UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOBBIE PACHECO DYER and PATRICIA STALLWORTH, on behalf of themselves and all others similarly situated, Plaintiffs, vs. WELLS FARGO BANK, N.A., Defendant.	Case Number: C 13-2858 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: August 28, 2014 Time: 2:00 p.m. Judge: Honorable Jon S. Tigar Courtroom: 9

NOTICE OF MOTION AND MOTION

To all parties and their attorneys of record, please take notice that on 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 the entry of a Final Judgment:

1. Finally approving the proposed settlement memorialized by the parties' Joint Stipulation of Class Settlement and Release (Settlement Agreement) filed with this Court on February 26, 2014 (Doc. 35-1)[1] as fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23;

2. Finally certifying the Class for settlement purposes;

[1] Citations to entries on the Civil Docket shall be referred to as "Doc. __".

3. Excluding from the binding effect of the Stipulation of Class Settlement and Release the two (2) Class Members who submitted a timely request for exclusion;

4. Approving payment of enhancement awards in the amount of $15,000 to each of the Class Representatives;

5. Approving payment to Class Counsel of attorneys' fees, costs and expenses in the amount of $3,685,775.25; and

6. Retaining jurisdiction over the enforcement of the Stipulation of Class Settlement and Release.

This Motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities; the Joint Stipulation of Class Settlement and Release; the Declarations of John A. Yanchunis ("Yanchunis Decl.") and Cory LeFebvre ("LeFebvre Decl.") filed concurrently herewith as Exhibits 1 and 2 respectively; the Declaration of Tamra Givens in Support of Final Approval of Settlement (Doc. 42); pleadings and papers on file in this action and other such evidence or argument as may be presented to the Court at the hearing on this Motion.

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

MEMORANDUM OF POINTS AND AUTHORITIES

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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 Motion for Final Approval of Class Action Settlement.

Plaintiffs seek final approval of a proposed nationwide class action settlement with Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"), preliminarily approved by this Court as fair, reasonable and adequate (Doc. 41). The Settlement resolves Plaintiff's claim that 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, Plaintiffs 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. Although Wells Fargo denies any liability or wrongdoing, the parties have agreed to settle this matter upon the terms set forth in the Joint Stipulation of Class Settlement and Release.

Pursuant to the Settlement, Wells Fargo has agreed to pay $14,743,101.00 to resolve the alleged claims of Plaintiffs and Class members, in addition to a separate payment of $15,000 to each of the Class Representatives, and separately paying the costs of notice and administration, as well as the employer's portion of payroll taxes which will be due as a result of the payments to the Class members. Plaintiffs need not submit claim forms in order to receive their payments under the settlement and, as discussed below, the Settlement is nearly entirely non-reversionary – only $983.18 of the $14,743,101.00 settlement fund will revert to Wells Fargo.

Notice to the Class has been disseminated in accordance with the procedures ordered by the Court. The Declaration of Cory LeFebvre of Rust Consulting, Inc., attached hereto as Exhibit 2, summarizes the process undertaken Claims Administrator to administer the notice program and the results of the dissemination of notice to the Class. The results indicate overwhelming support for the Settlement. Of the 8,695 Class members, only two have requested exclusion from the Class. In addition, in accordance with this Court's Order of Preliminary Approval, Plaintiffs filed their motion for an award of Attorneys' Fees and Costs and Enhancement Awards on July 11, 2014, a date in advance of the July 25, 2014 deadline to object to the Settlement. No Class member filed an objection to the Settlement or to the requested attorneys' fees, costs and expenses and enhancement awards. As evidenced by the reaction of the Class, the Settlement is an excellent result for the Class which provides them substantial recovery for their potential claims.

For the reasons set forth below, the Court should find that the Class meets the requirements for certification and that the Settlement is "fair, reasonable and adequate" under Fed. R. Civ. P. 23(e)(2) and should be granted final approval. In addition, the Court should grant approval of the requested attorneys' fees, costs and expenses and enhancement awards to the Class Representatives.

II. SETTLEMENT TERMS

The Joint Stipulation of Class Settlement and Release (Doc.35-1) contains the complete terms of the Settlement, which are summarized below.

A. The Settlement Class

Pursuant to the Joint Stipulation of Class Settlement and Release, and as certified by the Court for settlement purposes in the Order of Preliminary Approval, the Settlement Class is defined as follows:

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

B. Substantive Relief Provided to Class Members

The Settlement Agreement provides for monetary relief for the benefit of Plaintiffs and the Settlement Class. Under the Settlement, Wells Fargo will create a fund consisting of $14,743,101.00 for the benefit of the Class. Class members will not be required to do anything affirmative, i.e., submit a claim form in order to receive benefits under the Settlement. Class members who do not opt out will be entitled to receive a proportional share of the fund, less attorneys' fees, costs and expenses. Due to the fact that Class Members are not required to submit claim forms in order to receive payment under the settlement, the settlement is virtually an all-in settlement, with no reversion of funds to Defendant as a result of receiving releases by class members who do not take an affirmative step to claim in. Wells Fargo will only receive back a total of $983.18 in unclaimed funds earmarked for one (1) Class Member who requested exclusion from the class and therefore did not release their claims against Wells Fargo. All Class Members who release their claims against Wells Fargo will receive compensation under the Settlement.

In addition, Defendant is separately responsible for the payment of the employer's portion of payroll taxes resulting from their payment of claims to Class members, which will

not be deducted from the settlement fund. Defendant is also separately responsible for payment of the costs of notice to the class and administration of the settlement.

Attorneys' fees, costs and expenses will be paid out of the settlement fund not to exceed twenty-five percent (25%) of the value of the settlement fund. In addition, Class Counsel will request an incentive award not to exceed $15,000 for each of the two class representatives, which will be paid by Wells Fargo separately and not from the settlement fund.

III. SETTLEMENT APPROVAL

Pursuant to rule 23(e) of the Federal Rule of Civil Procedure , "[t]he claims, issues or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. "Adequate notice is critical to court approval of a class settlement under Rule 23(e). *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). In addition, rule 23(e) "requires the district court to determine whether a proposed settlement is fundamentally fair, adequate and reasonable." *Id.* at 1026. "Assessing a settlement proposal requires the district court to balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status throughout trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. *Id.* The Court should give a presumption of fairness to arms-length settlements reached by experienced counsel. *Rodriguez v. West Pub'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution …."); *Garner v. State Farm Mut. Auto Ins. Co.*, No. CV 08 1365 CW

(EMC), 2010 U.S. Dist. LEXIS 49477, at *35 (N.D. Cal. Apr. 22, 2010) ("Where a settlement is the product of arms-length negotiations conducted by capable and experienced counsel, the court begins its analysis with a presumption that the settlement is fair and reasonable.").

