

20 Awards

21 1992 Paul M. Bator Award for Excellence in Teaching, Scholarship and Public Service, from
22 the Federalist Society for Law and Public Policy Studies

23 Languages

24 Reading knowledge of Spanish, French, and Italian.

25 Shorter Works

26
27 Defusing The Banks' Financial Time Bomb: Without Tough Reforms, Writes Robert Pozen,
28 We'll Probably Face An Ugly Repeat of Recent History (Business Week, March 11, 2010)

1 Why Interstate Banking is in the National Interest, Testimony Before the Subcommittee on
2 Financial Institutions Supervision, Regulation and Deposit Insurance of the House Committee
on Banking, Housing and Urban Affairs (September 29, 1993)

3 Challenging the Concept of the Common Law as a Closed System, Columbia Law School
4 Report, Autumn, 1993 (with Norman Silber)

5 The Insurance Industry's Antitrust Exemption: A Longstanding Tradition Faces its Greatest
6 Challenge, 1992-93 ABA Preview of Supreme Court Cases 198 (1993)

7 Shootout at the Escheat Corral, 1992-93 ABA Preview of Supreme Court Cases (1993)

8 Choices and Chances for Consumers, Legal Times, Oct. 12, 1992, at 29-30.

9 Impeachment Procedures: An Unexplored Territory in the Separation of Powers, 1992-93
10 ABA Preview of Supreme Court Cases 39 (1992)

11 An (Ex)changing of the Guard, 21 Journal of Legal Studies iii (1992)

12 Revisiting the Contingency Factor in Fee-Shifting Awards, 1991-92 ABA Preview of
13 Supreme Court Cases 327 (1992)

14 The Foreign Sovereign Immunities Act and the Market for Public International Debt, 1991-92
15 ABA Preview of Supreme Court Cases 307 (1992)

16 Return of the Tenth Amendment?: Federal Control and State Autonomy over Low Level
17 Radioactive Wastes, 1991-92 ABA Preview of Supreme Court Cases 284 (1992)

18 What are the Limits on Congressional Power to Influence Pending Cases?, 1991-92 ABA
19 Preview of Supreme Court Cases 158 (1991)

20 RICO Standing for Securities Fraud: Does the Purchaser-Seller Rule of Rule 10b-5 Apply?,
1991-92 ABA Preview of Supreme Court Cases 155 (1991)

21 Banking and Investment: Introduction to UPA Index and Microfiche Collection (University
22 Publications of America 1991)

23 Source of Strength in the Court: Can Bank Holding Companies be Required to Support
24 Failing Subsidiary Banks?, 1991-92 ABA Preview of Supreme Court Cases 42 (1991)

25 Source of Strength: A Source of Trouble, Legal Times, September 30, 1991 (Special
26 Supplement, pp. 22-25)

27 The Once and Future American Banking Industry, The American Enterprise (with Jonathan R.
28 Macey)(1991)

1 The Former Stockholder as Plaintiff in Short-Swing Trading Cases, 1990-91 ABA Preview of
Supreme Court Cases (1991)

2 Disposing of Demand Excuse in Derivative Litigation, 1990-91 ABA Preview of Supreme
3 Court Cases (1991)

4 Up in the Air: Can Congress Require States to Appoint Members of Congress to State
5 Agencies?, 1990-91 ABA Preview of Supreme Court Cases 294 (1991)

6 The Statute of Limitations under Rule 10b-5, 1990-91 ABA Preview of Supreme Court Cases
7 (1991)

8 Tort Claims Against Federal Banking Agencies: New Hope For Shareholders and Officers of
9 Failed Depository Institutions?, 1990-91 ABA Preview of Supreme Court Cases 94 (1991)

10 Punitive Damages Redux: If the Eighth Amendment Doesn't Apply, What About the Due
Process Clause?, 1990-91 ABA Preview of Supreme Court Cases 47 (1990)

11 Quandaries of Causation: Proxy Solicitation in Freeze-Out Mergers, 1990-91 ABA Preview of
12 Supreme Court Cases 57 (1990)

13 Racial Statesmanship, Legal Times S31 (July 23, 1990)

14 Eurodollars, Sovereign Risk, and the Liability of U.S. Banks for Deposits in Foreign
15 Branches, 1989-90 ABA Preview of Supreme Court Cases 281 (1990)

