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

**PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF PROPOSED
CLASS ACTION SETTLEMENT
(UNOPPOSED)**

Date: August 20, 2020

Time: 8 a.m.

Dept: Courtroom 12

Judge: Hon. William H. Alsup

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1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE THAT on August 20, 2020 at 8 a.m., or as soon thereafter as this
3 matter may be heard before the Honorable William H. Alsup, either by telephone or videoconference,
4 *see* N.D. Cal. General Order No. 72-3, or in Courtroom 12, 19th Floor of the United States District
5 Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco,
6 California 94102, Plaintiffs will and hereby do move the Court for an order granting final approval of
7 the proposed class action settlement under Federal Rule of Civil Procedure 23(e); granting final
8 certification of the settlement class under Rules 23(a) and 23(b)(3); and finding that notice has been
9 implemented in accordance with the Court-approved notice plan and comports with due process.

10 This motion is based on the following memorandum of points and authorities, the joint
11 declaration of Richard Paul and Michael Schrag as Class Counsel and exhibits thereto, the arguments of
12 counsel, and any other matters in the record or that properly come before the Court.

13 Dated: June 8, 2020

Respectfully submitted,

14 */s/ Michael Schrag*

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I. INTRODUCTION

1
2 After much contentious litigation and with the case approaching trial, the parties reached a
3 class-wide settlement of \$18.5 million. On April 19, 2020, this Court preliminarily approved the
4 settlement, and per that order, the settlement administrator mailed notice to the class on May 18, 2020.
5 (Dkt. 277.) The parties now request that the Court grant final approval of their settlement because it is
6 fair, reasonable, and adequate and poised to deliver significant payments to over 500 class members.

7 The settlement was negotiated at arms-length under the supervision of Magistrate Judge Donna
8 M. Ryu and comes after Plaintiffs litigated two motions to dismiss, completed the vast majority of fact
9 and expert discovery, achieved certification of a litigation class, and as the parties were briefing Wells
10 Fargo’s motion for summary judgment on the claim certified for class treatment. The settlement class is
11 the same class that this Court certified during the litigation. If the settlement is approved, class
12 members will receive net payments ranging between \$14,000 and \$120,000. Given the risks in proving
13 breach of contract liability and establishing damages, considerable uncertainty remains as to whether
14 the class would recover this much (or anything at all) if this case went through trial and appeals.

15 To fully resolve this litigation, Wells Fargo will establish a non-reversionary \$18.5 million fund
16 for monetary payments to class members. All 510 class members will automatically receive a check for
17 economic harm without having to submit a claim form. Under the proposed allocation plan, each class
18 member’s net settlement amount will be calculated based on factors designed to approximate the value
19 of their lost modification opportunity, such as their unpaid principal balance and period of delinquency,
20 as well as how much they already received from Wells Fargo in remediation.

21 The proposed settlement also allocates \$1 million to compensate class members who suffered
22 severe emotional distress as a result of the foreclosure of their homes. Class members can submit a
23 simple claim form for a portion of this fund. The Court has appointed Cathy Yanni, a seasoned
24 mediator, to evaluate submissions and award compensation for severe emotional injuries. The \$18.5
25 million fund will also cover settlement administration expenses, attorney’s fees, and litigation costs.

26 Class Counsel strongly believe the settlement is in the best interests of the class. Because the
27 settlement readily meets Rule 23(e) standards of fair, reasonable, and adequate, Plaintiffs respectfully
28 request that the Court grant final approval.

II. OVERVIEW OF THE LITIGATION

A. The alleged circumstances that prompted this lawsuit

Wells Fargo wrongfully denied trial loan modifications to approximately 870 homeowners, over 500 of whom lost their homes through foreclosure. From 2010 to 2018, a calculation error in Wells Fargo's software overstated the amount of attorney's fees used to calculate borrowers' eligibility for a trial loan modification under the federal Home Affordable Modification Program (HAMP). Rather than limit such fees to the maximum allowable under HAMP, the bank added the limits to fees actually incurred, and consequently, certain homeowners who should have qualified for trial modifications were deemed unqualified for such financial assistance.

Wells Fargo discovered the error in 2013 and implemented a partial fix in 2015. A related error, however, continued until 2018. That same year, Wells Fargo publicly admitted the error and implemented a comprehensive fix. The bank sent affected borrowers a letter apologizing for its mistake, and provided compensation, mainly between \$5,000 and \$15,000, to nearly all of those borrowers who subsequently lost their homes through foreclosure. The letters also invited borrowers to mediate legal disputes.

B. An abbreviated procedural history

Plaintiff Alicia Hernandez filed a putative class action in December 2018 seeking damages for all such affected homeowners nationwide. Shortly after filing suit, Plaintiff asked this Court to order Wells Fargo to explain the propriety of its communications with putative class members. (Dkt. 14.) After a hearing, the Court ordered Wells Fargo to send borrowers corrective letters to advise them of this litigation and their right to be represented by counsel in mediations with Wells Fargo. (Dkt. 28.)

Plaintiffs then filed a first amended complaint on behalf of Hernandez and 14 other proposed class representatives against Wells Fargo Bank and its parent company. (Dkt. 44.) Both defendants moved to dismiss. (Dkt. 59, 73.) The Court dismissed the parent company and Plaintiffs' breach of contract, wrongful foreclosure, and negligence claims but denied the motion as to Plaintiffs' intentional infliction of emotional distress, UCL, Homeowner's Bill of Rights, and other state consumer protection claims. (Dkt. 87.) After Plaintiffs deposed a corporate representative, who testified that a loan modification would cure a payment default, the Court permitted Plaintiffs to re-assert the contract claim

1 in a second amended complaint. (Dkt. 136, 137.) Wells Fargo answered this complaint. (Dkt. 141.)

2 During and after that motion practice, the parties engaged in robust discovery. Class Counsel
3 reviewed more than 200,000 pages of documents and deposed seven Wells Fargo employees in Iowa,
4 Oregon, Minnesota, North Carolina, and California. (Joint Class Counsel Declaration (“Joint Decl.”) at
5 ¶ 5.) Plaintiffs also served five sets of interrogatories and three sets of requests for production (to which
6 Wells Fargo responded and later supplemented on several occasions). (*Id.*) Wells Fargo served requests
7 for production and multiple sets of interrogatories to fifteen named Plaintiffs and deposed 16 named
8 Plaintiffs (including class representative Sandra Campos, who was later added). The bank also deposed
9 18 *absent* California class members. (*Id.* at ¶ 7-8.) Class Counsel spent many hours reviewing each
10 deponent’s loan file (hundreds, if not thousands of pages) and preparing each for a deposition that often
11 lasted all day. (*Id.*)

12 Discovery was contentious. The parties submitted more than five discovery disputes to the
13 Court. (Dkt. 102, 105, 106, 175, 193, 196, 218, 219.) The Court compelled Wells Fargo to produce
14 several categories of discovery, including testimony regarding the bank’s efforts to comply with certain
15 government consent orders and certain documents concerning loan modification practices that were
16 given to board-level committees. (Dkt. 115 at ¶¶ 1, 3.)