A. Notice to the Class and the Results

As agreed upon by the parties pursuant to the Settlement Agreement, Wells Fargo hired Rust Consulting, Inc. as the Claims Administrator for the Settlement. The notice program was implemented in accordance with the terms agreed upon by the parties and approved by the Court. Wells Fargo provided the Claims Administrator a Class List of 8,695 Class members and containing each Class Member's last known address. (LeFebvre Decl. ¶ 7). The Claims Administrator updated the addresses utilizing the National Change of Address ("NCOA") database maintained by the U.S. Postal Service. *Id*. at ¶ 8. On June 10, 2014, the approved Class Notice was mailed to 8,695 Class members via First Class mail. *Id*. at ¶ 9. The Notice provided each Class member with pertinent information regarding the case and proposed settlement; their options under the settlement, including the right to exclude themselves or object; and the estimated amount of their settlement payment.

Of the 8,695 Notices mailed on June 10, 2014, the Claims Administrator received 94 Notices returned as undeliverable from the address to which it was sent. Of the 94 Notices returned as undeliverable, the Claims Administrator performed address traces on the 86 of them. The other eight (8) did not need to be traced because six (6) Class members provided the Claims Administrator with a more current address to which the Claims Administrator re-mailed Notice and two (2) were returned as undeliverable subsequent to the July 25, 2014 deadline for exclusion or objection. Of the 86 Notices for which the Claims Administrator performed address traces, the trace resulted in identification of a more current address for 61 of them. The Claims Administrator promptly re-mailed Notice to these 61 Class members via First Class mail. Of the 61 re-mailed Notices, six (6) were returned to the Claims Administrator as undeliverable for a second time. In sum, 33 of the 8,695 (less than ½ of 1%) Notices remain undeliverable due to the inability to locate a current address. Seven (7) Notices were returned by the Post Office to the Claims Administrator with forwarding

addresses attached. The Claims Administrator promptly re-mailed the Notice to these Class members via First Class mail. *Id*. at ¶ 10.

In addition, as provided in the Notice, Lead Class Counsel posted a copy of the Joint Stipulation of Settlement and Release on their website at http://www.forthepeople.com/class-action-lawyers/notices. In addition, Lead Counsel posted other informational materials on their website including various documents filed with the Court and answers to frequently asked questions.

The results of the Notice program reflect its success. Of the 99.6% of the Class that received Notice, only two (2) Class members submitted a request for exclusion from the Settlement and no objections were received. *Id.* at 12,13.

B. The Settlement Was Reached After Arms-Length Negotiations and Mediation

The settlement was reached after arms-length negotiations and mediation before an experienced and impartial mediator. As discussed above, settlements that are the product of such negotiations are considered presumptively fair and reasonable. *Rodriguez*, 563 F.3d at 965; *Garner*, 2010 U.S. Dist. LEXIS at *35.

In or about April 2013, Class Counsel began investigating a complaint from Bobbie Dyer, a former Wells Fargo Producing Sales Branch Manager, regarding her claim that she had not received the commissions that 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. Moreover, prior to conducting a factual investigation, 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, and the appropriate jurisdictions to bring the suit.

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 Class 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, Class Counsel continued to be contacted by other employees of Wells Fargo who claimed they too were not paid the full commissions under the Compensation Plan, and Class Counsel continued their investigation of the facts provided by these other employees and former employees. Following additional interviews and gathering of additional documents, Class 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 injected additional factual allegations which both supported and broadened the scope of the claims alleged in the lawsuit.

Following their Rule 26 conference, the parties each served Rule 26 disclosures. In addition, each party served discovery requests. The parties agreed also 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.

On January 23, 2014, the parties mediated the claims, defenses and issues raised in this case. The mediation was overseen by David Rotman, a highly qualified and experienced mediator well known to this Court. The mediation took place in San Francisco and was attended by both Plaintiffs who travelled from Florida to attend the mediation. During the mediation, the parties in a joint session and in separate sessions discussed in detail the strengths and weaknesses of Plaintiffs' claims and Wells Fargo's defenses, as well the issues confronting Plaintiffs in the certification of a class. 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.

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.

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.

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 Wells Fargo 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 Finance Manager in its Bonus/Commission Accounting Department, who oversaw Wells Fargo's internal analysis. Class Counsel conducted a deposition of Mr. Kilker, in which Class Counsel examined him regarding the process undertaken to identify Class members and to confirm 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, Class Counsel requested and reviewed further documentation provided by Wells Fargo to

enable Class Counsel to respond to inquiries from Class members and to further assess the accuracy of Wells Fargo's calculations of damages. (Yanchunis Decl. ¶ 19).

These facts, along with the involvement of David Rotman as mediator, demonstrate that the Settlement is the product of arms-length, non-collusive negotiations. (Rotman Decl., Doc 35-4); *see also Glass v. UBS Fin. Servs., Inc.*, C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 F. App'x 452 (9th Cir. 2009) (granting final approval of settlement reached at mediation "conducted by David Rotman, who, defense counsel attests, is 'one of the preeminent mediators of employment law claims in the country'"); *Wren v. RGIS Inventory Specialists*, C-06-05778 JCS, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011) supplemented, C-06-05778 JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011) (granting final approval of settlement reached the after "intensive negotiations led by … experienced mediator" David Rotman).

C. The Relative Strength of Plaintiffs' Case Weighs in Favor of Approval of the Settlement

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

Even if Plaintiffs were successful on the merits, Wells Fargo also contended throughout this case that class certification was highly improbable due to alleged individualized issues not capable of common proof. To that end, Wells Fargo asserted that the

laws of all 50 states apply to Plaintiffs' and Class Members' claims and that there is variation among state laws with regard to Wells Fargo's defenses such as waiver of contractual rights. Wells Fargo also argued that disputes were handled on the regional, rather than national level, precluding nationwide certification. At all times, Wells Fargo maintained that if the Court held that the contractual provision was ambiguous, it would introduce extrinsic evidence that would support its position that it never intended to pay greater than 43 bps for the specialty refinance loans at issue and that many class members never believed they were entitled to higher rates of commission. Moreover, Wells Fargo argued that the fact that one of the named Plaintiffs (and possibly other putative class members) raised the specialty refinance issue during her employment, was informed that it was Wells Fargo's intent to pay 43 bps for specialty refinance loans, and continued to originate such loans after being given this information, 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. (Doc. 42; Givens Decl. ¶ 4). All of these issues posed substantial risk to any recovery by Plaintiffs and Class Members.

