

1 Michael L. Schrag (SBN 185832)
 Joshua J. Bloomfield (SBN 212172)
 2 Linda P. Lam (SBN 301461)
GIBBS LAW GROUP LLP
 3 505 14th Street, Suite 1110
 Oakland, California 94612
 4 Telephone: (510) 350-9700
 Facsimile: (510) 350-9701
 5 mls@classlawgroup.com
 jjb@classlawgroup.com
 6 lpl@classlawgroup.com

7 Richard M. Paul III
 8 Ashlea G. Schwarz
 Laura C. Fellows
 9 **PAUL LLP**
 601 Walnut Street, Suite 300
 10 Kansas City, Missouri 64106
 Telephone: (816) 984-8100
 11 Facsimile: (816) 984-8101
 Rick@PaulLLP.com
 12 Ashlea@PaulLLP.com
 Laura@PaulLLP.com
 13

14 *Counsel for Plaintiffs and the Class*

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

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

19 Plaintiffs,

20 v.

21 WELLS FARGO BANK, N.A.,

22 Defendant.
 23

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

**PLAINTIFFS' REPLY BRIEF IN
 SUPPORT OF MOTIONS FOR
 FINAL APPROVAL OF PROPOSED
 CLASS ACTION SETTLEMENT
 AND FOR ATTORNEY'S FEES
 AND REIMBURSEMENT OF
 EXPENSES**

Date: August 20, 2020

Time: 8 a.m.

Dept: Courtroom 12

Judge: Hon. William H. Alsup

1 **INTRODUCTION**

2 Having already addressed in their opening briefs all but one of the final approval factors,
3 Plaintiffs submit this reply brief to address the one remaining factor: the class’s reaction to the
4 settlement.

5 The class’s reaction is highly positive. This is evident in three ways: the high level of class
6 engagement in seeking compensation for severe emotional distress; the low number of requests for
7 exclusion; and the lack of objections to the settlement itself or the motion for attorney’s fees and costs.

8 Lastly, the notice plan was effective. To date, the settlement administrator, JND, has likely
9 reached all but four of 510 class members (or, if deceased, their next of kin) eligible for settlement
10 benefits, which is over 99% of the class. JND will continue to search for these remaining four class
11 members.

12 **ARGUMENT**

13 **A. Class members were highly engaged when offered a procedurally fair process to avail**
14 **themselves of compensation for severe emotional distress**

15 As the Court knows, the settlement provides all class members monetary relief for economic
16 harm, and it delivers payment without a claims process. In addition, the settlement provides all class
17 members the opportunity to seek compensation for severe emotional distress, through a simplified
18 claims process administered by a court-appointed special master, Cathy Yanni.

19 That program is almost complete. 115 out of 510 class members, or 22% of the class, submitted
20 claims for emotional distress. This participation rate reveals a sufficient level of class engagement to
21 infer that the settlement’s benefits were appropriately conveyed to the class. *See Couser v. Comenity*
22 *Bank*, 125 F.Supp.3d 1034, 1044 (S.D. Cal. 2015) (noting a claims rate of 7.7% was “higher than
23 average”); *Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (“a claim rate as low as 3 percent is hardly
24 unusual in consumer class actions and does not suggest unfairness”).

25 Consistent with the framework that this Court preliminarily approved, Yanni carefully reviewed
26 each submission, which (in the main) included narratives from class members, sometimes
27 supplemented with mental health or medical records substantiating the severity of each injury. Based on
28 her comparative analysis of these submissions, Yanni allocated either \$6,700 or \$13,400 to each

1 claiming class member depending on her judgment of the severity of each class member's emotional
2 injury. Yanni has allocated \$911,200 out of the \$1 million fund, leaving a remainder of \$88,800. (Joint
3 Class Counsel Declaration at ¶ 11.) Yanni has the discretion to allocate some or all of this remainder to
4 class members who ask for reconsideration of her decision. Any money left in this fund after Yanni's
5 reconsideration will be distributed to class members who cashed their economic damages checks based
6 on their proportionate share of the settlement, or if that is not feasible, distributed *cy pres*. Dkt. 269-3 at
7 3.

8 On July 16, 2020, JND communicated these preliminary decisions to class members via mail.
9 These individuals have until July 30, 2020, to request reconsideration from Yanni. Yanni will resolve
10 any such contests by August 13, 2020.

11 **B. The low number of exclusions and the lack of objections support final approval**

12 Only five class members asked to be excluded from the settlement. No class member has
13 objected to the settlement itself or the request for attorney's fees and costs.

14 These numbers are too small to raise any suspicion that a meaningful portion of the class
15 disapproves of the settlement or that the benefits are unfavorable. Quite the opposite, the small number
16 of exclusions and the lack of objections support final approval. *In re Cathode Ray Tube (CRT) Antitrust*
17 *Litig.*, No. 14-cv-02058, 2015 WL 9266493, at *7 (N.D. Cal. Dec. 17, 2015) ("Class members' positive
18 reaction to a settlement weighs in favor of settlement approval; the absence of a large number of
19 objections to a proposed class action settlement raises a strong presumption that the terms of a proposed
20 class settlement [] are favorable to the class members.") (internal quotations and citations omitted); *see*
21 *also Churchill Vill., LLC v. Gen Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming final approval
22 where "only 45 of the approximately 90,000 notified class members objected to the settlement" and 500
23 class members opted out).

24 **C. The notice plan was effective**

25 JND effectively carried out the notice plan, ultimately reaching nearly all of the 510 class
26 members eligible for settlement benefits.

27 JND mailed notice to all class members using first class mail, address correction requested.
28 (Joint Decl. at ¶ 5.) Fifty-two notices were returned as undeliverable, either because a class member

1 was deceased or contact information was no longer correct. JND initially found updated addresses for
2 39 of these 52 class members and re-mailed notice to them. Class Counsel and JND worked together to
3 locate addresses for nine of the remaining 13 class members (or next of kin), and re-mailed notice to
4 these nine class members on July 20, 2020. If none of those nine are returned as undeliverable, JND
5 will have reached all but four of the 510 class members, which is over 99% of the class. JND will
6 continue to search for the remaining four missing class members so that these individuals can also
7 receive economic compensation under the settlement if it is finally approved. (*Id.* at ¶ 6-8.)

8 **CONCLUSION**

9 For the reasons stated above, and for those detailed in Plaintiffs' opening briefs, Plaintiffs
10 respectfully request that the Court grant final approval and Plaintiffs' motion for attorney's fees and
11 reimbursement of expenses.

12 Dated: July 23, 2020

Respectfully submitted,

13 */s/ Michael Schrag*

14 **GIBBS LAW GROUP LLP**

15 Michael L. Schrag (SBN 185832)

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