17 Class Counsel retained Brian Kelley, a banking industry expert, to opine about liability issues
18 and Dan Salah, a damages expert, to build a model to estimate class member damages. Each expert
19 prepared a report and supplemental report, and sat for deposition. Class Counsel also deposed the two
20 experts Wells Fargo hired to rebut Kelley’s and Salah’s opinions. (Joint Decl. at ¶ 10.)

21 There were two rounds of class certification briefing and argument. (Dkt. 138, 173.) Plaintiffs’
22 second motion argued that class certification was appropriate because common issues regarding Wells
23 Fargo’s conduct predominated, while Wells Fargo opposed, arguing that individual causation and
24 damages issues predominated. (Dkt. 188 at pp. 10-15.) On January 29, 2020, the Court certified a
25 nationwide class under Rule 23(b)(3) to pursue the breach of contract claim on behalf of foreclosed
26 borrowers. (Dkt. 217 at p. 4.) In that order, the Court appointed Debora Granja and Sandra Campos as
27 class representatives and Gibbs Law Group LLP and Paul LLP as Class Counsel. (*Id.* at p. 11.)

28 Per that order, Plaintiffs filed a third amended complaint that added Campos and included all

1 the named Plaintiffs’ individual claims (such as intentional infliction of emotional distress, HBOR,
2 UCL, and other state consumer protection claims) as well as the certified breach of contract claim on
3 behalf of the nationwide class. (Dkt. 220.) Shortly after the Court’s certification order, the parties filed
4 a joint proposal for class notice. (Dkt. 233.) Under Rule 23(f), Wells Fargo petitioned the Ninth Circuit
5 for permission to appeal the class certification order and asked this Court to stay proceedings pending
6 the appeal. (Dkt. 229.) Plaintiffs opposed the Rule 23(f) petition as well as the motion to stay. (Dkt.
7 243.) The Court later denied the motion to stay. (Dkt. 259.)

8 In late February, Wells Fargo moved for summary judgment on the class-wide breach of
9 contract claim, Granja’s and Campos’s individual UCL and wrongful foreclosure claims, and Campos’s
10 HBOR claim. (Dkt. 231.) Wells Fargo argued that it was entitled to judgment as a matter of law on the
11 contract claim—the only certified claim—because neither the Fannie/Freddie nor FHA contract
12 required the bank to notify Plaintiffs and class members that they qualified for trial loan modifications
13 before foreclosing on their homes. (*Id.*) That motion was pending when the parties settled.

14 The parties participated in a settlement conference before Judge Ryu on March 3, 2020. (Dkt.
15 180; Joint Decl. at ¶ 11.) Although the parties did not reach an agreement on that day, they agreed to
16 consider Judge Ryu’s mediator’s proposal. (Joint Decl. at ¶ 11.) Two days later, the parties agreed to
17 Judge Ryu’s monetary proposal and over the next three weeks negotiated the remaining settlement
18 terms. (*Id.*) On March 26, the parties executed the formal settlement agreement. The parties also
19 retained an experienced settlement administrator, JND Legal Administration, after soliciting three bids.
20 (*Id.* at ¶ 15.) With JND’s help, the parties developed a notice and funds distribution plan. (*Id.*)

21 Plaintiffs then filed a motion requesting that the Court preliminarily approve the settlement and
22 direct notice of the settlement to the class. (Dkt. 269.) The Court entered an order preliminarily
23 approving the settlement and the notice plan on April 19, 2020. (Dkt. 277.) Since preliminary approval,
24 JND and the parties established the settlement website and disseminated class notice.¹ (Dkt. 276-1 at p.
25 7.) The deadline for class members to opt out or object to the settlement is July 2, 2020. (*Id.*) Therefore,
26 Plaintiffs will wait for their reply brief (due on July 23, 2020) to address the class’s reaction to the

27 _____
28 ¹ Consistent with the settlement agreement, no later than 10 days before the final approval hearing, JND
will file a declaration attesting that notice was disseminated in accordance with the settlement. (Dkt.
269-2 at § VI, ¶ C; Dkt. 276-1 at ¶ 14.)

1 settlement.

2 **III. OVERVIEW OF THE SETTLEMENT**

3 **A. The proposed settlement class**

4 If approved, the settlement would offer relief to the following class:

5 All persons in the United States who between 2010 and 2018 (i) qualified for a home loan
6 modification or repayment plan pursuant to the requirements of government-sponsored
7 enterprises (such as Fannie Mae and Freddie Mac), the Federal Housing Administration
8 (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
9 Fargo due to excessive attorney’s fees being included in the loan modification
10 decisioning process; and (iii) whose home Wells Fargo sold in foreclosure.

11 (Settlement Agreement (“Settlement”), Dkt. 269-2 § II, ¶¶ 6, 39).

12 The settlement class is the same as the certified litigation class. (Dkt. 217 at 4.) The settlement
13 excludes: (a) Wells Fargo and its principals, affiliated entities, legal representatives, successors, and
14 assigns; (b) any person who files a valid, timely Request for Exclusion; (c) federal, state, and local
15 governments (including all agencies and subdivisions thereof); and (d) any Person who settled and
16 released claims at issue in this action. (Settlement at § II, ¶ 39.).

17 **B. Benefits to the settlement class**

18 **1. Settlement fund**

19 The proposed settlement delivers a non-reversionary fund of \$18,500,000, meaning Wells Fargo
20 will not be entitled to retain any part of the settlement for any reason. (Settlement at § VI.) After paying
21 attorney’s fees and expenses to Class Counsel and settlement administration costs to JND, the
22 remaining balance will be distributed to class members to compensate them for economic loss, except
23 that \$1 million will be set aside to compensate for severe emotional distress. (*Id.* at § IV, ¶ B.)

24 There is no claims process associated with compensation for economic loss because the class
25 members are known, and the amount of their monetary payments can be fairly determined by setting a
26 minimum payment and using factors and data designed to approximate the value of each class
27 member’s lost opportunity to modify his or her loan. The allocation plan is described below. As such,
28 upon final approval, JND will mail checks to class members and follow-up with them if checks are not
deposited.

