UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GREGORY YOUNG, et al., Plaintiffs, v. WELLS FARGO & COMPANY and WELLS FARGO BANK, N.A., Defendants.	Case No. 4:08-cv-00507-RP-CFB

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES TO PLAINTIFFS' COUNSEL AND SERVICE AWARDS TO CLASS REPRESENTATIVES

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I. INTRODUCTION

Plaintiffs[1] respectfully submit this reply memorandum of law in support of their motions (i) for final approval of the proposed Settlement of this Action (ECF No. 262), and (ii) for an award of attorneys' fees and reimbursement of litigation expenses to Plaintiffs' Counsel and service awards to Class representatives (ECF No. 263) (collectively, the "Motions"). As detailed in the Motions, the Settlement is an outstanding result and should be granted final approval. Further, Plaintiffs' Counsel's requested fees and expenses and the incentive awards to Plaintiffs are merited and within the range of reasonableness established in this Circuit.

Importantly, the Class agrees. Since Plaintiffs filed the Motions, the deadline for filing requests for exclusion and objections has passed, and the reaction of the Class remains overwhelmingly positive. A total of only 219 requests for exclusion have been received from the more than 2.7 million Class members, a miniscule percentage.[2] Further, even fewer Class members – just 13 – have filed objections to the proposed Settlement and/or Plaintiffs' Counsel's request for attorneys' fees, and of this number four are from well-known "serial" class action objectors.[3] Notably, no governmental entity that received Notice has objected to the Settlement.

As explained below, the objections to final approval of the proposed Settlement and

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[1] Capitalized terms shall have the meaning that the Stipulation ascribes to them. (*See generally* Stipulation and Agreement of Settlement, ECF No. 243-3).

[2] A total of 214 timely exclusion requests representing 181 unique loans with qualifying property inspection fee transactions were received by the claims administrator. *See* Declaration of Lori L. Castaneda at ¶3. Five additional exclusion requests representing four unique loans with qualifying property inspection fee transactions postmarked after the December 22, 2015 deadline have been received. *Id*. Plaintiffs respectfully submit that the Court should accept all of the exclusion requests received, including those that were untimely.

[3] Eleven objections have been filed with the Court. *See* ECF Nos. 250 (Ato H. Sparkman), 255 (Eric Chau), 260 (Clarence D. Thomas), 269 (Jennifer Deachin), 271 (Steven Buckley), 272 (Sonia Shelton), 273 (Julius N. Dunmore, Jr.), 274 (Louis M. Herran, Sr.), 275 (Rhadiante Van de Voorde), 276 (Darryl Gibson), and 277 (Kenneth M. Njema). The remaining objections, which were received by counsel for Wells Fargo, are attached as Exhibits A (Janis Flakes) and B (James J. Juliano) to the Reply Declaration of Deborah Clark-Weintraub (the "Clark-Weintraub Decl.") filed herewith.

Plaintiffs' Counsel's request for attorneys' fees are meritless. Accordingly, Plaintiffs respectfully submit that the objections should be overruled in their entirety and that the Motions should be granted.

II. ARGUMENT

A. The Court Should Grant Final Approval to the Settlement

In making a determination as to whether a Settlement is "fair, reasonable, and adequate" under Rule 23(e)(2), a "court should consider (1) 'the merits of the plaintiff's case[ ] weighed against the terms of the settlement,' (2) 'the defendant's financial condition,' (3) 'the complexity and expense of further litigation,' and (4) 'the amount of opposition to the settlement.'" *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013) ("*Uponor II*") (citing and quoting *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988)).[4] While these factors were fully addressed in the memorandum in support of the Final Approval Motion ("Final Approval Mem.") (ECF No. 262-1), Plaintiffs provide the Court with further detail as to the last factor, the reaction of the Class to the proposed Settlement, now that the objection and opt-out deadlines have passed.

"The fact that only a handful of class members objected to the settlement . . . weighs in its favor." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995). As noted above, direct mail notice was provided to over 2.7 million Class members and only 219 requests for exclusion and just 12 objections to the Settlement have been received. *See* Cataneda Decl. at ¶¶3-4.[5] While "a settlement can be found to be fair even if a substantial number of members object to it," *Watson v. Ray*, 90 F.R.D. 143, 147 (S.D. Iowa 1981), the fact that so few objections

[4] Unless otherwise noted, all internal citations are omitted, and emphasis is added.

[5] Class member Steven Buckley's objection is limited to the request for attorneys' fees and litigation expenses. *See* ECF No. 271.

were received here "is remarkable given the size and scope of this litigation." *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08–MDL–1958 ADM/AJB, 2013 WL 716088, at *7 (D. Minn. Feb. 27, 2013). Accordingly, the overwhelmingly positive reaction of the Class further supports that the Settlement is fair, reasonable, and adequate.