Class Counsel's analysis of the issues and evidence resulted in a Settlement which takes into account the strength of Plaintiffs' claims and legal defenses raised by Defendant, and which provides a timely and certain recovery to the Class on claims that were far from certain. (Yanchunis Decl. at 11, 12). The relative strength of the claims asserted by Plaintiffs on behalf of the Class weighs in favor of approval of the Settlement.

D. The Risk, Complexity, Expense and Duration of Continued Litigation Favors Final Approval

Settlements resolve inherent uncertainty on the merits of litigation and are therefore strongly favored by the courts, particularly in class actions. *See Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 625 (9th Cir. 1982); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). If litigation were to proceed, Plaintiffs would face a number of hurdles to certify the class and to try the case. This was not a case where there were various shades of gray which might result in a decision in the middle of the parties respective positions. At the end of the litigation, there would be only one winner and victory for the winner would be a complete one. As discussed above, the Settlement takes into consideration the strength of Plaintiffs' claims and legal defenses raised by Wells Fargo, as well as significant risk regarding obtaining and maintaining class certification through trial and reflects a compromise of the parties' positions which could not result from a trial.

Wells Fargo has denied and continues to deny liability in this case. Regarding the merits, Wells Fargo disputes that it improperly paid commissions to its home mortgage employees. Wells Fargo contests Plaintiffs' interpretation of the challenged provisions within Wells Fargo's Compensation Plans in effect during the relevant time period. At all times, Wells Fargo maintained its steadfast position that it never intended nor agreed to pay standard commission rates on specialty refinance loans. In addition, Wells Fargo has raised a number of contractual defenses to Plaintiffs' claims. Among these defenses include that Plaintiffs failed to follow Wells Fargo's internal dispute resolution process and exhaust contractual remedies; that interpretation of ambiguities within the Compensation Plan lies within the sole discretion of Wells Fargo; and that they waived their rights by not pursuing their dispute within the time period set forth in the Compensation Plan.

Even if Plaintiffs were successful on the merits, Wells Fargo also contended throughout this case that class certification was highly improbable due to alleged individualized issues not capable of common proof. To that end, Wells Fargo asserted that the laws of all 50 states apply to Plaintiffs' and Class Members' claims and that there is variation among state laws with regard to Wells Fargo's defenses such as waiver of contractual rights. Wells Fargo also argued that disputes were handled on the regional, rather than national level, precluding nationwide certification. At all times, Wells Fargo maintained that it would introduce evidence that it never intended to pay greater than 43 bps for the specialty refinance loans at issue and that many class members never believed they were entitled to higher rates of commission. Moreover, Wells Fargo argued that the fact that one of the named Plaintiffs (and possibly other putative class members) raised the specialty refinance issue during her employment, was informed that it was Wells Fargo's intent to pay 43 bps for specialty refinance loans, and continued to originate such loans after being given this information, 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. (Doc. 42, Givens Decl. ¶ 4). All of these issues posed substantial risk to any recovery by Plaintiffs and Class Members.

In addition to uncertainty of outcome, protracted litigation would result in substantial delay and expense. Continued litigation is certain to be expensive, complex and time consuming. The Scheduling Order set by the Court contemplated an estimated 20-day trial to

begin in February 2015 (Doc. 25). Assuming no delays, Plaintiffs would not obtain a judgment until sometime in or after February 2015. Even if Plaintiffs were to overcome all obstacles and obtain a judgment for the Class, Wells Fargo would likely appeal. Under the best case scenario, it could take an additional year or more for Plaintiffs and Class members to receive any relief.

The expense, complexity and duration of litigation are significant factors considered in evaluating the reasonableness of a settlement. *See Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). The Settlement provides Class members with substantial relief without the risk, delay and expense of continued litigation, trial and appeal. By reaching the Settlement, the parties will avoid protracted litigation and will receive a prompt resolution of their dispute. Plaintiffs will receive a substantial recovery in a prompt manner. The elimination of delay and expense by virtue of settlement weighs in favor of approval of the Settlement.

E. The Recovery to the Class Favors Final Approval of the Settlement

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 the two (2) Class members who opted out of the settlement. Those Class members' portion of the settlement fund is estimated to be $983.18. Accordingly, all but $983.18 of the settlement fund will be paid out by Wells Fargo to satisfy the claims alleged in this lawsuit. Class members need not do anything to receive their share of the settlement fund.

The amount each Class member will recover is dependent on the volume of their production of qualifying loans, but represents approximately one third of the potential damages Class members may have received had they successfully litigated the case to judgment.

In evaluating this factor, the Court should not substitute its own judgment for the negotiated resolution of the parties. The issue is not whether the settlement could hypothetically have been better, but whether it is fair and reasonable. "Settlement is the offspring of compromise; the question is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and fee from collusion." *Hanlon*, 150 F.3d at 1027. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators. Thus, the very essence of a settlement is a compromise, a yielding of absolutes and abandoning of highest hopes." *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted). "[T]he court's intrusion on what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *Hanlon*, 150 F.3d at 1027 (quoting *Officers for Justice*, 688 F.2d at 625).

Under the Settlement, each Class member will receive approximately one third (32.7%) of the potential damages they could have received had they succeeded at trial and obtained a judgment, without the need to submit a claim form or any evidence in support of their claims. *See Glass*, 2007 WL 221862, at *9 (finding settlement providing class members

25% to 35% of their actual loss to be fair and reasonable). The substantial relief conferred by the Settlement weighs in favor of approval of the Settlement.

F. The Extent of Discovery and Stage of Proceeding Favors Approval

When litigation has proceeded to the point where the parties have a "clear view of the strengths and weaknesses of their cases," this factor supports approval of a settlement. *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010). The relevant consideration is "whether the parties have sufficient information to make an informed decision about settlement." *Sandoval v. Roadlink United States Pac., Inc.*, No. EDCV 10-00973 VAP(DTBx), 2011 WL 5443777, at *10 (C.D. Cal. Oct. 9, 2011). "A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." *Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 WL 248367, at *4 (N.D. Cal. Feb. 2, 2009).

As discussed above, prior to filing the Complaint, Class Counsel conducted an extensive investigation into the factual allegations and legal issues surrounding Plaintiff Dyer's claim that she had not been properly paid commissions by 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. 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, and the appropriate jurisdictions to bring the suit.