The claims process for severe emotional distress funds requires class members to complete a

1 straightforward form that allows them to explain and substantiate any emotional distress. At
2 preliminary approval, the Court appointed Cathy Yanni of JAMS as special master to evaluate such
3 claims and award compensation from the fund.

4 The residual amount will be distributed to class members on a pro rata basis based on each class
5 member's share of the total amount paid from the economic damages fund. (Allocation Plan, Dkt. 276-
6 3 at 2.) If there are any uncashed checks from the second distribution, the agreement proposes that
7 NeighborWorks America, a congressionally chartered, nonpartisan, charitable organization focused on
8 affordable housing, receive any residual as a *cy pres*. (*Id.*; Settlement at § IV, ¶ C).

9 **2. Settlement allocation**

10 **a. Economic Damages Fund**

11 For this fund, the allocation plan recognizes that Wells Fargo has already paid class members an
12 average of 38% of the unpaid principal balance (UPB) of their loan at the time of the decision error.
13 (Allocation Plan at 1; Joint Decl. at ¶ 24.) The allocation plan uses this percentage as a benchmark, and
14 initially provides each class member the amount needed to bring the total of each class member's
15 settlement payment and their remediation payments to 38% of his or her UPB. The allocation plan,
16 however, reduces this amount by 5% for every six months of delinquency, but sets a minimum payment
17 from the settlement fund of \$14,000, in recognition of the fact that each class member was denied a
18 trial modification and later lost his or her home to foreclosure. The plan thus results in a minimum
19 payment of \$14,000, which, including prior payments Wells Fargo made, means each class member
20 will receive at least \$24,000 in compensation for the error. (*Id.* at ¶ 25.)

21 This plan recognizes that the value of the lost modification opportunity varies among class
22 members, and some have already received substantial compensation from Wells Fargo for such losses.
23 As such, the allocation plan uses the UPB at the time of the error as a proxy for the value of the
24 modification denied. In general, under Plaintiffs' theory, class members with larger UPBs are more
25 likely to have suffered more lost equity and more damages as a result of the lost modification
26 opportunity. (*Id.*)

27 The allocation plan reduces payments to class members with long delinquency periods (unless
28 they are already receiving the minimum \$14,000 payment). This reduction captures the economic

1 realities of this case: long delinquencies decrease the potential economic value of a loan modification.
2 The number of days of each class member's delinquency has a practical correlation to both the class
3 member's ability to perform under a loan modification and the amount of equity versus unpaid interest
4 and fees being re-amortized in a modification. Also, higher delinquency equates to longer occupancy in
5 properties for which mortgage payments were not made; meaning class members received the value of
6 keeping their properties longer without making mortgage payments. The allocation plan thus applies a
7 discount factor of 5% for each six-month period of loan delinquency. (Allocation Plan at 1; Joint Decl.
8 at ¶ 24.) In these ways, the allocation plan fairly distributes compensation for economic harm based on
9 the realities of this case.

10 **b. Severe Emotional Distress Fund**

11 In addition to their share of the economic damages fund, class members may seek compensation
12 for severe emotional distress. Recognizing that not all would be able to show the bank's error caused
13 severe emotional distress, the settlement sets aside \$1 million and requires class members to submit a
14 claim. The form asks for a narrative statement and, if available, supporting documentation, such as
15 medical records. (Claim Form, Dkt. 276-4.) Cathy Yanni, whom the Court appointed as special master,
16 helped design the form and will resolve claims for compensation based on factors including the severity
17 of emotional distress and the extent to which the class member can demonstrate it was caused by Wells
18 Fargo's error as opposed to other life issues. (*See* Declaration of Cathy Yanni ("Yanni Decl."), Dkt.
19 269-11.) Yanni will also entertain a single request for reconsideration from each participating class
20 member. (Settlement at § IV, ¶ B.) As of June 4, 37 class members have applied for compensation from
21 this fund. (Joint Decl. at ¶ 27.)

22 **c. Secondary or *cy pres* distribution**

23 Finally, funds remaining from the economic damages fund (opt-out amounts and uncashed
24 checks) along with any undistributed funds from the severe emotional distress fund will be redistributed
25 to class members who cash their checks (pro rata based on each class member's proportionate share of
26 the cashed checks from the initial payment). If there are any uncashed checks from this second
27 distribution, the residual will be sent to the *cy pres* recipient.

1 **C. The scope of class members' release of claims**

2 In exchange for the settlement payments, class members will release claims against Wells Fargo
3 and its officers, directors, legal representatives, successors, subsidiaries, and assigns limited to “all
4 claims, rights, causes of action, liabilities, actions, suits, damages, or demands (including Unknown
5 Claims as defined in Paragraph 47, herein), of any kind whatsoever that arise out of or are based on the
6 claims set forth in the Action, including claims based on the subject Loan Modification Denials,
7 damages based on any failure to modify the Loans and/or damages based on the foreclosures
8 challenged in the Action.” (Settlement at § II, ¶ 32.) In turn, Wells Fargo will release class members
9 from any claims related to this litigation or settlement. (*Id.*)

10 **D. The notice plan**

11 On May 18, 2020, JND mailed the court-approved notice to all class members. (Dkt. 276-2,
12 277.) The class notice clearly explains the material aspects of the settlement, as well as how to opt out
13 of or object to the settlement. (Notice, Dkt. 276-2.) Each class member's notice specifies the amount he
14 will receive from the economic damages fund and states the amount he has already received in
15 remediation payments. (*Id.* at Sec. 9.) The notice also identifies a website with links to important case
16 documents, a Spanish translation of the notice, and updates on the settlement approval process. (*See*
17 www.homeloanmodificationsettlement.com.)

18 As part of its remediation program, Wells Fargo mailed letters to each class member and
19 employed detailed skip tracing procedures for any letters that were returned as undeliverable. (Joint
20 Decl. at ¶ 16.) Wells Fargo provided those updated names and addresses for each class member to JND.
21 (*Id.*) JND then performed a National Change of Address search and conducted advanced address
22 updating using a variety of tools such as LexisNexis to obtain a current address. (*Id.*)

23 The notice plan has been effective. JND mailed notice to all class members using first-class
24 mail, address correction requested. (Settlement at § II, ¶ A.10.) To date, only 33 notices have been
25 returned as undeliverable. JND's research identified updated addresses for 27 of those undeliverable
26 notices, which were re-mailed. JND is using additional search tools to research the remaining six names
27 in continuing efforts to have notice reach all class members. (Joint Decl. at ¶ 16.)