B. The Court Should Grant Plaintiffs' Counsel's Request for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses

As discussed in the memorandum in support of the Fee Motion ("Fee Mem.") (ECF No. 263-1), consideration of the relevant factors used by courts in this Circuit demonstrates the requested fee award is reasonable under the percentage of the recovery and lodestar methods and should be approved. Fee Mem. at 3-11. The requested fee is 33-1/3% of the Settlement Fund, including the amount contributed to cover the cost of notice and administration. In the Eighth Circuit, courts "have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions." *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-4038-MWB, 2011 WL 5547159, at *1 (N.D. Iowa Nov. 9, 2011); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming fee award representing 36% of settlement fund as reasonable); *see Iowa Ready-Mix*, 2011 WL 5547159, at *2 (awarding one-third of the common fund as attorneys' fees); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% fee); *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1066 (D. Minn. 2010) (collecting cases); *In re Eng'g Animation Sec. Litig.*, 203 F.R.D. 417, 423 (S.D. Iowa 2001) (awarding attorneys' fees of one-third of settlement fund).

The requested fee is also eminently reasonable under the lodestar/multiplier methodology. Plaintiffs' Counsel devoted more than 7,000 hours litigating this Action for the last seven years on a fully contingent basis for a lodestar of $4,715,940.25. In addition,

Plaintiffs' Counsel have advanced $204,792.06 in litigation expenses.[6] The requested fee of $8,583,333 represents a multiplier of just 1.82, well within the range of reasonableness given the contingent nature of Plaintiffs' Counsel's representation and the number of years they pursued the litigation on behalf of Class members. *See, e.g.*, *Ray v. Lundstrom*, Nos. 8:10CV199, 4:10CV3177, 8:10CV332, 2012 WL 5458425, at *4 (D. Neb. Nov. 8, 2012); (approving multiplier of 1.96); *Yarrington*, 697 F. Supp. 2d at 1065 (approving multiplier of 2.26); *Nelson v. Wal-Mart Stores, Inc.*, No. 2:05CV000134WRW, 2009 WL 2486888, at *2 (E.D. Ark. Aug. 12, 2009) (approving multiplier of 2.5 and citing cases within the Eighth Circuit approving lodestar multipliers of up to 5.6); *Cohn v. Nelson*, 375 F. Supp. 2d 844, 862 (E.D. Mo. 2005) (approving a requested 2.9 multiplier and stating that "courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation"). Moreover, the ongoing work required of Plaintiffs' Counsel in finalizing this litigation through distribution of the Settlement proceeds to Class members will further reduce the requested multiplier.

C. The Objections Are Meritless

1. Several Objections Are from Serial Objectors and/or Individuals Represented by Counsel Who Routinely File Objections to Class Action Settlements

"Courts treat with particular disapproval the objections and appeals of 'professional objectors,' whose objections amount to a 'tax that has no benefit to anyone other than to the objectors' but serves to 'tie up the execution of [a] Settlement and further delay payment to the members of the Settlement Class.'" *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, No. 11–MD–2247 ADM/JJK, 2012 WL 3984542, at *5 (D. Minn. Sept. 11,

[6] This amount represents a reduction from the amount previously requested due to a negotiated reduction in the amount to be paid to a consulting expert. *See* Amended Declarations of Michael R. Reese and Daryl F. Scott submitted herewith.

2012). For this reason, the Federal Judicial Center has advised courts to "[w]atch out . . . for canned objections from professional objectors who seek out class actions to extract a fee by lodging generic, unhelpful protests." Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges, at 17 (3d ed. 2010).[7]

Unfortunately, four such "serial" objectors have filed objections in this case:

- **Rhadiante Van de Voorde** (ECF No. 275) has lodged objections in at least three other class action settlements. *See Astiana v. Kashi Company*, No. 3:11-cv-1967 (S.D. Cal.); *Schlesinger v. Ticketmaster*, No. BC 304565 (Cal. Super. Ct.); *Skold v. Intel Corporation*, Case No. 1-05-CV-039231 (Cal. Super. Ct.).[8] Although Ms. Van de Voorde has filed her objection here *pro se*, given its content it was likely "ghost written" by an attorney. Ms. Van de Voorde's objections in these cases were overruled on the merits or withdrawn.[9]

- **Jennifer Deachin** (ECF No. 269) has lodged objections to class action settlements in at least six other cases. *See Fladell v. Wells Fargo*, No. 13-cv-60721 (S.D. Fla.); *Fraley v. Facebook, Inc.*, No. 11-cv-1726 (N.D. Cal.); *In re Polyurethane Foam Antitrust Litig.*, No. 10-md-2196 (N.D. Ohio); *Blessing v. Sirius XM Radio Inc.*, No. 09-cv-10035 (S.D.N.Y.); *Faught v. American Home Shield*, No. 2:07-cv-1928 (N.D. Ala.), and *In re Mattel, Inc. Toy Lead Paint Prods. Liab. Litig.*, 07-ml-1897 (C.D. Cal.).[10] Although Ms. Deachin has filed her objection here *pro se*, in connection with her prior objections, Ms. Deachin has been represented by attorneys who frequently represent objectors in class action lawsuits. To the extent Ms. Deachin's objections in these cases have been ruled upon, they have been denied on the merits,[11] and any subsequent appeals

[7] http://www.fjc.gov/library/fjc_catalog.nsf/autoframepage?openform&url=/library/fjc_catalog.nsf/bycollectionfrm?openform&category=Pocket+Guides+for+Judges (last accessed January 12, 2016).

