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

GREGORY YOUNG, et al., Plaintiffs, v. WELLS FARGO & CO., and WELLS FARGO BANK, N.A., Defendants.	Case No. 4:08-cv-507-RP-CFB **DECLARATION OF DEBORAH CLARK-WEINTRAUB IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES TO PLAINTIFFS' COUNSEL AND SERVICE AWARDS TO CLASS REPRESENTATIVES**

1. I am a member of Scott+Scott, Attorneys at Law, LLP ("Scott+Scott"), one of Plaintiffs' Co-Lead Counsel in this action. I have personal knowledge of the matters set forth herein based on my active, day-to-day supervision and participation in the prosecution and settlement of the claims asserted on behalf of Plaintiffs and the putative Class, defined below, in this Action.[1]

2. I respectfully submit this declaration in support of Plaintiffs' motion for final approval of the proposed Settlement[2] and approval of the proposed Plan of Allocation, as well as Class Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

3. This declaration does not seek to detail each and every event that occurred since the Action was commenced seven years ago. Rather, this declaration provides the Court with

[1] At the commencement of this Action and for several years thereafter, I was a member of Whatley Drake & Kallas, LLC (now known as Consumer Law and Mass Tort Litigation Group, LLC). In January 2012, I joined Scott+Scott.

[2] All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 21, 2015 ("Stipulation") (ECF No. 243-3).

highlights of the litigation, the events leading to the Settlement, and the basis upon which Class Counsel and Plaintiffs recommend its approval and seek an award of attorneys' fees and reimbursement of Litigation Expenses.

I. PRELIMINARY STATEMENT

4. In entering into the Settlement with Defendants,[3] Plaintiffs and Class Counsel were fully informed about the strengths and weaknesses of the case. The Parties reached an agreement in principle to settle in February 2015—six-and-a-half years after the commencement of the Action—and only after extensive litigation before the Court. Prior to commencing the litigation, Class Counsel conducted an extensive pre-suit investigation reflected in the multiple, detailed complaints that were filed. In addition, Class Counsel (i) litigated a motion to transfer the Action from the Northern District of California where it was filed to the Southern District of Iowa; (ii) opposed two motions to dismiss; (iii) litigated multiple discovery motions; (iv) successfully moved for class certification and opposed Defendants' motion to the Eighth Circuit seeking interlocutory review of this Court's class certification decision; (v) conducted and nearly completed fact discovery, which included the production, review and analysis of over 50,000 pages of documents by Plaintiffs, Defendants and third parties, and more than 13.5 gigabytes of loan level data produced by Wells Fargo, as well as taking/defending a total of 12 depositions; (vi) retained and worked with multiple experts with respect to mortgage servicing industry guidelines and practices relating to property inspections and damages issues; and (vii) engaged in extensive negotiations with Wells Fargo to resolve this Action with the assistance of Hon. Arthur J. Boylan (Ret.), an experienced and highly respected mediator.

5. Further, the negotiations necessary to document the Settlement were protracted and hard-fought and required the further intervention and assistance of Judge Boylan.

[3] Defendants are Wells Fargo & Co. and Wells Fargo Bank, N.A. (collectively, "Wells Fargo").

6. Based upon an evaluation of the facts and applicable law and the risk and expense of continued litigation, Plaintiffs and Class Counsel submit that the proposed Settlement is fair, reasonable and adequate, represents an excellent result, and is in the best interest of the Settlement Class.

7. The Settlement requires Wells Fargo to deposit or cause to be deposited $25,750,000 in cash (the "Settlement Amount") into the Escrow Account established for these proceeds. On September 30, 2015, the Settlement Amount was deposited into the Escrow Account in accordance with the terms of the Stipulation. The Settlement Amount is currently invested in a money market fund invested in U.S. Treasury securities. The Settlement benefits the Settlement Class by conferring a guaranteed, immediate and substantial benefit of $25,750,000 and avoids the risks and expenses of continued litigation, including the risk of recovering less than the Settlement Amount after substantial delay, or nothing at all.

8. In addition to seeking final approval of the Settlement, Plaintiffs seek final approval of the proposed Plan of Allocation as fair and reasonable. The Plan of Allocation takes into account the varying risks to recovery associated with the different categories of charges (*i.e.*, initial versus subsequent, delinquency versus corporate advance). Under the proposed Plan of Allocation, the Settlement Amount (plus interest accrued and after deduction of Court-approved expenses and attorneys' fees) will be distributed on a *pro rata* basis to members of the Settlement Class based on their "Recognized Claim" amounts as calculated pursuant to the Plan of Allocation set forth in the Notice.

9. In addition, Class Counsel request an award of attorneys' fees and reimbursement of Litigation Expenses (the "Fee and Expense Application"). Specifically, Class Counsel are

applying for a fee award of $8,583,333 (or, 33-1/3% of the Settlement Fund), and for reimbursement of Class Counsel's Litigation Expenses in the amount of $252,877.30.

10. Class Counsel respectfully submit that the Fee and Expense Application is justified in light of the significant benefits conferred on the Settlement Class, the substantial risks undertaken by Class Counsel, the quality of representation, and the nature and extent of the legal services provided. As explained in the accompanying memorandum in support of Class Counsel's request for attorneys' fees and reimbursement of Litigation Expenses, the requested fee of 33-1/3% of the Settlement Fund is consistent with or less than the amount awarded in other class action litigation of this nature. Plaintiffs support an award of attorneys' fees in the requested amount.

11. For their part, Plaintiffs provided invaluable service as class representatives, without which the Settlement would not have been possible. Plaintiffs communicated with their counsel regarding the litigation, were required to and did produce documents in response to Requests for Production served by Wells Fargo, and each of the Plaintiffs was deposed. In addition, Plaintiffs reviewed and approved the Stipulation. Each of the Plaintiffs therefore requests a service payment of $10,000, which is, respectfully, reasonable and appropriate.

12. In sum, for the reasons discussed herein and in the accompanying memoranda, the Settlement and the Plan of Allocation are each "fair, reasonable, and adequate" in all respects, and the Court should, therefore, approve them pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Likewise, we respectfully submit that the Fee and Expense Application and service awards requested by Plaintiffs are merited under the circumstances and should be approved.