16 When is a Note a Note?, 1989-90 ABA Preview of Supreme Court Cases 18 (1990)

17 Interstate Banking and the Commerce Clause, 1989-90 ABA Preview of Supreme Court Cases
18 168 (1990)

19 Federal Courts, Municipalities, and the Contempt Power, 1989-90 ABA Preview of Supreme
20 Court Cases 37 (1989)

21 Shoe Could Still Drop on Issue of Punitive Damages, National Law Journal (August 21, 1989)

22 Punitive Damages and the Constitution, 1988-89 ABA Preview of Supreme Court Cases 391
23 (1989)

24 States, Bankruptcy and the Eleventh Amendment, 1988-89 ABA Preview of Supreme Court
25 Cases 412 (1989)

26 Stockholders, Arbitration, and the Securities Act of 1933, 1988-89 ABA Preview of Supreme
27 Court Cases 383 (1989)

28 Appropriations Riders, Nondisclosure Agreements, and the Separation of Powers, 1988-89

1 ABA Preview of Supreme Court Cases 375 (1989)

2 Judicial Appointments and the ABA: Business as Usual or Brand New World?, 1988-89
3 ABA Preview of Supreme Court Cases 379 (1989)

4 S & L Receiverships, State Law, and the Federal Courts, 1988-89 ABA Preview of Supreme
5 Court Cases 255 (1989)

6 The Non-delegation Doctrine in Taxation: A Different Constitutional Calculus?, 1988-89
7 ABA Preview of Supreme Court Cases 261 (1989)

8 Bankruptcy, Tax Liens, and Post-Petition Interest, 1988-89 ABA Preview of Supreme Court
9 Cases (1989)

10 Federal Courts, State Taxes: A Vexing Dilemma For the Enforcement of Civil Rights in a
11 Federal System, 1989-90 ABA Preview of Supreme Court Cases 95 (1988)

12 Separation of Powers and the Sentencing Commission, 1988-89 ABA Preview of Supreme
13 Court Cases 23 (1988)

14 Administering the Savings and Loan Crisis: New Problems for the FSLIC, 1988-89 ABA
15 Preview of Supreme Court Cases (1988)

16 Federal Procurement and the Separation of Powers, 1988-89 ABA Preview of Supreme Court
17 Cases 26 (1988)

18 Thinking About a Career in Law, 1988-89 Talbot's Student Planning Book 32 (1988)

19 Carl McGowan: A Great Judge Remembered, 56 George Washington Law Review 697 (1988)

20 Separation of Powers: The Independent Counsel Case Tests the Limits, 1987-88 ABA
21 Preview of Supreme Court Cases 390 (1988)

22 Decisionmaking in Collegial Bodies, Judicature, April/May 1988

23 The FDIC, Bank Officers and the Due Process Clause, 1987-88 ABA Preview of Supreme
24 Court Cases 326 (1988)

25 Farm Foreclosures in Bankruptcy, 1987-88 ABA Preview of Supreme Court Cases 199 (1988)

26 Equal Access to Justice and Government Litigation, 1987-88 ABA Preview of Supreme Court
27 Cases 160 (1988)

28 The Time Value of Money in Bankruptcy Cases, 1987-88 ABA Preview of Supreme Court
Cases 116 (1987)

1 Getting the Fee First?: Attorneys and the SSI Program 1987-88 ABA Preview of Supreme
2 Court Cases 118 (1987)

3 The Farmer and the FDIC, 1987-88 ABA Preview of Supreme Court Cases 48 (1987)

4 Testing the Limits of Securities Fraud: Financial Gossip in the Court, 1987-88 ABA Preview
5 of Supreme Court Cases 26 (1987)