[8] Ms. Van de Voorde's objections in *Kashi*, *Ticketmaster*, and *Skold* are attached as Ex. C to the Clark-Weintraub Decl.

[9] *See Astiana v. Kashi Co.*, No. 3:11-CV-1967, slip op. at 15 (S.D. Cal. Sept. 2, 2014) (finding that objections to settlement "ha[d] no merit.") (attached as Ex. D to the Clark-Weintraub Decl.); *Schlesinger v. Ticketmaster*, No. BC 304565, slip op. at 40-41 (Cal. Super. Ct. Feb. 27, 2015) (overruling objection in full)(attached as Ex. E to the Clark-Weintraub Decl.). In *Skold*, Ms. Van de Voorde withdrew her objection after the Plaintiffs moved for sanctions. *See* Clark-Weintraub Decl. Ex. F.

[10] Ms. Deachin's objections in *Fladell*, *Fraley*, *Polyurethane*, *Blessing*, *Faught*, and *Mattel* are attached as Ex. G to the Clark-Weintraub Decl.

[11] *See Fladell v. Wells Fargo*, No. 13-cv-60721, slip op at ¶9 (S.D. Fla. Oct. 29, 2014) (Clark-Weintraub Decl. Ex. H); *Fraley v. Facebook, Inc.*, 966 F. Supp. 2d 939, 947-49 (N.D. Cal. 2013); *Blessing v. Sirius XM Radio Inc.*, No. 09 CV 10035(HB), 2011 WL 3739024 (S.D.N.Y. Aug. 24, 2011); *Faught v. American Home Shield Corp.*,

she has taken have either been dismissed without explanation or any change to the terms of the settlement at issue,[12] or denied on the merits.[13]

- **Julius N. Dunmore, Jr.** (ECF No. 273) has been an objector in at least two other class action settlements. *See Malta v. The Federal Home Loan Mortgage Corporation*, No. 3:10-cv-1290 (S.D. Cal.); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-1827 (N.D. Cal.).[14] Although Mr. Dunmore has filed his objection here *pro se*, like Ms. Deachin, in connection with his prior objections, he has been represented by attorneys who frequently represent objectors in class action lawsuits.[15] Mr. Dunmore's objections in these cases were denied on the merits,[16] and subsequent appeals he has taken from these decisions have been dismissed without explanation or any change to the terms of the settlement at issue.[17]

- **Steven Buckley's** objection (ECF No. 271) has apparently been orchestrated by attorney John J. Pentz, who signed the certificate of service. Mr. Pentz is so prolific at filing meritless objections to class action settlements he has been the subject of numerous critical court decisions. *See, e.g., In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 350–51 (E.D.N.Y. 2010) (labeling Mr. Pentz's objections "meritless" and "based in part upon [a] misconception"); *In re Initial Pub. Offering Sec. Litig.*, 721 F. Supp. 2d 210, 214 (S.D.N.Y. 2010), *reconsideration denied*, 2010 WL 2605233 (S.D.N.Y. June 28, 2010) and *opinion clarified*, No. 21 MC 92 (SAS), 2010 WL 5186791 (S.D.N.Y. July 20, 2010) (finding "evidence of bad faith or vexatious conduct by the Objectors," noting that Pentz was a "serial" objector and requiring him and four other attorneys to post an appeal bond); *In re Wal-Mart Wage & Hour Employment Practices Litig.*, No. 2:06-CV-00225-PMP-PAL, 2010 WL 786513, at *1 (D. Nev. Mar. 8, 2010) (finding that Pentz had "a documented history of filing notices of appeal from

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No. 2:07–CV–1928–RDP, 2010 WL 10959223 (N.D. Ala. Apr. 27, 2010); *In re Mattel, Inc. Toy Lead Paint Prods. Liab. Litig.*, No. 2:07-ml-01897-DSF-AJW, slip op. at ¶2 (C.D. Cal. Mar. 24, 2010) (Clark-Weintraub Decl. Ex. I). The Court has not yet ruled on the motion for final approval and objections to the settlement in *Polyurethane*.

[12] *See* Clark-Weintraub Decl. Ex. J (voluntary dismissal of Ms. Deachin's appeals in *Fladell* and *Fraley*).