II. HISTORY OF THE ACTION

A. Commencement of the Action, Motion to Transfer Venue, and Defendants' Motion to Dismiss, to Strike, and For A More Definite Statement

13. On August 5, 2008, Plaintiffs Connie Huyer, Edward Huyer, Jr., Gregory Young and Odetta Young filed this action against Wells Fargo in the United States District Court for the Northern District of California alleging that Wells Fargo had engaged in a fraudulent scheme to exact improper, unwarranted and unreasonable property inspection fees from borrowers who were delinquent on their mortgage payments, and asserting claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§1961, *et seq.*, and California's consumer protection laws including, *inter alia,* California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §17200, *et seq.* and Consumer Legal Remedies Act ("CLRA"), Cal. Civil Code §1750, *et seq.*, as well as common law claims for fraud, deceit and/or misrepresentation and unjust enrichment. ECF No. 1.[4] Specifically, Plaintiffs alleged that they, and others similarly situated, were damaged by being charged for drive-by property inspections ordered through software called Fidelity Lender Processing Servicing ("Fidelity LPS") without any prior determination that the inspections were necessary to protect the lender's interest in the property.

14. On October 3, 2008, Wells Fargo moved pursuant to 28 U.S.C. §1404(a) to transfer the Action from the Northern District of California, where it had been filed, to the Southern District of Iowa, on the grounds that the officers and employees of Wells Fargo most knowledgeable about its property inspection policies were located there. *See* ECF Nos. 12-14. On the same day, Wells Fargo moved pursuant to Rules 9(b), 12(e) and 12(f) of the Federal Rules of Civil Procedure (i) to dismiss the complaint for failure to plead fraud with particularity; (ii) for a more definite statement; and (iii) to strike the complaint's allegations incorporating the

[4] This complaint as well as the Amended Complaints described *infra* also asserted claims with respect to late fee charges but these claims were not pursued after additional investigation and discovery.

opinion in *In re Dorothy Chase Stewart*, 391 B.R. 327 (Bkrtcy. E.D. La. 2008). *See* ECF Nos. 15-16. Specifically, Wells Fargo claimed that the Complaint failed to identify the alleged misrepresentations made to Plaintiffs and Class Members and that Plaintiffs should be required to file a RICO Case Statement to provide what it claimed was the necessary specificity to state a claim for violation of the RICO statute.

15. Plaintiffs filed comprehensive responses to both motions on November 26, 2008. *See* ECF Nos. 23-24, 26. On the same day, Wells Fargo filed a motion for a protective order seeking a stay of discovery given the pendency of its motions to transfer and to dismiss, which Plaintiffs opposed on December 9, 2008. *See* ECF No. 33. On December 17, 2008, the district court granted Wells Fargo's motion to transfer venue to the Southern District of Iowa and denied all other pending motions as moot.

16. On March 6, 2009, Plaintiffs filed their First Amended Complaint (the "FAC") in this Court. The FAC included an additional plaintiff, Sue Ann Ross, a resident of California, and added claims for violation of other states' deceptive trade practices statutes in addition to California's. *See* ECF No. 41.[5] In addition, Plaintiffs served their First Requests for Production of Documents, First Set of Interrogatories, and a Rule 30(b)(6) Deposition Notice on topics related to, *inter alia*, Wells Fargo's assessment of property inspection fees.

17. Wells Fargo once again moved to dismiss. *See* ECF No. 51. In addition to renewing its previous contentions (*see* ¶14, *supra*), Wells Fargo's motion to dismiss raised numerous additional arguments. Specifically, Wells Fargo argued that other courts, including the California Court of Appeals, had found similar inspection practices and fees of other servicers reasonable and necessary to protect the lender's interest in the property and, therefore, permissible under the terms of the mortgage notes signed by Plaintiffs and Class Members and,

[5] A corrected version of the First Amended Complaint was later filed on March 16, 2009. *See* ECF No. 42.

therefore, the Court was required to dismiss Plaintiffs' UCL claim. *Id*. at 8-9 (citing *Walker v. Countrywide Home Loans, Inc.*, 98 Cal. App. 4th 1158, 121 Cal. Rptr. 2d 79 (2002), and *Majchrowski v. Norwest Mortgage, Inc.*, 6 F. Supp. 2d 946 (N.D. Ill. 1998)). Further, Wells Fargo contended that the practices alleged by Plaintiffs amounted at most to a breach of contract and not deceptive conduct or a scheme to defraud prohibited by RICO or state deceptive trade practice statutes. *Id*. at 10. Wells Fargo also moved to dismiss the claims of the additional Plaintiff, Sue Ann Ross, on the grounds that she had another action pending. *Id*. at 13-14. In addition, Wells Fargo argued that the choice of law clauses in the remaining Plaintiffs' mortgage notes precluded them from bringing claims for violation of the consumer protection laws of states other than their states of residence – New Jersey and South Carolina. *Id*. at 14-15. Finally, Wells Fargo raised a series of arguments directed at specific Counts in the FAC including that (i) there was no claim for aiding and abetting a RICO violation; (ii) the CLRA did not apply to home mortgage loans or mortgage servicing and, in any event, Plaintiffs had failed to allege a misrepresentation of the kind forbidden by the CLRA; and (iii) there could be no claim for unjust enrichment because the parties' conduct was governed by an express contract – *i.e.*, Plaintiffs' mortgage notes. *Id*. at 12-13, 15-17.

18. Wells Fargo also renewed its motion for a protective order staying discovery pending the Court's ruling on the motion to dismiss the FAC, and for a more definite statement. *See* ECF No. 60. Following a telephonic conference with Magistrate Judge Bremer on April 15, 2009, Wells Fargo withdrew its motion for a protective order without prejudice to refiling it at a later date. ECF No. 62. Although Magistrate Judge Bremer ordered that formal discovery responses would not be due until further order of the Court, the parties were directed to continue meeting and conferring with respect to the discovery that had been propounded by Plaintiffs and

e-discovery protocols. The parties were further directed to submit a joint status report describing their progress in narrowing discovery disputes in advance of a subsequent conference scheduled for June 18, 2009. *Id.* This conference was later continued to July 30, 2009, following the parties' filing of the joint status report ordered by the Court. ECF Nos. 66-67.

19. On May 6, 2009, Plaintiffs filed their comprehensive response to Wells Fargo's motion to dismiss the FAC arguing that the FAC adequately alleged a scheme to defraud, including misrepresentations by Defendants, rather than individual claims for breach of contract. *See* ECF No. 63. Plaintiffs further argued that *Walker* and *Majchrowski* were distinguishable because they were decided on motions for summary judgment after full discovery and that *Walker* was inapposite for the additional reason that the plaintiffs there claimed that their mortgage contracts did not permit ***any*** property inspection fees to be charged to them irrespective of the circumstances. *Id*. at 8 n.4, 15. Further, Plaintiffs argued that the pendency of Ms. Ross's unrelated action relating to her eviction did not require dismissal of her claims in this case. *Id*. at 12-13. Finally, Plaintiffs argued that Wells Fargo's remaining narrow legal challenges to specific claims in the FAC were meritless. *Id*. at 11-12, 13-17.