6 Checks and Balances in the Twenty-First Century, 33 University of Chicago Law School
7 Record 7 (1987)

8 Separation of Powers May Become Focus Over NSC, Legal Times, Dec. 15, 1986, at 15

9 If a Bank is a Broker, is a Brokerage a Branch? 1986-87 ABA Preview of Supreme Court
10 Cases 65 (1986)

11 Attorney's Fees in the Supreme Court, American Bar Association Journal 40 (November,
12 1986)

13 The Contingency Factor in Attorney's Fees Reconsidered, 1986-87 ABA Preview of Supreme
14 Court Cases 20 (1986)

15 Restitution and Bankruptcy in a Federal System, 1986-87 ABA Preview of Supreme Court
16 Cases (1986)

17 Don't Limit Contingent Fees, Chicago Tribune, June 11, 1986

18 The Budget and the Separation of Powers: Gramm-Rudman in the Court, 1985-86 ABA
19 Previews of Supreme Court Cases 359 (1986)

20 Keeping Attorneys Fees in Proportion, 1985-86 ABA Preview of Supreme Court Cases 325
21 (1986)

22 Must the Federal Government Pay Interest on Attorneys Fees Awards?, 1985-86 ABA
23 Preview of Supreme Court Cases 241 (1986)

24 The Contingency Factor in Attorneys Fees Awards, 1985-86 ABA Preview of Supreme Court
25 Cases 243 (1986)

26 The FCC as Cop: Forcing State Public Service Commissions to Obey Federal Agency Orders,
27 1985-86 ABA Preview of Supreme Court Cases 191 (1986)

28 Preemption, Public Utilities, and Power Over Telephone Rate-Setting, 1985-86 ABA Preview
of Supreme Court Cases 187 (1986)

A Bank is a Bank is a Bank -- or is it?, 1985-86 ABA Preview of Supreme Court Cases 67

(1985)

Settlement Offers Conditioned on Waiver of Attorneys' Fees: A Legal and Ethical Dilemma Confronts the Court, 1985-86 ABA Preview of Supreme Court Cases 55 (1985)

Bankruptcy and the Environment: The Case of Hazardous Wastes, 1985-86 ABA Preview of Supreme Court Cases 25 (1985)

A Different Approach to Interstate Banking, American Banker (August 8, 1985)

The SEC as Censor: Is Banning an Investment Advice Newsletter a Prior Restraint of the Press?, 1984-85 ABA Preview of Supreme Court Cases 243 (1985)

Enforcing Federal Rights in State Courts, 1984-85 ABA Preview of Supreme Court Cases 277 (1985)

Interstate Banking and the Constitution, 1984-85 ABA Preview of Supreme Court Cases 364 (1985)

The "Sale of Business" Doctrine in the Supreme Court, 1984-85 ABA Preview of Supreme Court Cases 344 (1985)

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Appendix B: Materials Reviewed

- Joint Stipulation of Class Settlement and Relief
- Plaintiffs' Unopposed Notice of Motion and Motion for Preliminary Approval of Settlement; Memorandum of Points and Authorities in Support Thereof
- Declaration of Scott Kilker
- Declaration of John Yanchunis
- Declaration of David Rotman
- Declaration of Bobbie Pacheco Dyer
- Declaration of Patricia Stallworth
- Transcript of Rule 30(b)(6) videotaped deposition of Wells Fargo Witness Designee Todd Hauer

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

)
) Case Number: C 13-2858
)
BOBBIE PACHECO DYER and)
PATRICIA STALLWORTH, on behalf) **[PROPOSED] ORDER GRANTING**
of themselves and all others similarly) **PLAINTIFFS' UNOPPOSED**
situated,) **NOTICE OF MOTION AND**
) **MOTION FOR AWARD OF**
Plaintiffs,) **ATTORNEYS' FEES AND**
) **EXPENSES AND ENHANCEMENT**
) **AWARDS**
vs.)
)
WELLS FARGO BANK, N.A.,)
)
Defendant.)

I. INTRODUCTION

Plaintiffs Bobbie Dyer and Patricia Stallworth have moved for an award of attorneys' fees and expenses and a class representative enhancement award, in connection with the settlement of this class action. The matter came for hearing on August 28, 2014.