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 Class 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 other employees of Wells Fargo who claimed they were not paid proper commissions under the Compensation Plan, and Class Counsel continued their investigation of the facts provided by these other employees and former employees. Following additional interviews and gathering of additional documents, Class 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 injected additional factual allegations which broadened the scope of the claims alleged in the lawsuit.

Following their Rule 26 conference, the parties each served Rule 26 disclosures. In addition, each party served discovery requests. The parties agreed also 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) depositions of Wells Fargo's corporate representative and a Finance Manager in Wells Fargo's Bonus/Commission Accounting Department. Wells Fargo took the depositions of both Ms. Dyer and Ms. Stallworth. The parties undoubtedly had a clear view of the strengths and weaknesses of their respective cases and had sufficient information to make an informed decision about settlement. This factor weighs in favor of approval of the Settlement.

G. The Experience and Views of Counsel Favor Approval

Courts recognize that the opinions of experienced counsel supporting a settlement are entitled to considerable weight. *Churchill Village*, 361 F.3f at 576 (giving the experience and views of counsel factor significant consideration); *In re NVIDIA Corp. Derivative Litig.*, No.C-06-06110-SBA (JCS), 2008 WL 5382544, at *4 ((N.D. Cal. Dec. 22, 2008) ("significant weight should be attributed to counsel's belief that settlement is in the best interests of" the class).

The experience and views of Class Counsel, who reached the Settlement after arms-length negotiations and who firmly believe that the Settlement is in the best interest of the Class, weigh in favor of approval of the Settlement. Lead Class Counsel and the lawyers of Morgan & Morgan Complex Litigation Group are experienced class action lawyers who specialize in representing victims in complex class litigation. (Yanchunis Decl. 2-8). Class Counsel worked diligently to obtain the best possible result for the Class. *Id.* at 9, 11. The Settlement is a product of thorough analysis of the merits of the claims, the strength of the defenses and the risks of continued litigation. *Id*. at 9-13. Class Counsel believes that the Settlement is an excellent result which is in the best interests of the Class, and is fair, adequate and reasonable. *Id*. at 14.

H. The Reaction of the Class Favors Approval of the Settlement

Courts have recognized that a favorable reaction by class members, or the absence of a negative reaction, to a proposed settlement strongly supports final approval. *See Chun-Hoon*, 716 F. Supp. 2d at 852. "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action

settlement are favorable to the class members." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004)).

In this case, the deadline established by the Court for objections and requests for exclusion expired on July 25, 2014. The Class was given an opportunity to review and object to both the preliminary notice of settlement and Plaintiffs' application for attorneys' fees. *See In re Mercury Interactive Sec. Litig.*, 618 F.3d 988, 993-94 (9th Cir. 2010). Of the 8,695 Class members, only one (2) Class members opted out of the Settlement and not a single objection was filed. (LeFevbre Decl. ¶ 12). As evidenced by this data, the reaction of the Class to the proposed Settlement is overwhelmingly positive. The reaction of the Class to the Settlement very strongly supports final approval of the Settlement.

IV. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

When presented with a proposed settlement, a court must determine whether the settlement class satisfies the requirements for class certification under Rule 23. *Hanlon*, 150 F.3d at 1019. Where a court is evaluating the certification question in the context of a proposed settlement class, questions regarding the manageability of the case for trial purposes are not considered. *Amchem Prods. v. Windor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems … for the proposal is that there be no trial."). Certification of the Class is appropriate for purposes of settlement because the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied.

A. The Requirements of Rule 23(a) – Numerosity, Commonality, Typicality and Adequacy -- are Satisfied

Numerosity. The Class consists of 8,695 Class members. The numerosity requirement of Rule 23(a)(1) is easily satisfied. *See Breeden v. Benchmark Lending Group, Inc.*, 229 F.R.D. 623, 628 (N.D. Cal. 2005); *Sullivan v. Chase Inv. Servs., Inc.*, 79 F.R.D. 246, 257 (N.D. Cal. 1978).

Commonality. The commonality requirement of Rule 23(a)(2) is met in this case. "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule." *Hanlon*, 150 F.3d at 1019. There are numerous questions of fact and law common to the Class, including, among other things: whether the Compensation Plan required Wells Fargo to pay standard commission rates rather than a flat 43 bps for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs; whether Wells Fargo had a corporate practice of failing to pay standard commission rates for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs; whether Wells Fargo breached the terms of the Compensation Plan for failing to pay standard commission rates for originating specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs; and whether Wells Fargo failed to pay amounts due under the Compensation Plan. This non-exhaustive list of common issues are more than sufficient to meet the commonality requirement of Rule 23(a)(2).

Typicality. Typicality requires the court to determine "whether other [class] members have the same or similar injury, whether the action is based on conduct which is not

unique to the named plaintiffs, and whether other class members have been injured by the same conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The Ninth Circuit interprets typicality permissively. *Hanlon*, 150 F.3d at 1020. It is sufficient for the named plaintiff's claims to arise from the same remedial and legal theories as the class claims. *Arnold v. United Artists Theater, Inc.*, 158 F.R.D. 439, 449 (N.D. Cal. 1994).

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

Adequacy of Representation. Adequacy requires that the class representatives fairly and adequately protect the interests of the class. Fed. R. Civ. P 23(a)(4). Adequacy of representation requires that the class representatives do not have conflicts of interests with other class members and that the named plaintiffs and their counsel will prosecute the action vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. The adequacy requirement is met here. The interests of Plaintiffs and Class members are fully aligned and free of conflict. Further, Class Counsel are qualified and experienced in conducting class action litigation. (Yanchunis Decl.); *see also In re Emulex Corp. Sec. Litig.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) ("In evaluating the adequacy of attorneys representing the class, a court may examine the attorneys' professional qualifications, skill, experience, and

resources … [and] the attorneys; demonstrated performance in the suit itself."). Lead Class Counsel is highly experienced in class action litigation. (Yanchunis Decl. 2-8). Mr. Yanchunis, along with the other lawyers representing the Plaintiffs, have represented the Plaintiffs and putative class members vigorously and have obtained for them a highly favorable resolution of their claims. (Yanchunis Decl. 9, 11, 12, 13). The interests of the class have been adequately protected.