20. On August 17, 2009, this Court held a hearing on Wells Fargo's motion to dismiss the FAC, to strike, and for a more definite statement. At the hearing, the Court requested additional letter briefs on the impact of the Supreme Court's recent decision in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), on the parties' arguments regarding the sufficiency of the FAC, which were filed on August 24, 2009. *See* ECF Nos. 82-83.

21. While the motion to dismiss the FAC was *sub judice*, the parties continued to meet and confer and work with Magistrate Judge Bremer with respect to e-discovery issues and protocols. On June 29, 2009, Plaintiffs filed a brief requesting that Wells Fargo be ordered to

produce electronically stored information in native format with metadata and that Wells Fargo be ordered to bear the cost of production. *See* ECF No. 71. Wells Fargo filed a brief in opposition on July 20, 2009, and Plaintiffs filed a reply seven days later. *See* ECF Nos. 77-78. On July 31, 2009, a further hearing was held before Judge Bremer with respect to these issues, and the parties were ordered to continue their discussions and file another joint status report by September 14, 2009. *See* ECF No. 80. An additional conference with respect to these issues was held by Magistrate Judge Bremer on October 15, 2009, but no additional progress was made towards resolving the outstanding disputes and Magistrate Judge Bremer permitted Plaintiffs to serve formal discovery requests concerning e-discovery issues. *See* ECF Nos. 88, 90. On October 26, 2009, Plaintiffs served Wells Fargo with Requests for Production regarding e-discovery and a Rule 30(b)(6) Deposition Notice regarding various e-discovery topics.

22. On October 27, 2009, this Court issued an Order granting in part and denying in part Wells Fargo's motion to dismiss the FAC, to strike, and for a more definite statement. *See* ECF No. 89.

23. With respect to Wells Fargo's motion to strike references to the *Stewart* complaint, the Court struck the broad statement in paragraph 4 of the FAC generally incorporating the findings of fact and opinion in *Stewart*, but denied the motion with respect to the more specific references as "relevant to the plausibility of Plaintiffs' allegation that Wells Fargo . . . engaged in a scheme to defraud home mortgage borrowers." *Id.* at 7.

24. With respect to the motion to dismiss, the Court (i) dismissed Ms. Ross' claims without prejudice due to the pendency of her earlier filed action (*id*. at 6); (ii) dismissed the CLRA claim on the grounds that it did not apply to home mortgage loans (*id*. at 25-26); (iii) dismissed Plaintiffs' claim against Wells Fargo for aiding and abetting a RICO violation (*id*. at

31-35); and (iv) dismissed Plaintiffs' claim for violation of the South Dakota Deceptive Practices and Consumer Protection Act, S.D.C.L. §37-24-6 on the grounds that it required a misrepresentation or concealment in connection with the sale or advertisement of merchandise and the FAC contained no facts in this regard (*id*. at 45).

25. However, the Court otherwise denied the motion to dismiss holding that (i) the UCL claim was not barred by the decision in *Walker* because the claims in this case concerning Wells Fargo's manner of assessing property inspection fees "differ[ed] substantially" from the claims in *Walker*, which challenged the propriety of property inspections fee charges in general (*id*. at 23-24); (ii) Plaintiffs had alleged the elements of a claim for violation of §1962(c) (*id*. at 27-30); and (iii) the FAC satisfied Rule 9(b) by setting forth sufficient facts to plausibly allege a claim for violation of RICO and the UCL and rejecting Wells Fargo's assertion that Plaintiffs' RICO and consumer protection claims were "a billing dispute mispleaded as fraud claims" (*id*. at 38-44). The Court also declined to rule that Plaintiffs – residents of New Jersey and South Carolina – lacked standing to assert claims for violation of California's UCL, reasoning that the issue was one of adequacy and typicality under Rule 23, not standing. *Id*. at 22.

26. Finally, the Court granted Wells Fargo's motion for a more definite statement with respect to Counts VI-VIII of the FAC, which asserted claims for violation of deceptive trade statutes of states other than California and South Dakota and common law claims for fraud, deceit and misrepresentation, and unjust enrichment and granted Plaintiffs leave to amend with respect to these claims. *Id*. at 7-10. Ultimately, Plaintiffs decided not to file an amended pleading with respect to these claims but, at a status conference on December 8, 2009, Magistrate Judge Bremer ordered Plaintiffs to file a Second Amended Complaint (the "SAC") for the ministerial purpose of conforming the complaint to the rulings contained in this Court's October

27, 2009 Decision. *See* ECF No. 91. Wells Fargo answered the SAC on December 31, 2009. ECF No. 95.

B. Discovery and Early Mediation Efforts

27. On or about January 15, 2010, the parties exchanged initial disclosures and Wells Fargo finally provided written responses to Plaintiffs' long outstanding interrogatories and requests for production which contained numerous objections to the requests and required extensive meet and confer discussions. *See* ECF No. 104. These discussions were hard-fought and protracted and required numerous extensions of the scheduling order for completion of pretrial proceedings. Among other things, Wells Fargo claimed it was unable to produce certain information concerning the operation of the Fidelity mortgage loan servicing system it utilized to assess property inspection fees because Lender Processing Services ("LPS"), which then owned the system and licensed it to Wells Fargo, considered the information proprietary. *Id*. This required Plaintiffs to negotiate with LPS as well. Further, Wells Fargo steadfastly refused to produce other categories of documents requested by Plaintiffs including customer complaints and inquiries concerning property inspection fees and other lawsuits concerning these issues including documents relating to the *Stewart* case on the grounds of relevance and burdensomeness. *Id*. As a result, Plaintiffs were required to file a motion to compel with respect to these materials. ECF No. 107. By Order dated November 10, 2010, Magistrate Judge Bremer granted the motion in part and denied it in part and urged the parties to continue their good faith discussions to narrow disputes. *See* ECF No. 114.

28. The parties also continued to have significant disagreements concerning the format and protocols for production of ESI. *See* ECF No. 104. It was only after these issues

were finally resolved that the parties were able to commence negotiations regarding likely custodians of responsive email and search terms to be used to locate responsive ESI. *Id*.

29. In February 2010, Plaintiffs also subpoenaed Wells Fargo's property inspection vendors – First American Default Information Services LLC, LPS Field Services, Inc., Mortgage Contracting Services L.L.C., and National Field Representatives, Inc. – seeking relevant documents, and engaged in extensive negotiations with counsel for these entities over the scope and timing of their productions as well as confidentiality issues.

30. Disputes also arose between the parties regarding the scheduling of depositions and resulted in motion practice before the Court and further extensions of the scheduling order. *See* ECF Nos. 124, 131. Once taken, these depositions gave rise to additional requests for production by Plaintiffs.