II. LEGAL STANDARD

A. Attorneys' Fees

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The "common fund" doctrine, under which attorneys who create a common fund or benefit for a class of persons may be awarded their fees and costs out of the fund, has long been recognized by courts as a basis for determining the amount of attorneys' fees to be awarded to plaintiffs' counsel in class actions. Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980); Mills v. Electric

Auto-Lite Co., 396 U.S. 375 (1970). “[A] lawyer who recovers a common fund for the benefit of persons other than ... his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing*, 444 U.S. at 478. Federal courts, including the Ninth Circuit, have endorsed the percentage of the fund method as a fair way to calculate a reasonable fee when contingency fee litigation has produced a common fund. See, e.g., *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

B. Expenses

An attorney is entitled “to recover as part of the award of attorney’s fees those out-of-pocket expenses that “would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (quoting *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1216 n.7 (9th Cir. 1986)). See also *S.E.C. v. Sunwest Mgmt.*, 524 F. App’x 268 (9th Cir. 2013) (unpublished) (applying *Harris*’s rule to an award of attorney’s fees in a class action.

C. Incentive Award

Incentive awards, which are fairly typical in class actions, “are discretionary, ... and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (internal citation omitted). Relevant factors in determining an enhancement award include “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, ... the amount of time and effort the plaintiff expended in pursuing the litigation ... and reasonabl[e] fear[s of] workplace retaliation.” *Staton*, 327 F.3d at 977 (citing *Cook v. Neidert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

III. ANALYSIS

A. Attorneys' Fees

The Settlement Fund achieved in this action is \$14,743,101.00. Class Counsel have filed a request seeking an award of \$3,685,775.25. This amount, which includes Class Counsel's costs and expenses, is less than 25% of the Settlement Fund. In addition, Wells Fargo has agreed to separately pay the costs class notice and administration, as well as its portion of employer's payroll taxes, which adds value to the overall Settlement. The Court finds that the fee requested by Class Counsel is reasonable.

The results achieved by Class Counsel, and the speed and efficiency with which they were achieved, are excellent. The common fund created by the Settlement is \$14,743,101.00 to compensate 8,695 people. Class members will receive their settlement payment without the need to submit a claim. The fund is almost entirely non-reversionary. The only portion which will revert to Wells Fargo are funds which would otherwise have been paid to Class members who exclude themselves from the settlement.

Class Counsel assumed a very real risk in taking on this case. Plaintiffs, through Class counsel, challenged the practices of the largest retail mortgage lender in the United States, with respect to its payment of commissions to the employees who originate mortgages on Wells Fargo's behalf. Class Counsel took the case on a contingency basis, and invested time, effort and money with no guarantee of any recovery. Recovery in this case was far from certain.

The reasonableness of Class Counsel's requested fee is supported by Class Counsel's skill and experience as well as the high quality of their legal representation in this case. Class Counsel diligently investigated and prosecuted the claims in this matter.

Class Counsel took this case on behalf of Plaintiffs and the Class without any guarantee that they would receive any compensation for their work. “Courts have long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that might be paid nothing at all for their work. Ching v. Siemens Industry, Inc., No. 11-cv-04838, 2014 WL 2926210, at * 7 (N.D. Cal. June 27, 2014), 2014 WL 2926210, at *8 (citations omitted). This practice encourages attorneys to assume this risk and allows plaintiffs who would otherwise not be able to hire an attorney to obtain competent counsel. Kanawi v. Bechtel Corp., No. 06-05566 CRB, 2011 WL 782244, at *2 (N.D. Cal. March 1, 2011) (citing In re Washington Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994)).

The fee requested is also in line with fees awarded in comparable cases. In the Ninth Circuit, the typical range of reasonable attorneys’ fees from a common fund settlement is 20% to 33 1/3% of the total settlement value, with 25% considered to be the “benchmark.” Powers v. Eichen, 229 F.3d 1249, 1256 (9th Cir. 2000). In addition, an empirical study co-authored by Professor Geoffrey Miller in the March-April 2003 edition of Class Action Reports (CAR) which analyzed data from cases ranging from 1974 to 2003 confirmed the median fee across all types of common fund class action cases was 30%, while the median fee award in consumer cases was 25% and the median fee in employment cases was 25.7% [ECF No. ___, Miller Decl. ¶ 29-30]. In 2010, a study also co-authored by Professor Miller published in the Journal of Empirical Legal Studies of fees in all published class actions settlements between 1993 and 2008 found that the median fee in employment class actions was 25% and the mean fee was 27%. [Miller Decl. ¶ 32]. For the period 1993 to 2008, both the median and mean fee awards in the Ninth Circuit were 25% of the class recovery, exactly the award requested in this case. [Miller Decl. ¶ 33]. The

empirical data analyzed by Professor Miller demonstrates that a 25% fee is both appropriate and in line with similar cases. [Miller Decl. ¶¶ 3-4; 7, 29-35].