28

1 **E. The provision for attorney’s fees and cost reimbursements**

2 Under the settlement, attorney’s fees and costs are to be awarded from the gross settlement
3 fund. As detailed in Plaintiffs’ motion for attorney’s fees and costs, Class Counsel request an award of
4 \$4,525,000 (25% of the *net* settlement fund after deducting litigation and administration expenses) in
5 attorney’s fees and reimbursement of their \$335,000 in litigation expenses. These amounts were
6 included in the notice disseminated to the class. (Dkt. 276-2 at p. 1, Sec. 17.)

7 **IV. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED**

8 In December 2018, Rule 23(e) was updated to formalize the standard for approving class action
9 settlements. At the initial, or “preliminary” stage, courts are asked to decide whether they “will likely
10 be able” to approve the settlement and certify the settlement class. Fed. R. Civ. P. 23(e)(1)(B). If so, the
11 settlement notice is provided to the class and the final approval stage follows.

12 Here, the Court granted Plaintiffs’ motion for preliminary approval and ordered notice to be sent
13 to the class. (Dkt. 277.) With the notice now disseminated, the parties request that the Court certify the
14 proposed settlement class and grant final approval of their settlement.

15 **A. The proposed settlement merits approval**

16 A proposed class settlement should be approved only if it is “fair, reasonable, and adequate.”
17 Fed. R. Civ. P. 23(e)(2). The Ninth Circuit has described the following factors for district courts to
18 consider when evaluating the fairness of a proposed class settlement: “(1) the strength of the plaintiffs’
19 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of
20 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent
21 of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7)
22 the presence of a governmental participant; and (8) the reaction of the class members to the proposed
23 settlement.” *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020).

24 The new Rule 23(e)(2) factors are substantially similar to those the Ninth Circuit has instructed
25 district courts to consider in determining whether to approve a settlement, and were not designed “to
26 displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and
27 substance that should guide the decision whether to approve the proposal.” Fed. R. Civ. P. 23(e)(2)
28 advisory committee’s note to 2018 amendment. Therefore, Plaintiffs apply the framework set forth in

1 the recently amended Rule 23(e)(2), while drawing guidance from the Ninth Circuit’s factors and
2 precedent.

3 As discussed below, each factor under Rule 23(e)(2) weighs in favor of final approval.

4 **1. The parties negotiated the proposed settlement at arm’s length**

5 This Rule 23(e)(2) factor asks the Court to confirm the settlement was negotiated at arm’s
6 length. Fed. R. Civ. P. 23(e)(2)(B). This can be “described as [a] ‘procedural’ concern[], looking to the
7 conduct of the litigation and of the negotiations leading up to the proposed settlement.” Fed. R. Civ. P.
8 23(e)(2)(B), advisory committee’s note. Where, like here, a litigation class has already been certified,
9 “the Settlement Agreement need not be held to the ‘higher standard of fairness’ required of pre-
10 certification settlements.” *See In re MyFord Touch Consumer Litig.*, 2019 WL 1411510, at *5 n.2
11 (N.D. Cal. Mar. 28, 2019) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).
12 Even so, there are multiple indicia of the arm’s length nature of the negotiations.

13 First, the parties did not begin settlement discussions until after class certification and two
14 months before trial. (Joint Decl. at ¶ 11.) At that time, fact and expert discovery was nearly complete,
15 the parties had engaged in significant pretrial motion practice, and Wells Fargo had filed a motion for
16 summary judgment (seeking partial summary judgment on the individual claims and full judgment on
17 the only class claim). (*Id.* at ¶ 5-11.); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D.
18 Cal. 2018) (finding no signs of collusion where the parties had conducted substantial “factual
19 investigation and legal analysis,” “litigated two motions to dismiss,” and fully briefed a class
20 certification motion); *see also Wannemacher v. Carrington Mortg.*, 2014 WL 12586117, at *8 (C.D.
21 Cal. Dec. 22, 2014) (finding no signs of collusion where “significant ... discovery [was] conducted;”
22 “plaintiffs had already drafted a class certification brief;” and before “exploring settlement, the parties
23 litigated the case for a year”).

24 Second, the parties resolved the litigation with the assistance of Magistrate Judge Ryu. (Joint
25 Decl. at ¶ 11.) “[T]he involvement of a neutral or court-affiliated mediator or facilitator in [the parties’]
26 negotiations may bear on whether they were conducted in a manner that would protect and further the
27 class interests.” Fed. R. Civ. P. 23(e)(2)(B) advisory committee’s notes; *accord In re Bluetooth Headset*
28 *Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (participation of mediator, while not dispositive,

1 “weigh[s] in favor of a finding of non-collusiveness”). The parties mediated under Judge Ryu’s
2 guidance in March 2020, and ultimately accepted her mediator’s proposal. (Joint Decl. at ¶ 11.)

3 Third and finally, the requested attorney’s fees (25% of the net settlement fund) are proportional
4 to class member compensation, there is no “clear sailing” arrangement whereby Wells Fargo has agreed
5 not to contest the fee motion, and settlement funds will not revert to Wells Fargo under any
6 circumstances. *See In re Volkswagen*, 895 F.3d 597, 611 n.19 (9th Cir. 2018). For all these reasons,
7 there is no cause for concern that the settlement is the product of collusion.

8 **2. The quality of relief to the class weighs in favor of approval**

9 The next factor to consider is whether “the relief provided for the class is adequate, taking into
10 account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method
11 of distributing relief to the class, including the method of processing class-member claims; (iii) the
12 terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement
13 required to be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C).

14 **a. The settlement provides substantial relief to class members**

15 The proposed settlement provides substantial relief—\$18.5 million for 510 class members. This
16 settlement provides substantially more relief than that approved in similar settlements involving
17 wrongful loan modifications in this district. For example, in *Chao v. Aurora Loan Services*, the Court
18 approved a \$5.25 million California class settlement for over 15,000 California borrowers who lost
19 their homes to foreclosure after making payments under a voluntary forbearance agreement under the
20 false hope that the lender would then provide a loan modification. No. 10-03118-SBA, 2015 WL
21 294823 (N.D. Cal. Jan. 21, 2015). The gross settlement in *Chao* represented approximately 19% of the
22 claimed damages for breach of contract and UCL restitution and provided an average payment of
23 \$16,000 for one class of borrowers and payments of approximately \$25 for the remaining borrowers.
24 *Id.*; Dkt. 218 at 13.