B. The Requirements of Rule 23(b)(3) – Predominance and Superiority -- are Satisfied

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

In this case, and in the context of the proposed settlement, common questions of fact and law predominate over questions of fact and law affecting only individual members of the Class. Wells Fargo is alleged to have, as a national corporate policy, failed to pay standard commission rates for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs, in contravention of its written and uniform

Compensation Plan. All Class Members were subject to compensation agreements that contained the same provisions with regard to the payment of commissions for specialty refinance loans and Wells Fargo uniformly paid a flat 43 bps instead of specialty refinance rates for originating the specialty refinance loans at issue. In proving their individual claims, Plaintiffs would have to address and answer the very same factual and legal questions that would need to be adjudicated in every other class member's case. Accordingly, the predominance element of Rule 23(b)(3) is satisfied.

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

V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant final approval of the Settlement. A proposed form of Final Judgment is submitted with this Motion.

Dated: July 31, 2014

s/ John A. Yanchunis
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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July, 2014, I electronically filed PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT 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,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A.,

Defendant.

Case Number: C 13-2858

DECLARATION OF JOHN YANCHUNIS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL CERTIFICATION OF THE CLASS

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 to practice before this Court in this case. I am one of the Counsel for the Class in this case, and I was appointed by this Court as Lead Counsel for the Class. I submit this declaration in support of the Motion for Final Approval of the Class Action Settlement. The facts herein stated are true of my own personal knowledge and from my review of materials provided or obtained in discovery, including Defendant's responses to discovery and from information in the Court file generated during my involvement in the case or from my review of the docket. If called to testify to such facts, I could and would do so competently.

2. I practice in the area of consumer class actions, and I have focused my practice in this area for the last 19 years. Before that time, I specialized in complex litigation. 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.

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 have 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 So far this year I have lectured on class litigation on three separate occasions around the country, and I am scheduled to lecture in September at a seminar in New York City. I have also served as an expert to The Florida Bar on the topic of the ethical obligations of a class counsel in class action litigation and I have served as an expert on the reasonableness of attorneys' fees in a number of class cases. On each occasion that I have been tendered as an expert, the courts in those cases have accepted me as an expert.

7. Recently I was appointed to the five-member Overall Executive Committee in the Target Data Breach MDL, which is pending United States District Court in St. Paul, Minnesota.

8. 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."

9. **There Was No Fraud or Collusion in the Negotiation of the Settlement.**

The sharply contested nature of the proceedings in this case demonstrates the absence of fraud or collusion behind the Settlement. Defendant was well represented by some of the most preeminent lawyers in the areas of law at issue and in class action defense. While the parties cooperated with one another throughout the litigation, the case was nevertheless hard-fought and many points and issues were very strongly disputed. Along with my co-counsel, I negotiated the Settlement with similar vigor. We agreed with Defendant to the selection of an experienced mediator, David A. Rotman. With the assistance of David A. Rotman, negotiations were conducted in person during a full-day mediation on January 23, 2014 in California. My clients were also involved in the negotiations. They were not potted plants in the room. I sought their advice during the process. At all times the negotiations with Defendant's counsel were arm's-length and extensive. At the mediation session, the parties finally reached an agreement on the basic terms of settlement for the Settlement Class. For the next several weeks, the parties continued settlement discussions in earnest, some which were strongly contested, and negotiated the specific terms of the agreement.

10. **The Settlement Will Avert Complex and Expensive Litigation.**

This case involves claims affecting over 8,600 current and former Wells Fargo employees and addresses the interpretation of complicated commission schedules and how commissions are paid. The claims and defenses are complex; litigating them would be both difficult and time-consuming. Recovery by any means other than settlement would require lengthy and expensive litigation, both as to the merits and class certification, and a favorable outcome is far from certain. By contrast, the Settlement provides immediate, certain and substantial benefits to members of the Settlement Class.

11. **The Factual Record Is Sufficiently Developed to Enable Class Counsel to**

Make a Reasoned Judgment.

Following an extensive investigation, sufficient formal and informal discovery was conducted in the case to enable me and my co-counsel to make a reasoned judgment concerning the benefits of settlement compared to the risks attendant to continued litigation. We also researched the law extensively on the contractual issues and defenses implicated by this lawsuit, and evaluated our assessment of the facts, the contracts and the jurisprudence to make reasoned and informed judgments during the mediation process and in our negotiations with Wells Fargo's counsel over the terms of the settlement. These analyses, and the likely expense, duration and uncertainty of continued litigation put me and my counsel in a solid position to negotiate the best settlement possible.

12. **Plaintiffs Would Have Faced Significant Obstacles to Prevailing.**

I believe that Plaintiffs have a good case against Wells Fargo Bank. Even so, I was mindful that Wells Fargo advanced significant defenses that would have had to be overcome in any contested proceeding. In addition, Wells Fargo strongly contested the suitability of the case for class certification, which presented a large hurdle to recovery for the Class. Apart from the risks, continued litigation would have involved substantial delay and expense, which further supports Final Approval. Had Plaintiffs succeeded in obtaining class certification of a nationwide class, Plaintiffs and the certified class would still have faced summary judgment, a trial on the merits, and a post-judgment appeal. The uncertainties and delays from this process would have been significant. Given the myriad of risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the settlement cannot be seen as anything except a fair compromise.

13. **The Benefits Provided by the Settlement Are Fair, Adequate and**

Reasonable Compared to the Range of Possible Recovery.

While the settlement does not achieve a total victory in terms of the Plaintiffs' view of the interpretation of the contractual provision addressing the compensation to be paid on the loans at issue, a ruling adverse to the Plaintiffs' position would have been a total defeat. The settlement provides approximately one third of what Class members could have obtained were we to have been successful in certifying a class, trying the case to verdict, and defeating any attempts to appeal the results, but then again we could have lost everything at trial were there to be a determination that Defendant's interpretation of the provision of the compensation plan at issue was the prevailing one. In addition, had Defendant prevailed on class certification, always a substantial risk in class litigation, Class members would not be in a position to recover anything.

14. **The Opinions of Class Counsel, the Class Representatives, and Absent Settlement Class Members Favor Approval of the Settlement.**

Both my co-counsel and I wholeheartedly endorse the Settlement with Wells Fargo. As a former law clerk to a United States District Judge and a trial lawyer for over 32 years, I have been involved in numerous trials and my experience has provided me with a deep appreciation for the risks inherent in litigation. While the settlement does not achieve a complete victory for the Class, in my opinion it strikes a more than fair compromise with regard to the risks involved in both certifying and trying the case, the time and expense it would have taken to try the case after certification, and the appeals which would have followed both certification and final judgment. I am very proud of the settlement and I believe it provides a substantial benefit to and is in the best interest of the Class.