[13] *See Blessing v. Sirius XM Radio Inc.*, 507 Fed. App'x 1 (2d Cir. 2012); *Faught v. American Home Shield Corp.*¸668 F.3d 1233 (11th Cir. 2012).

[14] Mr. Dunmore's objections in the *Malta* and *TFT-LCD* cases are attached as Ex. K to the Clark-Weintraub Decl.

[15] Significantly, in the *TFT-LCD* case, Judge Illston found that the behavior of Mr. Dunmore and his counsel, together with that of another objector, bordered on extortion under California law. *See In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-1827, 2013 WL 2048408, at *2 n.4 (N.D. Cal. May 14, 2013).

[16] *See Malta v. The Federal Home Loan Mortgage Corporation*, 3:10-cv-1290, slip op. at ¶8 (S.D. Cal. Jun. 21, 2013) (attached as Exhibit L to the Clark-Weintraub Decl.); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 3:07-md-1827, 2013 WL 1365900, at *8 (N.D. Cal. Apr. 3, 2013).

[17] *See* Clark-Weintraub Decl. Ex. M (voluntary dismissal of Mr. Dunmore's appeals in *Malta and TFT-LCD)*.

orders approving other class action settlements, and thereafter dismissing said appeals when they and their clients were compensated by the settling class or counsel for the settling class" and ordering the filing of an appeal bond); *Barnes v. Fleetboston Fin. Corp.*, C.A. No. 01–10395–NG, 2006 WL 6916834, at *2-3 (D. Mass. Aug. 22, 2006) (requiring objector represented by Pentz (his mother-in-law) to post appeal bond after finding her objections frivolous); *In re Compact Disc Minimum Advertised Price Antitrust Litig*., No. MDL 1361, 2003 WL 22417252, at *2 n.3 (D. Me. Oct. 7, 2003) (finding that Mr. Pentz, a "repeat objector," had filed a "groundless objection," imposing an appeal bond because his appeal "might be frivolous," and noting that sanctions on appeal were "a real possibility"); *In re Warfarin Sodium Antitrust Litig*., 212 F.R.D. 231, 258 (D. Del. 2002), *aff'd*, 391 F.3d 516 (3d Cir. 2004) (approving settlement despite objection and finding that Mr. Pentz, and other serial objector counsel, had misunderstood allocation and distribution plan); *Tenuto v. Transworld Sys., Inc*., No. 99-4228, 2002 WL 188569, at *3 (E.D. Pa. Jan. 31, 2002) (approving settlement and finding that Mr. Pentz had been unaware of applicable law and had misstated value of settlement). Indeed, Mr. Pentz has filed hundreds of objections and/or appeals to class action settlements and, in most cases, has lost, dismissed, abandoned or withdrawn objections or appeals, without attaining settlement changes or additional benefits to the class. Indeed, in a 2004 article that appeared in *Corporate Counsel*, Mr. Pentz freely admitted that most of the appeals he files on behalf of objectors are dismissed in return for payments from class counsel. *See* Lisa Lerer, "Fringe Player," *Corporate Counsel*, (October 2004) (stating that Pentz "acknowledge[s] that the bulk of his income does not come from court-awarded fees" and that "objectors make most of their money when class counsel pay them to drop their objections").[18]

2. The Serial Objectors' Complaints Are Meritless

The serial objectors' complaints fall into five broad categories: (i) objections to the Plan of Allocation; (ii) objections to the purported scope of the release; (iii) objections to Plaintiffs' Counsel's request for an award of attorneys' fees; (iv) objections to Plaintiffs' request for service awards; and (v) objections to the Notice.

a. The Objections to the Plan of Allocation Are Mertiless

Underscoring that her interest in objecting is driven by something other than the merits, Ms. Van de Voorde, although she is a Class member with an Active loan and, therefore, is not required to file a claim to obtain a settlement payment under the Plan of Allocation, complains

[18] A copy of this article is attached as Ex. N to the Clark-Weintraub Decl.

that the Plan of Allocation is unfair because Class members in the Post-Sale category are required to file a Proof of Claim. *See* ECF No. 275 at 2-3. Even assuming *arguendo* that Ms. Van de Voorde is acting in good faith in lodging an objection that is of no consequence to her personally, her objection is baseless. Although Ms. Van de Voorde states that "Class Counsel has not provided any reason why Post-Sale Class Members are required to submit a claim form," in fact, as Ms. Van de Voorde herself admits, the Notice provides the explanation – available information provided by Wells Fargo with respect to these loans did not permit automatic payments to be made to this subset of the Class. *See* ECF No. 243-5 at 7 (response to Question 9). For example, to the extent available records with respect to Post-Sale Loans reflect payments of property inspection fees, such payments may have been made with investor or GSE as opposed to borrower funds.