25 In *Gaudin v. Saxon Mortgage Services, Inc.*, the court approved a \$4.5 million settlement on
26 behalf of 2,705 borrowers who made at least three HAMP trial plan payments but were not offered a
27 permanent loan modification and ultimately lost their homes to foreclosure. No. 11-cv-01663-JST,
28 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015). The settlement represented about 13.5% of the

1 maximum breach of contract, UCL, and Rosenthal Act damages, and class members received an
2 average payment of over \$1,100. *Id.* at *6. Unlike the plaintiffs in *Gaudin* who alleged they made the
3 required trial period payments but were denied a permanent HAMP modification, Plaintiffs here
4 alleged they were denied a *trial* modification. Thus, the settlement here – which provides a minimum
5 payment of \$14,000 or around 12 times the \$1,100 average payment in *Gaudin* – provides relief that is
6 significant and fair. *See also Wigod v. Wells Fargo Bank, N.A.*, No. 1:10-cv-02348 (N.D. Ill.) at Dkts.
7 269, 274 at 7, and 277 (approving a claims-made settlement where a group of borrowers who lost their
8 homes to foreclosure were eligible to receive a share of a \$2 million fund based on criteria such as
9 whether the borrower previously received a modification; at final approval, 170 claims were
10 submitted).

11 The \$18.5 million settlement fund also represents 37% of what Plaintiffs estimate they could
12 have recovered in economic damages on their best day at trial. Plaintiffs’ damages expert, Dan Salah,
13 prepared an expert report for the named Plaintiffs and California class members in which he calculated
14 two categories of economic damages: lost equity in class members’ homes and the value of the “loss of
15 use” of their homes. (Joint Decl. at ¶ 19-20; Dkt. 192-12.) Before the settlement conference, Salah used
16 the same methodology to calculate damages for all class members. He estimates that aggregate
17 damages would have been approximately \$65 million. It is important to note that in addition to the
18 settlement funds, class members have already received approximately \$15 million from Wells Fargo in
19 voluntary remediation payments. The gross amount class members will receive in connection with this
20 error will therefore be over \$33 million. Even if Plaintiffs obtained a judgment for their “soaking wet”
21 damages of \$65 million, the \$15 million already paid would be subtracted, meaning a \$50 million
22 breach of contract judgment would have been possible if everything worked in the class’s favor at
23 summary judgment, trial, and appeals. The settlement of \$18.5 million is 37% of this maximum
24 potential \$50 million judgment. (Joint Decl. at ¶ 19.) Of course, that estimate is subject to substantial
25 downward pressure due to the litigation risks remaining: Wells Fargo could prevail at summary
26 judgment, trial, or on appeal, leaving the class with no recovery at all.

27 Plaintiffs also sought emotional distress damages through the IIED claim, as well as a
28 component of damages for the wrongful foreclosure claims in Georgia and California only. *See* Dkt.

220 at ¶ 183-189, 194, 199. Proving that Wells Fargo intentionally caused emotional distress would be challenging given their defense that the calculation error was an innocent mistake. Nevertheless, the settlement creates a \$1 million fund and class members can submit a claim if they believe they suffered severe emotional distress as a result of the calculation error.

Finally, the amount of the settlement is fair in view of the claims released by class members. The proposed release here covers only claims related to the conduct at issue and relates to the types of damages class members suffered in losing their homes. This Court has approved similar releases that are anchored to the conduct at issue. *See In re LendingClub Sec. Litig.*, No. C 16-02627 WHA, 2018 WL 1367336, at *4 (N.D. Cal. Mar. 16, 2018) (approving release anchored to conduct and discussing approval of similar release in *Luna v. Marvell*, No. 15-5447). In *Saravia v. Dynamex Operations West, LLC*, for example, this Court approved a release of the claims pled in the complaint, as well as “other claims seeking substantially the same lost wages.” No. 14-05003 WHA, 2017 WL 1295069, at *2 (N.D. Cal. Apr. 4, 2017) (Alsup, J.); *see also Parrish v. Manatt, Phelps & Phillips, LLP*, No. 10-03200 WHA (Dkt. 125 at 3) (approving release of “all claims and causes of action . . . that arise out of the facts, occurrences, transactions, or other matters that were alleged in, are the subject of or relate to the Present Action” in legal malpractice case); *In re Diamond Foods, Inc.*, No. 11-05386 WHA, 2013 WL 5400539 (N.D. Cal. Sept. 26, 2013) (Alsup, J.) (approving release of “claims that relate to those certified for class treatment”). For similar reasons, this release is reasonable.

The negotiated relief is therefore more favorable than what classes in comparable cases received and readily satisfies the Rule 23 standard of fair, reasonable, and adequate. This settlement provides a substantial payment to each class member in a case that was fiercely contested, where Plaintiffs’ contract interpretation theory presented substantial litigation risk, and where even upon a showing of liability there would have been questions about Plaintiffs’ ability to demonstrate damages. Under these circumstances, Plaintiffs and Class Counsel wholeheartedly endorse this negotiated resolution.

b. Continued litigation would entail substantial risk, cost, and delay

Most class actions are long, costly and risky, which supports the Ninth Circuit’s “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998). Here, had the parties not settled, the

1 litigation would have remained risky, protracted, and costly.

2 With respect to the remaining cost and time needed to prosecute the case, though the parties had
3 already completed the vast majority of discovery, they still needed to brief *Daubert* issues and a
4 potential Rule 23(f) appeal if the Ninth Circuit were to grant Wells Fargo's petition, followed by
5 motions in limine, a possible decertification motion, and then trial. Each stage would have added risk
6 and necessarily imposed delay before the class could receive any relief. And due to the COVID-19
7 public health crisis, trials in this district have been delayed until at least September 30, 2020. N.D. Cal.
8 General Order No. 72-3. Had the parties not settled, the class would have needed to wait until at least
9 then for a trial date.

10 On the merits, certain key facts favored Plaintiffs, but case law developed in the wrongful
11 foreclosure context provided Wells Fargo with many arguments that could have allowed the bank to
12 prevail. Plaintiffs believed that Wells Fargo's calculation error breached their mortgage contracts and
13 caused Plaintiffs economic damage. But Wells Fargo, while admitting that it mistakenly denied trial
14 loan modifications, relied on case law stating that the contracts do not require the bank to notify
15 borrowers of their eligibility for a modification. On the Fannie/Freddie contract, the bank's position
16 was that it only had to notify class members that they could cure their defaults (and avoid foreclosure)
17 by paying the amounts in arrears. Plaintiffs faced the obstacle of rulings in other districts that found the
18 relevant language did not mandate a modification as a way to cure a default. (Dkt. 231 at p. 13-14.) On
19 the FHA contract, Wells Fargo would continue arguing that nothing in the incorporated HUD
20 regulations required the bank to offer a modification. Wells Fargo also argued that claims based on
21 violations of HUD regulations have not been expressly authorized under California law and are not
22 recognized in every state. (Dkt. 231 at p. 16-18.) There was no guarantee Plaintiffs would survive
23 summary judgment, let alone trial. *See In re Anthem*, 327 F.R.D. at 319, 321-22 (granting final approval
24 of settlement fund representing 14.5% of plaintiffs' damages estimate, while overruling objections to
25 the amount of the settlement because "none of these [objectors] adequately take into account the risks
26 and delays involved in proceeding to summary judgment or trial").