“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.” Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002). In this case, Class Counsel’s lodestar is \$1,196,572.50, which results in a multiplier of approximately 3.08. This is in the range of presumptive acceptable multipliers for cases of this size and complexity. Vizcaino, 290 F.3d at 1052 and n.6. (approving 3.65 multiplier); see also Milliron v. T-Mobile USA, 423 Fed. App’x 131, 135 (3d Cir. 2011) (“we have approved a multiplier of 2.99 in a relatively simple case”); City of Livonia Emples. Ret. Sys. v. Wyeth, 2013 U.S. Dist. LEXIS 113658, 11 (S.D.N.Y. Aug. 7, 2013) (lodestar multiplier of 3.45); In re Citigroup Inc Secs. Litig., 2013 U.S. Dist. LEXIS 108115 *9 (S.D.N.Y. Aug. 1, 2013) (approving 2.8 lodestar multiplier over objection); In re Cadence Design Sys., Inc. Sec. & Deriv. Litig., No. C-08-4966 SC, 2012 U.S. Dist. LEXIS 56785, at *5 (N.D. Cal. April 23, 2012 (awarding counsel “more than 2.88 times its lodestar amount”)); Been v. O.K. Indus., Inc., No. CIV-02-285-RAW, 2011 U.S. Dist. LEXIS 115151, at *11 (E.D. Okla. 2011) (citing a study “reporting average multiplier of 3.89 in survey of 1,120 class action cases” and finding that a multiplier of 2.43 would be “per se reasonable”); In re Sumitomo Copper Litig., 74 F. Supp. 2d 393, 399-400 (S.D.N.Y. 1999) (finding “multipliers of 3 to 4.5 to be reasonable”); Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 298 (N.D. Cal. 1995) (“Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class actions”); In re Beverly Hills Fire Litig., 639 F. Supp. 915, 924 (E.D. Ky. 1986) (multiplier of 5).

B. Enhancement Award

The Court finds that the proposed \$15,000 enhancement award to Plaintiffs Dyer and Stallworth is reasonable. Plaintiffs' agreement to settle is not contingent on them receiving the award, and there is no apparent danger that the award will destroy the cohesion of the class or the adequacy of their representation. The enhancement awards will be paid by Defendant in addition to and without deduction from the Settlement Fund. Plaintiffs spent a substantial amount of time participating in this litigation. They incurred significant risk and personal inconvenience in litigating this case. Plaintiff Dyer spent over 200 hours on this case and sacrificed income in order to serve the Class. Plaintiff Stallworth is the sole caregiver of a young child and also expended much time and effort on this case. Both Dyer and Stallworth travelled from Florida to San Francisco and actively participated in mediation. Considering the efforts made by the Class Representatives, the requested enhancement awards are reasonable.

IV. CONCLUSION

For the foregoing reasons, the Court hereby ORDERS as follows:

1. Class Counsel are hereby awarded attorneys' fees and expenses in the amount of \$3,685,775.25. This award shall be paid by Wells Fargo in accordance with the terms of the Settlement Agreement.

2. Class Representatives Bobbie Dyer and Patricia Stallworth are each awarded enhancement awards in the amount of \$15,000. This award shall be paid by Wells Fargo no later than fifteen (15) days after final approval of the settlement.

3. The Court finds in the exercise of its discretion that the fee and expense award and enhancement awards to be fair and reasonable. The Court finds that the Class Representatives and Class Counsel have demonstrated that: (i) the results obtained in light of the relevant circumstances of this action support the fee award; (ii) the economies of the prosecution

1 of this action and the experience of Class Counsel support the fee award; (iii) the fee award is
2 substantially similar to fees approved in similar cases; and (iv) the time and labor required by the
3 Class Representatives and Class Counsel is consistent with the fee award and enhancement
4 awards.

5 **IT IS SO ORDERED.**

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8 Dated: _____

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11 JON S. TIGAR
12 United States District Judge
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