In similar circumstances, courts have approved settlements that require a portion of the class to file proof-of-claim forms even though other class members will receive automatic payments. *See, e.g.*, *Spark v. MBNA Corp.*, 48 Fed. Appx. 385, 387 (3d Cir. 2002) (affirming order approving settlement wherein "class members with a 'current-active' account would receive an automatic credit but that class members with a 'current-not active' or 'non-current' account would be required to submit a claim either by calling a toll-free telephone number or by returning a claim form to MBNA."); *see also In re Excess Value Ins. Coverage Litig.*, No. M-21-84RMB, 2004 WL 1724980, at *14 (S.D.N.Y. July 30, 2004) (approving settlement wherein some class members received automatic vouchers and others had to submit affidavits in order to establish eligibility, as UPS "ha[d] no practical means to independently identify from its records every individual entitled to settlement benefits.").[19]

[19] While Ms. Van de Voorde complains that the proof of claim requirement for post-sale borrowers was intended to intentionally depress payments to Class members in this category, in fact, available evidence strongly

Ms. Van deVoorde also objects that the Plan of Allocation is unfair to post-sale Class members because "Active/Paid-in-Full Class Members are entitled to complete reimbursement for all 'subsequent' Fee Code 4 inspection fees . . . paid" while "[h]omeowners that paid for fees while in foreclosure are limited to 50% of all 'subsequent' inspection fees paid (otherwise known as 'corporate advance')." *See* ECF No. 275 at 3. According to Ms. Van de Voorde, the effect "is to minimize relief to homeowners that are or were in foreclosure even if they paid their inspection fees." *Id*. This argument evidences a fundamental lack of understanding of the Plan of Allocation.

Irrespective of whether a loan is categorized as Active, Paid-in-Full, or Post-Sale, Class members may, and frequently did, have both Fee Code 4 and corporate advance inspection fees assessed to their accounts. Thus, to the extent the Recognized Claim formula discounts subsequent corporate advance inspection fees, this discount is applied to all three categories of loans. *See* ECF No. 243-5 at 6 (Recognized Claim formula). As a result, there is no conflict among the different categories of Class members and no need for separate representation for Post-Sale Loans.[20]

Further, to the extent Ms. Van de Voorde is arguing that subsequent corporate advance inspection fees should be weighted equally with subsequent Fee Code 4 inspection fees in the Recognized Claim formula, as stated in the Notice, it was the informed judgment of Plaintiffs'

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suggested that a large portion of the inspection fees assessed to this group, who did not repay even the principal balance of their loans, were not paid by the borrower.

[20] The cases cited by Ms. Van de Voorde are distinguishable for this reason. In *Dewey v. Volkswagen AG*, 681 F.3d 170, (3d Cir. 2012), the proposed settlement gave priority access to the settlement fund to one group of plaintiffs – those whose cars had already suffered leakage from the alleged defect – rather than those whose cars were merely at risk of potentially experiencing leakage in the future. Because the two groups received different benefits, the Court held that the representative plaintiffs, who were all in the first group, were inadequate to represent class members who fell into the second group. Similarly, in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626-27 (1997), the Supreme Court held that conflicts existed between class members currently afflicted with various asbestos-related diseases and "exposure-only plaintiffs" such that each group was required to have separate representation.

Counsel that the discount applied to subsequent corporate advance inspection fees was justified based on the risk Plaintiffs faced in prevailing on their claims that Wells Fargo's assessment of inspection fees was unlawful once a loan fell into foreclosure status. In the opinion of Plaintiffs' Counsel, Class members' strongest claims related to Wells Fargo's practice of conducting repeated inspections of loans in delinquency, as opposed to foreclosure, status after an initial inspection had been conducted and it was determined that the property was occupied and well maintained. In Plaintiffs' Counsel's view, Plaintiffs' chances of prevailing declined once a loan crossed into foreclosure status, in light of available evidence indicating that properties that have entered foreclosure are at higher risk of abandonment, potentially justifying more frequent inspections.[21] As noted in the Final Approval Mem., plans of allocation that vary payouts in this manner based on the strength of claims have been repeatedly approved in the class action context. *See* ECF No. 262-1 at 10-11. Ms. Van de Voorde's assertion that "the strength of Plaintiffs' claims . . . should not form the basis for the Allocation Plan" flies in the face of this well-settled authority.

b. The Release Is Not Overbroad

Ms. Van de Voorde complains that the release is "overinclusive [sic] and unfair" because it releases claims relating to late fees. *See* ECF No. 275 at 4. Once again, she is wrong. The proposed release is expressly limited to claims "based upon, arising out of, or relating to, in any way, property inspection fees assessed on a mortgage serviced by Wells Fargo, or Wells Fargo's practices in ordering or charging borrowers for property inspections, during the Class Period." *See* ECF No. 243-3 at ¶2.28.