27 Even if Plaintiffs ultimately prevailed on liability, Wells Fargo would have continued arguing
28 that there were little or no damages. The bank has argued that class members' loss of use damages are

1 not recoverable at all, relying on this Court’s class certification order. (Dkt. 252 at 4 (“The only
2 purpose of [the class] trial is to ‘determine the value of the equity lost by each homeowner through a
3 foreclosure...”).) Salah’s estimate of lost equity damages was \$37.9 million. (Joint Decl. at ¶ 20.) If
4 Wells Fargo prevailed on the loss of use issue, the class’s best day at trial would result in a \$37.9
5 million verdict – and if the \$15 million in remediation payments were treated as an offset, this amount
6 would be reduced to as little as \$22.9 million. (*Id.*) Thus, if only lost equity damages were in play, the
7 settlement recovers a substantial portion of the damages the class could win at trial.

8 Wells Fargo also strenuously argued (and had some authority to support) that lost equity
9 damages must be measured at the time of foreclosure, which would bring those damages to nearly zero.
10 The vast majority of class members’ foreclosures occurred when they were “under water” on their
11 homes – meaning they had no equity to lose at the time of foreclosure. Although Plaintiffs had
12 authority to counter this and believe that it would be unfair to measure lost equity when property values
13 were at their lowest, this dispute presented substantial risk.

14 Plaintiffs believe they had reasonably strong prospects of overcoming Wells Fargo’s arguments
15 and defenses, but there can be little doubt that those defenses presented the possibility that the class
16 would recover nothing if the case persisted, or at least far less than what Plaintiffs were seeking. Even
17 if Plaintiffs had prevailed on each of these issues through trial, an appeal would likely follow, taking
18 another two-plus years to resolve. This settlement “eliminates the risks inherent in certifying a class,
19 prevailing at trial, and withstanding any subsequent appeals, and it may provide the last opportunity for
20 class members to obtain relief.” *Calderon v. Wolf Firm*, 2018 WL 6843723, at *7 (C.D. Cal. Mar. 13,
21 2018). This factor therefore weighs in favor of settlement approval.

22 **c. The settlement agreement provides for an effective distribution of**
23 **proceeds to the class**

24 The settlement has an efficient and effective distribution process. Class members will receive
25 checks for their share of the economic damages fund automatically in the mail, without the need to
26 submit a claim or gather any documentation. In other words, no affirmative steps on their part are
27 required to receive their economic damages payments.

28 As for the severe emotional distress fund, the claims process is simple and can be completed

1 online or by mail. Class members have been asked to describe, in narrative form, their claim for severe
2 emotional distress, and have the opportunity to submit documentation supporting their claim.
3 (Allocation Plan, Dkt. 276-3 at p. 2.) Once Yanni makes her final decision on each claim, a check will
4 be sent to each class member for his or her share of the severe emotional distress fund.

5 **d. The terms of the proposed award of attorney’s fees also support**
6 **settlement approval**

7 As detailed in Plaintiffs’ concurrently filed motion for attorney’s fees and costs, Class Counsel
8 seek compensation from the settlement fund, proportional to the class’s recovery. Class Counsel seek
9 \$4,525,000, which is 25% of the *net* recovery and also request reimbursement of \$335,000 in litigation
10 expenses. This fee request is below the Ninth Circuit’s benchmark of 25% of a common fund, as that
11 benchmark is typically applied to the *gross* settlement amount. *See In re Bluetooth Headset Prods.*
12 *Liab. Litig.*, 654 F.3d at 942. Nothing about the proposed award of attorney’s fees should detract from
13 the fairness of the settlement.

14 **e. The parties have no other agreements pertaining to the settlement**

15 The Court also must evaluate any agreement made in connection with the proposed settlement.
16 *See* Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the settlement agreement before the Court is the only
17 agreement between the parties. (Joint Decl. at ¶ 12.)

18 **3. The class representatives and Class Counsel have adequately represented**
19 **the class**

20 Under Rule 23(e)(2)(A), courts look to the adequacy of representation, which includes an
21 analysis of “the nature and amount of discovery” undertaken in the litigation. Fed. R. Civ. P.
22 23(e)(2)(A), advisory committee’s notes.

23 To begin with, class representatives Debora Granja and Sandra Campos have diligently
24 represented the class. They actively participated in the litigation and discovery, including by sitting for
25 their depositions, conducting ESI searches, producing documents, and traveling to San Francisco to
26 attend the settlement conference. (Joint Decl. at ¶ 79.) Throughout, they remained in contact with Class
27 Counsel, stayed updated on the litigation, and acted with the interests of the class in mind. (*Id.*)

28 In granting class certification, this Court found Class Counsel to be diligent and adequate. (Dkt.

1 218 at p. 8.) Class Counsel’s work supports this conclusion. They vigorously prosecuted this case,
2 completing most pre-trial work in less than 18 months. They briefed and argued a motion to transfer,
3 two motions to dismiss, five discovery letter briefs, class certification, and partial summary judgment.
4 (*Id.* at ¶ 5.) They conducted extensive discovery and were in the midst of preparing an exhibit list for
5 trial when the parties reached a proposed settlement. (*Id.* at ¶ 6.) Class Counsel developed evidence
6 revealing that Wells Fargo discovered the error in 2013, but despite recognizing that the error could
7 negatively impact borrowers and recommendations from employees to review and remediate if
8 borrower harm was identified, the bank did not fully fix the problem until 2018. Class Counsel also
9 engaged the services of two experts, one who opined on industry standards for banking practices and
10 another who assisted in developing a damages methodology. (*Id.* at ¶ 10.)

11 As part of these efforts, Class Counsel worked over 6,877 hours on the case and advanced more
12 than \$335,000 in litigation expenses, with no assurance that those expenses would be reimbursed. (*Id.*
13 at ¶ 63, 76.) Throughout the investigation, litigation and settlement process, Class Counsel have
14 continuously and adequately represented the class’s best interests.