31. On July 5, 2011, Plaintiffs filed their Third Amended Complaint adding Hazel Navas Castro and Carlos Castro, residents of California, as Plaintiffs. With the filing of this complaint, Gregory and Odetta Young withdrew from the action.

32. With Plaintiffs having obtained a critical mass of documents and deposed several knowledgeable witnesses, on November 1, 2011, the parties informed the Court that they had agreed to attempt to resolve the litigation through private mediation before the Hon. Edward A. Infante (Ret.) and requested that the scheduling order deadlines be extended to allow sufficient time for the mediation process to occur. *See* ECF No. 133. In response to a subsequent request by the parties, the scheduling order deadlines were stayed pending the filing of a joint status report on the mediation to be filed on May 4, 2012. *See* ECF No. 140.

33. On April 25, 2012, the parties participated in an initial mediation session with Judge Infante which focused on Plaintiffs' request for data relating to the dollar amount of

property inspection fees assessed by Wells Fargo during the Class Period. *See* ECF No. 142. At the conclusion of this session, Wells Fargo agreed to provide certain data regarding its assessment of property inspection fees and the parties agreed to meet again with Judge Infante on June 28, 2012. *Id.* After receiving a Joint Status Report regarding the mediation, Magistrate Judge Bremer continued the stay of the scheduling order deadlines. *See* ECF No. 143. Ultimately, however, the parties' mediation efforts were unsuccessful, and they jointly requested the entry of a new pretrial scheduling order. *See* ECF Nos. 144-45.

C. Class Certification

34. On November 9, 2012, Plaintiffs filed their motion for class certification requesting certification of a RICO Damages Class, a California UCL Class, and an Injunctive Relief Class. *See* ECF No. 150. Thereafter, Wells Fargo deposed each of the Plaintiffs and, on January 22, 2013, filed its resistance to Plaintiffs' motion arguing that class certification was inappropriate for multiple reasons. *See* ECF No. 158. First, Wells Fargo argued that whether it was reasonable to order a property inspection was an individual issue that turned on a number of factors including the circumstances of an individual borrower and property and, therefore, neither the commonality requirement of Fed. R. Civ. P. 23(a)(2) nor the predominance requirement of Rule 23(b)(3) could be met in this case. Second, Wells Fargo argued that Plaintiffs did not satisfy the typicality requirement of Fed. R. Civ. P. 23(a)(3) because none of the Plaintiffs had standing to sue under the UCL as the Huyers were not California residents and the Castros, although California residents, had not paid any of the hundreds of dollars in inspection fees they had been assessed. For the same reason, Wells Fargo argued that the Castros also lacked standing to bring the RICO claim. Wells Fargo also maintained that the Huyers, although they paid the property inspection fees that had been assessed, also lacked

standing to bring the RICO claim because they had not established that they had paid them in reliance on the false monthly mortgage statements upon which the predicate acts of mail and wire fraud were based and, therefore, had not establish causation. Finally, Wells Fargo argued that no injunctive relief class could be certified because (i) injunctive relief was not available as a remedy under RICO or the UCL; (ii) Rule 23(b)(2) certification is not available when class members would be entitled to an award of monetary damages; and (iii) the proposed injunctive relief class lacked the required cohesiveness. In support of its resistance, Wells Fargo also filed an expert report of William Hamm, Ph.D., a purported expert in loan servicing, who opined, *inter alia*, that the reasonableness of property inspection fees assessed to Class Members could not be proved with common evidence. *See* ECF No. 156-15. Plaintiffs filed a comprehensive reply brief rebutting each of Wells Fargo's arguments and moved to strike Dr. Hamm's report. *See* ECF Nos. 165, 167.

35. Pursuant to the then-existing scheduling order with respect to the exchange of expert reports on merits issues, on April 30, 2013, Plaintiffs served the report of Christopher Wyatt, their expert with respect to mortgage loan servicing. In response, on May 28, 2013, Wells Fargo served an expert report on merits issues prepared by its class certification expert, Dr. Hamm.

36. After briefing closed on Plaintiffs' motion for class certification, the parties once again agreed to explore resolving the action and, on August 20, 2013, attended a settlement conference before Magistrate Judge Bremer. However, again the parties were not able to reach agreement.

37. On October 2, 2013, this Court heard oral argument on Plaintiffs' motion for class certification and on October 23, 2013, issued an Order granting the motion. *See* ECF No. 206.

The Court rejected Wells Fargo's contention that the individual circumstances surrounding each property inspection destroyed commonality, reasoning that the common question of whether Wells Fargo's alleged uniform policy of automatically ordering drive-by property inspections when borrowers were late paying their mortgage was "certainly amenable to a common answer, which will drive the resolution of this litigation." *Id*. at 10. The Court also rejected Wells Fargo's contention that Plaintiffs were atypical because they did not have standing to assert the RICO and UCL claims, reasoning that the target of the standing inquiry at the class certification stage concerned Plaintiffs' Article III, not statutory standing, and that Plaintiffs had suffered an injury-in-fact within the meaning of Article III. *Id*. at 15-16. In view of the foregoing, as well as Wells Fargo's failure to challenge numerosity or adequacy, the Court found that the requirements of Fed. R. Civ. P. 23(a) had been satisfied. *Id*. at 16. The Court also rejected Wells Fargo's contention that an injunctive relief class could not be satisfied under Fed. R. Civ. P. 23(b)(2) holding that (i) injunctive relief was indisputably available under the UCL and the Court had found that the Castros had standing to bring the claim; (ii) injunctive relief was available under RICO following the Seventh Circuit's reasoning in *National Organization of Women, Inc. v. Scheidler*, 267 F.3d 687, 698 (7th Cir. 2001), *rev'd on other grounds*, 537 U.S. 393 (2003); (iii) *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011), did not preclude certification of separate classes for injunctive relief class under Fed. R. Civ. P. 23(b)(2) and for monetary damages under Fed. R. Civ. P. 23(b)(3); and (iv) Fed. R. Civ. P. 23(b)(2)'s cohesiveness requirement was easily met in this case because "[a]ll members of this class have been subjected to the same policy of ordering drive-by property inspections for borrowers meeting certain delinquency criteria." ECF No. 206 at 24. Finally, the Court concluded that the proposed UCL and RICO Damages Classes satisfied the predominance requirement of Fed. R. Civ. P. 23(b)(3)

reasoning that "whether the challenged policy constitutes a RICO and/or a UCL violation [could] be established by common evidence and requires no examination of the individual circumstances of each class member," and that any reliance requirement of Plaintiffs' civil RICO claim could be established by circumstantial evidence applicable to the class as a whole – *i.e.*, the payment of the amount shown on Class Members' monthly mortgage statements, which included inspection fees. *Id*. at 28-30.

