

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

ALICIA HERNANDEZ *et al.*, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Case No. 3:18-cv-07354-WHA

STIPULATION OF CLASS ACTION SETTLEMENT

The undersigned parties (collectively, the “Parties,” and each separately a “Party”), by and through their attorneys, have entered into the following Stipulation of Class Action Settlement (the “Agreement”), subject to approval of the Court.

I. RECITALS

A. This Agreement is made and entered into this 25th day of March, 2020 by Plaintiffs Sandra Campos (“Campos”) and Debora Granja (“Granja”), on behalf of themselves and the Settlement Class, and Defendant Wells Fargo Bank, N.A. (“Wells Fargo” or “Defendant”). Capitalized terms used herein are defined in Section II herein or indicated in parentheses elsewhere in the Agreement. Subject to Court approval as required by applicable Federal Rules of Civil Procedure, and as provided herein, the Parties stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and on entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and compromised on the terms and conditions contained herein.

B. On December 5, 2018, Plaintiff Alicia Hernandez filed a class action complaint titled *Alicia Hernandez v. Wells Fargo Bank, N.A.* in this Court (the “Complaint”) contending that Wells Fargo incorrectly denied HAMP mortgage modifications due to a calculation error and alleging five causes of action: (1) negligence; (2) conversion; (3) violation of California’s unfair competition law (“UCL”); (4) violation of the New Jersey Consumer Fraud Act; and (5) negligence *per se*.

C. On February 28, 2019, Plaintiff Alicia Hernandez and additional Plaintiffs Emma White, Keith Lindner, Troy Frye, Coszetta Teague, Iesha Brown, Russell and Brenda Simoneaux, John and Yvonne Demartino, Rose Wilson, Tiffanie Hood, George and Cyndi Floyd, and Diana Trevino filed an amended class action complaint contending that Wells Fargo incorrectly denied HAMP mortgage modifications due to a calculation error and alleging seven causes of action: (1) breach of contract; (2) intentional infliction of emotional distress; (3) negligence; (4) wrongful foreclosure; (5) violation of California’s Homeowners Bill of Rights (“HBOR”); (6) violation of California’s UCL; and (7) violation of state consumer protection laws in Illinois, Maryland, New Jersey, New York and Pennsylvania.

D. On July 11, 2019, Plaintiffs Alicia Hernandez, Debora Granja, Keith Lindner, Emma White, Coszetta Teague, Russell and Brenda Simoneaux, John and Yvonne Demartino, Rose Wilson, Tiffanie Hood, George and Cyndi Floyd, Troy Frye, and Diana Trevino filed a second amended class action complaint contending that Wells Fargo incorrectly denied HAMP mortgage modifications due to a calculation error and alleging nine causes of action: (1) breach of contract; (2) intentional infliction of emotional distress; (3) negligence; (4) wrongful foreclosure; (5) violation of California’s Homeowners Bill of Rights (“HBOR”); (6) violation of California’s UCL; (7) violation of state consumer protection laws in Illinois, Maryland, New Jersey, New York and Pennsylvania; (8) fraud by concealment; and (9) negligent misrepresentation.

E. Following extensive motion practice and extensive discovery in the Action, Plaintiffs filed a motion for class certification on August 29, 2019. On November 21, 2019, Plaintiffs filed a second motion for class certification.

F. Following the second motion for class certification, the aforementioned Plaintiffs and additional Plaintiff Sandra Campos filed a third amended class action complaint contending that Wells Fargo incorrectly denied HAMP mortgage modifications due to a calculation error and alleging nine causes of action: (1) breach of contract; (2) intentional infliction of emotional distress; (3) negligence; (4) wrongful foreclosure; (5) violation of California's Homeowners Bill of Rights ("HBOR"); (6) violation of California's unfair competition law; (7) violation of state consumer protection laws in Illinois, Maryland, New Jersey, New York and Pennsylvania; (8) fraud by concealment; and (9) negligent misrepresentation.

G. On January 29, 2020, the Court certified a nationwide breach of contract claim for the following individuals:

All persons in the United States who between 2010 and 2018 (i) qualified for a home loan modification or repayment plan pursuant to the requirements of government-sponsored enterprises (such as Fannie Mae and Freddie Mac), the Federal Housing Administration (FHA), the U.S. Department of Treasury's Home Affordable Modification Program (HAMP); (ii) were not offered a home loan modification or repayment plan pursuant to the requirements of government-sponsored enterprises (such as Fannie Mae and Freddie Mac), the Federal Housing Administration (FHA), the U.S. Department of Treasury's Home Affordable Modification Program (HAMP); (ii) were not offered a home loan modification or repayment plan by Wells Fargo due to excessive attorney's fees being included in the loan modification decisioning process; and (iii) whose home Wells Fargo sold in foreclosure.

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(the "Certified Class"). As described below, the Settlement Class is coextensive with the Certified Class.

H. In its order on January 29, 2020, the Court also appointed Plaintiffs Sandra Campos and Debora Granja as class representatives for the Certified Class and appointed Michael Schrag of Gibbs Law Group LLP and Richard Paul of Paul LLP as Class Counsel.

I. Plaintiffs Russell and Brenda Simoneaux are the only Plaintiffs that are not Certified Class members. They agree to dismiss their claims in the Action without prejudice, and a stipulation of dismissal was filed with the Court on March 24, 2020.

J. Class Counsel have conducted a thorough investigation into the facts and law relating to the Action and have analyzed and evaluated the merits of the Parties' contentions. Class Counsel also have evaluated the risks, delay, and difficulties involved in establishing liability, and in the event of liability, a right to recovery in excess of that offered by this Agreement and the likelihood that the Action could be further protracted and expensive. Class Counsel are satisfied that this Settlement is fair, reasonable, adequate, and equitable, and that settlement of the Action is in the best interest of the Settlement Class.

K. On March 3, 2020, Plaintiffs and Wells Fargo participated in a formal settlement conference with Magistrate Judge Ryu and, following further discussions and negotiations facilitated by Judge Ryu, were able to reach an agreement. At all times, the Parties' negotiations were adversarial, non-collusive, and at arms' length. Ultimately, and with Judge Ryu's assistance, the Parties reached a settlement in principle, which settlement is now fully memorialized in this Agreement.