[21] *See, e.g.*, Smith, James, "Memorandum: Abandoned and Vacant Properties," available at http://www.uniformlaws.org/shared/docs/mortgage%20foreclosure/8_2012may17_RREMFPP_Abandoned%20and%20Vacant%20Properties%20memo_Smith.pdf.

Ms. Van de Voorde's suggestion that the release does not exclude *parens patriae* claims is equally meritless. Only claims belonging to Plaintiffs and Class members are released by the Settlement. *Id*. State officials' law enforcement powers are not claims Plaintiffs and Class members have and, therefore, these claims are not released. *See In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 241 (E.D. Pa. 2009).

c. The Objections to Plaintiffs' Counsel's Requested Fees Are Meritless

Ms. Deachin argues that "a 33-1/3% attorney's fee is way too large" and asserts that "attorneys' fees should be 15 or 20%." *See* ECF No. 269. Mr. Dunmore asserts that "a 17% fee would be much more reasonable." *See* ECF No. 273. As noted above and in the Fee Mem. (ECF No. 263-1), however, the requested fee is justified under the specific facts and circumstances here and well within the range of fee awards approved in this Circuit. Indeed, their fellow objector, Ms. Van de Voorde asserts that "the general range of fee awards in this district is between 25% and 33%." *See* ECF No. 275 at 5-6.

Ms. Van de Voorde lodges several objections to Plaintiffs' Counsel's requested fee award all of which are meritless. First, Ms. Van de Voorde asserts that Plaintiffs' Counsel should not be awarded interest on their fee from the date of award. *See* ECF No. 275 at 5. However, this is a routine provision in class action fee awards which appropriately compensates Plaintiffs' Counsel for any delay in payment of the sums once they are awarded, including delays occasioned by meritless appeals filed by serial objectors such as Ms. Van de Voorde. *See In re Xcel Energy, Inc., Secs., Deriv. & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1004 (D. Minn. 2005).

Next, Ms. Van de Voorde argues that the Court should reserve judgment on Plaintiffs' Counsel's fee request until the Court knows the total number of claims submitted by post-sale Class members and the proportion of benefits received by them as opposed to active and paid-in-

full claimants. *See* ECF No. 275 at 5. Although the basis for this request is less than clear, it appears to be predicated on the discredited notion that there is an intra-class conflict between Class members with Post-Sale Loans and those with Active and Paid-in-Full Loans and, therefore, should be rejected.

Finally, Ms. Van de Voorde, along with Steven Buckley,[22] asserts that even if this Court determines that 33-1/3% fee is merited, the Court should exclude the cost of notice and administration from the total amount of the fund when calculating the fee because these amounts are not benefits to the Class. *See* ECF No. 275 at 5; ECF No. 271. In support, these objectors cite decisions of the Seventh Circuit Court of Appeals. *Id*. Outside of the Seventh Circuit, however, it is widely accepted that "[w]here the defendant agrees to pay the reasonable cost of notice to the class, courts will include that cost, as well as the cost of claims administration, in calculating the common fund benefiting the plaintiffs for all purposes, including the calculation of attorneys' fees." *See* 2 McLaughlin on Class Actions §6:24 (11th ed.); *see also Hartless v. Clorox Co.*, 273 F.R.D. 630, 645 (S.D. Cal. 2011), *aff'd*, 473 Fed. Appx. 716 (9th Cir. 2012) ("[C]ourts base the fee award on the entire settlement fund as that package is the benefit to the class. This amount includes notice and administration costs and separately paid attorneys' fees and costs."); *Staton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003) (holding that where, as here, "the defendant pays the justifiable cost of notice to the class . . . it is reasonable . . . to include that cost in a putative common fund benefiting the plaintiffs for all purposes, including the calculation of attorneys' fees."); *Weeks v. Kellogg Co.*, No. CV 09–08102(MMM)(RZx), 2013 WL 6531177, at *29 (C.D. Cal. Nov. 23, 2013) (agreement by defendants to pay costs of notice and administration "ensured that more money would be available to pay claimants" and,

[22] Mr. Buckley also urges this Court to perform a lodestar cross-check (ECF No. 271 at 2) but, as noted above, a lodestar cross-check evidences that the requested fee is fair and reasonable.

therefore, "conferred a concrete benefit on the class."); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1078 (S.D. Tex. 2012) ("Including the notice costs in the value helps ensure that counsel work to make the notice effective and that such settlements are public and that damages are pursued."); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 802-03 (N.D. Ohio 2010) (holding that notice and administration costs were a benefit to the class).