Moreover, the fact that only two (2) class members out of 8,695 requested exclusion

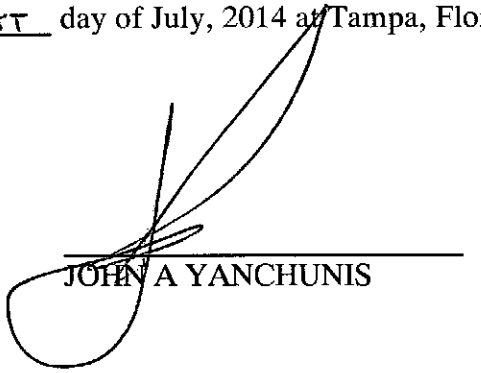
and not one member of the class filed an objection validates my decision to compromise the claims of the Class on the terms set forth in the Settlement agreement.

15. **The Court Should Certify the Settlement Class.**

This Court has previously found the requirements of Rule 23(a) and 23(b)(3) were satisfied in this Action in a settlement posture (Doc. 41). The Court should make the same class certification findings in granting Final Approval.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty under the laws of the State of Florida that the foregoing is true and correct. Executed this 31st day of July, 2014 at Tampa, Florida.



JOHN A YANCHUNIS

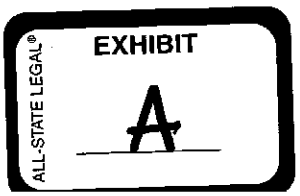
John A. Yanchunis Mr. Yanchunis practices in Morgan & Morgan's Complex Litigation Group and leads the National Consumer Class Action and False Claims Act sections. Prior to joining Morgan & Morgan in 2011, Mr. Yanchunis was a senior partner at James, Hoyer, Newcomer, Smiljanich & Yanchunis, P.A., where 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).

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.

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 Florid and across the country.

Mr. Yanchunis has represented The Florida Bar in many capacities. He has served as an expert for The Florida Bar in the area of class actions and ethics, and also served as special counsel in the prosecution of individuals for The Unauthorized Practice of Law and as follow up in direct criminal contempt proceedings. He has argued before the Florida Supreme Court on behalf of The Florida Bar on a number of occasions, including the following cases: *In re*



Amendments to the Rules Regulating The Florida Bar and the Florida Rules of Judicial Administration, 907 So.2d 1138, 30 Fla. L. Weekly S351 (Fla., May 12, 2005)(NO. SC04-135); *Florida Bar re Revisions to Simplified Forms, Pursuant to Rule 10-2.1(a) of the Rules Regulating The Florida Bar*, 774 So.2d 611, 25 Fla. L. Weekly S570 (Fla., Jul 13, 2000)(NO. SC902023); *The Florida Bar v. Eubanks*, 752 So.2d 540, 24 Fla. L. Weekly S304 (Fla., Jun 24, 1999)(NO. 91,084); *The Florida Bar re Advisory Opinion on Nonlawyer Representation in Securities Arbitration*, 696 So.2d 1178, 22 Fla. L. Weekly S388 (Fla., Jul 03, 1997)(NO. 89,140); *The Florida Bar re Advisory Opinion Activities of Community Ass'n Managers*, 681 So.2d 1119, 21 Fla. L. Weekly S328 (Fla., Jul 18, 1996)(NO. 86,929); *The Florida Bar re Amendments to Rules Regulating The Florida Bar* (Proceedings Before a Referee), 685 So.2d 1203, 21 Fla. L. Weekly S291 (Fla., Jun 27, 1996)(NO.87,132); *The Florida Bar v. Schramek*, 670 So.2d 59, 21 Fla. L. Weekly S51 (Fla., Feb 01, 1996)(NO. 83,873); *The Florida Bar v. Schramek*, 616 So.2d 979, 18 Fla. L. Weekly S243 (Fla., Apr 15, 1993)(NO. 77,871).

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.

Mr. Yanchunis also served as a member of the Board of Directors for The Florida Bar Foundation (2003-2006), and is a Fellow of The Florida Bar Foundation. He served as Chairman of the Special Commission on Multi-Jurisdictional Practice (2001-2005), and was a member of the Special Committee on the Enhancement of the Practice of Law (1997-1998). Mr. Yanchunis was a member of the Board of Governors (BOG) of The Florida Bar (1999-2003), and was involved with many subcommittees of the BOG, including the Budget Committee (2000-2003), Multi-Disciplinary Practice Committee (1999-2002), and Board Review Committee on Professional Ethics (1999-2002). He has served on The Florida Bar's Ethics Committee (1997-1999), Standing Committee on Simplified Forms where he was a member (1996-1998) and Vice 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

...For the people

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.

Mr. Yanchunis has represented as outside counsel 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 anti trust activity, other possible unlawful activity and activities regarding the payment of undisclosed compensation and commissions to insurance brokers. Many of 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.

Mr. Yanchunis has represented The Florida Bar in many capacities, including as special counsel in the prosecution of individuals for The Unauthorized Practice of Law and as follow up in direct criminal contempt proceedings. He has argued before the Florida Supreme Court on behalf of The Florida Bar on a number of occasions, including the following cases: *In re Amendments to the Rules Regulating The Florida Bar and the Florida Rules of Judicial Administration*, 907 So.2d 1138, 30 Fla. L. Weekly S351 (Fla., May 12, 2005)(NO. SC04-135); *Florida Bar re Revisions to Simplified Forms, Pursuant to Rule 10-2.1(a) of the Rules Regulating The Florida Bar*, 774 So.2d 611, 25 Fla. L. Weekly S570 (Fla., Jul 13, 2000)(NO. SC902023); *The Florida Bar v. Eubanks*, 752 So.2d 540, 24 Fla. L. Weekly S304 (Fla., Jun 24, 1999)(NO. 91,084); *The Florida Bar re Advisory Opinion on Nonlawyer Representation in Securities Arbitration*, 696 So.2d 1178, 22 Fla. L. Weekly S388 (Fla., Jul 03, 1997)(NO. 89,140); *The Florida Bar re Advisory Opinion Activities of Community Ass'n Managers*, 681 So.2d 1119, 21 Fla. L. Weekly S328 (Fla., Jul 18, 1996)(NO. 86,929); *The Florida Bar re Amendments to Rules Regulating The Florida Bar* (Proceedings Before a Referee), 685 So.2d 1203, 21 Fla. L. Weekly S291 (Fla., Jun 27, 1996)(NO.87,132); *The Florida Bar v. Schramek*, 670 So.2d 59, 21 Fla. L. Weekly S51 (Fla., Feb 01, 1996)(NO. 83,873); *The Florida Bar v. Schramek*, 616 So.2d 979, 18 Fla. L. Weekly S243 (Fla., Apr 15, 1993)(NO. 77,871).