L. Wells Fargo denies any and all wrongdoing of any kind whatsoever and denies any liability to Plaintiffs or to the Settlement Class. In no event shall this Agreement, or any part thereof, be construed or deemed to be evidence of an admission or concession on the part of Wells Fargo of any fault or wrongdoing of any kind, nor an admission or concession of liability of any kind, whether for damages or equitable or declaratory relief or any other form of legal remedy, or a concession of any infirmity in any of the defenses that have been asserted or could have been asserted in the Action. Wells Fargo, however, considers it desirable that all claims against it be settled on the terms hereinafter set forth to avoid further expense, inconvenience, and delay, dispose of the Action, and put to rest all controversy concerning the

claims that have been or could have been asserted in the Action. Therefore, for settlement purposes only, Wells Fargo, while continuing to deny any and all allegations of liability, has agreed to settle and terminate the Action against it as set forth herein.

M. This Agreement is entered into by and among the Parties, by and through their respective attorneys and representatives, and the Parties agree that (1) upon approval of the Court after the Final Approval Hearing, the Action and all Released Claims shall be settled and compromised as between the Settlement Class on the one hand, and Wells Fargo on the other hand; (2) upon Court approval of the Agreement, the [Proposed] Final Judgment and [Proposed] Order Approving Settlement, substantially in the form to be agreed on by the Parties, shall be entered dismissing the Action with prejudice and on the merits as to Campos, Granja, and the Settlement Class, and releasing all Released Claims, as defined herein, against Wells Fargo and all Released Parties, all on the following terms and conditions.

II. DEFINITIONS

A. As used in this Agreement, the following capitalized terms have the meanings specified below:

1. “Action” means the class action captioned *Alicia Hernandez v. Wells Fargo Bank, N.A.*, Master Docket No. 3:18-cv-07354-WHA, pending in the United States District Court for the Northern District of California.

2. “Administration Expenses” means the reasonable expenses incurred by the Class Action Administrator in administering the Awards and any reasonable expenses incurred by the Class Action Administrator or the Class Action Administrator’s Agent in determining the validity of claims for emotional damages.

3. “Agreement” means this Stipulation of Class Action Settlement.

4. “Award” means the monetary relief obtained by Settlement Class Members pursuant to Section IV.A and IV.B of the Agreement.

5. “Campos” means Plaintiff Sandra Campos.

6. “Certified Class” means the nationwide class certified in the Order re Motion for Class Certification, Motion for Leave to File Third Amended Complaint, and Administrative Motion for Leave to File Supplemental Brief, ECF No. 217 (entered January 29, 2020) in the Action, as follows:

All persons in the United States who between 2010 and 2018 (i) qualified for a home loan modification or repayment plan pursuant to the requirements of government-sponsored enterprises (such as Fannie Mae and Freddie Mac), the Federal Housing Administration (FHA), the U.S. Department of Treasury’s Home Affordable Modification Program (HAMP); (ii) were not offered a home loan modification or repayment plan pursuant to the requirements of government-sponsored enterprises (such as Fannie Mae and Freddie Mac), the Federal Housing Administration (FHA), the U.S. Department of Treasury’s Home Affordable Modification Program (HAMP); (ii) were not offered a home loan modification or repayment plan by Wells Fargo due to excessive attorney’s fees being included in the loan modification decisioning process; and (iii) whose home Wells Fargo sold in foreclosure.

The Certified Class is part of the Settlement Class, as defined below.

7. “Class Action Administrator” means the independent company retained by Defendant with the consent of Class Counsel and approved by the Court to administer the Settlement.

8. “Class Action Administrator’s Agent” means a special master reasonably experienced with review of emotional distress claims, who will act as an agent of the Class Action Administrator and carry out the duties described herein in connection with allocating funds from the Severe Emotional Distress Damages Fund.

9. “Class Counsel” means Michael L. Schrag of Gibbs Law Group LLP

and Richard M. Paul of Paul LLP, whose contact information is:

Michael L. Schrag, Esq.
mls@classlawgroup.com
Gibbs Law Group LLP
505 14th Street, Suite 1110
Oakland, California 94612

Richard M. Paul III, Esq.
Rick@PaulLLP.com
Paul LLP
601 Walnut Street, Suite 300
Kansas City, Missouri 64106

10. “Class Notice” means the notice which will be distributed via first-class mail. Class Notice will be substantially in the form to be agreed on by the Parties and that will be submitted to the Court in connection with the Motion for Preliminary Approval of Settlement, and that is discussed in Section XI.

11. “Complaint” means the class action complaint filed in this Action on December 5, 2018.

12. “Court” means the United States District Court for the Northern District of California.

13. “Defendant” means Wells Fargo Bank, N.A., and includes, without limitation, all related entities including but not limited to parents, subsidiaries, agents, employees and assigns, predecessors, successors, and affiliates.

14. “Defendant’s Counsel” means Winston & Strawn LLP, whose contact information is:

Amanda L. Groves, Esq.
agroves@winston.com
Winston & Strawn LLP
101 California Street, 35th Floor
San Francisco, California 94111

Kobi K. Brinson, Esq.
kbrinson@winston.com
Stacie C. Knight, Esq.
sknight@winston.com
Winston & Strawn LLP
300 South Tryon Street
Charlotte, North Carolina 28202

15. “Economic Damages Fund” means the amount of money from the Settlement Fund the Parties agree will be used to pay alleged economic damages directly to Settlement Class Members, as set out in Exhibit A.

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16. “Effective Date” means either: (a) the date thirty-five (35) calendar days after the entry of the Final Judgment and Order Approving Settlement, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other effort to obtain review has been initiated, the date thirty-five (35) calendar days after such appeal or other review has

been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise.

17. “Fee Award” means the amount of attorneys’ fees and reimbursement of costs awarded by the Court to Class Counsel for all of the past, present, and future attorneys’ fees, costs (including court costs), expenses, and disbursements incurred by them and their experts, staff, and consultants in connection with the Action.

18. “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence and to determine the Fee Award. The Parties shall request the Court set the Final Approval Hearing no earlier than sixty-five (65) calendar days after the Notice Date and no earlier than one hundred (100) calendar days after Preliminary Approval.

19. “Final Judgment and Order Approving Settlement” means an order and judgment entered by the Court:

- a. Giving final approval to this Agreement and this Settlement as fair, adequate, and reasonable;
- b. Providing for the orderly performance and enforcement of the terms and conditions of this Agreement;
- c. Dismissing the Action with prejudice and on the merits as to Campos, Granja, and the Settlement Class;
- d. Discharging the Released Parties of and from all further liability for the Released Claims to the Releasing Parties; and
- e. Permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to

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prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in any state court, any federal court, before any regulatory authority, or in any other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims.