Nevertheless, even assuming *arguendo* that notice and administration costs should be subtracted from the value of the common fund, Class Counsel's fee award is still well within the range of reasonableness under a percentage-of-the-fund approach. Excluding notice and administration costs from the Settlement Fund would result in Class Counsel's fee request equaling 38% of the fund. As the court held in *Velez v. Novartis Pharm. Corp.*, No. 04-09194, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010), "federal courts have established that a standard fee in complex class action cases like this one, where plaintiffs[']counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit."

d. The Requested Service Awards Are Reasonable

Ms. Van de Voorde next asserts that the requested service awards to Plaintiffs should be reduced to 46% because none of the Plaintiffs' loans fall into the post-sale category and post-sale loans make up 46% of the loans held by Class members. Like many of Ms. Van de Voorde's other arguments, this one also appears to be rooted in the misplaced notion that there is an intra-class conflict. As discussed above, this is not the case and the requested incentive awards are reasonable based on Plaintiffs' service in this seven-year litigation as well as awards in similar cases in this Circuit. *See Iowa Ready-Mix*, 2011 WL 5547159, at *4-5 (approving incentive

awards of $10,000 for each plaintiff); *Fulford v. Logitech, Inc.*, No. 08-cv-02041 MMC, 2010 WL 807448, at *3 n.1 (N.D. Cal. 2010) (collecting cases awarding incentive payments ranging from $5,000 to $40,000).

e. The Notice Fully Informed Class Members of Their Rights and What Was at Stake in the Litigation

Ms. Deachin objects to the settlement complaining that the notice did not provide information concerning the size of the class or her estimated recovery. Each of these assertions is meritless. As an initial matter, the Notice informed Class members that approximately 2.7 million loans had been impacted by the challenged behavior. *See* ECF No. 243-5 at 7 ("During the litigation, Wells Fargo produced to Plaintiffs loan level data reflecting assessments, waivers, and certain payments and credits of property inspection fees and other charges with respect to more than 2.7 million loans belonging to Class Members."). In any event, as Ms. Deachin is aware since she has made and lost this very argument in objecting to other class action settlements,[23] "'the adequacy of notice [does not] turn on the ability of an individual Class Member to calculate the amount of his or her actual recovery under the settlement.'" *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 110 (D.N.J. 2012) (quoting *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 124 (S.D.N.Y. 1997)). Further, Ms. Deachin was free to contact the claims administrator and/or Plaintiffs' Counsel with any questions she had in this regard.

3. The Remaining Objections Should Be Overruled

The objections filed by non-serial objectors are also meritless.

a. Eric Chau and Sonia Shelton

[23] *See, e.g., Fladell v. Wells Fargo Bank, N.A.*, No. 13-cv-60721, slip op at ¶9 (S.D. Fla. Oct. 29, 2014) ("The items some objectors describe as missing from the Notice (e.g., 'aggregate estimated damages suffered by the class') are not required by due process or the notice requirements set out in Fed. R. Civ. P. 23."). Ms. Deachin's objections in *Fladell* and the Court's order overruling them are attached as Exs. G and H, respectively, to the Clark-Weintraub Decl.

Class members Eric Chau and Sonia Shelton object on the grounds that the settlement amount should be higher.[24] However, "complaining that the settlement should be 'better' . . . is not a valid objection." *Browning v. Yahoo! Inc.*, No. C04–01463 HRL, 2007 WL 4105971, at *5 (N.D. Cal. Nov. 16, 2007). The fact that these objectors "would prefer that all Class members receive greater cash benefits . . . has no bearing on whether the terms of the Settlement Agreement itself are fair and reasonable." *Hall v. AT&T Mobility LLC*, No. 07-5325(JLL), 2010 WL 4053547, at *8 (D.N.J. Oct. 13, 2010). "As a compromise, the Settlement 'is, necessarily, a compromise between plaintiffs, who did not win their case, and defendants, who did not lose theirs. Th[is] settlement[], like all others, reflect[s] each side's considered view of the risks of an adverse judgment and the value of buying peace." *Uponor*, 2012 WL 2512750, at *9 (quoting *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280, 282 (D. Minn. 1997)). For all of the reasons previously stated, Plaintiffs respectfully submit that the Settlement is fair, reasonable and adequate and should be approved.

b. Ato Sparkman and James J. Juliano

Class member Ato Sparkman conditionally objects to the Settlement to the extent it would require him to release the claims in other litigation he has brought against Wells Fargo. *See* ECF No. 250. However, since by Mr. Sparkman's own admission those claims do not involve "property inspection fees assessed on a mortgage serviced by Wells Fargo, or Wells Fargo's practices in ordering or charging borrowers for property inspections, during the Class Period," they are not within the scope of the release.

Mr. Juliano's objection fails for the same reason.[25] Mr. Juliano also objects to the release

[24] Mr. Chau also asserts that attorneys' fees should be limited to 15-20% of the settlement amount. *See* ECF No. 255. This objection should be overruled for the reasons stated above.