15 **4. The settlement treats all settlement class members equitably**

16 The final Rule 23(e)(2) factor turns on whether the proposed settlement “treats class members
17 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “Matters of concern could include
18 whether the apportionment of relief among class members takes appropriate account of differences
19 among their claims, and whether the scope of the release may affect class members in different ways
20 that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e)(2)(D), advisory committee’s notes.

21 Here, the settlement treats class members equitably by taking into account differences in the
22 value of their claims. With respect to the economic damages fund, individual class member awards are
23 differentiated based on estimated value of the lost modification opportunity. Factors that went into the
24 allocation formula include each class member’s unpaid principal balance (UPB), his period of
25 delinquency, and the amount Wells Fargo already paid him in remediation. (Allocation Plan, Dkt. 276-
26 3 at 1.). For example, one class member, “Jane Smith” (loan number ending in 3433) is receiving the
27 minimum of \$14,000 under the settlement because she had a relatively low UPB (\$88,941) and had
28 already received \$30,000 in remediation payments. In contrast, another class member, “John Doe”

1 (loan number ending in 9385) is receiving \$99,082, an amount on the high end of the range under the
2 settlement, because he had a much higher UPB (\$394,978), meaning he lost a more expensive home
3 and thus arguably suffered more economic harm than Jane. Both class members' allocation amounts
4 were discounted for every six months of delinquency.

5 Payments from the severe emotional distress fund will similarly take differences in the strength
6 of class members' emotional distress claims into account. For those who apply for a portion of this
7 fund, Yanni will take into account the severity of their emotional distress and whether the trial
8 modification denial (as opposed to other factors unrelated to this lawsuit) caused the stress. (Yanni
9 Decl., Dkt. 269-11 at ¶ 10.) While evaluating emotional distress claims necessarily involves subjective
10 judgment, Yanni will draw on her years of experience administering settlements in similar cases to
11 fairly allocate this fund. (*Id.*)

12 Class members are all being treated equitably in another way: no class representative will seek
13 an incentive award. Thus, because no named Plaintiff is receiving a benefit not available to other class
14 members, and class members' awards are directly proportional to any damages they might have been
15 able to recover at trial, this factor weighs in favor of settlement approval. *See, e.g., Altamirano v. Shaw*
16 *Indus., Inc.*, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015) (finding no preferential treatment
17 because the settlement "compensates class members in a manner generally proportionate to the harm
18 they suffered on account of [the] alleged misconduct").

19 **B. Certification of the settlement class is appropriate**

20 The proposed settlement class definition is the same as the litigation class this Court certified in
21 January 2020 and the settlement class the court preliminarily approved in April. (Dkt. 217.) Because
22 there is no reason to depart from the Court's previous conclusions regarding the propriety of
23 certification, Plaintiffs address certification of the proposed settlement class only briefly.

24 **1. The settlement class satisfies the requirements of Rule 23(a)**

25 All Rule 23(a) requirements are readily satisfied. There are 510 class members (numerosity);
26 questions common to all class members, including whether uniform contracts required Wells Fargo to
27 provide notice of eligibility for a loan modification as a way to cure a default, are answerable through
28 common proof (commonality); the type of harm Plaintiffs suffered is the same as that suffered by all

1 class members (typicality); and the class representatives and Class Counsel will continue to represent
2 the class's best interests, as they have to date (adequacy). Fed. R. Civ. P. 23(a).

3 **2. The settlement class meets the requirements of Rule 23(b)(3)**

4 Each Rule 23(b)(3) requirement is also satisfied. For one, common questions predominate over
5 any individual ones because Wells Fargo engaged in a uniform course of conduct applicable to all class
6 members. This includes the core allegation that Wells Fargo failed to offer loan modifications because
7 of a widespread software error that miscalculated class members' eligibility for financial relief under
8 HAMP. The proposed settlement class is therefore sufficiently cohesive to warrant adjudication by
9 representation.

10 Similarly, it is superior to resolve all class members' claims through a single class action as
11 opposed to individual lawsuits. Given the time and expense this case requires, even a relatively large
12 award is likely to be lower than the cost of individual litigation. *Takiguchi v. MRI Int'l, Inc.*, 2016 WL
13 1091090, at *12 (D. Nev. Mar. 21, 2016) (finding a class action to be superior even where damages ran
14 from "tens of thousands to hundreds of thousands of dollars," since litigation would present hardship on
15 individual class members' finances and health).

16 For these reasons and the reasons this Court accepted in certifying a litigation class, certification
17 of the proposed nationwide settlement class is appropriate.

18 **C. Notice to the settlement class comported with Rule 23 and Due Process**

19 Where a settlement class is certified under Rule 23(b)(3), the notice must be the "best notice
20 that is practicable under the circumstances, including individual notice to all members who can be
21 identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

22 Here, notice was disseminated to each class member via first-class mail on May 18, 2020. The
23 notices were sent in envelopes that were stamped with the phrase "NOTICE RE: WELLS FARGO
24 LOAN MODIFICATION SETTLEMENT," so that they are more likely to be opened than thrown
25 away as junk mail. (Dkt. 12 at Sec. 13.) JND received class member addresses from Wells Fargo, and
26 ran all addresses through the United States Postal Service's National Change of Address database.
27 (JND Declaration, Dkt. 269-10 at ¶ 16.) JND also established a settlement website, where class
28 members can find a full version of the notice in both English and Spanish, the claim form for the severe

1 emotional distress fund (in both English and Spanish), important documents from the litigation, and up-
2 to-date information on the settlement approval process. (*See*
3 www.homeloanmodificationsettlement.com.)

4 The notice also complies with Rule 23(c)(2)(B) in that it “clearly and concisely state[s] in plain,
5 easily understood language” the nature of the action; the class definition; the class claims, issues, or
6 defenses; that the class member may appear through counsel; that the court will exclude from the class
7 any member who requests exclusion; the time and manner for requesting exclusion; and the binding
8 effect of a class judgment on class members. (*See* Dkt. 276-2.) To that end, the notice is consistent with
9 the samples provided by the Federal Judicial Center.²

10 Finally, notice was also provided to the U.S. Attorney General and appropriate regulatory
11 officials, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. (Settlement, Dkt. 269-2 at §
12 VII.)

13 V. CONCLUSION

14 For all the above reasons, Plaintiffs respectfully request that the Court enter the proposed final
15 approval order, thus finally approving the proposed settlement; finally certifying the proposed
16 settlement class; and determining that Plaintiffs’ class notice plan comports with Rule 23 and due
17 process. Plaintiffs will file a reply addressing the class’s reaction to the settlement by July 23, 2020.
18

19 Dated: June 8, 2020

Respectfully submitted,

20 */s/ Michael Schrag*
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² *See* <https://www.fjc.gov/sites/default/files/2016/ClaAct04.pdf>.