The actual form of the Final Judgment and Order Approving Settlement entered by the Court may include additional provisions as the Court may direct that are not inconsistent with this Agreement and will be substantially in the form to be agreed on by the Parties.

20. “Granja” means Plaintiff Debora Granja.

21. “Loan” means each Settlement Class Member’s home mortgage loan with Wells Fargo that is at issue in this Action.

22. “Loan Modification Denial” means the trial loan modification that Wells Fargo denied due to excessive attorneys’ fees being included in the loan modification decisioning process.

23. “Motion for Preliminary Approval of Settlement” means the motion, to be filed by Plaintiffs, for Preliminary Approval of this Settlement and includes all supporting papers.

24. “Notice Date” means the last date, set by the Court, on which Class Notice is provided pursuant to the Notice Plan described in Section VI. The Notice Date shall be no later than ninety (90) calendar days after the Court enters the Preliminary Approval Order or such other date as the Court may order.

25. “Notice Plan” means the plan for dissemination of the Class Notice to be agreed on by the Parties and that will be submitted to the Court in connection with the Motion for Preliminary Approval of Settlement.

26. “Objection Deadline” means the date by which Settlement Class Members must file objections, if any, to the Settlement in accordance with Section VIII.A.

27. “Opt-Out Deadline” means the date, to be set by the Court, by which a Request for Exclusion must be filed with the Class Action Administrator for a Settlement Class Member to be excluded from the Settlement Class in accordance with Section VIII.C.

28. “Party” or “Parties,” unless otherwise specified, means Plaintiff Sandra Campos, Plaintiff Debora Granja, Settlement Class Members, and Defendant Wells Fargo.

29. “Person” means a natural person, individual, corporation, partnership, association, or any other type of legal entity.

30. “Preliminary Approval Order” means the order to be entered by the Court, substantially in the form to be agreed on by the Parties preliminarily approving the Settlement, setting the date of the Final Approval Hearing, approving the Notice Plan and Class Notice, and setting dates for the Opt-Out Deadline, Objection Deadline, and Notice Date.

31. “Release” means the release set forth in Section IX of this Agreement.

32. “Released Claims,” as it applies to the claims released by Campos, Granja, and the Settlement Class, means any and all claims, rights, causes of action, liabilities, actions, suits, damages, or demands (including Unknown Claims as defined in Paragraph 47, herein), of any kind whatsoever that arise out of or are based on the claims set forth in the Action, including claims based on the subject Loan Modification Denials, damages based on any failure to modify the Loans and/or damages based on the foreclosures challenged in the Action. Notwithstanding the foregoing, “Released

Claims” does not include claims relating to the enforcement of the Settlement. “Released Claims,” as it applies to the claims released by Wells Fargo, means any and all claims, rights, causes of action, liabilities, actions, suits, damages, or demands (including Unknown Claims as defined in Paragraph 47, herein), of any kind whatsoever that arise out of or are based on the claims set forth in the Action, including claims based on the subject Loan Modification Denials, damages based on any failure to modify the Loans and/or damages based on the foreclosures challenged in the Action. Notwithstanding the foregoing, the Parties understand and agree that this Agreement shall not, under any circumstances, be deemed to prohibit Wells Fargo or any other person or entity from continuing to take any actions with regard to any other bank, credit, investment, mortgage or other account obtained by the Settlement Class Members from or serviced by Wells Fargo, including but not limited to such actions as acceleration and foreclosure as may be appropriate if the Settlement Class Members default on any other mortgage or credit obtained by the Settlement Class Members from Wells Fargo.

33. “Released Party” as it applies to Wells Fargo, includes all of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees, and assigns.

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“Released Party” as it applies to Campos, Granja, and each Settlement Class Member includes each of their spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, or affiliates. It is expressly understood that, to the extent a Released Party is not a Party

to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

34. “Releasing Party” as it applies to Wells Fargo, includes all of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees, and assigns. “Releasing Party” as it applies to Campos, Granja, and each Settlement Class Member includes each of their spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, or affiliates.

35. “Representatives” means Plaintiff Sandra Campos and Plaintiff Debora Granja.

36. “Request for Exclusion” means the written communication that must be mailed to the Class Action Administrator and postmarked on or before the Opt-Out Deadline by a Settlement Class Member who wishes to be excluded from the Settlement Class.

37. “Service Award” means the amount of money that the Court authorizes to be paid to Campos and/or Granja in recognition of their efforts and risks in assisting with the prosecution of the Action.

38. “Settlement” means the terms, transactions, rights, obligations, conditions, Release, and other matters contemplated by, described in, or provided by this Agreement.

39. “Settlement Class” and “Settlement Class Member(s)” means the Certified Class and includes Campos and Granja. Excluded from the Settlement Class are: (a) Wells Fargo and its principals, affiliated entities, legal representatives, successors, and assigns; (b) any Person who files a valid, timely Request for Exclusion; (c) federal, state, and local governments (including all agencies and subdivisions thereof); and (d) any Person who settled and released claims at issue in this Action.

40. “Settlement Consideration” means the monetary consideration exchanged by and between Wells Fargo and the Settlement Class as set forth in this Agreement, as defined more fully in Section IV hereof. The Settlement Consideration includes the Economic Damages Fund and the Severe Emotional Distress Damages Fund, and it is inclusive of attorneys’ fees, costs, reasonable Administration Expenses, and any reasonable service awards Plaintiffs may request. The Settlement Consideration represents the limit and extent of Wells Fargo’s monetary obligations under this Agreement.

41. “Settlement Fund” means the amount of the Settlement Consideration and shall be the amount of Eighteen Million Five Hundred Thousand Dollars (\$18,500,000.00). The Settlement Fund includes the Economic Damages Fund, the Severe Emotional Distress Damages Fund, the Fee Award, any Service Award, and other expenses outlined in Section V.D below.

42. “Settlement Website” means the website to be created for this Settlement that will include information about the Action, the Agreement, the Settlement, and relevant documents and electronic and printable forms relating to the Settlement, including a Spanish-language version of the Class Notice. The Settlement Website shall be activated no later than twenty-one (21) calendar days after the entry

of the Preliminary Approval Order and shall remain active until the Effective Date or such later date as may be agreed to by Class Counsel and Defendant's Counsel.