Mr. Yanchunis is actively involved in his profession. He is a former member (1997-2002) of The Florida Board of Bar Examiners (FBBE) and is presently an Emeritus Member. He served on many subcommittees of the FBBE including the Committee on Character and Fitness where he was a member (1998-2000) and Chair (2000-present), the Committee on Petitions where he was a member (1998-1999) and Chair (1999-2000), the Committee on Budget (1999-present), the Committee on Questions (1998-present), the Committee on Abstracts of Practice where he was a member (1999-present) and Chair (2000-present), and Examination Grading (July 2000).

Mr. Yanchunis is involved in many other activities with The Florida Bar. He served as a member of the Board of Directors for The Florida Bar Foundation (2003-2006), and is a Fellow of The Florida Bar Foundation. He served as Chairman of the Special Commission on Multi-Jurisdictional Practice (2001-2005), and was a member of the Special Committee on the

Enhancement of the Practice of Law (1997-1998). Mr. Yanchunis was a member of the Board of Governors (BOG) of The Florida Bar (1999-2003), and was involved with many subcommittees of the BOG, including the Budget Committee (2000-2003), Multi-Disciplinary Practice Committee (1999-2002), and Board Review Committee on Professional Ethics (1999-2002). He has served on the 6th Circuit Pro Bono, Ethics Committee (1997-1999), Standing Committee on Simplified Forms where he was a member (1996-1998) and Vice 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). Presently, he is a member of the Florida Supreme Court's Judicial Management Council (2008-present) and the Consumer Protection Law Committee (2009-present).

Mr. Yanchunis was a member of the St. Petersburg Bar Association (1996-2005) 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. Presently he is 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 (2003-2008), 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 serves 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 (admitted in 1981) and of The State Bar of Texas (admitted in 1980). 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 was selected to Florida Super Lawyers in 2009 and 2010. The President's Award for Excellence recognizes 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, Associate Editor-in-Chief and Technical Editor of the South Texas Law Journal Phi Alpha Delta.

[Counsel Listed on Next Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BOBBIE PACHECO DYER, on behalf of herself and all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Case No. 13-CV-02858 JST

DECLARATION OF CORY LEFEBVRE

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WELLS FARGO BANK, N.A.

I, Cory LeFebvre, declare as follows:

1. I am a Project Manager for Rust Consulting, Inc. ("Rust"). My business address is 625 Marquette Avenue, Suite 880, Minneapolis, Minnesota 55402-2469. My telephone number is (612) 359- 2858. I am over twenty-one years of age and am authorized to make this declaration on behalf of Rust and myself.

2. Rust has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, property damage, employment discrimination, employment wage and hour, product liability, insurance and consumer issues. We have provided notification and/or claims administration services in more than 4,300 cases. Of these, more than 1,500 were Labor & Employment cases.

3. Rust was engaged by Counsel to provide notification services in the *Bobbie Pacheco Dyer, et al. v. Wells Fargo Bank, N.A.* Settlement (the "Settlement"). Duties included: a) preparing, printing and mailing of the *Notice of Pendency of Class Action, Proposed Settlement, Your Rights, and Options for You to Consider* ("Notice"); b) processing of requests for exclusion; c) drafting and mailing settlement checks to Class Members; and d) for such other tasks as the Parties mutually agree or the Court orders Rust to perform.

4. Rust obtained a mailing address of Dyer, et al. v. Wells Fargo Bank, N.A., c/o Rust Consulting, Inc. – 4323, P.O. Box 2396, Faribault, MN 55021-9096 to receive requests for exclusion, objections, undeliverable Notices and other communication regarding the Settlement.

5. Rust obtained a phone number of (888) 764-7511 for Class Members to call with questions regarding the Settlement.

6. On or about May 13, 2014, Rust received text for the Notice from Counsel. A draft of the Notice was prepared by Rust and approved by the Parties prior to mailing.

7. On or about May 27, 2014, Counsel for Defense provided Rust with a mailing list (the "Class List") containing the Class Member's names, last known addresses, Social Security Numbers, employee identification numbers and the impact on individual commission rates resulting from Wells Fargo paying 43 basis points on the Wells Fargo to Wells Fargo specialty

refinances at issue in the lawsuit and estimated award. The Class List contained data for 8,695 potential Class Members.

8. The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service. The NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Notice.

9. On June 10, 2014, Notices were mailed to 8,695 Class Members contained in the Class List via First Class mail. The Notice advised Class Members that they could submit a request for exclusion post-marked by July 25, 2014.

10. Of the 8,695 Notices mailed on June 10, 2014, Rust received 94 Notices returned as undeliverable from the address to which it was originally sent. Of the 94 Notices returned as undeliverable, Rust performed address traces on the 86 of them. The other eight (8) did not need to be traced because six (6) Class members provided Rust with a more current address to which Notices were re-mailed, and two (2) were returned as undeliverable subsequent to the July 25, 2014 deadline for submitting requests for exclusion or objections. Of the 86 Notices for which Rust performed address traces, the trace resulted in identification of a more current address for 61 of them. Rust promptly re-mailed Notices to these 61 Class members via First Class mail. Of the 61 Notices re-mailed to a traced address, six (6) were returned to Rust as undeliverable for a second time. In sum, 33 of the 8,695 Notices remain undeliverable due to the inability to locate a more current address.

11. As of this date, seven (7) Notices were returned by the Post Office with forwarding addresses attached. Notices were promptly re-mailed to those Class Members via First Class mail.

12. Rust is also responsible for receipt of all requests for exclusion for the Settlement. As of this date, Rust has received two (2) requests for exclusion.

13. As of this date, zero (0) objections were received by Rust.

14. The total cost for the administration of this Settlement, including fees incurred and future costs for completion of the administration is estimated to be $77,979.76.

I declare under penalty of perjury under the laws of the State of California and the United States that the above is true and correct to the best of my knowledge and that this Declaration was executed this 30th day of July 2014, at Minneapolis, MN.

CORY LEFEBVRE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOBBIE PACHECO DYER and PATRICIA STALLWORTH, on behalf of themselves and all others similarly situated, Plaintiffs, vs. WELLS FARGO BANK, N.A., Defendant.	Case Number: C 13-2858 **[PROPOSED] FINAL JUDGMENT AND ORDER**

Before the Court are Plaintiffs' motions for final approval of the pending class action settlement and for an award of attorneys' fees and costs and an enhancement award to the class representatives. The Court held a final fairness hearing on August 28, 2014, at 2:00 p.m.