38. On November 6, 2013, Wells Fargo filed a petition in the Eighth Circuit Court of Appeals pursuant to Fed. R. Civ. P. 23(f) for leave to appeal this Court's decision granting Plaintiffs' motion for class certification. Plaintiffs filed their opposition brief on November 15, 2013, and on January 27, 2014, the petition was denied.

39. Thereafter, Plaintiffs focused their efforts on obtaining the class list needed to provide notice to the Classes certified by the Court, and the individual borrower loan level data necessary to compute alleged damages, which Wells Fargo had withheld pending the Court's class certification ruling. In addition, Plaintiffs propounded a series of interrogatories and requests for production focused on damages issues. Moreover, once the individual loan level data was produced, Plaintiffs sought and obtained documents, including data dictionaries, and took a Rule 30(b)(6) deposition of a Wells Fargo executive involved in extracting the loan level data in order to understand the data that had been produced and determine whether any additional data was necessary to complete discovery with respect to Plaintiffs' claims. Given the size of the Class and the length of the Class Period, obtaining responses to these discovery demands took several months.

III. THE SETTLEMENT

40. In the Fall of 2014, with notice to the certified classes due to be disseminated, and discovery with respect to damages in its final stages, the parties agreed to renew their efforts to resolve the action and agreed to mediate before the Hon. Arthur J. Boylan (Ret.). In advance of the mediation, Plaintiffs prepared a detailed mediation statement for Judge Boylan explaining the claims, evidence and legal issues in the case. In addition, Plaintiffs retained experts to assist them in reviewing the loan level data Wells Fargo had produced and to calculate estimated damages.

41. The mediation was held in Minneapolis, Minnesota on February 17, 2015. At the mediation, the parties engaged in extensive one-on-one and joint discussions with Judge Boylan with respect to liability issues and their experts' respective analyses of the loan level data and calculations of estimated damages for various categories of borrowers. By the end of the day, the parties had reached an agreement in principle to settle the action and had signed a Memorandum of Understanding. On February 20, 2015, the parties informed the Court that an agreement-in-principle to settle the action had been reached and requested a stay of the pretrial deadlines. *See* ECF No. 230.

42. Thereafter, the parties engaged in months of hard-fought negotiations regarding the formal settlement documentation, which eventually required the assistance of Judge Boylan and a second in-person mediation session in Minneapolis on May 15, 2015. Once again, Plaintiffs prepared a pre-mediation submission setting forth their positions on the issues of disagreement and worked with their experts to obtain relevant data. Finally, on August 21, 2015, the parties executed the Stipulation of Settlement and Plaintiffs moved for preliminary approval

of the Settlement. *See* ECF No. 243. Preliminary approval was granted on September 2, 1015, and mail notice was disseminated to the Class on October 16, 2015.

43. As discussed above, the Settlement of $25,750,000 plus interest was the result of hard-fought, arm's length negotiations overseen by Judge Boylan. The Settlement provides the Settlement Class an immediate and substantial benefit and eliminates the risk of continued litigation. Class Counsel believe that the Settlement is fair, reasonable and an excellent result for Settlement Class Members considering the risk of recovering nothing or less after substantial delay.

A. Reasons for the Settlement

44. As noted in Plaintiffs' memorandum in support of preliminary approval, the outcome of this litigation was far from certain. Throughout the litigation, Wells Fargo strenuously argued that the challenged property inspections complied with the law, applicable Government Sponsored Entity ("GSE") and investor guidelines, and were reasonably necessary to protect Wells Fargo's interests or the interests of investors. In addition, Wells Fargo argued that the risk of neglect and property damage is significantly greater for properties with delinquent mortgages, especially those that had fallen into foreclosure status, and that it was at risk for lawsuits, sanctions and fines if it did not inspect properties frequently enough and they fell into disrepair. *See, e.g.*, ECF No. 156-15 at ¶¶23, 25. Further, Wells Fargo argued that it was not incentivized to order unnecessary inspections because, unlike other mortgage servicers, it did not mark up the amount charged for a property inspection and, in fact, lost millions of dollars each year on property inspection fees that were not paid by borrowers. *Id.* at ¶¶38-39. Further, discovery revealed that in certain instances Wells Fargo had attempted (albeit frequently unsuccessfully) to suppress property inspections due to contact with the borrower and had itself

uncovered and sought to rectify instances in which it had ordered duplicative inspections of properties with first and second mortgages. Notwithstanding the foregoing, Plaintiffs continued to believe that the evidence showed that Wells Fargo's policies and procedures for ordering inspections resulted in substantial numbers of unnecessary inspections that imposed a significant cost on Class Members, that the numbers of inspections ordered exceeded relevant guidelines and that the vast majority of the inspections were not necessary to protect Wells Fargo's or investors' interests, but they recognized that Wells Fargo's arguments to the contrary were not frivolous and might have persuaded a jury otherwise.

45. Further, although this Court previously held that Plaintiffs had adequately alleged the elements of a civil RICO violation, since the Court's decision was issued, other courts evaluating the adequacy of similar claims brought against other defendants have disagreed. *See, e.g.*, *Cirino v. Bank of America, N.A.*, No. CV 13–8829 PSG (MRWx), 2015 WL 3669078, at *3-6 (C.D. Cal. Feb. 10, 2015) (holding that Bank of America and its property inspection vendors did not share a common purpose and, therefore, did not constitute a valid RICO enterprise; RICO claims dismissed with prejudice); *Stitt v. Citibank, N.A.*, No. 12-cv-03982-YGR, 2015 WL 75237, at *4-6 (N.D. Cal. Jan. 6, 2015) (same); *Ellis v. J.P. Morgan Chase & Co.*, No. 12–cv–03897–YGR, 2015 WL 78190, at *4-6 (N.D. Cal. Jan. 6, 2015) (same).

46. In addition, Plaintiffs recognized that there were substantial risks to maintaining class certification through trial. Although this Court granted Plaintiffs' motion for class certification and the Eighth Circuit denied Defendants' attempt to take an interlocutory appeal of that decision, Plaintiffs were cognizant that this Court was free to re-examine this decision at any time and that it could be reversed on appeal. *See* Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment.").

47. Finally, the risks of establishing damages were not insignificant. For example, although loans as to which there had been a foreclosure sale, short sale or deed-in-lieu accounted for more than half of all property inspection fees assessed during the relevant period, Wells Fargo maintained that only a fraction of these amounts were paid by borrowers as opposed to investors or the GSEs, if they were paid at all. In addition, Wells Fargo maintained that borrowers who had signed loan modification agreements agreeing to pay principal balances that included capitalized property inspection fees had relinquished any claim in this case that such fees were unlawful. *See Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417, 420 (8th Cir. 1985) ("[A] valid fraud claim is relinquished when the victim of the fraud enters into a subsequent agreement with the perpetrator concerning the same subject matter."); *Grady v. Ocwen Loan Servicing, LLC*, No. 11-cv-1531, 2014 WL 231952 (N.D. Ill. Jan. 21, 2014) (Borrower's claim that servicer had charged "improper fees" not legally due under the mortgage is precluded by her agreement to a loan modification in which she affirmed the debt.). Moreover, the expert analysis required of the more than 13.5 gigabytes of loan level data produced by Defendants necessary to establish damages promised to be protracted and expensive.