43. "Severe Emotional Distress Damages Decision Date" means the date by which the Class Action Administrator's Agent will make an initial determination as to the allocation of funds from the Severe Emotional Distress Damages Fund for each Settlement Class Member who has made a written submission for the Severe Emotional Distress Damages Fund. The Severe Emotional Distress Damages Decision Date shall be twenty (20) calendar days after the Severe Emotional Distress Damages Request Deadline.

44. "Severe Emotional Distress Damages Dispute Deadline" means the date by which the Settlement Class Member may contest the initial decision about the allocation of funds from the Severe Emotional Distress Damages Fund. The Severe Emotional Distress Damages Dispute Deadline shall be within twenty (20) calendar days of the Severe Emotional Distress Damages Decision Date.

45. "Severe Emotional Distress Damages Fund" means the One Million Dollars (\$1,000,000.00) of the Settlement Fund the Parties agree will be used to pay alleged emotional distress damages for qualifying Settlement Class Members, for which a Settlement Class Member may apply by submitting a written request.

46. "Severe Emotional Distress Damages Request Deadline" means the date by which any Settlement Class Member requesting Severe Emotional Distress Damages must send their written submission to the Class Action Administrator. The Severe Emotional Distress Damages Request Deadline shall be sixty (60) days after the Notice Date.

47. "Unknown Claims" means any Released Claims that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her or its favor at

the time of the release of the Released Parties, and any Released Parties' Claims that Wells Fargo does not know or suspect to exist in his, her or its favor, which, if known by him, her or it, might have affected his, her or its settlement with and release of the Class Representatives, Settlement Class Members, and Class Counsel, or might have affected his, her or its decisions with respect to the Settlement.

III. CLASS CERTIFICATION AGREEMENT FOR SETTLEMENT PURPOSES ONLY

A. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (1) the validity of any claim or allegation by Campos, Granja, or any Settlement Class Member, or of any defense asserted by Wells Fargo, in the Action or any other action or proceeding; or (2) any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, Released Party, Settlement Class Member or their respective counsel; or (3) the propriety of class certification in the Action or any other action or proceeding.

B. For the sole and limited purpose of settlement only, and subject to the Court's final approval of the Settlement, Wells Fargo stipulates not to contest certification of the Settlement Class, which stipulation is contingent on the occurrence of the Effective Date. Should the Effective Date not occur, this Agreement shall be void and will not constitute, be construed as, or be admissible in evidence as, an admission of any kind or be used for any purpose in the Action or in any other pending or future action. Wells Fargo's agreement to class certification of the Settlement Class for settlement purposes only (and any statements or submissions made by the Parties in connection with seeking the Court's approval of this Settlement) shall not be deemed to be a stipulation as to the propriety of class certification, or any admission of fact or law regarding class certification, in any other action or proceeding,

whether or not involving the same or similar claims. Wells Fargo also does not waive any arguments made in its Rule 23(f) petition, and Wells Fargo reserves the right to pursue that petition and the supporting arguments in the event this Settlement is not approved. In the event the Court does not enter a Final Judgment and Order Approving Settlement, or the Effective Date does not occur, or the Agreement is otherwise terminated or rendered null and void, Wells Fargo's agreement to certification of the Settlement Class for settlement purposes shall be null and void. Nothing in this Agreement shall be admissible in any proceeding to certify this or any other classes in any other court under any circumstances.

IV. SETTLEMENT CONSIDERATION

A. Monetary Relief. Within thirty (30) days of the Court's entry of the Preliminary Approval Order, Wells Fargo will initially fund the Settlement by depositing into an escrow account, the terms of which shall be subject to Wells Fargo's approval, with the Settlement Administrator the sum of Six Thousand Dollars (\$6,000.00) to cover initial costs and expenses for implementing the terms of the Settlement set forth herein. Within seven (7) calendar days of the Effective Date, Wells Fargo will provide the remaining Settlement Fund balance of Eighteen Million Four Hundred Ninety-Four Thousand Dollars (\$18,494,000.00). The \$18,500,000.00 Settlement Fund will include the Economic Damages Fund (from which the Class Action Administrator will pay the sums outlined in Exhibit A directly to Settlement Class Members, without a claims process), the Severe Emotional Distress Damages Fund (from which the Class Action Administrator will pay approved claims for alleged emotional distress damages, as set forth herein), the Fee Award, any Service Award, and expenses outlined in this Paragraph and Paragraphs V.D. and V.E below.

B. To qualify for monetary relief from the Severe Emotional Distress Damages Fund, a Settlement Class Member must make a written submission to the Class Action Administrator in the form set forth as Exhibit A. The deadline for this submission will be sixty

(60) calendar days after the Notice Date (the “Severe Emotional Distress Damages Request Deadline”). Within twenty (20) calendar days after the Severe Emotional Distress Damages Request Deadline, the Class Action Administrator will have its agent, a special master reasonably experienced with review of similar claims (the “Class Action Administrator’s Agent”), review such submission. The Class Action Administrator’s Agent will make an initial determination as to the allocation of funds from the Severe Emotional Distress Damages Fund, after which the Class Action Administrator will notify the Settlement Class Member about the determination (the “Severe Emotional Distress Damages Decision Date”). Within twenty (20) calendar days of the Severe Emotional Distress Damages Decision Date, Settlement Class Members who are not satisfied with the determination about their emotional distress damages award may contest the decisions by sending a written submission to the Class Action Administrator (“Severe Emotional Distress Damages Dispute Deadline”). Within twenty (20) calendar days of the Severe Emotional Distress Damages Decision Date, the Class Action Administrator’s Agent shall decide the dispute, and the Class Action Administrator will notify the Settlement Class Member of the final determination as to the amount of monetary relief to be provided from the Severe Emotional Distress Damages Fund. That decision shall be final.

C. Residual Funds Distribution. The Class Action Administrator will mail checks from the Economic Damages Fund directly to all Settlement Class Members who do not opt out from this Settlement within forty-five (45) days following the Court’s final approval of the Settlement. Any funds remaining in the Economic Damages Fund due to opt outs, uncashed checks or amounts undistributed from the Severe Emotional Distress Fund will be re-distributed by the Class Action Administrator. The Parties agree any such re-distributions shall be made to Settlement Class Members who cashed their checks on a pro rata basis based on the proportionate share each such Settlement Class Member received from the checks they cashed from the Economic Damages Fund in the initial distribution; but if the total amount of the

remaining funds is less than Twenty-Five Thousand Dollars (\$25,000.00), then this residual shall be paid to NeighborWorks America, a cy pres award recipient focused on providing affordable housing, as set out in Section V. below. All cy pres distributions will take place within one hundred eighty (180) calendar days of the last stale date on a check for any Settlement Class Member receiving monetary relief from the Severe Emotional Distress Damages Fund, as described in Section V.E.