[25] Mr. Juliano did not file his objection with the Court as required. It is attached as Ex. B to the Clark-

arguing that "Well[s] Fargo should NEVER be released of claims of deceptive acts and practices in their processing of loan modification requests that [led] to foreclosures and or loan restructures, that were severely damaging to loan holders." However, the release does not extend to such claims.

c. Clarence D. Thomas

Class member Clarence D. Thomas objects to the requirement that Class members with post-sale loans provide proof they paid inspection fees. *See* ECF No. 260. There is nothing unusual, however, about the need for claimants in a class action to provide concrete documentation substantiating their claims. The alternative, "soliciting declarations from putative class members . . . would invite them to speculate, or worse." *Weiner v. Snapple Beverage Corp.*, No. 07 Civ. 8742(DLC), 2010 WL 3119452, at *13 (S.D.N.Y. Aug. 5, 2010).[26] For this reason, courts have refused to approve settlements where objective proof of payment by class members was not required. *See, e.g., In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, No. 09–md–2034, 2015 WL 6757611, at *7 (E.D. Pa. Nov. 5, 2015).

d. Kenneth M. Njema

Class member Kenneth M. Njema objects to the Settlement because he claims that it "release[s] Wells Fargo from any past and future obligations" under the National Mortgage Settlement. *See* ECF No. 277 at 1-2. This is simply untrue. As discussed above, the release is limited to Class members' claims "based upon, arising out of, or relating to, in any way, property inspection fees assessed on a mortgage serviced by Wells Fargo, or Wells Fargo's practices in ordering or charging borrowers for property inspections, during the Class Period." *See* ECF No.

Weintraub Decl.

[26] Mr. Thomas states that "Wells Fargo should have records showing if an inspection was done on [his] home." *See* ECF No. 260. As explained above, however, payments by borrowers with post-sale loans cannot be reliably ascertained from Wells Fargo's records due to the available information with respect to such loans.

243-3 at ¶2.28. Plaintiffs have no authority to alter or amend the National Mortgage Settlement.[27]

Mr. Njema also asserts that the lack of objections to the settlement is attributable to the fact that many Class members do not read the *Wall Street Journal* or *PR Newswire*. *See* ECF No. 277 at 3. This argument ignores that, in addition to publication, direct mail notice – the gold standard for providing notice in class action cases – was utilized here. *See* ECF No. 225 at 7 (quoting *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992)) (holding that "[i]t is beyond dispute that notice by first class mail ordinarily satisfies rule 23(c)(2)'s requirement that class members receive 'the best notice practicable under the circumstances.'").

Mr. Njema's remaining objections, which are based on his individual action against Wells Fargo pending in the United States District Court for the District of Minnesota and his petition to the Judicial Panel on Multidistrict Litigation to transfer that case to this Court, are specious. As Judge Schiltz, who is overseeing Mr. Njema's individual action, has stated:

> All that remains to be tried in [Mr. Njema's] case is a trespass claim. Neither that claim nor any other claim asserted by Mr. Njema in this lawsuit has anything to do with Judge Pratt's class action, as this Court and Judge Pratt have both informed Mr. Njema. In Judge Pratt's class action, plaintiffs are challenging certain inspection fees imposed by Wells Fargo on borrowers who default on their mortgages. At no time in this action has Mr. Njema made *any* claim about any inspection fees charged by Wells Fargo. For that reason (as well as many others), Mr. Njema's request to create a two-case MDL and transfer this case to Judge Pratt is utterly frivolous and is certain to be rejected by the Judicial Panel on Multidistrict Litigation.

See Kenneth M. Njema v. Wells Fargo Bank, N.A., Case No. 13-CV-0519 (PJS/JSM), ECF No. 314.

e. Janis Flakes, Darryl Gibson, and Louis M. Herran, Sr.

[27] To the extent that Mr. Njema is objecting that the Settlement is inadequate or that the requested attorneys' fees are too high his objections should be overruled for the same reasons stated above.

The remaining objections from Class members Janis Flakes,[28] Darryl Gibson (ECF No. 276), and Louis M. Herran, Sr. (ECF No. 274) lack any semblance of substance. Ms. Flakes blames Wells Fargo for her nervous breakdown, Mr. Gibson requests a reduction in his mortgage balance, and Mr. Herran objects to releasing parties who he believes contributed to him losing his home. While these individuals' circumstances are deeply unfortunate, they are obviously beyond the scope of this litigation.

III. CONCLUSION

For all of the reasons given above and in the Final Approval Mem. and Fee Mem., following the January 21, 2016, Settlement Fairness Hearing, the Court should grant final approval to the Settlement, grant Plaintiffs' Counsel's request for attorneys' fees and reimbursement of litigation expenses, and grant Plaintiffs' request for service awards.

Date: January 14, 2016

Respectfully submitted,

/s/ Deborah Clark-Weintraub

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[28] Ms. Flakes did not file her objection with the Court as required. It is attached as Ex. A to the Clark-Weintraub Decl.

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2016, the foregoing document was filed with the Clerk of the Court via the Court's CM/ECF electronic filing system and served on all counsel of record registered to receive electronic notice. Those not registered to receive electronic notice, including all Objectors, were served as follows:

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