48. The proposed Settlement eliminates all of these significant risks and provides an immediate benefit to Class Members. As set forth in Plaintiffs' preliminary approval papers, based on their analysis of the discovery taken and the legal basis for the claims asserted, Plaintiffs believed that their strongest claims related to subsequent Inspection Fees that had been paid by Class Members or were still reflected on Wells Fargo's books as owed by borrowers with Active Loans. Based on their expert's pre-mediation analysis of the loan level data produced by Wells Fargo, Plaintiffs estimated that the amount of such fees ranged from $100

million to $115 million.[6] And, of course, Wells Fargo claimed that these numbers were much lower including due to the issue of loan modifications. Accordingly, Class Counsel firmly believe that settling the action at this juncture and for the amount negotiated was and is in the best interests of the Settlement Class.

B. Notice to the Settlement Class Meets the Requirements of Due Process and Rule 23 of the Federal Rules of Civil Procedure

49. Pursuant to its September 2, 2015 Preliminary Approval Order, the Court (a) directed that notice be disseminated to the Settlement Class; (b) set December 22, 2015, as the deadline for Settlement Class Members to request exclusion from the Settlement Class and submit objections to the Settlement, Plan of Allocation and/or the request for attorneys' fees and expenses; and (c) set January 21, 2016 at 10:00 a.m. as the date and time for the Final Approval Hearing. ECF No. 245.

50. In accordance with the Court's Preliminary Approval Order, beginning on October 16, 2015, Class Counsel, through the Court-appointed Claims Administrator, Garden City Group, LLC ("GCG"), notified potential Settlement Class Members of the Settlement by mailing a copy of the Postcard Notice to potential Settlement Class Members. *See* Declaration of Jennifer M. Keough Regarding Notice Dissemination and Publication ("Keough Decl.") at ¶¶9-10.[7] The Postcard Notices contain a summary of the action and the Settlement and informed Class Members (i) whether they will receive an automatic payment (Active and Paid-in-Full loans) or must file a claim to participate (Post-Sale Loans); (ii) of their right to object to the proposed Settlement and the date by which they must do so; (iii) of their right to exclude themselves if they do not want to be bound by the proposed Settlement and the date by which

[6] These estimates were based on the definition of a "subsequent" inspection as one occurring within 60 days of a prior inspection and would decline if a 30-day interval is utilized.

[7] The Keough Declaration is attached hereto as Exhibit 1.

they must do so; and (iv) that any judgment, whether favorable or not, will bind all Class Members who do not request exclusion. *See Id*., Ex. A. It also directed recipients to a dedicated Settlement Website where additional information with respect to the action was posted, including a more detailed long-form notice. *See Id*. at ¶13.

51. Previously, during the course of discovery, Class Counsel had obtained from Wells Fargo a list of over 2.7 million borrowers potentially impacted by the wrongful conduct at issue in this action. Class Counsel forwarded this list to the Claims Administrator. *Id*. at ¶5. As of the date of this filing, GCG has disseminated a total of 2,713,463 Postcard Notices (including re-mailings) to potential Settlement Class Members and has mailed 18,623 Notice Packets containing the long-form Notice and Proof of Claim Form in response to Class Member inquiries. *See Id*. at ¶¶10, 12.

52. In addition to the Postcard Notice mailing, the Summary Notice was published in THE WALL STREET JOURNAL and transmitted over the *PR Newswire* on October 22, 2015 as required by the preliminary approval order. Keough Decl. at ¶11. A copy of the Stipulation and the Proof of Claim form (for those Class Members required to file claims) was also posted on the Settlement Website. *Id*. at 13. This method of giving notice, previously approved by the Court, is appropriate because it directs notice in a "reasonable manner to all class members who would be bound by the propos[ed judgment]." Fed. R. Civ. P. 23(e)(1).

53. To date, only 4 objections, and only 102 requests for exclusion have been received from this extremely large Settlement Class of over 2.7 million. Keough Decl. at ¶14.[8] Some of the exclusion requests relate to the same loan. *Id*.

[8] Plaintiffs will address the substance of these objections and any other objections in their Reply Memorandum In Support of Final Approval of the Settlement which will be filed after the deadline for filing objections.

54. As explained in the accompanying Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement, the Notice fairly apprises Settlement Class Members of their rights with respect to the Settlement and therefore is the best notice practicable under the circumstances and complies with the Court's September 2, 2015 Preliminary Approval Order (ECF No. 245), Federal Rule of Civil Procedure 23, and due process.

C. Plan of Allocation

55. Plaintiffs have proposed a plan for allocating the proceeds of the Settlement among members of the Settlement Class. The Plan of Allocation ("POA") seeks to equitably distribute the Settlement proceeds to Class Members who have suffered an economic loss as a proximate result of Defendants' alleged wrongdoing. The POA generally estimates the amount of loss that a Class Member could claim for purposes of making pro-rata distributions from the Net Settlement Fund ("Recognized Claims"). Each eligible Class Member shall be allocated a pro rata share of the Net Settlement Fund based on his or her Recognized Claim compared to the total Recognized Claims of all Class Members.

56. As noted above, during the litigation, Wells Fargo produced to Plaintiffs loan level data reflecting assessments, waivers, and certain payments and credits of Inspection Fees and other charges with respect to more than 2.7 million mortgage loans of potential Class Members. These loans were categorized as (A) Active – *i.e.*, loans with an unpaid principal balance greater than zero; (B) Paid-In-Full – *i.e.*, loans that were paid in full by the borrower; or (C) Post-Sale – *i.e.*, loans with respect to which there had been a foreclosure sale, short sale, deed-in-lieu, or charge-off. In addition, property inspection fees were coded by Wells Fargo as either (A) "Fee Code 4" – *i.e.*, which generally corresponds to inspection fees charged to loans in

delinquency status; or (B) "corporate advance" – *i.e.*, which generally corresponds to inspection fees charged to loans that were in foreclosure status.