D. Limit of Relief. The Economic Damages Fund, Severe Emotional Distress Fund, the Fee Award, the Administration Expenses and any Service Awards, represent the limit and extent of Wells Fargo's monetary obligations under this Agreement, and shall be Eighteen Million Five Hundred Thousand Dollars (\$18,500,000.00).

V. CLASS ACTION ADMINISTRATION

A. Retention of Class Action Administrator. Wells Fargo shall, subject to the reasonable consent of Plaintiffs and approval of the Court, retain a Class Action Administrator to help implement the terms and conditions of the Agreement. The Class Action Administrator will sign a non-disclosure agreement with the Parties. The Parties agree that the Class Action Administrator shall be approved by the Court, shall be an agent of the Court, and shall be subject to the Court's supervision as circumstances may require. Wells Fargo will pay reasonable Administration Expenses and will not be responsible for any costs of additional services outside the scope of this Agreement. The Class Action Administrator shall assist with various administrative tasks, including, without limitation:

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1. Obtaining from Wells Fargo the name and last known mailing address information for Settlement Class Members, for the purpose of sending checks and Notice to Settlement Class Members;

2. Arranging for the dissemination of the Class Notice, including data standardization and de-duplication of the Settlement Class Members, pursuant to the Notice Plan agreed to by the Parties and approved by the Court;

3. Updating addresses of Settlement Class Members through the National Change of Address system or similar database;

4. Handling returned mail not delivered to Settlement Class Members, including making reasonable efforts to update addresses for undeliverable mailings;

5. Making any additional mailings required under the terms of this Agreement or by law;

6. Answering inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel;

7. Receiving and maintaining Requests for Exclusion;

8. Establishing the Settlement Website;

9. Establishing the toll-free informational telephone number described in Section V.G.

10. Distributing payments to Settlement Class Members as approved by the Court;

11. Disbursing payments from the Settlement Fund as set out in Section X;

12. Distributing IRS forms to Settlement Class Members as necessary;

13. Completing and providing any tax forms necessary for Wells Fargo to effectuate the Settlement;

14. Providing to the Class Action Administrator's Agent written submissions for monetary relief from the Severe Emotional Distress Damages Fund;

15. Work with the Class Action Administrator's Agent to determine appropriate payout amounts from the Severe Emotional Distress Damages Fund;

16. Providing full and complete information about its activities to Class Counsel and Defendant's Counsel, including responding to inquiries and requests for information from Class Counsel and Defendant's Counsel and providing confirmation in writing to Class Counsel and Defendant's Counsel upon completion of the administration of the Settlement; and

17. Otherwise assisting with administration of the Settlement.

B. The Class Action Administrator shall administer payments for the monetary relief for Settlement Class Members provided by this Agreement by operating in a cost-effective and timely manner consistent with the terms of this Agreement and the orders of the Court. The Class Action Administrator shall maintain records of all payments distributed until at least three hundred sixty-five (365) calendar days after the last of the payment checks to Settlement Class Members is issued and such records will be made available upon request to Class Counsel and Defendant's Counsel. Upon request by Class Counsel or Defendant's Counsel, the Class Action Administrator shall provide reports totaling: (a) number of payments distributed; (b) number of submissions for the Severe Emotional Distress Damages Fund; (c) number of opt out requests; and (d) such other information as reasonably required for Wells Fargo or Class Counsel to exercise their rights under this Agreement. Payment information and supporting documentation will be kept confidential by the Class Action Administrator and Class Action Administrator's Agent and will be provided only to the Court on request, and to Class Counsel and Defendant's Counsel to the extent necessary to resolve issues relating to [Case 3:18-cv-01324-MHA Document 508-5 Filed 04/01/20 Page 21 of 40](#) this Agreement. The Class Action Administrator also shall provide such reports and such other information as the Court may require.

C. The Class Action Administrator will use adequate and customary standards to administer the Economic Damages Fund and Severe Emotional Distress Damages Fund and to pay only legitimate Settlement Class Members. The Class Action Administrator shall make all

determinations concerning the eligibility of Settlement Class Members. In the event a Settlement Class Member is deceased, payments may be made to the Settlement Class Member's successor in interest.

D. Payment for Settlement Class Members: Economic Damages Fund. Payments from the Economic Damages Fund will be made directly by first class mail as set forth in Exhibit A and within fifteen (15) calendar days following the Court's final approval of the Settlement. The checks will be made jointly payable to co-borrowers on a Loan where applicable and will state that the checks must be cashed within one hundred twenty (120) calendar days from the date issued or they will become void. If there are uncashed checks the Class Action Administrator, in consultation with Wells Fargo Counsel and Class Counsel, will make adequate and customary efforts to contact and/or locate these Settlement Class Members. The Class Action Administrator will also send a postcard reminder notice to any Settlement Class Members who have not cashed their checks after sixty (60) days of issue. Cy pres distributions will take place within one hundred eighty (180) calendar days after the last stale check on a date for any Settlement Class Member receiving monetary relief from the Severe Emotional Distress Damages Fund, as set forth below in Paragraph E.

E. Payment for Settlement Class Members Claiming Severe Emotional Distress Damages. The payment amount for Settlement Class Members claiming emotional distress damages, if any, will be determined as set forth in Section IV.B, above. As to Settlement Class Members claiming emotional distress damages, checks for any award as determined by the [Case 3:18-cv-01324-MHA Document 508-5 Filed 04/01/20 Page 25 of 40](#) Class Action Administrator's Agent from the Severe Emotional Distress Damages Fund shall issue within forty-five (45) calendar days following the Court's final approval of the Settlement. The checks will state that they must be cashed within one hundred twenty (120) calendar days from the date issued or they will become void. Cy pres distributions will take place within one hundred eighty (180) calendar days after the last stale check on a date for any

Settlement Class Member receiving monetary relief from the Severe Emotional Distress Damages Fund.

F. Settlement Website. The Class Action Administrator shall cause the Settlement Website to be created. The Settlement Website shall contain relevant documents, including but not limited to, the Class Notice (in English and Spanish); orders of the Court pertaining to the Settlement; this Agreement; and a toll-free telephone number and address to contact the Class Action Administrator by email and U.S. Mail. The Settlement Website shall be rendered inactive after the time to terminate this Agreement as set forth in Section XIV has passed. The Parties shall use reasonable efforts to agree on all information and documents to be posted on the Settlement Website.