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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

**[PROPOSED] ORDER AND
JUDGMENT GRANTING
MOTION FOR FINAL
APPROVAL OF CLASS
SETTLEMENT AND
AWARDING ATTORNEY'S
FEES AND
REIMBURSEMENT OF
EXPENSES**

Date: August 20, 2020

Time: 8 a.m.

Dept: Courtroom 12

Judge: Hon. William H. Alsup

1 Plaintiffs’ Motion for Final Approval of Proposed Class Action Settlement and Motion for
2 Attorney’s Fees and Reimbursement of Expenses came before the Court for hearing on August 20,
3 2020 pursuant to the Preliminary Approval Order dated April 19, 2020. Having considered the parties’
4 Class Action Settlement Agreement (“Settlement”) and all papers filed and proceedings herein, THE
5 COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:¹

6 1. The Court has subject matter jurisdiction over this matter.

7 2. Based on Plaintiffs’ Motion for Final Approval of Proposed Class Action Settlement, the
8 argument and comments at the final Fairness Hearing, and its further consideration of the factors
9 identified in the Court’s Preliminary Approval Order, the Court orders that the following class (referred
10 to as the “Settlement Class” or “Class”), which was certified in the litigation, remains certified for
11 settlement purposes:

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

21 3. The Court confirms its appointment of Plaintiffs Debora Granja and Sandra Campos as Class
22 Representatives. The Court also confirms its appointment of Michael Schrag of Gibbs Law Group LLP
23 and Richard Paul of Paul LLP as Class Counsel.

24 4. Attached to this Final Approval Order and Judgment is a list setting forth the name of each
25 person who is excluded from the Class. The persons so identified: (a) are not Settlement Class members
26 as that term is defined and used herein; (b) shall not be bound by this Final Approval Order or any
27 release provided herein; and (c) shall not be entitled to any benefits from the Settlement.

28 5. The Court finds that Class Notice has been disseminated to the Class in compliance with the
Court’s Preliminary Approval Order and the Notice Plan provided the best notice to the Class
practicable under the circumstances, fully satisfied due process, met the requirements of Rule 23 of the

¹ Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Class Settlement Agreement, Dkt. 269-2.

1 Federal Rules of Civil Procedure, and complied with all other applicable law. The Court further finds
2 that notice provisions of 28 U.S.C. § 1715 were complied with in this case.

3 6. The Court finds that the Settlement is fair, reasonable, adequate, is in the best interests of the
4 Class, has been entered into in good faith, and should be and hereby is fully and finally approved
5 pursuant to Federal Rule of Civil Procedure 23. The Settlement represents a fair resolution of all claims
6 asserted by the Class Representatives on behalf of the Class, and fully and finally resolves all such
7 claims.

8 7. The Release set forth in the Settlement will become binding and effective on all Class members
9 upon the Effective Date. To avoid ambiguity, this Release must be read in light of the definitions of
10 “Released Claims”² and “Released Party,”³ and reads as follows:

11 A. The Agreement shall be the sole and exclusive remedy for any and all Released Claims
12 of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability or
13 expense of any kind to any Releasing Party with respect to any Released Claims.

14 Upon entry of the Final Judgment and Order Approving Settlement, each and every Releasing
15 Party shall be permanently barred and enjoined from initiating, asserting, and/or prosecuting any
16 Released Claim against any Released Party in any court or any forum whatsoever.

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

20 C. The Parties acknowledge that they may hereafter discover facts in addition to or
21

22 ² “Released Claims” means any and all claims, rights, causes of action, liabilities, actions, suits,
23 damages, or demands (including Unknown Claims as defined in Paragraph 47 of the Agreement), of
24 any kind whatsoever that arise out of or are based on the claims set forth in the Action, including claims
25 based on the subject Loan Modification Denials, damages based on any failure to modify the Loans
26 and/or damages based on the foreclosures challenged in the Action.

27 ³ “Released Party” as it applies to Wells Fargo, includes all of its respective predecessors, successors,
28 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. “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.

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

7 D. Waiver of Civil Code Section 1542 and Similar Laws. With respect to any and all
8 Released Claims, and upon entry of the Final Judgment and Order Approving Settlement without
9 further action, the Parties shall be deemed to have waived any and all provisions, rights, and benefits
10 conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine similar,
11 comparable, or equivalent to California Civil Code §1542, which reads as follows:

12 **A general release does not extend to claims that the creditor or**
13 **releasing party does not know or suspect to exist in his or her favor at**
14 **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.

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

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

23 8. The Class Action Administrator (JND) is hereby directed to implement and carry out the
24 Settlement in accordance with the terms and provisions thereof, including the allocation plan set forth
25 in Exhibit A to the Settlement Agreement.

26 9. Class Counsel and the Class Representatives fairly and adequately represented the interests of
27 Class members. The Court finds that Class Counsel's request for \$4,525,000 in attorney's fees which
28 represents 25% of the net class recovery is fair and reasonable, given the high level of risk involved, the

1 result achieved, the high quality of the legal representation, and the novelty and complexity of the legal
2 issues in this case. In addition, this Court has cross-checked the fee award and finds that Class
3 Counsel's combined lodestar of \$3,758,689 is reasonable under the circumstances of this case and the
4 1.2 multiplier on this lodestar is fair and reasonable for the reasons discussed above. The Court finds
5 Class Counsel reasonably spent over 6,877 hours representing the Class's interests over the course of
6 this litigation, and that Class Counsel's hourly rates were reasonable and in line with the prevailing
7 rates in the community for complex class action litigation. The Court further finds that the \$335,000 in
8 costs incurred to prosecute the litigation were reasonable. Accordingly, Class Counsel is hereby
9 awarded attorney's fees in the amount of \$4,525,000 and costs in the amount of \$335,000, which are to
10 be paid from the Settlement Fund within seven (7) days following the Effective Date of the Settlement.

11 10. There being no just reason for delay, the Court, in the interests of justice, expressly directs the
12 Clerk of the Court to enter this Final Order and Judgment, and hereby decrees that, upon entry, it be
13 deemed a Final Judgment.

14 11. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing
15 jurisdiction over (a) implementation and administration of the Settlement; (b) further proceedings, if
16 necessary, on applications for attorney's fees and costs in connection with the Action and the
17 Settlement; and (c) the Parties and the Class members for the purpose of construing, enforcing, and
18 administering the Settlement Agreement and all orders and judgments entered in connection therewith.

19
20 IT IS SO ORDERED.

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22 Dated: _____
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United States District Judge