57. The formula for calculating Recognized Loss for loans in each of these categories is as follows:

A. **For Active Loans**, the Recognized Claim is the sum of (i) all subsequent[9] Fee Code 4 inspection fees assessed, plus (ii) 50% of all subsequent corporate advance inspection fees assessed, plus (iii) 10% of all initial Fee Code 4 and initial corporate advance inspection fees assessed, less any credits or waivers of such fees, to the extent such assessments, credits or waivers may be determined from the loan level data produced by Wells Fargo.[10]

B. **For Paid-In-Full Loans**, the Recognized Claim is the sum of (i) all subsequent Fee Code 4 inspection fees paid, plus (ii) 50% of all subsequent corporate advance inspection fees paid, plus (iii) 10% of all initial Fee Code 4 and initial corporate advance inspection fees paid, to the extent such payments, credits or waivers may be determined from the loan level data produced by Wells Fargo.

C. **For Post-Sale Loans**, the Recognized Claim will be based on submission of an approved claim form and will be the sum of (i) all subsequent Fee Code 4 inspection fees paid, plus (ii) 50% of all subsequent corporate advance inspection fees paid, plus (iii) 10% of all initial Fee Code 4 and initial corporate advance inspection fees paid.

58. Class Members who fall within the "Active" and "Paid-in-Full" categories will automatically receive a distribution from the Net Settlement Fund after the Settlement becomes final, because their Recognized Claim will be calculated using Wells Fargo's records. However, due to the available information with respect to such loans, Class Members who fall within the "Post-Sale" category must timely complete a Proof of Claim form and provide documentary proof of payment of the property inspection charges claimed. Class Members in the Post-Sale

[9] For purposes of the POA, an inspection is deemed to be an "initial" inspection if no other inspection was assessed within the preceding sixty (60) calendar days. An inspection within sixty (60) calendar days of a prior inspection is deemed a "subsequent" inspection.

[10] These percentages reflect Plaintiffs' Counsel's assessment of the risk Plaintiffs faced in prevailing on their claims that Wells Fargo's assessment of inspection fees was unlawful. It is Plaintiffs' Counsel's view that this risk arguably varied depending upon whether the inspection was an initial or subsequent inspection and whether the loan in question had reached foreclosure status.

category will have the option of completing their claim forms on the settlement website or submitting a paper copy of their claim.

59. Class Counsel submit that the Plan of Allocation is fair and reasonable and should be approved together with the Settlement. As noted above, it is the judgment of Plaintiffs and Class Counsel, based on their review of the law and the evidence, and after consultation with experts, that borrowers with Active or Paid-In-Full Loans who were assessed Subsequent Fee Code 4 Inspection Fees – *i.e.*, an inspection within 30 or 60 calendar days of a prior inspection on a loan not in foreclosure status – possessed the strongest claims and, therefore, the Recognized Claim formula gives the greatest weight to these charges. Plaintiffs and Class Counsel believed that the ordering of an initial inspection with respect to delinquent loans and inspections of properties once loans reached foreclosure status might be viewed as more defensible by a jury in light of the expert evidence Wells Fargo intended to present with respect to the risk of loss with respect to such properties. *See, e.g.*, ECF No. 156-15 at 11. Significantly, in response to the dissemination of the Notice, there have been no objections to date to the proposed Plan of Allocation.

IV. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

60. In addition to seeking final approval of the Settlement and Plan of Allocation, Class Counsel are also applying to the Court for an award of attorneys' fees and expenses.

61. Specifically, Class Counsel are applying for a fee of 33-1/3% of the Settlement Fund (*i.e.*, $8,583,333, plus interest at the same rate as that earned on the Settlement Fund), and for reimbursement of $252,877.30 in Class Counsel's Litigation Expenses.

62. In determining whether a requested award of attorneys' fees is fair and reasonable, the Eighth Circuit has approved consideration of the factors set forth in *Johnson v.*

Georgia Highway Express, Inc., 488 F.2d 714, 717–20 (5th Cir. 1974). Based on consideration of each of the foregoing factors as further discussed below, and on the additional legal authorities set forth in the accompanying Memorandum of Law in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee Memorandum") filed contemporaneously herewith, Class Counsel respectfully submit that the requested Fee and Expense Application should be granted.

A. Application for Attorneys' Fees

1. The Requested Fee of 33-1/3% of the Settlement Fund Is Fair and Reasonable

63. For the extensive efforts on behalf of the Settlement Class, Class Counsel are applying for compensation from the Settlement Fund on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances, is supported by public policy, has been recognized as appropriate by the United States Supreme Court for cases of this nature and represents the overwhelming current trend in the Eighth Circuit and most other circuits.

64. Based on the result achieved for the Settlement Class, the extent and quality of work performed, the risks of the litigation and the contingent nature of the representation, Class Counsel submit that a 33-1/3%% fee award is justified and should be approved.

65. As discussed in the Fee Memorandum, a 33-1/3% fee award is fair and reasonable for attorneys' fees in common fund cases such as this, and is well within, or below, the range of 25-36% typically awarded in class actions in this Circuit. *See, e.g., In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-

4038-MWB, 2011 WL 5547159, at *1 (N.D. Iowa Nov. 9, 2011); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011).

66. We respectfully submit that the work undertaken by Class Counsel in prosecuting this case and arriving at this Settlement has been time consuming and challenging. From the outset, Class Counsel appreciated the significant risks inherent in this litigation. As a result, it was unclear at the time of the filing of the original complaint whether Plaintiffs would overcome Wells Fargo's anticipated motions to dismiss – much less obtain class certification, survive summary judgment, and prevail at trial and on any post-trial appeals.

67. This Action settled only after Class Counsel overcame multiple legal and factual challenges. To do so, Class Counsel: conducted a pre-filing investigation; filed four complaints; opposed two rounds of motions to dismiss; sought and obtained class certification; analyzed a substantial amount of evidence, including over 50,000 pages of documents and 13.5 gigabytes of data produced by Wells Fargo and third parties; took and/or defended 12 depositions; engaged and conferred with experts and consultants on practices in the mortgage servicing industry and damages; researched the applicable law with respect to the claims of Plaintiffs and the Settlement Class, as well as Defendants' potential defenses and other litigation issues; and engaged in hard-fought settlement negotiations with experienced defense counsel for nearly six months. The requested fee is justified given the substantial work performed on a purely contingent basis and the uncertainties and risks surrounding the litigation.

68. As described in Class Counsel's Fee Memorandum, the requested fee is not only fair and reasonable under the percentage approach, but a lodestar cross-check confirms the reasonableness of the fee.

69. Listed in the attached declarations submitted on behalf of Class Counsel, Exs. 2-8, are summaries of Class Counsel's lodestar as well as the expenses incurred by category (the "Fee and Expense Schedules"). The Fee and Expense Schedules indicate the amount of time spent by each attorney and paraprofessional employed by Class Counsel, and the lodestar calculations based on their 2015 billing rates and titles. The declarations aver that the Fee and Expense Schedules contained in these declarations were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which records are available at the request of the Court. The hourly rates for attorneys and paraprofessionals included in these schedules have been accepted in other securities or shareholder litigation. For attorneys or paraprofessionals who are no longer employed by Class Counsel, the lodestar calculations are based upon the billing rates for such person in his or her final year of employment.

70. Class Counsel took this case on a contingency basis, committed their resources and then aggressively litigated it for more than six years without any compensation or guarantee of success. Based on the excellent result achieved for the Settlement Class, the quality of work performed, the risks of the Action and the contingent nature of the representation, Class Counsel submits that the request for a 33-1/3% fee award is fair and reasonable and consistent with other similar cases in the Eighth Circuit.

2. Standing and Expertise of Class Counsel

71. The expertise and experience of counsel are other important factors in setting a fair fee. As demonstrated by the firm résumés attached to their individual declarations, the attorneys at Class Counsel are experienced and skilled class action litigators and have a successful track record in class action cases throughout the country.

3. Standing and Caliber of Opposing Counsel

72. The quality of the work performed by counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Class Counsel was opposed in this case by very skilled and highly respected counsel – Severson & Werson and Faegre Baker Daniels. These counsel are highly experienced attorneys with vast resources. In the face of this knowledgeable and formidable defense, Class Counsel were nonetheless able to develop a case that was sufficiently strong to persuade Wells Fargo to settle on terms that are favorable to the Settlement Class.

4. The Risks of the Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk, Class Action Cases

73. As noted above, the Action was undertaken on a wholly contingent basis. From the outset, Class Counsel understood that they were embarking on a complex and expensive litigation with no guarantee of compensation for the investment of time, money and effort that the case would require. In addition, Class Counsel understood that liability, damages and class certification would be heavily contested with no assurance of success.

74. In undertaking the responsibility for prosecuting the Action, Class Counsel assured that sufficient attorney resources were dedicated to the investigation of the Class claims against Wells Fargo and that sufficient funds were available to advance the expenses required to pursue and complete such complex litigation. As set forth below, Class Counsel received no compensation and, in total, incurred $252,877.30 in expenses in prosecuting this Action for the benefit of the Settlement Class.

75. Class Counsel also bore the risk that no recovery would be achieved. As discussed herein, this case presented a number of risks and uncertainties which could have prevented any

recovery whatsoever. Despite the vigorous and competent efforts of Class Counsel, success in contingent-fee litigation, such as this, is never assured.

76. Class Counsel firmly believe that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations.

5. The Reaction of the Settlement Class to Date

77. As set forth above, Postcard Notices have been disseminated to more than 2.7 million potential Settlement Class Members. Keough Decl. at ¶10. In addition, the Summary Notice was published in THE WALL STREET JOURNAL and transmitted over *PR Newswire*. Keough Decl. at ¶11. In addition, the long-form Notice and Summary Notice, among other documents related to the Settlement, were published on a dedicated settlement website, www.WellsFargoPropertyInspectionSettlement.com. The Notice explains the Settlement and Class Counsel's anticipated fee request. The deadline to object to Class Counsel's fee request is December 22, 2015. To date there has been just one objection to Class Counsel's fee request.[11]

78. In addition, the Notice informed Settlement Class Members that the deadline to request exclusion from the Settlement Class is December 22, 2015. To date, only 102 requests for exclusion have been received by the Claims Administrator. *Id.* at ¶14. The overwhelming approval of this extremely large Settlement Class to date further supports Class Counsel's request.

79. In sum, given the complexity and magnitude of the Action; the responsibility undertaken by Class Counsel; the difficulty of proof on liability and damages; the experience of

[11] As noted above, Class Counsel will address this objection along with any others that are received in their Reply Memorandum in Support of Class Counsel's Application for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, which will be filed after the deadline for filing objections.

Class Counsel and defense counsel; and the contingent nature of Class Counsel's agreement to prosecute this Action, Class Counsel respectfully submit that the requested attorneys' fees are reasonable and should be approved.

6. Application for Reimbursement of Expenses

80. Class Counsel also seek reimbursement of $252,877.30 in Litigation Expenses reasonably and necessarily incurred by Class Counsel in connection with commencing and prosecuting the Action over the course of the last six-plus years. The Notice apprises potential Settlement Class Members that Class Counsel intend to seek reimbursement of expenses in an amount not to exceed $400,000. The amount of the unreimbursed Litigation Expenses actually requested is less than what was stated in the Notice and, to date, no objection has been raised to Class Counsel's request for reimbursement of Litigation Expenses.

81. From the beginning of the case, Class Counsel were aware that they might not recover any of their expenses, and would not recover anything until the Action was partially or fully resolved. Class Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced to prosecute this Action. Thus, Class Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

82. As set forth in the Expense Schedule in Exs. 2-8, Class Counsel have incurred a total of $252,877.30 in unreimbursed Litigation Expenses through the date of the accompanying motion in connection with the prosecution of this Action. The expenses are reflected on the books and records maintained by Class Counsel. These books and records are prepared from

expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred.

83. The Litigation Expenses for which Class Counsel seek reimbursement were largely incurred for professional fees, including the costs of experts and consultants. Plaintiffs' experts provided substantial assistance to Class Counsel in the prosecution and resolution of this Action. This included drafting reports and otherwise assisting Class Counsel in reviewing documents and data produced by Wells Fargo and preparing for mediation.

84. The other expenses for which Class Counsel seek reimbursement are also the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, long distance telephone and facsimile charges, postage and delivery expenses, computerized research, overtime expenses, filing fees and photocopying.

85. All of the Litigation Expenses incurred were necessary to the successful prosecution and resolution of the claims against Wells Fargo. In view of the complexity of the Action, the expenses incurred were reasonable and necessary to pursue the interests of the Settlement Class. Accordingly, we respectfully submit that the Litigation Expenses incurred by Class Counsel should be reimbursed in full.

V. CONCLUSION

86. In view of the outstanding recovery for the Settlement Class, the very substantial risks of this litigation, the enormous efforts of Class Counsel, the quality of work performed, the contingent nature of the fee, the complexity of the case and the standing and experience of Class Counsel, Class Counsel respectfully submit that the Settlement should be approved as fair, reasonable and adequate; that the Plan of Allocation should be approved as fair and reasonable;

that a fee in the amount of 33-1/3% of the Settlement Fund, plus interest at the same rate as earned by the Settlement Fund from the date of award, be awarded to Class Counsel; and that Class Counsel's Litigation Expenses be reimbursed in full.

I declare, under penalty of perjury, that the foregoing facts are true and correct.

Dated: December 8, 2015

/s/ Deborah Clark-Weintraub
Deborah Clark-Weintraub