G. Toll-Free Number. The Class Action Administrator shall cause a toll-free telephone number to be created for Settlement Class Members to receive information about the Settlement. The Parties shall meet and confer regarding a set of frequently asked questions and answers to be used by the Class Action Administrator when answering Settlement Class Members' questions. Any disputes between the Parties as to those FAQs shall be resolved by the Class Action Administrator.

VI. NOTICE TO THE SETTLEMENT CLASS

A. No later than ninety (90) calendar days after entry of the Preliminary Approval Order or such other date as the Court may order, the Class Action Administrator shall cause the Class Notice to be disseminated to Settlement Class Members via regular mail in accordance with the Notice Plan to be agreed on by the Parties. The Parties acknowledge and agree that Class Notice pursuant to the Notice Plan is the best notice practicable under the

circumstances of this case to effect notice to the Settlement Class Members and that the Notice Plan comports with the requirements of due process.

B. Form of Class Notice. The Class Notice shall be substantially in the form to be agreed on by the Parties and approved by the Court, shall be posted on the Settlement Website and shall remain available until the Effective Date or such later date as agreed to by Class Counsel and Defendant's Counsel. The Class Notice shall set forth the following information:

1. Inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they will be eligible to receive relief under the proposed Settlement;

2. Contain a short, plain statement of the background of the Action and the Settlement;

3. Describe the Settlement Consideration outlined by this Agreement, including the criteria for requesting funding for emotional damages;

4. Explain the impact of the Settlement on any existing litigation, arbitration, or other proceeding;

5. State that any relief to Settlement Class Members is contingent on the Court's final approval of this Agreement;

6. Inform Settlement Class Members that they may exclude themselves from the Settlement Class by submitting a Request for Exclusion postmarked no later than the Opt-Out Deadline;

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7. State that any Settlement Class Member who has not submitted a Request for Exclusion by the Opt-Out Deadline may, if he or she desires, object to the proposed Settlement by filing and serving a written statement of objection postmarked no later than the Objection Deadline;

8. State that any Settlement Class Member who has filed and served written objections to the proposed Agreement may, if he or she requests, appear at the Final Approval Hearing, either personally or through counsel;

9. State that any Final Judgment and Order Approving Settlement entered in the Action shall include, and be binding on, all Settlement Class Members who have not timely submitted a Request for Exclusion, even if they have objected to the proposed Settlement and even if they have any other claim, lawsuit, or proceeding pending against Wells Fargo arising from the Loan Modification Denial;

10. Explain the terms of the Release; and

11. Provide other information necessary or judicially required for Settlement Class Members to exercise or choose not to exercise their due process rights.

C. The Class Action Administrator shall provide the Court with a declaration attesting that the Class Notice was disseminated pursuant to the Notice Plan.

VII. NOTICE UNDER THE CLASS ACTION FAIRNESS ACT

A. The Class Action Fairness Act of 2005 (“CAFA”) requires Wells Fargo to inform certain federal and state officials about this Settlement. *See* 28 U.S.C. § 1715.1.

B. Under the provisions of CAFA, the Class Action Administrator, on behalf of Wells Fargo, will serve notice on the appropriate officials within ten (10) calendar days after the Parties file the proposed Agreement with the Court. *See* 28 U.S.C. § 1715(b).

C. The Parties agree that Wells Fargo is permitted to provide CAFA notice as required by law and that any notice by Wells Fargo shall be done to effectuate the Settlement and shall not be considered a breach of this Agreement or any other agreement of the Parties.

VIII. OBJECTIONS AND REQUESTS FOR EXCLUSION

A. Objections. Any Settlement Class Member who intends to object to the Settlement must do so within forty-five (45) days of the date of mailing of the Class Notice

(the Objection Deadline). To object, the Settlement Class Member must file with the Court, a document that includes:

1. The name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel;
2. Specifically, and in writing, the specific legal and factual bases for all objections;
3. Whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;
4. A statement of his/her membership in the Settlement Class; and
5. A detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the objection to this Settlement.

B. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his/her intent to appear at the Final Approval Hearing pursuant to this section shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by any means, including but not limited to an appeal.

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C. Requests for Exclusion.

1. Any Settlement Class Member may request to be excluded (or “opt out”) from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so no later than thirty (30) calendar days before the Final Approval Hearing (the Opt-Out Deadline). To opt out, a Settlement Class Member

must complete and mail to the Class Action Administrator a Request for Exclusion that is postmarked no later than the Opt-Out Deadline.

2. Requests for Exclusion that are postmarked after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely submits a Request for Exclusion will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Judgment and Order Approving Settlement and the Release contemplated thereby. Except for those Persons who have properly and timely submitted Requests for Exclusion, all Settlement Class Members will be bound by this Agreement and the Final Judgment and Order Approving Settlement, including the Release contained herein, regardless of whether they receive any monetary relief.

3. Any Person who timely and properly submits a Request for Exclusion shall not (a) be bound by any orders or the Final Judgment and Order Approving Settlement nor by the Release contained herein; (b) be entitled to any relief under this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of this Agreement.

4. Each Person requesting exclusion from the Settlement Class must personally sign his or her own individual Request for Exclusion. No Person may opt out of the Settlement Class by any other Person, or be opted-out by any other Person, and no Person shall be deemed opted-out of the Settlement Class through any purported “mass” or “class” opt outs. If there was more than one borrower on the applicable loan, both borrowers must personally sign the Request for Exclusion.

5. The Class Action Administrator shall provide Class Counsel and Defendant’s Counsel with a final list of any timely Requests for Exclusion received by

the Class Action Administrator within five (5) business days after the Opt-Out Deadline.

IX. RELEASE

A. The Agreement shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claims. Upon entry of the Final Judgment and Order Approving Settlement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting, and/or prosecuting any Released Claim against any Released Party in any court or any forum whatsoever.

B. Upon entry of the Final Judgment and Order Approving Settlement, each Releasing Party shall be deemed to have released and forever discharged each Released Party of and from any and all liability for any and all Released Claims.

C. The Parties acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Release, but nevertheless fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, may hereafter exist, or heretofore have existed based on actions, conduct, events, or transactions occurring on or before the date of the Agreement, without regard to subsequent discovery or the existence of such different or additional facts concerning each of the Released Parties.