I. BACKGROUND

Plaintiffs' operative complaint, FAC, ECF No. 27, alleges that Defendant Wells Fargo Bank, N.A. failed to pay commissions to the proposed class of Branch Sales Managers and Home Mortgage Consultants of the Wells Fargo Home Mortgage Division (WFHM) as required by WFHM's Incentive Compensation Plan. The Court previously granted the settlement preliminary approval and directed the distribution of class notice. ECF No. 41. The Court's prior Order sets out the relevant background of the case and the settlement agreement.

II. LEGAL STANDARD FOR SETTLEMENT APPROVAL

Pursuant to Fed. R. Civ. P. 23(e), "[t]he claims, issues or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. "Adequate notice is critical to court approval of a class settlement under Rule 23(e). Hanlon v. Chrysler Corp., 150 F.3d 1011, 1025 (9th Cir. 1998). In addition, Rule 23(e) "requires the district court to determine whether a proposed settlement is fundamentally fair, adequate and reasonable." Id. at 1026. "Assessing a settlement proposal requires the district court to balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status throughout trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. Id.

III. ANALYSIS

A. Settlement Approval

1. Adequacy of Class Notice

The Court previously approved the form of class notice in its Preliminary Approval Order. Since then, the Claims Administrator carried out the notice plan by updating the addresses on the class list utilizing the National Change of Address Database, mailing the class notice, performing address traces and re-mailing the class notice as necessary for notices returned as undeliverable, and re-mailing notices returned with forwarding addresses. LeFebvre Decl., ¶¶ 8-11. Thirty-three (33) of the 8,695 class notices remain undeliverable. Id. at ¶ 10. The Claims Administrator received two requests for exclusion and no objections were received. Id. at ¶¶ 12, 13.

The Court finds that the class notice plan was implemented properly.

2. Fairness, Adequacy and Reasonableness of Settlement

The Court previously found that the settlement fell within the "range of possible approval," that it was the product of "serious, informed, non-collusive negotiations," that it had no "obvious deficiencies," and that it "does not improperly grant preferential treatment to class representatives or segments of the class." See In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079–80 (N.D. Cal. 2007) (quoting Schwartz v. Dallas Cowboys Football Club, Ltd., 157 F. Supp. 2d 561, 570 (E.D. Pa. 2001)). Since then, no class member has objected, and only two have requested exclusion.

Class members are not required to submit a claim form to receive a settlement payment. Accordingly, the participation rate for this settlement is nearly 100%. Nearly the entire settlement amount of $14,743,101.00 will be distributed to claimants. Only $983.18, the amount which would have been distributed to the two class members who excluded themselves and therefore will not release their claims, will revert to Defendant.

B. Class Certification

For the reasons discussed in the Court's Preliminary Approval Order, the Court finds that the requirements for certification of the conditionally certified settlement class have been met, and that the appointment of Plaintiffs Dyer and Stallworth as Class Representatives, and John Yanchunis as Lead Class Counsel and the remaining Plaintiffs' counsel as Class Counsel, is proper.

C. Attorneys' Fees and Expenses

"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). 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 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).

Class Counsel requests twenty-five (25%) of the total settlement amount, or $3,685,775.25, as attorneys' fees and expenses. Because Class Counsel's request includes expenses, this amount requested is slightly less than the presumptive 25% "benchmark" for a reasonable fee award. After considering the record in this case, Class Counsel's declarations and filings, the declaration of Geoffrey Miller submitted in support of Class Counsel's motion for

attorneys' fees, and relevant caselaw in similar types of cases, the Court finds that the fee requested, slightly less than 25% of the settlement fund, is reasonable.

D. Enhancement Award

"Incentive awards are discretionary . . . and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk 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). "[D]istrict courts must be vigilant in scrutinizing all incentive awards to determine whether they destroy the adequacy of the class representatives." Radcliffe v. Experian Information Solutions, Inc., 715 F.3d 1157, 1165 (9th Cir. 2013).

"Courts may consider the following criteria in determining whether to provide incentive awards: '(1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.'" Walsh v. Kindred Healthcare, No. 11-cv-00050-JSW, 2013 WL 6623224, at *4 (N.D. Cal. Dec. 16, 2013) (quoting Van Vranken v. Atlantic Richfield Co., 901 F.Supp. 294, 299 (N.D. Cal. 1995)).

In this case, the Court finds that $15,000 is reasonable to reflect the time and energy Plaintiffs Bobbie Dyer and Patricia Stallworth expended in bringing this action. 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 the Defendant in addition to 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. The Court has jurisdiction over the Plaintiffs, Defendant, the settlement Class members, and the claims asserted in this Action.

2. The Court hereby certifies the settlement class conditionally certified in this Court's prior Preliminary Approval Order, ECF No. 41.

3. The settlement has been entered into in good faith following arms-length negotiations and is non-collusive.

4. The Class Notice disseminated to the class complies with the requirements of Federal Rule of Civil Procedure 23 and due process and constitutes the best notice practicable under the circumstances.

5. A total of two (2) Class members have timely requested exclusion from the settlement class. The two (2) Class members who have excluded themselves from the settlement class are Rosa S. Aguirre and Debra L. Ashley.

6. The Court grants final approval of the Joint Stipulation of Settlement and Release, and finds that it is fair, reasonable and adequate, and in the best interest of the settlement class. All class members who have not timely excluded themselves from the settlement are bound by this Final Judgment and Order.

7. Defendant shall distribute the relief to the settlement class in accordance with the Joint Stipulation of Class Settlement and Release.

8. The Court approves an enhancement award of $15,000 each to Class Representatives Bobbie Dyer and Patricia Stallworth. Defendant shall distribute these payments to the Class Representatives in accordance with the Joint Stipulation of Class Settlement and Release.

9. The Court approves an award to Class Counsel of $3,685,775.25 in attorneys' fees and expenses. Defendant shall distribute this payment to Class Counsel in accordance with the Joint Stipulation of Class Settlement and Release.

10. The Action is dismissed with prejudice, without fees or costs except as provided in the Joint Stipulation of Class Settlement and Release and in paragraph 10 above.

11. The Court excludes from the binding effect of the Stipulation of Class Settlement and Release the two (2) Class Members who submitted a timely request for exclusion.

12. The Court retains jurisdiction over the enforcement of the Stipulation of Class Settlement and Release.

IT IS SO ORDERED.

Dated: _____

_____
JON S. TIGAR
United States District Judge