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D. Waiver of Civil Code Section 1542 and Similar Laws. With respect to any and all Released Claims, and upon entry of the Final Judgment and Order Approving Settlement without further action, the Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal

doctrine similar, comparable, or equivalent to California Civil Code §1542, which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

E. On and after the Effective Date, each of the Releasing Parties shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Released Parties, from all claims of every nature and description, including Unknown Claims, relating to the defense, settlement, and/or resolution of the Action or the Released Claims.

F. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties, Settlement Class Members, the Class Action Administrator, and the Class Action Administrator's Agent to interpret and enforce the terms, conditions, and obligations under the Agreement.

X. COUNSEL FEES, SERVICE AWARD, AND COSTS

A. Within seven (7) days of the Effective Date, the Class Action Administrator shall cause to be paid from the Settlement Fund an award of reasonable attorneys' fees and litigation costs and associated expenses as awarded by the Court to Class Counsel (the "Fee Award"). The Fee Award shall constitute complete consideration for all work performed and all expenses and costs incurred by Class Counsel to date, and for all work to be performed and all expenses and costs to be incurred through the completion of the Action and this Settlement.

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The Class Action Administrator will be responsible for disbursing the Fee Award from the Settlement Fund consistent with the Court's Final Approval Order.

B. Class Counsel may apply to the Court for Service Awards for Campos and Granja in amounts not to exceed \$2,500 for Campos and \$2,000 for Granja. The Class Action Administrator will be responsible for disbursing any Service Awards from the Settlement Fund.

XI. PRELIMINARY APPROVAL

A. The Parties and their respective counsel agree that Plaintiffs shall seek Preliminary and Final Approval of the Settlement as described herein. Within seven (7) calendar days after execution of the Agreement, Plaintiffs shall submit a Motion for Preliminary Approval of Settlement, this Agreement, including all exhibits, and shall seek a Preliminary Approval Order from the Court, substantially in the form to be agreed on by the Parties, which, by its terms shall:

1. Determine preliminarily that this Agreement and the Settlement set forth herein fall within the range of reasonableness meriting possible final approval and dissemination of Notice to the Settlement Class;

2. Schedule the Final Approval Hearing to: (a) review objections, if any, regarding the Settlement; (b) consider the fairness, reasonableness, and adequacy of the Settlement; (c) consider Class Counsel's application for an award of attorneys' fees and reimbursement of expenses and service awards; (d) determine the validity of Requests for Exclusion and exclude from the Settlement Class those Persons who validly and timely opted out; and (e) consider whether the Court shall issue the Final Judgment and Order Approving Settlement approving the Settlement, dismissing the Action with prejudice and on the merits as to Campos, Granja, and the Settlement Class and releasing all Released Claims;

3. Set a briefing schedule for the Final Approval Hearing;

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4. Approve the Class Notice and Notice Plan;

5. Approve the designation of the Class Action Administrator;

6. Direct the Class Action Administrator to cause the Class Notice to be disseminated in the manner set forth in the Notice Plan on or before the Notice Date;

7. Determine that the Class Notice and Notice Plan (a) meets the requirements of Rule 23(c)(3) and due process; (b) is the best practicable notice under the circumstances; (c) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed Settlement or opt out of the Settlement Class; and (d) is reasonable and constitutes due, adequate, and sufficient notice to all those entitled to receive notice;

8. Require each Settlement Class Member who wishes to opt out of the Settlement Class to submit a timely written Request for Exclusion on or before the Opt-Out Deadline, as specified in Section VIII.C herein;

9. Rule that any Settlement Class Member who does not submit a timely Request for Exclusion will be bound by all proceedings, orders, and judgments in the Action; and

10. Require any Settlement Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement or to the award of attorneys' fees, costs, and expenses, to deliver to Class Counsel and Defendant's Counsel and to file with the Court, by the Objection Deadline, all of the information described in Section VIII.A.

B. The Parties agree to request that the Action be stayed while the Motion for Preliminary Approval is pending.

XII. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT

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A. This Agreement is subject to and conditioned upon (1) the issuance by the Court of the Final Judgment and Order Approving Settlement that grants final approval of the Settlement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and

obligations hereunder; (2) the Effective Date; and (3) the Parties' performance of their continuing rights and obligations hereunder.

B. The Final Judgment and Order Approving Settlement shall be substantially in the form to be agreed upon by the Parties and shall:

1. Confirm that the Notice Plan complied in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class;

2. Determine that the Agreement is entered into in good faith, is reasonable, fair, and adequate, and is in the best interests of the Settlement Class;

3. Dismiss the Action with prejudice and on the merits as to Campos, Granja, and the Settlement Class;

4. Decree that neither the Final Judgment and Order Approving Settlement nor this Agreement constitutes an admission by Wells Fargo of any liability or wrongdoing whatsoever;

5. Release each Released Party from the Released Claims that any Releasing Party has, had, or may have in the future against any Released Party;

6. Bar and enjoin all Releasing Parties from asserting against any Released Party any Released Claim and bar and enjoin all Settlement Class Members from initiating or pursuing any claim or action barred by the Release; and

7. Retain the Court's continuing and exclusive jurisdiction over the Parties to the Agreement, including all Settlement Class Members, to construe and enforce the Agreement in accordance with its terms for the mutual benefit of the Parties.

XIII. REPRESENTATIONS AND WARRANTIES

A. Wells Fargo represents and warrants: (1) that it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the

transactions contemplated hereby; (2) that the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Wells Fargo; and (3) that the Agreement has been duly and validly executed and delivered by Wells Fargo and constitutes its legal, valid, and binding obligation.

B. Campos and Granja each represents and warrants that she is entering into this Agreement on behalf of herself individually and as a representative of the Settlement Class and the Releasing Parties, of her own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Campos and Granja further represent and warrant that they have reviewed the terms of the Settlement in consultation with Class Counsel and believe those terms to be fair and reasonable, and covenants that they will not file a Request for Exclusion from the Settlement Class or object to the Settlement.

C. Except as set forth herein, the Parties represent and warrant that no other promise, inducement, or consideration for the Settlement has been made. No consideration, amount or sum paid, accredited, offered, or expended by Wells Fargo in its performance of this Agreement and the Settlement constitutes a fine, penalty, punitive damage, or other form of assessment for any claim against it.

XIV. TERMINATION OF THIS AGREEMENT

A. Either Party may terminate this Agreement by providing written notice to the other Party within ten (10) calendar days of the occurrence of any of the following:

1. The Court does not enter a Preliminary Approval Order conforming in all material respects to Section XI.A and to the form agreed to by the Parties;
2. The Court does not conditionally and finally certify the Settlement Class as defined herein; or

3. The Court does not enter the Final Judgment and Order Approving Settlement conforming in all material respects to Section XII.B and to the form agreed to by the Parties or, if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court before the Effective Date.

B. It is expressly agreed that neither the failure of the Court to enter the Fee Award nor the amount of any attorneys' fees and costs or Service Awards that may be finally determined and awarded, shall provide a basis for termination of this Agreement.

C. Either party may withdraw from and terminate this Agreement up to fifteen (15) calendar days before the Final Approval Hearing if the following occurs:

1. The Court fails to approve the Notice Plan, or requires material changes to the Notice Plan;

2. Any state attorney general, or any federal or state agency, regulator, or authority institutes a proceeding against any of the Released Parties arising out of or otherwise related to the Release, the Agreement, and/or the Settlement;

3. Any state attorney general, or any federal or state agency, regulator, or authority raises an objection to any aspect or term of the Agreement or Settlement that is not resolved by agreement; or

D. More than seven percent (7%) of Settlement Class Members have submitted valid and timely Requests for Exclusion. If either Party elects to cancel the Agreement pursuant to this Section XIV.C., the Agreement and all related documents exchanged or signed by the Parties or submitted to the Court shall be null and void and shall have no effect whatsoever upon the Action or its adjudication. If a Party withdraws or terminates pursuant to Section XIV.C, the withdrawing Party shall be responsible for any Administration Expenses incurred in notifying Settlement Class Members of that withdrawal or termination.

E. In the event of termination, the terminating Party shall cause the Class Action Administrator to post information regarding the termination on the Settlement Website.

F. In the event this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement. Upon termination, Sections III.A, III.B, and XV herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void.

XV. MEDIA COMMUNICATIONS

A. Campos, Granja, Class Counsel, and Defendant's Counsel shall not cause any aspect of the Action or the Settlement not available in the public record to be reported to the media or news reporting service, nor will the Parties issue a press release related to this Action. Wells Fargo may make such disclosures regarding the Action and the terms of the Settlement as it deems necessary in its filings with the Securities and Exchange Commission, to its auditors, or as otherwise required by state or federal law.

XVI. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of the Agreement Case 3:18-cv-01324-MHA Document 503-5 Filed 04/01/20 Page 32 of 40 has been made or relied upon except as expressly set forth herein.

B. Execution by Counterparts. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be deemed original signatures and shall be binding.

C. Notices. All notices to the Parties or counsel required by this Agreement shall be made in writing and delivered personally, by UPS, Federal Express, or similar service, next business day delivery, or sent by certified mail, postage prepaid, to the following:

If to Campos, Granja, the Settlement Class, or Class Counsel:

Michael L. Schrag, Esq.
mils@classlawgroup.com
Gibbs Law Group LLP
505 14th Street, Suite 1110
Oakland, California 94612

Richard M. Paul III, Esq.
Rick@PaulLLP.com
Paul LLP
601 Walnut Street, Suite 300
Kansas City, Missouri 64106

If to Wells Fargo or Defendant's Counsel:

Amanda L. Groves, Esq.
agroves@winston.com
Morgan E. Stewart
mstewart@winston.com
Winston & Strawn LLP
101 California Street, 35th Floor
San Francisco, California 94111

Kobi K. Brinson, Esq.
kbrinson@winston.com
Stacie C. Knight, Esq.
sknight@winston.com
Winston & Strawn LLP
300 South Tryon Street
Charlotte, North Carolina 28202

D. Good Faith. The Parties acknowledge that each intends to implement the Agreement. The Parties have at all times acted in good faith and shall continue to, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

E. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of the Parties to the Agreement, Wells Fargo, and the Released Parties.

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F. No Third Party Beneficiary Rights. The provisions of this Agreement are for the sole benefit of the Parties and their successors and permitted assigns, and will not be construed as conferring any rights to any third party (including any third party beneficiary rights).

G. No Collateral Attack. This Agreement shall not be subject to collateral attack by any Settlement Class Member or recipient of notices of this Agreement after the Final Judgment and Order Approving Settlement is entered.

H. Covenants Not to Sue. Campos and Granja, on behalf of themselves and the Settlement Class Members, covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participation of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Released Parties.

I. Arms-Length Negotiations. The determination of the terms of, and the drafting of, this Agreement, has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, the rule of construction that any ambiguities are to be construed against the drafter shall have no application. All Parties agree that this Agreement was drafted by Class Counsel and Defendant's Counsel at arms' length, and that no parole or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their attorneys, or the circumstances under which the Agreement was negotiated, made, or executed.

J. Waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

K. Modification in Writing Only. This Agreement and any and all parts of it may be amended, modified, changed, or waived only by an express instrument in writing signed by the Parties.

L. Agreement Constitutes a Complete Defense. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

M. Tax Consequences. Plaintiffs and Class Counsel agree that if it is later determined by the Internal Revenue Service or any other taxing body that taxes of any type should have been paid in connection with any benefit they receive pursuant to this Agreement, Plaintiffs will be solely responsible for paying such taxes. Wells Fargo makes no representations or warranties regarding the legal effect or tax consequences of this Agreement, or any such filing or reporting by Wells Fargo. Plaintiffs and Class Counsel further expressly acknowledge that they neither received nor relied upon any tax advice from Wells Fargo or its representatives and attorneys.

IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

ON BEHALF OF SANDRA CAMPOS

Sandra Campos

03/25/2020

Date:

ON BEHALF OF DEBORA GRANJA

Debora Granja

03/25/2020

Date:

ON BEHALF OF THE PROPOSED SETTLEMENT CLASS:

Michael Schrag

Rick Paul

03/25/2020

Michael Schrag

Rick Paul

Date:

ON BEHALF OF WELLS FARGO BANK, N.A.

Date:

ON BEHALF OF SANDRA CAMPOS

Date:

ON BEHALF OF DEBORA GRANJA

Date:

ON BEHALF OF THE PROPOSED SETTLEMENT CLASS:

Date:

ON BEHALF OF WELLS FARGO BANK, N.A.

Craig R. Baldauf
EVP + Deputy General Counsel
Craig R. Baldauf

3/25/2020
Date: