

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**In re:**

**TROY SHANNON HARLOW**

§  
§  
§ **Case No. 17-71487**  
§ **Chapter 13**  
§  
§

**Debtor**

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**TROY SHANNON HARLOW**

**MARK STEPHEN ESTES**

**KIMBERLY PORTER FERWELL,**

**BEATRIZ VILLEGAS-RODRIGUEZ**

**and**

**RODOLFO RODRIGUEZ,**

**on behalf of themselves and all  
others similarly-situated,**

§ **ADVERSARY NO. 20-07028**

§ **DISTRICT COURT NO. 7:24-cv-00424**

**Plaintiffs,**

**v.**

**WELLS FARGO BANK, N.A.**

**Defendant.**

**PLAINTIFFS’ MOTION FOR ATTORNEYS’ FEES AND NON-TAXABLE COSTS AND  
CLASS REPRESENTATIVE SERVICE AWARDS**

Plaintiffs Troy Shannon Harlow, Mark Stephen Estes, Kimberly Porter Fewell, Beatriz Villegas-Rodriguez and Rodolfo Rodriguez (“Plaintiffs”), individually and on behalf of all other similarly situated individuals, with the consent of Defendant Wells Fargo Bank, N.A. (“Defendant”), move for an order awarding attorneys’ fees, expenses, and class representative service awards. Pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), and for the reasons set forth in

class counsel's accompanying memorandum of law, the Court should award the requested attorneys' fees, expenses, and class representative service awards.<sup>1</sup>

WHEREFORE, Plaintiffs Troy Shannon Harlow, Mark Stephen Estes, Kimberly Porter Fewell, Beatriz Villegas-Rodriguez and Rodolfo Rodriguez, individually and on behalf of all other similarly situated individuals, with the consent of Defendant Wells Fargo Bank, N.A. ("Defendant"), request an order from the Court:

1. Awarding class counsel a reasonable fee of 33% of the Settlement Fund, totaling \$4,950,000.00;
2. Reimbursing class counsel from the common fund for reasonable litigation expenses, in the amount of \$62,296.36; and
3. Awarding each class representative a service award of \$12,500.00, with the combined total of the service award being \$62,500.00.

Dated: July 31, 2024.

Respectfully submitted,

/s/ Theodore O. Bartholow, III ("Thad")

Theodore O. Bartholow III ("Thad")\*

Texas State Bar No. 24062602

Karen L. Kellett\*

Texas State Bar No. 11199520

KELLETT & BARTHOLOW PLLC

11300 N. Central Expressway, Suite 301

Dallas, TX 75243

Tel.: (214) 696-9000

Fax: (214) 696-9001

thad@kblawtx.com

kkellett@kblawtx.com

/s/ Malissa L. Giles

Malissa L. Giles

Tracy Giles

/s/ Abelardo Limon, Jr.

Abelardo Limon, Jr.\*

Texas State Bar No. 1235770

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<sup>1</sup> Plaintiffs are filing this motion by July 31, 2024, as set forth in the bankruptcy court's order of preliminary approval. Class members' objections and opt outs are not due until September 9, 2024, and Plaintiffs' motion for final approval is not due until September 11, 2024. Plaintiffs will more fully explain the case and settlement, will address any objections, and will file any additional materials in support of their final-approval and fee motions prior to the final approval currently set for October 11, 2024.

Giles & Lambert, PC  
PO Box 2780  
Roanoke, VA 24001  
Tel: (540) 981-9000  
mgiles@gileslambert.com

890 W. Price Road  
Brownsville, TX 78520  
Tel: (956) 544-7770  
Fax: (956) 544-4949

*Attorneys for the Plaintiffs*

\*Admitted Pro Hac Vice

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the parties listed below via ECF notification or first-class mail on July 31, 2024.

/s/ Karen L. Kellett  
Karen L. Kellett

William C. Mayberry  
Troutman Pepper Hamilton Sanders LLP  
301 South College Street, Suite 3400  
Charlotte, NC 28202  
bill.mayberry@troutman.com  
John C. Lynch  
Troutman Pepper Hamilton Sanders LLP  
222 Central Park Ave., Suite 2000  
Virginia Beach, VA 23462  
john.lynch@troutman.com  
Michael E. Hastings, Esq. (VSB No. 36090)  
Justin E. Simmons, Esq. (VSB No. 77319)  
Woods Rogers PLC  
10 South Jefferson Street, Suite 1400  
Roanoke, VA 24011  
Tel.: (540) 983-7600  
Fax: (540) 322-3417  
mhastings@woodsrogers.com  
jsimmons@woodsrogers.com

Christopher Viapiano  
Sullivan & Cromwell LLP  
1700 New York Avenue, N.W.,  
Suite 700  
Washington, D.C. 20006-5215

viapianoc@sullcrom.com

Brendan Cullen  
Sullivan & Cromwell LLP  
550 Hamilton Avenue Palo Alto, CA 94301-2010  
United States  
cullenb@sullcrom.com



**TABLE OF CONTENTS**

I. Introduction.....1

II. Procedural Background.....3

III. Argument and Authorities.....7

A. A 1/3 percentage-of-recovery attorney fee award is appropriate and reasonable compensation for Class Counsel in this case .....7

1. The percentage-of-recovery approach is the preferred approach to determine attorney’s fees in the Fourth Circuit .....7

2. Class Counsel’s request 1/3 fee is reasonable and comparable to other awards in the Fourth Circuit.....10

3. Class Counsel’s request 1/3 fee should be awarded because they have met the standard for awarding fees as a percentage of recovery in the Fourth Circuit ....11

1) The settlement Class Counsel negotiated achieves an outstanding and extremely valuable result for the Class.....12

2) Class Members may object to the fees requested by Class Counsel....13

3) The quality, skill, and efficiency of the attorneys involved.....13

4) This case was complex and has lasted over 4 years.....14

5) Class Counsel took significant risks and overcame major obstacles to prosecute and settle the class members’ claims in this case .....15

6) The requested fee of 33% of the recovery is reasonable in light of fees awarded in comparable cases.....17

7) The fee award sought is supported by public policy.....17

4. Class Counsel’s requested fee is supported by a lodestar cross-check.....18

B. Class Counsel is entitled to reimbursement of their reasonable expenses in the amount of \$62,296.36 .....23

5. The Class Representatives have earned their service awards, which are reasonable and appropriate .....24

Troy Shannon Harlow, Mark Stephen Estes, Kimberly Porter Fewell, Beatriz Villegas-Rodriguez and Rodolfo Rodriguez, (together, “Plaintiffs” or “Named Plaintiffs”), individually and on behalf of all other similarly situated individuals, with the consent of Defendant Wells Fargo Bank, N.A. (“Defendant”), move for an order awarding attorneys’ fees, expenses, and class representative service awards. For the reasons listed below, the Court should award the requested attorneys’ fees, expenses, and class representative service awards.<sup>1</sup>

## I. INTRODUCTION

Plaintiffs allege that in early March of 2020, at the beginning of the pandemic, Wells Fargo made a decision to provide mortgage forbearances to certain customers in Chapter 13 bankruptcies who had not explicitly requested a forbearance. Plaintiffs allege that the CARES Act required an explicit request for forbearance relief by the mortgagor. Plaintiffs further allege that, for certain Chapter 13 bankruptcy debtors whose loans Wells Fargo placed into forbearance without the borrower’s request, Wells Fargo filed notices of forbearance in the individuals’ Chapter 13 bankruptcy cases stating incorrectly that the debtors had requested forbearance or that Wells Fargo had provided the debtors with a temporary suspension of their mortgage payments (implying debtors’ knowledge and acceptance of the forbearances).

Plaintiffs allege that Wells Fargo’s placement of Chapter 13 bankruptcy debtors’ mortgage loans into forbearance was inherently harmful to the consumer debtors. Plaintiffs also allege that Wells Fargo’s forbearances were tantamount to an involuntary modification of the Chapter 13 debtors’ mortgage loans, which interfered with the Chapter 13 bankruptcy process in a variety of ways.

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<sup>1</sup> Plaintiffs attach to this memorandum the declarations of Theodore O. Bartholow, III (Exhibit 1), Karen Kellett (Exhibit 2), Malissa Giles (Exhibit 3), Abelardo Limon (Exhibit 4), and John Rao (Exhibit 5) in support of both Plaintiffs’ fee motion and their soon to-be-filed motion for final approval of the class settlement.

The Plaintiffs sued Wells Fargo on June 26, 2020, to put an end to and provide remedies for the harms created by its practice of placing debtors in Chapter 13 bankruptcy proceedings into unwanted and unrequested mortgage forbearances.<sup>2</sup> *See* Bartholow Decl., ¶ 15-20.

Wells Fargo argued that the vast majority of debtors who received a mortgage forbearance requested or wanted it and used it, and fought this case for four years through extensive motion practice and discovery in both federal bankruptcy court and federal district court.

In the proposed settlement that Class Counsel ultimately negotiated in this case, Wells Fargo will pay \$15,000,000.00 into a non-reversionary settlement fund for payment for the approximately 7,841 mortgage loan accounts of the Settlement Class Members, payment of settlement administration costs, service awards to the Class Representatives in an amount of up to \$12,500 each, Class Counsel's reasonable and actual expenses, and Class Counsels' attorneys' fees in an amount up to 33% of the Settlement Fund. As stated in more detail in Plaintiffs' Motion for Preliminary Approval, automatic cash payments in the amount of \$2,500.00 per loan will go to Subclass 1 members and automatic cash payments in the amount of \$500.00 per loan will go to members of Subclass 2, and the remaining balance of the settlement fund after these payments and after the costs of administration, litigation expenses, and attorneys' fees, will be deposited into a Claims Fund, from which Class Members can assert claims for damages proximately caused by Wells Fargo placing their loan into forbearance, which were not otherwise compensated by the automatic payments. These claims will be administered by UNC Chapel Hill Law Professor Kara Bruce, as claims ombudsman. Any funds remaining after this process shall be paid out in a second automatic distribution, in equal amounts, on a per loan basis to every Class Member who cashed their initial automatic settlement payment check.

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<sup>2</sup> *See* Harlow, et. al. v. Wells Fargo, AP No. 20-07028 (Bank WDVA)(“*Harlow*”), Dkt. No. 49.

These achievements are the product of Class Counsel's substantial efforts over the course of four-plus years of vigorously contested, often contentious litigation in both bankruptcy and district court, extensive discovery, and multiple days of hard-fought arms-length mediated negotiations.

Indeed, Class Counsel's discovery in this case confirmed that Wells Fargo engaged in the behavior alleged by Plaintiffs, which ultimately facilitated settlement of this case. Without Plaintiffs' and Class Counsel's prosecution and settlement of this case, it is possible that Wells Fargo's unauthorized mortgage forbearances would have resulted in foreclosures of mortgage loans and disruption, or even dismissal of borrowers' Chapter 13 cases, and other unnecessary stresses on the regular functioning of the nation's Chapter 13 bankruptcy system, and that the Plaintiffs would continue to suffer damages as a result of same.

## II. PROCEDURAL BACKGROUND

In the spring of 2020, Ms. Giles discovered that Wells Fargo was placing her clients into unwanted and unrequested forbearances, and filing notices in the bankruptcy court that falsely asserted the debtors had asked for the forbearances. She joined with the other Class Counsel and all firms extensively investigated Wells Fargo's forbearance practices throughout the country. Bartholow Decl., ¶ 15-18; Giles Decl., ¶ 13. Class Counsel vetted potential candidates to serve as class representatives in this case, prepared the initial *Harlow* class action complaint and filed it on June 26, 2020. *Harlow*, Dkt. No. 1; Bartholow Decl., ¶ 19-20.

On August 6, 2020, Plaintiffs filed a motion for a preliminary injunction, and after extensive negotiations, Wells Fargo consented to entry of an order by the bankruptcy court restricting filings Wells Fargo could make in bankruptcy courts regarding mortgage forbearances

and limiting the circumstances under which Wells Fargo could file motions for relief from stay prior to January 1, 2021. *Harlow*, Dkt. Nos. 26, 40; Bartholow Decl., ¶ 25-26.

From August through early December of 2020, Plaintiffs' counsel and counsel for Wells Fargo repeatedly engaged in extensive good faith informed negotiations regarding the scope and nature of the discovery needed for trial, and for a possible settlement. *Id.* at ¶ 27.

Plaintiffs filed their second amended complaint on November 16, 2020. *Harlow*, Dkt. No. 49, which Wells Fargo moved to dismiss. *Id.* at Dkt. Nos. 59 and 60. Wells Fargo also moved for withdrawal of the reference, which Plaintiffs opposed.<sup>3</sup> Bartholow Decl., ¶ 30. On January 6, 2021, the District Court for the Western District of Virginia withdrew the reference and consolidated *Harlow* with *Forsburg*<sup>4</sup>, which was pending at that time in the United States District Court for the Western District of Virginia.<sup>5</sup> Bartholow Decl., ¶ 34-35.

At the end of 2020, in the Northern District of California, the District Court had ordered mediation in later-filed, similar non-bankruptcy forbearance class actions against Wells Fargo ("*Delpapa*"), at which point counsel for the California plaintiffs and counsel for the consolidated *Harlow/Forsburg* plaintiffs joined forces, hired experts, engaged in extensive informal discovery, and ultimately mediated over three separate days in late summer of 2021. *Id.* at ¶ 32, 38-46. At Wells Fargo's request, the *Harlow/Forsburg* plaintiffs also agreed to a litigation stay during this process. *Id.* at ¶ 40-42.<sup>6</sup> Our Harlow team carefully considered and researched the implications

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<sup>3</sup> See *Harlow, et. al v. Wells Fargo & Co.*, Case No. 7:20-mc-00030-MFU (VAWD), Dkt. Nos. 1, 4, 5, 10.

<sup>4</sup> This is a lawsuit filed by Plaintiffs' counsel on behalf of a nationwide class of non-bankruptcy mortgagors, alleging that Wells Fargo placed non-debtor borrowers into unrequested and unwanted forbearances in violation of numerous laws. *Forsburg v. Wells Fargo & Co. et al.*, Case No. 5:20cv-00046-MFU, WDVA ("*Forsburg*").

<sup>5</sup> See *Harlow, et. al v. Wells Fargo & Co.*, Case No. 7:20-mc-00030-MFU (VAWD), Dkt. Nos. 11, 12.

<sup>6</sup> See *Forsburg*, Dkt. Nos. 90, 91, 92, 94, 95.

of this stay in light of the potential impacts of this case on class members' Chapter 13 bankruptcy cases before consenting to the litigation stay.

The *Harlow* Plaintiffs served formal discovery on Wells Fargo in January of 2021. Bartholow Decl., ¶ 38. In addition, as part of the extensive and hard-fought negotiations regarding the pre-mediation informal discovery for the 2021 mediation, Wells Fargo agreed to provide Plaintiffs with extensive documentation and account-level data regarding the *Harlow* Plaintiffs' bankruptcy claims, as well as substantial documentation and information regarding Wells Fargo's COVID-19 forbearance practices in general. *Id.* at ¶ 43-44.

Despite extensive informal discovery, expert assistance, preparation, and three days of mediation in the summer of 2021, the mediation reached an impasse, and the litigation continued. *Id.* at ¶ 46.

The *Forsburg/Harlow* parties then filed extensive briefing in the district court on Defendants' motion to dismiss the *Harlow* Plaintiffs' second amended complaint, and Plaintiffs' motion to transfer the consolidated cases to the Northern District of California, both before and after the December 16, 2021, hearing on those motions. *Id.* at ¶¶ 48-49.<sup>7</sup>

On March 30, 2022, the district court denied the motion to transfer. However, Wells Fargo subsequently consented to transfer Forsburg to the North District of California, where it was consolidated with 5 other non-bankruptcy forbearance cases pending there. On June 21, 2022, the district court granted Wells Fargo's motion to dismiss the *Harlow* plaintiffs' non-bankruptcy claims, formally de-consolidated *Harlow* and *Forsburg* and referred *Harlow* back to the bankruptcy court for a ruling on Wells Fargo's motion to dismiss Plaintiffs' remaining bankruptcy claims. Bartholow Decl., ¶ 50-51. *See Harlow, et al. v. Wells Fargo & Co., et al.*, Case No. 7:22-

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<sup>7</sup> *See Harlow, et al. v. Wells Fargo*, Case No. 7:22-cv-00267-MFU (WDVA). (*Harlow*) Dkt. Nos. 3, 4, 5,6, 7

cv-00267-MFU (WDVA), Dkt. Nos. 12, 13.

After additional briefing in the Bankruptcy Court and oral argument, the Bankruptcy Court granted in part and denied in part Wells Fargo's motion to dismiss. *Harlow*, Dkt. Nos. 73 – 77. Bartholow Decl., ¶ 52-53. See *Harlow, et al. v. Wells Fargo & Co., et al.*, 2022 WL 17586716 (Bankr. W.D. Va. Dec. 12, 2022).

The Parties engaged in additional discovery, including voluminous document and data production from Wells Fargo (and its review), as well as Plaintiffs taking the depositions of four Wells Fargo employees. Bartholow Decl., ¶ 54, 57-58, 60. The parties agreed to mediate the case again, and after months of preparation, the parties mediated this case with David Geronemus of JAMS in New York City on November 30, 2023, where the parties agreed in principle to a settlement of this case. *Id.* at ¶ 60-62. The parties continued to extensively negotiate a term sheet and ultimately the Settlement Agreement, which the parties signed on March 26, 2024. Bartholow Decl., ¶ 63.

The Plaintiffs filed their Amended Motion for Preliminary Approval of the settlement in Bankruptcy Court on April 8, 2024. *Harlow*, Dkt. No. 123. The Court heard Plaintiffs' counsel's presentation in support of Plaintiffs' unopposed amended motion for preliminary approval of the settlement on May 22, 2024, and subsequently entered the order preliminarily approving the settlement and appointing the undersigned as Class Counsel the same day. *Harlow*, Dkt. No. 126. Epiq Systems, Inc., the Settlement Administrator, was required to mail long form notices to Class Members on July 11, 2024, emailed the same information to all class members for which it had email addresses. Epiq also set up a website where class members can obtain information and submit claim forms.<sup>8</sup>

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<sup>8</sup> See <https://www.wellsfargobankruptcyforbearanceclass.com>.

### III. ARGUMENT AND AUTHORITIES

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). There are two main methods for calculating the reasonableness of attorneys’ fees – the lodestar method and the percentage of recovery method. *McAdams v. Robinson*, 26 F. 4<sup>th</sup> 149, 162 (4<sup>th</sup> Cir. 2022). A district court may choose the method it deems appropriate based on its judgment and the facts of the case. *Id.*

**A. A 1/3 percentage-of-recovery attorney fee award is appropriate and reasonable compensation for Class Counsel in this case.**

**1. The percentage-of-recovery approach “is the preferred approach to determine attorney’s fees” in the Fourth Circuit.**

In the Fourth Circuit, the percentage-of-recovery approach “is the preferred approach to determine attorney’s fees.” *Savani v. URS Prof’l Sols. LLC*, 121 F. Supp. 3d 564, 568 (D. S.C. 2015)(citing cases). *Jones v. Dominion Resources Services, Inc.*, 601 F.Supp 756, 758-759 (S.D. W. Va. 2009)(“The percentage method has overwhelmingly become the preferred method for calculating attorneys’ fees in common fund cases.”); *Durm v. Am. Honda Fin. Corp.*, WDQ-13-223, 2015 U.S. Dist. LEXIS 150425, 2015 WL 6756040, at \*6 (D. Md. Nov. 4, 2015) (district courts in Fourth Circuit use the percentage of recovery method in common fund cases). *See also* Manual for Complex Litigation, §14.121 at 187 (4th ed. 2011)(“the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases”).<sup>9</sup> The approved settlement in a comparable bankruptcy class action filed in the WDNC in

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<sup>9</sup> The Supreme Court has “recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co.*, 444 U.S. 472, 478 (1980); *United States v. Tobias*, 935 F.2d 666, 667 (4th Cir. 1991)(explaining equitable basis of the “common fund” doctrine). “It is also viewed as the preferable method in cases, such as this one, where the Plaintiff agreed to pay counsel on a contingency fee basis.” *In re LandAmerica 1031 Exch. Servs., Inc. I.R.S. 1031*

*Cotton* authorized a percentage of recovery fee awarded of 33% of the common fund in the amount of \$13,460,000. *Cotton et al. v. Wells Fargo Bank, N.A., et al.*, No. 3:18-cv-00499-RJC, in the United States District Court for the Western District of North Carolina, Docket No. 23.

Under this method, Class Counsel’s fees are calculated as a percentage of the class recovery “as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. at 478 (citing a line of decisions dating to *Trustees v. Greenough*, 105 U.S. 527 (1882)); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)(“[T]he calculation of attorney’s fees under the ‘common fund doctrine[.]’ is based on a percentage of the fund *bestowed on the class[.]*”(emphasis added). Thus, it is “appropriate to base the percentage on the gross cash benefits available for class members to claim, plus the additional benefits conferred on the class[.]” *Payne v. Sprint Commc’ns Co. L.P.*, No. 11- 3434, 2012 WL 13006270, at \*2 (D. Md. Nov. 30, 2012)(citing *Boeing Co.*, 444 U.S. at 479).

The percentage-of-recovery method “better aligns the interests of Class Counsel and class members because it ties the attorneys’ award to the overall result achieved rather than the hours expended by the attorneys.” *Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 462 (S.D. W. Va. 2010). Under this approach, plaintiffs’ counsel have a strong incentive to obtain the maximum possible recovery for the class in the shortest time possible under the circumstances, because it removes the incentive present under the lodestar method for Class Counsel to over-litigate or draw out cases in an effort to increase the number of hours used to calculate their fees. *See Teague v. Bakker*, 213 F. Supp. 2d 571, 584 (W.D.N.C. 2002)(“[A]n award of attorneys’ fees from a common fund depends on whether the attorneys’ specific services benefited the fund—whether they tended to create, increase, protect or preserve the fund.”). The percentage-of-recovery approach also

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*Tax Deferred Exch. Litig.*, No. 3:09-cv-00054, 2012 WL 5430841, at \*2 (D. S.C. Nov. 7, 2012). *See* Bartholow Decl. ¶ 4.

eliminates the burden on the court to engage in a detailed review and calculation of attorneys' hours and rates. *Kruger v. Novant Health*, No. 1:14cv208, 2016 U.S. Dist. LEXIS 193107, 2016 WL 6769066, \*4 (M.D.N.C. Sept. 29, 2016).

The Fourth Circuit in *Pellegrin v. Nat'l Union Fire Ins. (In re Abrams & Abrams, P.A.)*, 605 F.3d 238 (4<sup>th</sup> Cir. 2010), stressed the importance of honoring the contingency fee of attorneys who take on difficult litigation such as this, because “contingency fees are an acknowledged feature of our legal landscape, approved by legislative and judicial bodies alike that help secure for the impecunious access both to counsel and to court.” *Id.* at 245 (quoting *Wells v. Sullivan*, 907 F.2d 367, 372 (2d Cir. 1990)(“[A]ccepting reasonable contingency agreements ... increases the likelihood that a claimant can find an attorney sufficiently committed and skilled to litigate successfully.”)).<sup>10</sup>

Access to the courts would be difficult to achieve without compensating attorneys for that risk. ... In addition, it may be necessary to provide a greater return than an hourly fee offers to induce lawyers to take on representation for which they might never be paid, and it makes sense to arrange these fees as a percentage of any recovery. “[M]any attorneys are unwilling to accept the risk of nonpayment without a guaranteed contingency percentage of the recovery.” In other words, plaintiffs may find it difficult to obtain representation if attorneys know their reward for accepting a contingency case is merely payment at the same rate they could obtain risk-free for hourly work, while their downside is no payment whatsoever.

*Id.* at 246 (citations omitted).

In stressing the incentives, which are also applicable when class attorneys receive a percentage of a common fund, the Fourth Circuit also noted that an attorney compensated on a contingency basis “has a strong economic motivation to achieve results for his client, precisely

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<sup>10</sup> Although *Abrams* was not a class action seeking fees from a common fund, it is often cited in percent-of-recovery class action cases for its discussion of contingency fees. *Phillips v. Triad Guaranty Inc.*, 1:09cv71, 2016 U.S. Dist. LEXIS 60950, 2016 WL 2636289, at \*3 (M.D.N.C. May 9, 2016) (citing *Abrams*). See, e.g., *Abrams*, 605 F.3d at 244.

because of the risk accepted.” *Id.* at 246 (citing *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir.1986)(“[t]he contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains.”)). A contingency fee “automatically handles compensation for the uncertainty of litigation” because it “rewards exceptional success, and penalizes failure.” *Kirchoff*, 786 F.2d at 326. “Because the district court’s ruling failed to recognize that contingency fees provide attorneys due consideration for the risk they undertake, it reduced counsel’s fee to a level that few attorneys would have accepted at the outset of litigation, when success was by no means assured and the size of any settlement or judgment was unpredictable.” *Abrams*, 605 F.3d at 246. *See also* Rao Decl., ¶¶ 26-31, 35-36.

**2. Class Counsel’s requested 1/3 fee is reasonable and comparable to other awards in the Fourth Circuit.**

Class Counsel seeks 33% of the total settlement fund amount of \$15,000,000.00 as their fee in this case. This roughly one-third percentage is in line with fee awards in common-fund class action settlements in the Fourth Circuit. *See, e.g., Kidrick v. ABC Television & Appliance Rental, Inc.*, No. 97-cv-0069, 1999 U.S. Dist. LEXIS 23693, 1999 WL 1027050, at \*2 (N.D. W.Va. May 12, 1999)(noting that awards of 30%, 35%, and even 50% have been held reasonable); *In re Allura Fiber Cement Siding Litig.*, 2:19-mn-02886-DCN, 2021 U.S. Dist. LEXIS 96931, 2021 WL 2043531, at \*4 (courts in the Fourth Circuit have held that 1/3 of the settlement fund for attorneys’ fees is reasonable). *See also* Newberg on Class Actions § 15:73 (5th Ed.). One study found that courts consistently award between 30% and 33% of the common fund. Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. of Empirical Legal Studies, 27, 31, 33 (2004). *See also e.g., Chrismon v. Pizza*, No. 5:19-cv-155-BO, 2020 U.S. Dist. LEXIS 119873, 2020 WL 3790866 \*5 (E.D.N.C. July 7, 2020) (same and

collecting cases); *Anselmo v. West Paces Hotel Group, LLC*, No. 9:09-cv-02466, 2012 U.S. Dist. LEXIS 164618, 2012 WL 5868887, at \*3 (D.S.C. November 19, 2012)(approximate 33% for fees was reasonable); *Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 U.S. Dist. LEXIS 14772, 2020 WL 434473 at \*3 (D. Md. Jan. 28, 2020) (“Contingent fees of up to one-third are common in this circuit.”) (collecting cases); *Savani*, 121 F. Supp. 3d at 576 (“[A]n award of attorney's fees of 39.57% from the Subclass recovery is fair and reasonable given the results, risks, difficulty, complexity and magnitude of the litigation, and the highly specialized expertise, time and substantial resources required to prosecute it successfully.”)

**3. Class Counsel’s requested 33% fee should be awarded because they have met the standard for awarding fees as a percentage of recovery in the Fourth Circuit.**

Courts in the Fourth Circuit analyze seven factors when awarding fees as a percentage of recovery: (1) the results obtained for the Class; (2) objections by members of the Class to the settlement terms and/or fees requested by counsel; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) public policy; and (7) awards in similar cases. *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 261 (E.D. Va. 2009)(citing cases). Application of these standards in this case confirms that Class Counsel’s requested fees are reasonable and appropriate.

**(1) The settlement Class Counsel negotiated achieves an outstanding and extremely valuable result for the Class.**

In the Fourth Circuit, “the most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” *Abrams*, 605 F.3d at 247 (internal quotation marks omitted). The \$15,000,000.00 settlement in this case provides significant monetary and other relief for approximately 7,841 class members. The class members all will be sent payments automatically, on a per loan basis, without needing to take any action: an automatic cash payment

of \$2,500.00 per loan will be sent to Subclass 1 members and an automatic cash payment of \$500.00 per loan will be sent to Subclass 2 Members. Bartholow Decl., ¶ 3. Any individual class member can assert an additional claim for any additional damages proximately caused by Wells Fargo placing their loan into forbearance. *Id.* To the extent funds are remaining after distribution from the Claims Fund of the allowed claims, the Settlement Administrator will make a second automatic distribution, on a per loan basis, in equal amounts, to the class members who cashed their initial automatic settlement payment check. *Id.* Class Counsel consider this settlement an extremely successful and beneficial result for the class members. Because this settlement provides both meaningful automatic cash payments and an additional opportunity by filing a claim for class members to obtain further relief, tailored to the class members' personal harms. *Id.*; Kellett Decl., ¶ 5; Rao Decl., ¶ 31-34.

The settlement also provides many debtors and former debtors with benefits that they would otherwise have been unlikely to obtain. Kellett Decl., ¶ 5. The value of the benefits class members will receive under this settlement is enhanced by the fact that the initial benefits will be provided promptly, without the delay, burden, and risks of further litigation. Bartholow Decl., ¶ 3; Kellett Decl., ¶ 5. This factor is especially important in this case, as the class members are in dynamic situations. Many are still in Chapter 13 bankruptcies, and most are still paying on their mortgage loans. *Id.*

**(2) Class members may object to the fees requested by Class Counsel.**

Class members' objections and opt outs are not due until September 9, 2024, and Plaintiffs' motion for final approval is not due until September 11, 2024. Plaintiffs will address any objections, and file any additional materials in support of their final-approval and fee motions thereafter and prior to the hearing on final approval currently set for October 11, 2024.

**(3) The quality, skill, and efficiency of the attorneys involved.**

Class Counsel include experienced, highly-regarded, and nationally-recognized attorneys, including attorneys at Kellett & Bartholow PLLC who have litigated contested class certification evidentiary hearings and a certified class action to judgment on behalf of consumer Chapter 13 bankruptcy debtors. In particular, Class Counsel’s individual and class action cases frequently involve allegations that creditors violated Chapter 13 debtors’ rights under the Bankruptcy Code and related consumer-protection laws. Few, if any, currently practicing attorneys have comparable experience and success representing consumer bankruptcy debtors as class plaintiffs in this unique and complex context. *See* Rao Decl., ¶ 26-28; Bartholow Decl., ¶ 76-90; Kellett Decl., ¶ 21-23.<sup>11</sup>

Moreover, “[a]dditional skill is required when the opponent is a sophisticated corporation with sophisticated counsel.” *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 U.S. Dist. LEXIS 2392, 2007 WL 119157, at \* 2 (M.D.N.C. Jan. 10, 2007). Wells Fargo is the fourth largest bank in the U.S., with over \$1.959 trillion in assets. Kellett Decl., ¶ 13.<sup>12</sup> Class Counsel litigated against experienced counsel at Troutman Pepper Hamilton Sanders LLP., a huge,

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<sup>11</sup> Debtors in bankruptcy with bankruptcy counsel generally cannot, by definition, afford to hire and pay counsel to prosecute a case like this, which involves complex legal and factual issues. *See Jones v. Wells Fargo Home Mortgage (In re Jones)*, Adv. No. 06-1093, 2012 U.S. Bankr. LEXIS 1450, 2012 WL 1155715, at \* 1-2, 6-10 (Bankr. E.D. La. Apr. 5, 2012)(slip opinion), *aff’d*, *Jones v. Wells Fargo Home Mortgage (In re Jones)*, 489 B.R. 645 (E.D. La. 2013)(discussing resources of chapter 13 debtors and awarding attorneys’ fees). *See Brown v. Goldman Sachs Bank, USA*, Adversary Proceeding No. 24-07009, in the United States Bankruptcy Court for the Western District of Virginia, at ECF 23 (“The vast majority of debtors coming in the bankruptcy courts, especially consumer debtors like the ones here, have very limited resources. The Court sees it nearly every day.”); *See* Kellett Decl., ¶ 22-23. Moreover, most debtors’ bankruptcy attorneys simply do not have the expertise and cannot afford either the time or expense of such complex litigation *See* Kellett Decl., ¶ 22. *See* Rao Decl., ¶ 26-28, 31, 35-36. *See Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 576 B.R. 84, 97-100 (Bankr. S.D. Tex. 2017). Law firms will not bring these cases due to the substantial risks involved, and those that do usually fail due to the risks and obstacles inherent in a case of this type. *See* Kellett Decl., ¶ 22-23; Rao Decl., ¶26-28, 30-31, 35-36. Kellett & Bartholow is one of the few firms in the country to bring and successfully litigate class actions on behalf of borrowers in or formerly in a Chapter 13 bankruptcy proceeding. *See id.* Kellett Decl., ¶ 6-7, 22-23.

<sup>12</sup> *See* <https://www.bankrate.com/banking/biggest-banks-in-america>.

well-respected, law firm.<sup>13</sup> The Plaintiffs, on the other hand, were represented by one small, four-lawyer firm with two other of-counsel attorneys, a solo practitioner, and a small consumer bankruptcy law firm.<sup>14</sup>

**(4) This case was complex and has lasted over 4 years.**

This litigation was complex and hard fought. The extensive motion practice, discovery, and the lengthy settlement mediations and negotiations are set out *supra* at length in Mr. Bartholow's, Ms. Kellett's, and Mr. Rao's declarations.

The issues in this case also were novel and complex, which added substantially to Class Counsel's risk in undertaking this litigation. The Coronavirus Aid, Relief, and Economic Security (CARES) Act was fresh off the books when Defendants implemented their COVID forbearance program. Class Counsel filed the Harlow adversary proceeding as the very first class action lawsuit in the country seeking to stop Wells Fargo's COVID forbearance actions and seeking redress for the damages caused by Wells Fargo unilaterally placing borrowers into forbearance without their request or informed consent. Because this was a new law and unprecedented conduct by a mortgage servicer, the financial motivation of Wells Fargo was largely unseen and unknown to the general public. As a result, this lawsuit was completely novel, requiring a significant degree of research and creativity to develop the factual allegations and theories of legal liability asserted in the class complaint. Kellett Decl., ¶ 10.

In addition, Bankruptcy Rule 3002.1 itself was enacted December 1, 2011, and has been

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<sup>13</sup> Troutman Pepper employs over 1,300 lawyers in 22 cities in the United States. Sullivan & Cromwell, LLP, brought in to additionally represent Wells Fargo in 2023, employs over 880 lawyers in 13 cities in the U.S., Europe, Australia and Asia. Kellett Decl., ¶ 13.

<sup>14</sup> Ms. Wells left the firm as of July 14, 2023, but the firm added Ms. Parry on October 23, 2023, so Kellett & Bartholow has maintained an office of four attorneys. O. Max Gardner and Matt McKee were of-counsel to Kellett & Bartholow for part of the Harlow litigation.

amended and modified several times since then. Fed. R. Bankr. P. 3002.1 Advisory Committee Notes. Kellett Decl., ¶ 11. While Class Counsel has brought numerous individual cases involving Fed. R. Bankr. P. 3002.1, Class Counsel has only brought one other class case based on violations of Bankruptcy Rule 3002.1—the *Cotton* case, in which the United States District Court for the Western District of North Carolina entered a final order certifying the nationwide settlement class and approving the settlement. *Cotton et al. v. Wells Fargo Bank, N.A., et al., supra*, Docket No. 23. To Class Counsel’s knowledge, no other attorneys have brought a successful nationwide class action based on violation of rule 3002.1. Kellett Decl., ¶ 6-7.

**(5) Class Counsel took significant risks and overcame major obstacles to prosecute and settle the class members’ claims in this case.**

Courts have recognized that an attorney’s risk is a “foremost factor” in determining an appropriate fee award. *Abrams*, 605 F.3d at 246-47 (holding that district court’s failure to consider substantial risks when awarding fee was error); *Mills Corp.*, 265 F.R.D. at 263. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000); *In re Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007)(surveying cases); *Ressler v. Jacobson*, 149 F.R.D. 651, 656-57 (M.D. Fla. 1992)(“Numerous cases recognize that the attorney’s contingent fee risk is an important factor in determining the fee award.... In evaluating [the contingent fee] factor the court will not ignore the pecuniary loss suffered by plaintiff’s counsel in other actions where counsel receive little or no fee.”).

Throughout this litigation, Wells Fargo’s position has been that, as a mortgage servicer, it had the right to unilaterally forbear or pause mortgage payments from customers. It also argued that the vast majority of class members “wanted,” and “used” the forbearances that Wells Fargo imposed, and that Plaintiffs failed to identify any damages caused by the forbearances other than

the Plaintiffs' attorneys' fees. As such, Wells Fargo argued that the class members were entitled to recover nothing in this litigation. Kellett Decl., ¶ 14.

Plaintiffs faced significant additional litigation risk if the case did not settle, as the litigation could go on for years. Moreover, Wells Fargo asserts it would win the case on summary judgment, so the parties would have to litigate that motion. Wells Fargo would also strenuously contest class certification, and it is a significant challenge to certify a class action over a defendant's objection. Even if Plaintiffs' survived summary judgment, and the Court certified the class over Wells Fargo's objections, Wells Fargo would likely seek a direct appeal of class certification to the Fourth Circuit pursuant to Fed. R. Bankr. P. 7023(f). On appeal of any class certification order, Wells Fargo would, among other issues, challenge the bankruptcy court's ruling that it can preside over a nationwide class action, an issue where court opinions across the nation are divided.<sup>15</sup> Rao Decl., ¶ 31; Kellett Decl., ¶ 8-9, 12, 14-18. Wells Fargo would also argue that the Court should not have certified the class because allegedly there are individual issues of liability based on Wells Fargo's claim that some Class Members "asked for" or "wanted" the forbearance, and that class members' damages would therefore have to be tried individually, making a class action unmanageable, and therefore not certifiable. Finally, on the merits, although Plaintiffs' prevailed so far, courts are split regarding the scope of a bankruptcy court's authority to impose sanctions for violations of Fed. Bankr. R. 3002.1. *See* Kellett Decl., ¶ 17-18; Rao Decl., ¶ 30. Plaintiffs deny that any of Wells Fargo's arguments would defeat class certification or support judgment for Wells Fargo on the merits, but Plaintiffs' Counsel nevertheless acknowledge the substantial uncertainty that further litigation would present, absent this settlement. For Class Counsel and

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<sup>15</sup> *Harlow, et al., v. Wells Fargo & Co., et al.*, Adv. P. No. 20-07028, 2022, Bankr. LEXIS 3512, 2022 WL 17586716, 3 (Bankr. W.D. Va. Dec. 12, 2022).

class members alike, the risk of non-payment was very real. *See* Kellett Decl., ¶ 6-20; Rao Decl., ¶ 26, 30-31, 35-37. These risks and obstacles support Class Counsel’s fee request.

**(6) The requested fee of 33% of the recovery is reasonable in light of fees awarded in comparable cases.**

As noted *supra*, the percentage-of-recovery method is the “preferred” approach in the Fourth Circuit, and it is consistent with class action fee awards. In particular, in the *Cotton* case brought against Wells Fargo in the Western District of North Carolina with respect to different conduct by Wells Fargo that also allegedly violated Fed. R. Bankr. 3002.1, the Court awarded 1/3 of the common fund for attorneys’ fees, plus the expenses requested. *Cotton et al. v. Wells Fargo Bank, N.A., et al., supra*, Docket No. 23.

**(7) The fee award sought is supported by public policy.**

The public policies in favor of granting a percentage of recovery to Class Counsel are discussed at length, *supra*.

**4. Class Counsel’s requested fee is supported by a lodestar cross-check.**

Given that courts in the Fourth Circuit approve of the percentage-of-fund method for awarding fees in common fund cases, “[i]t is not necessary for the Court to conduct a lodestar analysis[.]” *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 U.S. Dist. LEXIS 193107, 2016 WL 6769066, at \*4 (M.D.N.C. Sept. 29, 2016)(quoting *Krispy Kreme*, 2007 WL 119157, at \*3).<sup>16</sup>

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<sup>16</sup> A lodestar crosscheck is not required and is, in some respects, problematic from a policy standpoint because it reintroduces the same bad policy and perverse incentives that the increasingly popular percentage-of-recovery method otherwise eliminates. As the Fourth Circuit noted in *Abrams*, “Fixing a lodestar fee in this contingency case was error and threatens to nullify the considerable advantages of contingency arrangements.” *Abrams*, 605 F.3d at 245. If Class Counsel believe that courts will limit their fee to some multiple of their lodestar, then they will have the same imperfect incentives they would if courts used the lodestar method alone: to be inefficient, perform unnecessary projects, delay results, and overbill and overstaff work in order to run up their lodestar. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n. 5 (9th Cir. 2002)(“The lodestar method is merely a cross-check on the reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee...”). The lodestar crosscheck also caps the amount of compensation Class Counsel can receive, thereby misaligning their incentives from those of class, and

“The lodestar method calculates reasonable fees ‘by multiplying the number of reasonable hours expended time a reasonable rate.’” *McAdams*, 26 F.4<sup>th</sup> at 162. Courts look at the *Gunter* factors<sup>17</sup> or the *Johnson* factors<sup>18</sup> or both. *See, e.g. Haney v. Genworth Life Ins. Co.*, 3:22cv55, 2023 U.S. Dist. LEXIS 114524, 2023 WL 2317435, at \*11 (E.D. Va. June 28, 2022). The *Gunter* factors are the same as the *Mills Corp.* factors except the seventh factor is “the amount of time devoted to the case by plaintiffs’ counsel,” which is set out below. The extensive work performed is discussed *supra* and at length in the declarations of Mr. Bartholow, Ms. Kellett, Ms. Giles, Mr. Limon, and Mr. Rao. *See* Exhibits 1, 2 and 5. The *Johnson* factors also were discussed at length *supra* and in the supporting declarations, except factors (7), (10) and (11). As to (7) - time

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reducing their rational incentive to achieve the largest possible award for the class.

<sup>17</sup> The *Gunter* factors are: (1) the results obtained for the class; (2) objections; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the case; (5) the risk of nonpayment; (6) awards in similar cases; (7) the amount of time devoted to the case by plaintiffs' counsel. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). As with the *Johnson* factors, not all factors are equally weighted in every case. *See In re Cendant Corp. PRIDES Litigation*, 243 F.3d 722, 735 (3d Cir. 2001).

<sup>18</sup> The *Johnson* factors are (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for legal work; (6) the attorney's expectations at the outset of litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation[,] and ability of the attorney; the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases. *See Barber v. Kimbrell's*, 577 F.2d 216, 226 n.28 (4<sup>th</sup> Cir. 1978).

However, “[t]he lodestar may not be adjusted due to a *Johnson* factor that was already taken into account during the initial calculation of the lodestar.” *Doe v. Kidd*, 656 Fed. Appx. 643, 657 n.5 (4<sup>th</sup> Cir. 2016)(citing *Black v. SettlePou, P.C.*, 72 F.3d 492, 502 (5<sup>th</sup> Cir. 2013). And, as noted in *Perdue v. Kenny A.*, 559 U.S. 542 (2010), “the lodestar figure includes most, if not all, of the relevant factors constituting a ‘reasonable’ attorney’s fee.” *Perdue*, 559 U.S. at 553. Three of the *Johnson* factors, 1 - complexity of the issues, 8 - results obtained, and 4 - preclusion of other employment, are presumably fully reflected and subsumed in the lodestar amount. *Heidman v. County of El Paso*, 171 F.3d 1038, 1043 (5<sup>th</sup> Cir. 1999) (quoting *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986); *Shipes v. Trinity Industries*, 987 F.2d 311, 319–22 & n. 9 (5<sup>h</sup> Cir. 1993). Moreover, after *Johnson* was decided, the “Supreme Court has barred any use of the sixth factor,” whether the fee is fixed or contingent. *Walker v. U.S. Dep't of Housing & Urban Dev.*, 99 F.3d 761, 772 (5<sup>th</sup> Cir.1996) (citing *City of Burlington*, 505 U.S. at 567; *Shipes*, 987 F.2d at 323). The Supreme Court has also noted that “the quality of an attorney’s performance generally should not be used to adjust the lodestar because considerations concerning the quality of a prevailing party’s counsel’s representation normally are reflected in the reasonable hourly rate.” *Perdue*, 559 U.S. at 553. Thus, it would seem that the lodestar subsumes factors 3 and 9.

limitations imposed by the client or circumstances - the withdrawal of the reference and consolidation with *Forsburg*, which was initiated by Wells Fargo, kept the case in the district court for a year and a half while the parties pursued mediation, which was ultimately unsuccessful. As to the undesirability of the case, factor (10), counsel and Mr. Rao have described in their declarations how difficult, arduous and extremely risky these types of class actions are and are thus undesirable. As noted, Class Counsel are not aware of any other attorney in the country who brings these types of class action lawsuits. Finally, the named plaintiffs have been Class Counsel's clients since June of 2020, more than four years..

When using lodestar method as a "cross-check," for a common fund fee award the Court needs not apply the "exhaustive scrutiny" typically mandated for fee applications, and the Court may accept the time estimates provided by lead counsel. *Mills*, 265 F.R.D. at 264.

Multiplying Class Counsel's reasonable hours (after exercise of billing judgment) by its hourly rates yields a total lodestar of \$ 1,890,600.00 for time spent through the dates for each firm as set out in the declarations.<sup>19</sup> The following summarizes Class Counsel's work in this case:

Timekeeper	Hours	Rates	Total
Karen Kellett	1006.0	\$500 per hour	\$503,000.00
Thad Bartholow	1856.50	\$400 per hour	\$742,600.00
Caitlyn Wells	444.20	\$300 per hour	\$133,260.00
Claude Smith	197.1	\$350 per hour	\$68,985.00
Megan Parry	38.2	\$250 per hour	\$9,550.00

<sup>19</sup> Class Counsel has voluminous time records documenting their time in this litigation. At the court's request, Class Counsel will provide its records for *in camera* review.

Randi Daun (paraprofessional)	123.6	\$100 per hour	\$12,300.00
O. Max Gardner	136.5	\$500 per hour	\$68,250.00
Malissa Giles	568.3	\$400 per hour	\$227,320.00
Tracy Giles	90.8	\$400 per hour	\$36,320.00
Abe Limon	273.8	\$325 per hour	\$88,985.00
Total	4727.4		\$1,890,600.00

See Bartholow Decl, ¶ 8-10, 12; Giles Decl, ¶6; Limon Decl, ¶ 5. Kellett & Bartholow's hourly rates in this case are substantially below market and thus reasonable and have been approved in several cases in various jurisdictions in Dallas, Texas and across the country. See Bartholow Decl., ¶ 11. Judge Black recently approved Mr. Bartholow's and Ms. Kellett's rates at \$650 and \$750 per hour, respectively.<sup>20</sup>

Each of the above billing rates is within the range of reasonable rates approved in the Fourth Circuit. See, e.g., *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 788 n.33 (E.D. Va. 2001) (\$555 per hour for a senior partner was reasonable in 2001); *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 576 (E.D. Va. 2016); *In re Neustar*, 1:14-cv-885(JCC/TRJ), 2015 WL 8484438, at \*10 (E.D. Va. 2015) (approving rates of \$260–\$310 for paralegals, \$420–\$700 for associates, and \$800–\$975 for partners); *Hosch v. BAE SystemsInfo. Sols., Inc.*, No. 1:13–CV–00825 (AJT/TCB), 2015 U.S. Dist. LEXIS 181158, 2015 WL 12227738, at \*3 n.4 (E.D. Va. Apr. 28, 2015) (rates of up to \$650/hour were within range of reasonableness); *Phillips*, 2016 WL 2636289, at \*8 (partner rates

<sup>20</sup> See Docket Nos. 24, 29 and 35 in Case No. 23-70426 in the United States Bankruptcy Court for the Western District of Virginia, styled *In re Rhea Ann Brown*, approving the employment of Kellett & Bartholow, PLLC and Giles & Lambert, P.C. as special counsel representing Ms. Brown in *Rhea Ann Brown and Gregory Kevin Maze v. Goldman Sachs Bank, USA d/b/a Marcus by Goldman Sachs*, Adversary Proceeding No. 24-07009, in the same district. Mr. Giles and Ms. Giles were also approved at \$500 per hour each.

of \$640–\$880 per hour and associate rates of \$375–\$550 per hour “within the range of reasonableness[,]” especially given that “the market for class action attorneys is nationwide and populated by very experienced attorneys with excellent credentials”); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 467 (D. Md. 2014) (accepting as reasonable rates ranging from \$325–\$700 per hour); *Denton v. PennyMac Loan Servs., LLC*, 252 F. Supp. 3d 504, 516 (E.D. Va. 2017) (approving of \$475 and \$575 for associate and partners, respectively).

Moreover, Class Counsel’s rates are below comparable rates in their local market and thus are objectively reasonable as “national rates,” because so few attorneys bring these type of class actions. The Fourth Circuit Court of Appeals has recognized that “where it is reasonable to retain attorneys from other communities, ... the rates in those communities may also be considered,” particularly “when the complexity and specialized nature of a case may mean that no attorney, with the required skills, is available locally.” *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 175, 179 (4<sup>th</sup> Cir. 1994). Courts have held that in similar cases where very few attorneys in the country bring a certain type of litigation, the market rate is a “nationwide market rate.” *Kruger*, 2016 WL 6769066 at \* 4.

Class Counsel’s rates fall well in line with rates approved within the Fourth Circuit. We are not seeking that the Court specifically approve these rates. Rather, counsel’s rates for this case permit the Court to calculate a lodestar for purposes of performing a lodestar crosscheck.

Overall, the amount of attorneys’ fees requested is reasonable under a lodestar crosscheck. Class Counsel billed at reasonable hourly rates for their skill and experience. Indeed, by billing at their original rates, their rates are low by today’s standards. Kellett Decl, ¶ 25-26; Giles Decl, ¶ 6 at n. 2, 3 and 4, and ¶ 9; Limon Decl, ¶ 5 at n. 2 and , and ¶ 6 (discussing counsel’s hourly rates today). Class Counsel performed extensive, though reasonable, amounts of labor at all stages in

the litigation and used their billing judgment to eliminate entries for time spent that would not be billed to a client paying on an hourly basis. A lodestar crosscheck in this case supports Class Counsel's fee request.

If the Court awards Class Counsel a fee of 33% of \$15 million common fund in this case, (\$4,950,000), the fee amount would represent a lodestar multiplier of 2.62, which is consistent with lodestar multipliers courts have held to be reasonable and necessary to fairly compensate Class Counsel for undertaking the foreseeable risk and delay of cases like this one, particularly where counsel first began work on the issues in this litigation more than 4 years ago. *See* Manual for Complex Litigation §14.122 at 195-96 (4th ed. 2011) (stating as to common fund cases that "[t]he lodestar figure may be adjusted... to account for several factors including... the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, the risk of nonpayment, and any delay in payment").

Lodestar multipliers between 2 and 4.5, or more, are generally considered reasonable.<sup>21</sup> *See, e.g., Deloach v. Philip Morris Cos.*, No. 1:00CV01235, 2003 U.S. Dist. LEXIS 23240, 2003 WL 23094907, at \* 11 (M.D.N.C. Dec. 19, 2003) (finding multiplier of 4.45 appropriate to compensate for the "exceptional result" achieved); Newberg on Class Actions, Third §14.03 at 14-4 to 14-5 ("Courts applying the lodestar approach will often use large multipliers or monetary enhancements of the time/rate (lodestar) calculation in order to reach fee award results comparable to percentage of recovery fees."). *See also Kruger*, 2016 WL 6769066 at \* 5 (approving a 3.69 multiplier, and citing cases where multipliers of 3.9, between 3.4 – 4.3, 4.45, 4.65, 5.2, 6, 6.96, 5.5

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<sup>21</sup> *See, e.g., Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 689 (D. Md. 2013); *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 439 n.6 (D. Md. 1998) (approving 3.6 multiplier); *In re Cardinal Health Securities Litigation*, 528 F. Supp. 2d 752, 768 (S.D. Oh. 2007) (finding that a lodestar multiplier of 6 was not unreasonable "[g]iven the outstanding settlement in this case and the noticeable skill of counsel.").

and 8.9 had been approved).

Class Counsel anticipates spending a substantial amount of additional time preparing for the final approval hearing and on supporting class settlement administration. Class Counsel also has certain continuing obligations as Class Counsel after the settlement is approved, including assisting class members with questions and helping class members obtain payment should they encounter any trouble. These ongoing duties will likely require significant future investments of time by Class Counsel, without any additional or independent payment.

**B. Class Counsel is entitled to reimbursement of their reasonable expenses in the amount of \$62,296.36.**

Class Counsel is also entitled to reimbursement of their reasonable expenses. Class Counsel requests that the Court award them \$62,296.36 in the reasonable expenses incurred, which are summarized in the attached declarations. *See* Bartholow Decl., ¶ 6; Giles Decl., ¶ 8; Limon Decl., ¶ 7. *See generally*, Agr. § I.9, 37; § IV, § VII. “[C]osts, if reasonable in nature and amount, may appropriately be reimbursed from the common fund.” *In re Microstrategy*, 172 F. Supp. 2d at 791. *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg. In re: Lumber Liquidators Chinese-Manufactured Flooring Durability Mktg.*, No. 115MD2627AJTTRJ, 2020 U.S. Dist. LEXIS 181103, 2020 WL 5757504, at \*11 (E.D. Va. Sept. 4, 2020), *aff’d sub nom. In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 27 F.4th 291 (4th Cir. 2022).

**5. The Class Representatives have earned their service awards, which are reasonable and appropriate.**

The class representatives request—and the Defendants do not oppose—a modest service award of \$12,500 for each of the five named plaintiffs for their participation in this case and service to the class, which represents only .4 % of the common fund. In this case, the class representatives

took active roles throughout the litigation, providing documents, meeting with counsel, answering discovery and staying informed about the case. Bartholow Decl., ¶ 68; Giles Decl., ¶ 18, 20; Limon Decl., ¶ 23.

Importantly, Mr. Harlow and Ms. Fewell agreed to be interviewed by NBC News, and allowed NBC News to write an article on their cases, despite possible reputational harm. *See* Bartholow Decl., ¶ 68.

Awards to class representatives in the amount requested herein are reasonable and have been considered reasonable by judges in the Fourth Circuit, including by judges in the Western District of Virginia. *See e.g., Moore v. Blue Ridge Bankshares, Inc., et al.*, Case No. 3:19-cv-00045 in the United States District Court for the Western District of Virginia, Charlottesville Division, ECF No. 201, entered June 4, 2024 (awarding service award of \$17,500.00 paid from \$6,000,000.00 common fund). *See, e.g., All. Ophthalmology, PLLC v. ECL Grp., LLC*, 1:22-cv-296, 2024 U.S. Dist. LEXIS 113914, 2024 WL 3203226, at \*17 (M.D.N.C. June 27, 2024) (approving award of \$40,000 for named plaintiff); *Haney v. Genworth Life Ins. Co.*, 3:22cv55, 2023 U.S. Dist. LEXIS 15589, 2023 WL 1111646, at \*9 (E.D. Va. January 30, 2023) (approving \$15,000 service award for each of the class representatives, noting participation in the case); *Lorenzo v. Prime Communs., L.P.*, 5:12-cv-69-H-KS, 2020 U.S. Dist. LEXIS 20960, 2020 WL 1970042 at \*2 (E.D.N.C. January 21, 2020) (awarding \$20,000 service award commensurate with class representative's contribution); *Robinson v. Carolina First Bank, N.A.*, 7:18-cv-02927-JDA, 2019 U.S. Dist. LEXIS 103831, 2019 WL 2591153, at \*17-18 (D.S.C. June 21, 2019) (\$15,000 service award approved for class representative based on \$450,000 common fund); *Six v. Loancare, LLC*, 5:21-cv-00451, 2022 U.S. Dist. LEXIS 202284, 2022 WL 16747291, at \*8 (S.D.W.V. November 7, 2022) (collecting cases) (service award of \$15,000 approved supported

by work in the case in addition to promotion of the public interest.) In addition, an empirical study published in 2006 suggests that the average service award per class representative is about \$16,000[.]” 4 Newberg on Class Actions § 11:38 (4th ed.)

Indeed, the purpose of class representative service awards is not to compensate the named plaintiffs for the harm caused by the defendant but, rather, to fairly reward them for the time and effort they invested in the case and spent on behalf of the class. *See Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, 807 F.3d 600, 613 (4th Cir. 2015) (instructing that service awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”). the named Plaintiffs earned their proposed service awards through their substantial participation in the case. The Court should therefore approve the Plaintiffs’ request for class representative service awards.

### CONCLUSION

Based on the reasons and authorities set forth above, Plaintiffs request that the Court award Class Counsel’s attorneys’ fees in the amount of \$4,950,000.00, expenses in the amount of \$62,296.36, and the class representatives’ service awards of \$12,500.00 each as set forth herein.

Dated: July 31, 2024.

Respectfully submitted,

/s/ Malissa L. Giles

Malissa L. Giles  
Tracy Giles  
Giles & Lambert, PC  
PO Box 2780  
Roanoke, VA 24001  
Tel: (540) 981-9000  
mgiles@gileslambert.com

/s/ Abelardo Limon, Jr.

Abelardo Limon, Jr.\*  
Texas State Bar No. 1235770  
890 W. Price Road  
Brownsville, TX 78520  
Tel: (956) 544-7770  
Fax: (956) 544-4949

/s/ Theodore O. Bartholow, III (“Thad”)

Theodore O. Bartholow III (“Thad”)\*  
Texas State Bar No. 24062602  
Karen L. Kellett\*  
Texas State Bar No. 11199520  
KELLETT & BARTHOLOW PLLC  
11300 N. Central Expressway, Suite 301  
Dallas, TX 75243  
Tel.: (214) 696-9000  
Fax: (214) 696-9001  
[thad@kblawtx.com](mailto:thad@kblawtx.com)  
[kkellett@kblawtx.com](mailto:kkellett@kblawtx.com)

*Attorneys for the Plaintiffs*

\*Admitted Pro Hac Vice

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the parties listed below via ECF notification and electronic transmission or other method specified on July 31, 2024.

/s/ Theodore O. Bartholow, III (“Thad”)  
Theodore O. Bartholow, III (“Thad”)

William C. Mayberry  
Troutman Pepper Hamilton Sanders LLP  
301 South College Street, Suite 3400  
Charlotte, NC 28202  
[bill.mayberry@troutman.com](mailto:bill.mayberry@troutman.com)  
John C. Lynch  
Troutman Pepper Hamilton Sanders LLP  
222 Central Park Ave., Suite 2000  
Virginia Beach, VA 23462  
[john.lynch@troutman.com](mailto:john.lynch@troutman.com)  
Michael E. Hastings, Esq. (VSB No. 36090)  
Justin E. Simmons, Esq. (VSB No. 77319)  
Woods Rogers PLC  
10 South Jefferson Street, Suite 1400  
Roanoke, VA 24011  
Tel.: (540) 983-7600  
Fax: (540) 322-3417  
[mhastings@woodsrogers.com](mailto:mhastings@woodsrogers.com)  
[jsimmons@woodsrogers.com](mailto:jsimmons@woodsrogers.com)

Christopher Viapiano  
Sullivan & Cromwell LLP  
1700 New York Avenue, N.W.,  
Suite 700  
Washington, D.C. 20006-5215  
viapianoc@sullcrom.com

Brendan Cullen  
Sullivan & Cromwell LLP  
550 Hamilton Avenue Palo Alto, CA 94301-2010  
United States  
cullenb@sullcrom.com

# **Exhibit 1**



knowledge in support of Plaintiffs' Motion for Attorneys' Fees and Non-Taxable Costs and Class Representative Service Awards. ECF 6.<sup>1</sup>

2. The Settlement Agreement provides that Class Counsel may submit an application (the "Fee and Expense Application") to the Court for payment of: (a) an award of attorneys' fees; plus (b) reimbursement of reasonable and actual expenses incurred in connection with prosecuting this Action. *See Agr. p. 28 VII(A).*

### **The Settlement Agreement**

3. In the proposed settlement that Class Counsel ultimately negotiated in this case, Wells Fargo will pay \$15,000,000.00 into a non-reversionary settlement fund for payment for the approximately 7,841 mortgage loan accounts of the Settlement Class Members, payment of settlement administration costs, service awards to the Class Representatives in an amount of up to \$12,500 each, Class Counsel's reasonable and actual expenses, and Class Counsels' attorneys' fees in an amount up to 33% of the Settlement Fund, plus reasonable and actual expenses. As stated in more detail in Plaintiffs' Motion for Preliminary Approval, automatic cash payments of \$2,500 per loan will go to Subclass 1 members, and automatic cash payments of \$500 per loan will go to members of Subclass 2. After these initial automatic cash payments and after payment of the costs of administration, litigation expenses, and attorneys' fees, the remaining balance of the settlement fund will be deposited into a Claims Fund, from which Class Members can assert claims for damages proximately caused by Wells Fargo placing their loan into forbearance, for which they were not otherwise fully compensated by the initial automatic payments. These claims will be administered by UNC Chapell Hill Law Professor Kara Bruce, as claims ombudsman,

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<sup>1</sup> In support of my declaration, attached as Exhibit A is my curriculum vitae; attached as Exhibit B are expense summaries of Kellett & Bartholow; attached as Exhibit C is the Settlement Agreement ("Agr."), without exhibits, and attached as Exhibit D is the order preliminarily approving the settlement, without exhibits.

together with the Claims Administrator. Any funds remaining after this process shall be paid out in a second automatic distribution, in equal amounts, to every Class Member who cashed their initial automatic settlement payment check.

#### **Class Counsel's Fees and Expenses**

4. Counsel's engagement agreements with the Class Representatives included a contingency agreement for attorneys' fees of up to 40% of the recovery in a common fund, in addition to expenses to be paid from the common fund. However, in the settlement negotiations for this case, we reduced our contingent fee to 33% of the Settlement Fund. Expenses allowed by the Court are paid from the Settlement Fund as well. Wells Fargo does not oppose Class Counsel seeking fees and expenses on this basis.

5. Multiplying Class Counsel's hours by the firms' historical hourly rates used in this case for each of their professionals yields a total lodestar of \$1,890,600.00 (attorneys' reasonable time multiplied by reasonable hourly rates) for class counsel's time spent through the dates shown below.

6. Class Counsel are also entitled to reimbursement of their reasonable expenses. Class counsel requests that the Court award \$62,296.36 in the reasonable expenses incurred in this matter. A summary of Kellett & Bartholow's actual and reasonable expenses incurred in this litigation is attached as Exhibit B. This includes reasonable expenses such as mediation fees and expenses, travel expenses for depositions, hearings, and mediation, and expert fees, among other fees and expenses incurred. Summaries of Giles & Lambert's and Mr. Limon's expenses are attached to the declarations of M. Giles and A. Limon.

7. I have thoroughly reviewed and edited Class Counsel's collective voluminous time and expense records documenting their time and expenses in this litigation. Class Counsel will

provide those records to the Court for *in camera* review upon request.

8. The following summarizes Kellett & Bartholow’s attorneys’ and paraprofessional’s time and rates for work in this case, excluding hours no-billed in the exercise of billing judgment:

Timekeepers at Kellett & Bartholow <sup>2</sup>	Hours	Rates	Total
Karen Kellett	1006.0	\$500 per hour	\$503,000.00
Thad Bartholow	1856.50	\$400 per hour	\$742,600.00
Caitlyn Wells	444.20	\$300 per hour	\$133,260.00
Claude Smith	197.1	\$350 per hour	\$68,985.00
Megan Parry	38.2	\$250 per hour	\$9,550.00
Randi Daun (paraprofessional)	123.6	\$100 per hour	\$12,300.00
O. Max Gardner	136.5	\$500 per hour	\$68,250.00
Total	3801.8		\$1,537,975.00

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<sup>2</sup> For Kellett & Bartholow’s time through July 30, 2024.

9. The following summarizes Giles & Lambert’s times and rates for their work in this case, excluding hours no-billed in the exercise of billing judgment:

Timekeepers at Giles & Lambert <sup>3</sup>	Hours	Rates	Total
Malissa Giles	568.3	\$400 per hour	\$227,320.00
Tracy Giles	90.8	\$400 per hour	\$36,320.00
Total	659.1		\$263,640.00

10. The following summarizes Mr. Limon’s hours and rates for work in this case, excluding hours no-billed in the exercise of billing judgment:

Timekeepers at The Limon Law Firm <sup>4</sup>	Hours	Rates	Total
Abe Limon	273.8	\$325/hour	\$88,985.00
Totals	273.8		\$88,985.00

11. Kellett & Bartholow’s hourly rates are reasonable. All Class Counsel has billed at the original rates from the beginning of the case and have not raised their rates for this case during the over four years it has been pending. Kellett & Bartholow’s historical and current rates have been approved in several cases in Dallas, Texas, and in multiple jurisdictions and across the country. Notably, WDVA Bankruptcy Judge Black recently approved employment of Mr. Bartholow and Ms. Kellett using rates of \$650 per hour and \$750 per hour, respectively. In re Brown, Case. No. 23-70426 (Bankr. WDVA), Dkt. Nos. 29, 35.

12. Class Counsel together has worked 4,734.7 billable hours on this litigation,

<sup>3</sup> For Giles & Lambert’s time through July 12, 2024.

<sup>4</sup> For The Limon Law Firm’s time through June 24, 2024.

resulting in a total lodestar of \$1,890,600.00. This works out to a blended rate of \$399.31 per hour for Class Counsel's attorneys' and paraprofessionals.

13. Consistent with the Settlement Agreement and Class Counsel's representation agreement with the named class plaintiffs, Class Counsel seek an award of fees in this case in the amount of \$4,950,000.00, which is 33% of the Settlement Fund. This results in a lodestar multiplier of 2.62.<sup>5</sup>

14. Based on my experience in litigating bankruptcy class actions, the excellent result Class Counsel achieved for the class in this case, and the extreme risk this case presented as discussed in the fee motion and by Ms. Kellett and Mr. Rao in their declarations, I believe Class Counsel's fee request is fair, reasonable, and appropriate.

#### **Procedural History of this Litigation**

15. I first learned that Wells Fargo was placing borrowers' mortgage loan accounts into forbearance without their consent from Ms. Giles, who noted in an email list-serve post that Wells Fargo was filing Rule 3002.1 notices of forbearance in several of her clients' Chapter 13 bankruptcy cases, which notices falsely stated that her clients had requested forbearances. Among those clients were Troy Harlow and Mark Estes, who agreed to serve and were subsequently named as proposed class representatives in this case.

16. The Giles, Mr. Limon and my firm conducted investigations of dozens of bankruptcy court dockets across the nation and were able to identify additional instances of Wells Fargo filing forbearance notices in bankruptcy courts in Chapter 13 bankruptcy cases of debtors, where it appeared that the debtors did not request the mortgage forbearances from Wells Fargo.

17. Mr. Limon's Chapter 13 clients, Beatriz Villegas-Rodriguez and Rodolfo

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<sup>5</sup> If using Class Counsel's current hourly rates, the lodestar would be \$2,731,155.00, yielding a multiplier of 1.81.

Rodriguez, also alleged Wells Fargo placed them into an unauthorized forbearance and filed a false forbearance notice with the bankruptcy court. Mr. Limon and I consulted with them at length, and they also agreed to serve as class representatives in this case.

18. Similarly, Mr. Gardner, who was ‘of counsel’ to our firm at the time, was able to identify Chapter 13 debtors in the Western District of North Carolina with loans that Wells Fargo placed into forbearance without borrower consent, including Kimberly Fewell, a client of the Crow Law Firm residing in the Charlotte, North Carolina area. Mr. Gardner, the Crows, and I consulted with Ms. Fewell at length by telephone and Zoom conference regarding her situation, and she, too, agreed to serve as a class representative in this case.

19. In addition to those persons who ultimately agreed to serve as class representatives, Class Counsel vetted other potential candidates to serve as class representatives in this case.

20. Plaintiffs’ counsel filed the original *Harlow* class action complaint on June 26, 2020. *Harlow, et al. v. Wells Fargo & Co., et al.*, AP No. 20-0728 (USBK WDVA)(*Harlow*), Dkt. No. 1.

21. Upon filing the *Harlow* complaint, I contacted Pulitzer Prize winning reporter, Gretchen Morgenson (NBC News), who had written a story in the New York Times about the 2018 *Cotton* bankruptcy class action filed by Kellett & Bartholow in the Western District of North Carolina. She was interested and sent a video team to Virginia to interview Mr. Harlow and Ms. Fewell and included portions of the interviews in her initial story published on NBC News’s website on July 16, 2020.

22. The initial national reporting regarding Wells Fargo’s unauthorized forbearances generated enormous interest from borrowers around the country, many of whom were not in bankruptcy, who also asserted that Wells Fargo placed their mortgage loans into unauthorized

forbearances.

23. My firm and co-counsel fielded dozens of telephone calls, emails, and other inquiries from borrowers nationwide regarding unwanted Wells Fargo forbearances. My team and I devoted significant time and resources researching and developing legal theories, confirming factual contentions, and preparing our strategy for prosecuting this case.

24. After we filed this case and due, at least in part, to the national publicity it generated, two United States Senators sent a letter to Wells Fargo requesting that Wells Fargo investigate, explain, and correct its forbearance practices. In Wells Fargo's August and September 2020 responses to the Senators' letter, Wells Fargo specifically admitted placing Chapter 13 debtor borrowers' accounts into forbearance without being requested to do so and acknowledged that its practices could result in certain harms and potential harms for its customers. *Harlow*, Dkt. 57-2. The senators' demands and Wells Fargo's responses generated further coverage from NBC News. Nevertheless, despite its responses to the Senators, Wells Fargo continued to deny all liability in this lawsuit and strenuously defended the case for over four years.

25. In late July of 2020, still in the early stages of this litigation, I negotiated at length with counsel for Wells Fargo regarding Plaintiffs' proposal that Wells Fargo consent to entry of an agreed nationwide preliminary injunction, focusing on obtaining Wells Fargo's consent to cease, on a nationwide basis, (1) providing borrowers in Chapter 13 bankruptcy with forbearance relief without their informed consent (2) extending forbearances for loans of borrowers in Chapter 13 bankruptcy who did not request forbearance relief in the first place, and (3) filing statements with the bankruptcy courts that inaccurately state that the borrower requested forbearance. We also sought Wells Fargo's agreement to temporarily refrain from seeking relief from stay as to

loans of Chapter 13 debtors Wells Fargo placed into forbearance without the borrower's informed consent.

26. On August 6, 2020, Plaintiffs filed a motion for preliminary injunction, and after Plaintiffs set that motion for hearing and further negotiations, Wells Fargo consented to the entry of an order by the bankruptcy court restricting filings Wells Fargo could make in bankruptcy courts regarding mortgage forbearances in Chapter 13 bankruptcies, and constraining Wells Fargo from filing motions for relief from stay with respect to borrowers whose loans Wells Fargo had placed into forbearance through January 1, 2021. *See Harlow*, Dkt. Nos. 26, 40.

27. Also in August of 2020, counsel for Wells Fargo and I engaged in extensive good faith negotiations regarding the scope and nature of the discovery and account-level data Plaintiffs and Wells Fargo would require to be able to properly prepare the case for trial and possibly settle it. We entered a stipulated protective order with Wells Fargo on September 8, 2020, which allowed us to begin exchanging confidential information with Wells Fargo in discovery. *Harlow*, Dkt. No. 35.

28. In mid-October of 2020, Plaintiffs' counsel began to research and interview potential experts who could provide testimony regarding industry practices regarding forbearances and the potential economic benefits to mortgage servicers resulting from placement of borrower loans into forbearance. Throughout the case, our firm engaged in significant research and analysis of industry trade publications, government rules and guidelines regarding COVID-19 forbearances, and Wells Fargo's SEC filings. Eventually, counsel for the plaintiffs in the *Harlow*, *Forsburg* and the California class actions engaged consultation experts in preparation for mediation that ultimately took place in the summer of 2021.

29. The *Harlow* Plaintiffs filed their second amended complaint on November 16, 2020, which added RICO allegations based on our research regarding Wells Fargo's relationships with third parties InfoEx, Albertelli Law, and Black Knight in connection with Wells Fargo's Chapter 13 forbearance notice filings. *Harlow*, Dkt. No. 49. Wells Fargo moved to dismiss debtors' Plaintiffs' second amended complaint on December 4, 2020. *Id.* at Dkt. Nos. 59, 60. *See also* *Harlow, et al. v. Wells Fargo & Co.*, Case No. 7:22-cv-00267-MFU (WDVA), Dkt. No. 3.

30. On December 1, 2020, Wells Fargo moved to withdraw the reference and consolidate *Harlow* with *Forsburg*<sup>6</sup>, and that motion was docketed by the District Court the same day. *Harlow*, Dkt. Nos. 53, 55. *Harlow, et al. v. Wells Fargo & Co.*, Case No. No. 7:20-cv-00030-MFU (WDVA), Dkt. No. 1.

31. In November of 2020, we identified a series of instances in which it appeared that Wells Fargo had continued its practice of filing inaccurate forbearance notices. On December 1, 2020, Plaintiffs filed a motion for contempt of the agreed order resolving our motion for preliminary injunction. *Harlow*, Dkt. No. 57. Our team spent time and effort obtaining declarations of affected debtors for the evidentiary hearing for our motion, which ultimately was set for February 19, 2021. *See id.* at Dkt. No. 64.

32. In early December of 2020, I attended (by Zoom) the initial *Delpapa* case management conference being held in San Francisco. The District Court directed the *Delpapa* plaintiffs and Wells Fargo to mediate. At that point, the plaintiffs in *Harlow, Forsburg, Delpapa* and the related California cases joined forces, began searching for a mediator, and ultimately agreed with Wells Fargo to engage respected JAMS mediator Bob Meyer, for a mediation that ultimately occurred over the course of three days during the summer of 2021.

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<sup>6</sup> *Forsburg, et al., v. Wells Fargo*, Case No. 5:20-cv-00046-MFU (WDVA)(*Forsburg*).

33. On December 10, 2020, in *Forsburg*, the District Court in Roanoke conducted – on short notice – an hours-long hearing in which the parties discussed the issues underlying the plaintiffs’ claims in the *Harlow* and *Forsburg* cases in detail and argued the merits of withdrawal of the reference and potential consolidation of *Harlow* and *Forsburg* in the District Court, versus allowing the two cases to proceed separately.

34. Following that hearing, the *Harlow* Plaintiffs timely filed their brief in opposition to the motion to withdraw the reference on December 14, 2020, and Wells Fargo filed its reply on December 24, 2020. *Harlow, et al. v. Wells Fargo & Co.*, Case No. No. 7:20-cv-00030-MFU (WDVA), Dkt. Nos. 4, 5, 10.

35. On January 6, 2021, the District Court entered an order withdrawing the reference for the *Harlow* case and consolidated *Harlow* with *Forsburg* (as consolidated, “*Forsburg/Harlow*”). *Id.* at 11, 12.

36. In December of 2020 and January of 2021, both sides also filed *voluminous* briefs in connection with Wells Fargo’s motion to dismiss the *Harlow* Plaintiffs’ second amended complaint. *See Harlow*, Dkt. Nos. 59, 60; *Harlow, et al. v. Wells Fargo & Co., et al.*, Case No. 7:22-cv-00267-MFU (WDVA), Dkt. Nos. 3-5.

37. The arguments and legal issues in Wells Fargo’s motion to dismiss were extensive and complex, and responding to them was a significant undertaking that required my team and me to devote substantial time and energy to the necessary research and analysis required to prepare Plaintiffs’ opposition briefs.

38. On January 7, 2021, Plaintiffs served formal discovery on Wells Fargo in connection with this adversary.

39. On January 8, 2021, Plaintiffs in the consolidated *Forsburg/Harlow* cases moved to transfer their cases from the Western District of Virginia to the Northern District of California, where they could be consolidated with the other cases then-consolidated with *Delpapa. Forsburg*, Dkt. No. 80.

40. From mid-January through mid-March of 2021, our team and counsel for the plaintiffs in the consolidated California cases (*Delpapa*) engaged in intense negotiations with counsel for Wells Fargo regarding a joint mediation process. To facilitate settlement discussions and mediation, Plaintiffs agreed to withdraw the contempt motion in *Harlow* without prejudice and ultimately to a brief litigation stay. *Id.* at Dkt Nos. 82, 90, 91.

41. The litigation stay was conditioned on the parties reaching agreement on exchange of informal settlement discovery in advance of mediation.

42. The parties had extensive and at times contentious discussions about the nature and scope of Wells Fargo's production for mediation, and as those discussions continued, the temporary mediation stay was extended ultimately through September 10, 2021, so that the parties could prepare for and attend mediation. *See id.* at Dkt Nos. 93, 95.

43. During this process, Plaintiffs requested and obtained substantial informal discovery related to Wells Fargo's forbearance practices for borrowers in Chapter 13 bankruptcy, including voluminous amounts of account level data for borrowers in Chapter 13 bankruptcy with loans in forbearance. We also obtained tens of thousands of pages of relevant documents, as well as detailed mortgage servicing account records for the *Harlow* named plaintiffs.

44. We reviewed the voluminous bankruptcy specific information that Wells Fargo produced to us, in addition to separately assisting in the review of the massive volume of non-bankruptcy information Wells Fargo also provided that went to Wells Fargo's overall COVID-19

forbearance policies and procedures.

45. Based on our review of the data and documents Wells Fargo provided for mediation purposes, my *Harlow* team and I prepared mediation settlement positions and mediation statements for the *Harlow* chapter 13 bankruptcy class members.

46. In the summer of 2021, along with counsel for the other California non-bankruptcy class cases, we participated in three days of Zoom mediation with Mr. Meyer and counsel for Wells Fargo. During these mediations, our team continued to negotiate the bankruptcy claims in *Harlow* separately and independently of the claims in the other non-bankruptcy cases. Unfortunately, despite our substantial efforts, we were unable to reach a settlement in mediation and the litigation continued. Plaintiffs in *Forsburg/Harlow* resumed their efforts to transfer the consolidated cases to the Northern District of California, which Wells Fargo opposed. *Forsburg*, Dkt. Nos. 97, 98, 102, and, later, after deconsolidating, *Forsburg*, Dkt. Nos. 112, 113, 114, 115.

47. On November 12, 2021, Plaintiffs in the consolidated *Forsburg/Harlow* case and the consolidated *Delpapa* cases each served extensive formal requests for production to Wells Fargo. The *Harlow* team's discovery requests sought documents and information pertaining specifically to the *Harlow* plaintiffs' bankruptcy-related claims and Wells Fargo's forbearance practices pertaining to borrowers in Chapter 13 bankruptcy. Wells Fargo provided written responses and objections to these requests on January 13, 2022, and the parties thereafter, over a period of several weeks, engaged in a series of meet-and-confer conferences to discuss the extent and scope of information Wells Fargo was to produce in formal discovery. Based on those discussions, Wells Fargo subsequently commenced making a series of voluminous rolling document productions.

48. On December 16, 2021, the District Court in Roanoke held lengthy oral arguments on Wells Fargo's motions to dismiss the *Harlow* and *Forsburg* complaints, as well as the Plaintiffs' motion to transfer *Forsburg/Harlow* to the Northern District of California. I prepared for and argued both of these motions for Plaintiffs.

49. At the conclusion of the hearing, at Judge Urbanski's request, parties filed additional briefs regarding a series of new bankruptcy court opinions interpreting the sanctions provisions in Bankruptcy Rule 3002.1. *Harlow, et al. v. Wells Fargo & Co., et al.*, Case No. 7:22-cv-00267-MFU (WDVA), Dkt. Nos. 6-7.

50. On March 31, 2022, Judge Urbanski entered an order that denied Plaintiffs' motion to transfer without prejudice and effectively de-consolidated *Harlow* and *Forsburg*, by ordering the *Forsburg* plaintiffs to file an amended complaint in *Forsburg* that added allegations regarding the District Court of California's exercise of personal jurisdiction against Wells Fargo in San Francisco, California, for that case only. *Forsburg*, Dkt. Nos. 116, 117.

51. On June 21, 2022, Judge Urbanski ruled on Wells Fargo's motion to dismiss the *Harlow* Plaintiffs' second amended complaint, dismissing Plaintiffs' non-bankruptcy claims and referring the remaining core bankruptcy claims in *Harlow* back to the bankruptcy court for determination. *Harlow, et al. v. Wells Fargo & Co., et al.*, Case No. 7:22-cv-00267-MFU (WDVA), Dkt. Nos. 12-13.

52. The Giles and I attended a pretrial conference in Bankruptcy Court in Roanoke on August 23, 2022, at which time the Court scheduled argument on Wells Fargo's motion to dismiss Plaintiffs' remaining bankruptcy claims and ordered the parties to file supplemental briefing in advance of that hearing, which they did. *Harlow*, Dkt. Nos. 73-76.

53. On November 14, 2022, the Bankruptcy Court held lengthy oral arguments in Roanoke on Wells Fargo's motion to dismiss Plaintiffs' remaining bankruptcy claims, which, with substantial assistance from the Gileses, I prepared for and argued on behalf of the Plaintiffs.

54. On November 3, 2022, Wells Fargo served each of the named Plaintiffs with a separate set of interrogatories and a separate set of requests for production, which Plaintiffs responded to and later supplemented. Plaintiffs identified, compiled, and produced hundreds of pages of documents in response to Wells Fargo's document production requests.

55. On December 12, 2022, the Bankruptcy Court issued its opinion on Wells Fargo's motion to dismiss Plaintiffs' second amended complaint in *Harlow*, dismissing some of Plaintiffs' bankruptcy claims and denying the motion with respect to several of Plaintiffs' claims. I view this opinion as an extremely critical development in this case. In it, Judge Black confirmed the bankruptcy court's authority to preside over a nationwide class action and to issue appropriate sanctions, award punitive damages against Wells Fargo, and to provide consumer debtors relief for Wells Fargo's abuse of the bankruptcy process and violation of various provisions of the Bankruptcy Code and Rules, including in the circumstances alleged in our complaint.

56. Wells Fargo filed its answer to Plaintiffs' second amended complaint, and the parties subsequently submitted their detailed Rule 26(f) report and case management plan, which the Court entered on March 17, 2023. *See id.* at 92, 94, 96. On March 6, 2023, the Court held a pretrial conference, which was attended by counsel for the parties by video and then entered the pre-trial order and case management plan. *Id.* at 96.

57. Following that scheduling conference, my staff and I prepared and served a second set of 46 separate specific document production requests to Wells Fargo in *Harlow*. My team and I also exchanged meet-and-confer correspondence and held numerous meet-and-confer telephone

conferences with counsel for Wells Fargo regarding Wells Fargo's objections and other issues related to the scope of the production Plaintiffs sought in discovery.

58. Over the course of the *Harlow* litigation, Wells Fargo produced over 57,000 pages of bankruptcy-specific discovery and extensive account level data for the class representatives and the putative class members. My team and I have analyzed this data to identify and confirm the class composition, develop and support our theories of liability and damages for trial, and to prepare for depositions and mediated settlement negotiations.

59. Ultimately, the non-bankruptcy forbearance cases, including *Forsburg*, *Healy* and *Urista* were all transferred to the Northern District of California, consolidated with *Green* and *Delpapa*, and renamed *In re Wells Fargo Consolidated Forbearance Litigation*. In those cases, Wells Fargo produced hundreds of thousands of additional pages of relevant documents and substantial amounts of other ESI, and the plaintiffs there took eight depositions in 2022 and 2023, four from Wells Fargo corporate representatives, and four from fact witnesses. I personally took four of these depositions: two 30(b)(6) depositions and two fact witness depositions. Most of this discovery was also relevant to *Harlow*, supported our theories of liability, and assisted our development of this case.

60. In *Harlow*, with the assistance of Ms. Giles, on June 28-29 of 2023 in Raleigh, North Carolina, I took the depositions of four former Wells Fargo employees who, while employed by Wells Fargo, prepared, executed, and filed forbearance notices in the named Plaintiffs' Chapter 13 bankruptcy cases. The parties obtained valuable information from these depositions, and thereafter, the parties actively re-engaged in negotiations regarding a second mediation to address the claims in the *Harlow* case. Ultimately, the parties agreed to engage JAMS mediator David Geronemus and scheduled a one-day mediation in New York City, on November 30, 2023.

61. Prior to the mediation, Plaintiffs prepared and submitted a detailed confidential settlement demand to Wells Fargo, as well as a mediation statement with extensive materials to educate the mediator regarding the complex consumer bankruptcy-specific issues involved in this litigation. Well Fargo also produced updated loan-level information regarding the potential size and composition of the putative class of Chapter 13 debtors who would be included in a settlement.

62. The mediation was attended in person by the five lead attorneys for the Plaintiffs, lead counsel for Wells Fargo, high level Wells Fargo executives, and our lead class plaintiff, Troy Harlow. The negotiations were difficult, and the parties were nearly unable to agree on a settlement amount – with agreement on the amount of the settlement coming only at the very end of the day.

63. My team and I subsequently labored for four months in lengthy, often challenging negotiations with Wells Fargo’s counsel over first a term sheet and then the settlement agreement, which the parties finally signed on March 26, 2024.

64. After the settlement agreement was signed, we prepared and filed a joint motion to withdraw the reference, and a motion for preliminary approval of the settlement in the bankruptcy adversary proceeding, as well as extensive declarations and exhibits.<sup>7</sup>

65. The bankruptcy court held a hearing on our motion for preliminary approval of the proposed class settlement on May 22, 2024, entering an order approving the settlement on a preliminary basis that day, which approved the undersigned as Class Counsel, approved the form of the notices to be sent to class members, and directed that the notices to the class members be sent, setting final approval and related deadlines, among other orders. Exhibit D.

66. In addition, since the notices of the settlement were mailed and emailed by the

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<sup>7</sup> See *Harlow*, Docket Nos. 116, 123.

Settlement Administrator, my team and I have spoken to many class members, their bankruptcy attorneys and Chapter 13 Trustees, to answer their questions and ensure checks will be made payable and delivered to the appropriate parties (including when class members' circumstances change due to death, divorce, change of address, etc.) Also, with respect to any notices and checks returned as undeliverable, our firm will assist the Settlement Administrator in updating addresses, and continue to perform our duties as Class Counsel.

67. We anticipate more extensive work in preparing for the hearing on final approval of the settlement and certification of the settlement class, which will further lower the multiplier for any lodestar cross-check.

### **The Class Representatives**

68. Plaintiffs also seek service awards of \$12,500 for each of the named class representatives, whose participation and perseverance throughout this litigation has been critical to the success embodied in this settlement. The Class Representatives took active roles in the litigation now settled. Each of the Class Representatives provided information to counsel in preparing this lawsuit against Wells Fargo. They gathered documents and otherwise answered Wells Fargo discovery. They stayed well informed of their case and agreed to be class representatives in a global settlement of the issues in this class action lawsuit. Mr. Harlow met with and spoke to counsel throughout the investigation and early discovery ordered by the Bankruptcy Court in their bankruptcy case, met with and spoke with his counsel in preparing the complaint, and has stayed informed and has participated in the litigation. Mr. Harlow personally attended the mediation in New York City on November 30, 2023. Importantly, Mr. Harlow and Ms. Fewell agreed to be interviewed by NBC News, and allowed NBC News to write an article on their case, despite possible reputational harm.

### **Mr. Bartholow's background and experience**

69. I am co-counsel for Plaintiffs in the above-referenced proceeding. Karen L. Kellett, Malissa Giles, Tracy Giles, and Abelardo Limon are my co-counsel in this matter.

70. I am an attorney duly licensed to practice in the states of Texas and New York, as well as in the United States District Courts for the Northern, Eastern, and Southern Districts of Texas and for the Southern District of New York, as well as the Fifth U.S. Circuit Court of Appeals. A true and correct copy of my *curriculum vitae* is attached. As described therein, I have substantial experience litigating individual and class action consumer claims, especially consumer claims against mortgage servicers, often in cases involving borrowers in or formerly in bankruptcy.

### ***Background / Relevant Experience***

71. I graduated from The University of Texas at Austin in 1998, with a B.A. in Philosophy.

72. I received my Doctor of Jurisprudence degree from the Benjamin N. Cardozo School of Law in 2002.

73. Since 2005, my legal practice has been focused exclusively on consumer and business bankruptcy, consumer litigation (with an emphasis on consumer litigation in bankruptcy-related matters), including in litigated cases across Texas and in New York, North Carolina, Colorado, California, Ohio, Alabama, and Louisiana. I have experience in litigation of consumer class actions involving lenders and lending issues, including class actions in bankruptcy court for conduct arising in bankruptcy proceedings.

74. Immediately following graduation from law school, I began my career at London Fischer LLP in New York City, where my work focused on insurance defense litigation, including property damage, premises liability, personal injury, and extensive work on complex insurance

and re-insurance matters related to the destruction of the World Trade Center on September 11, 2001.

75. I joined my parents, Molly Bartholow, former Chapter 13 Trustee, and Toby Bartholow, at their consumer bankruptcy firm in Dallas, Texas, Bartholow & Bartholow P.C. in 2003. My work at Bartholow & Bartholow initially focused on Chapter 7 and Chapter 13 consumer bankruptcy matters, including assisting in litigation of contested motions and objections to claims filed by secured and unsecured creditors against my consumer bankruptcy debtor clients.

76. In 2005, I became a partner with Bartholow & Bartholow P.C. I expanded my practice to include litigation of contested matters, including objections to claims and defending against mortgage servicers' motions for relief from stay, as well as adversary proceedings in bankruptcy court against creditors on behalf of my consumer debtor clients, as well as representing a regional bank as creditor's counsel in a handful of Chapter 13 cases. This litigation practice grew to encompass the substantial majority of my work with Bartholow & Bartholow P.C. through the end of 2009.

77. In December 2009, I formed Armstrong Kellett Bartholow P.C., a consumer bankruptcy and litigation firm, along with my partners, Gary Armstrong and Karen Kellett.

78. Armstrong Kellett Bartholow P.C. consolidated Bartholow & Bartholow's consumer bankruptcy and bankruptcy-focused consumer litigation practice with Mr. Armstrong's and Ms. Kellett's similar practices, which focused on pursuing claims on behalf of consumer debtors against banks, lenders, creditors, mortgage servicers and debt collectors in state and federal courts, including bankruptcy courts in the Northern, Eastern, and Southern Districts of Texas, and District Courts in the Northern and Eastern Districts of Texas.

79. With Armstrong Kellett Bartholow P.C., I also expanded my practice to include

consumer class action litigation in Federal District and Bankruptcy Courts, working extensively with my partner Karen Kellett and learning from her substantial consumer financial services class action experience. My litigation work with Armstrong Kellett Bartholow P.C. covered a broad range of consumer financial services issues and claims, most of which arose under or related to consumer bankruptcy cases, as well as claims pursuant to the Fair Debt Collection Practices Act, the Texas Debt Collection Act, the Real Estate Settlement Procedures Act, and other related statutory and common-law causes of action. Several of these suits involved causes of action relating to violations of the Bankruptcy Code's automatic stay and discharge injunction provisions, as well as claims against banks, lenders, mortgage servicers and debt collectors for violations of other provisions of the Bankruptcy Code and Rules allegedly caused by systemic problems with their internal policies, practices, and procedures.

80. For the last ten years, a substantial portion of our practice has been devoted to representing debtors and former debtors in cases in which the mortgage servicer failed to comply with Bankruptcy Rule 3002.1, and, as a result, wrongfully demanded undisclosed amounts and threatened and attempted foreclosure when such amounts were not paid. In many cases, mortgage servicers waited until after the debtors had successfully completed their chapter 13 plan before attempting to collect debts based on amounts not owed because they were not disclosed pursuant to Bankruptcy Rule 3002.1, and/or because the bankruptcy court had entered an order deeming the mortgage account current at the end of the case.

81. On September 10, 2015, one of the named partners of Armstrong Kellett Bartholow P.C. left the firm and the practice of law. As a result, Ms. Kellett and I formed a new firm, Kellett & Bartholow PLLC, shortly thereafter. I continue to engage in the same types of consumer and bankruptcy litigation that I engaged in at Armstrong Kellett Bartholow P.C.

82. In addition to my representation of the class plaintiffs in the instant case, I have represented class plaintiffs in several bankruptcy and bankruptcy-related class actions, including *Rodriguez v. Countrywide* (consumer class of former Chapter 13 debtors certified after contested three-day evidentiary class certification hearing, certification upheld on appeal to the Fifth Circuit); *Cano v. GMAC* (certifying nationwide settlement class against GMAC); *Cotton v. Wells Fargo* (certifying nationwide settlement class against Wells Fargo for filing false Rule 3002.1 notices regarding unauthorized mortgage modifications); *Jones v. Atlas Acquisitions, LLC* (certifying nationwide settlement class against debt buyer for alleged practice of filing fraudulent bankruptcy proofs of claim for non-existent debts); and *Brown, et al. v. Goldman Sachs* (class action alleging the defendant violated the automatic stay).

83. In *In re Think Finance*, I served as bankruptcy counsel to consumer plaintiffs in multiple pre-petition consumer class actions. In that capacity, despite the debtor's strenuous objection, my team and I successfully obtained bankruptcy court authorization to file class proofs of claim on behalf of our putative classes. As a consequence, we were able to negotiate a nationwide settlement that included certification of the class claims and substantial recovery for the consumer creditor class members, which settlement was approved in connection with a confirmed Chapter 11 plan. Similarly, in *In re Ditech*, a Chapter 11 bankruptcy filed in the Southern District of New York by a mortgage servicer, I served as chair of the consumer creditors' committee appointed by the United States Trustee. In that capacity, I successfully lobbied for the Committee to oppose confirmation of the debtor's proposed Chapter 11 plan, which would have resulted in the sale of the debtor's portfolio of mortgage servicing rights free and clear of consumer claims, in spite of the fact that the debtor's portfolio of loans included a significant amount of illegal fees and charges. The Committee's opposition to the debtor's Chapter 11 plan was

successful, and thereafter, the Committee successfully negotiated a more favorable Chapter 11 plan, which preserved consumer claims to correct unauthorized charges to borrowers' mortgage loans and provided a separate \$10 million consumer claims fund, which was substantially in excess of the amount provided for in the plan for payment of general unsecured claims, which consumer creditors would have shared with Ditech's other general unsecured creditors, had Ditech's original plan been approved.

84. My firm and I have also represented consumer class plaintiffs in non-bankruptcy class action litigation, including in: *Forsburg; Patterson v. Wells Fargo* (NDCA) (alleging Wells Fargo opened unauthorized consumer bank accounts for consumers who otherwise had no banking relationship with Wells Fargo).

85. In particular, I have substantial experience litigating mortgage servicing issues, having successfully litigated numerous cases asserting claims for violation of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), and their implementing regulations, Regulations Z and X respectively, as well as claims for violation of the Fair Credit Reporting Act (FCRA) and the Fair Debt Collection Practices Act (FDCPA), and substantial consumer bankruptcy-related mortgage litigation involving alleged violations of the automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), confirmed Chapter 13 bankruptcy plans, and Bankruptcy Rule 3002.1, as well as claims for abuse of process and seeking remedies under the Court's inherent authority and § 105(a) of the Bankruptcy Code.

***Professional Memberships and Speaking Experience***

86. I am a longstanding member of the National Association of Consumer Advocates (NACA), the National Consumer Law Center (NCLC), the National Association of Consumer Bankruptcy Attorneys (NACBA) (having received NACBA's "Distinguished Service Award" for

2016), the American Bankruptcy Institute (ABI), and the John C. Ford American Inn of Court. Since 2010, I have been a frequent speaker on consumer litigation-related topics, especially regarding residential mortgage servicing issues and individual and class action consumer litigation on behalf of consumers and consumer debtors in bankruptcy, including at national conventions for NACBA, NACA, the NCLC, the ABI, and the National Conference of Bankruptcy Judges (NCBJ). I also frequently speak on these and related topics at local and regional continuing legal education conferences. Together with my former colleague, O. Max Gardner III (who retired in December of 2022), I have co-taught several multi-day “boot camp” training sessions, with a focus on mortgage litigation issues and litigation issues arising in Chapter 13 and Chapter 7 consumer bankruptcy cases. I taught multiple times at “Max Gardner’s Bankruptcy Boot Camp,” twice at “Max Gardner’s Ultimate Litigation Boot Camp,” and also at “Max Gardner’s Actual Damages in Consumer Statutory Injury Cases.”

87. As reflected on my *curriculum vitae*, a copy of which is attached hereto as Exhibit A, I have obtained numerous favorable written opinions in class actions and individual cases, all of which involved claims based on bankruptcy issues.

88. Kellett & Bartholow’s hourly rates have been approved in several cases in various jurisdictions:

- *In re Vallejo*, BK No. 11-70432, filed in the United States Bankruptcy Court for the Southern District of Texas, Docket Nos. 158 and 169;
- *In re Zarate*, BK No. 15-70087, filed in the United States Bankruptcy Court for the Southern District of Texas, Docket Nos. 79 and 81;
- *In re Irma Contreras*, BK No. 15-70201, filed in the United States Bankruptcy Court for the Southern District of Texas, Docket Nos. 53 and 57;
- *In re Adan Contreras, Jr.*, BK No. 15-70634, filed in the United States Bankruptcy Court for the Southern District of Texas, Docket Nos. 49 and 52;
- *Hammond v. Adam Ross Paul, Inc., et al*, Adv. No. 12-03227, filed in the United States Bankruptcy Court for the Northern District of Texas, Docket Nos. 71-73;
- *In re Dunigan*, BK No. 11-32989, filed in the United States Bankruptcy Court for the

- Northern District of Texas, Docket Nos. 68 and 76;
- *In re Kochukunju*, BK No. 10-32433, filed in the United States Bankruptcy Court for the Northern District of Texas, Docket Nos. 83 and 88;
  - *In re Rowe*, BK No. 09-45027, filed in the United States Bankruptcy Court for the Northern District of Texas, Docket Nos. 129 and 135;
  - *In re Stokey*, BK No. 13-31513, filed in the United States Bankruptcy Court for the Northern District of Texas, Docket Nos. 147 and 155;
  - *Bruner-Halteman v. Educational Credit Management Corp.*, Adv. No. 14-03041, filed in the United States Bankruptcy Court for the Northern District of Texas, Docket Nos. 71, 73, and 103
  - *Amburgey v. Enzed, Inc.*, Adv. No. 14-04077, filed in the United States Bankruptcy Court for the Northern District of Texas, Docket No. 49;
  - *In re Wells*, BK Case No. 14-34240, filed in the United States Bankruptcy Court for the Northern District of Texas, Docket Nos. 70 and 77;
  - *In re Sanchez*, BK Case No. 15-70592, filed in the United State Bankruptcy Court for the Southern District of Texas, Docket Nos. 77 and 96;
  - *In re Salinas*, BK Case No. 16-34716, filed in the United States Bankruptcy Court for the Southern District of Texas, Docket Nos. 119 and 134
  - *In re Lopez*, Adv. No. 13-07019, filed in the United States Bankruptcy Court for the Southern District of Texas, Docket Nos. 194, 274, and 275;
  - *In re Franklin*, BK Case No. 10-20010, filed in the United States Bankruptcy Court for the Southern District of New York, Docket Nos. 159 and 160;
  - *In re Cash*, BK Case No. 15-30510, filed in the United States Bankruptcy Court for the Western District of Louisiana, Docket Nos. 59 and 66;
  - *In re Shankles*, BK Case No. 11-43075, filed in the United States Bankruptcy Court for the Eastern District of Texas, Docket Nos. 327 and 336;
  - *Haynes v. Wells Fargo Bank, N.A.*, Case No. 2:08-cv-183, filed in the United States District Court for the Eastern District of Texas, Docket No. 168.

89. My firm and I have vigorously prosecuted this suit to date.

90. Prior to and during this case, Kellett & Bartholow PLLC has committed substantial resources in both time and expenses over the last four years in this case. I will continue to commit all the resources necessary to the case to bring it to completion, including through trial and any appeals, should the settlement ultimately not be approved. Our firm has sufficient resources to pursue this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 31, 2024.

/s/ Theodore O. Bartholow, III  
Theodore O. Bartholow, III

# EXHIBIT A



**THEODORE O. BARTHLOW, III (“THAD”)**

11300 N. CENTRAL EXPWY. SUITE 301 DALLAS, TEXAS 75243  
TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: THAD@KBLAWTX.COM

Mr. Bartholow represents consumers in individual and class action litigation against mortgage servicers, debt collectors, and other creditors. His practice primarily focuses on matters related to his clients’ consumer bankruptcy cases, violations of applicable debt collection laws, and other consumer-protection statutes. Mr. Bartholow has obtained numerous favorable published opinions on behalf of his clients, his written work has been published in the American Bankruptcy Institute’s monthly Journal, amongst other publications, and he has represented the National Association of Consumer Bankruptcy Attorneys at a “Mortgage Mini-Conference” held by the Rules Committee of the National Conference of Bankruptcy Judges in 2012. Mr. Bartholow also lectures widely on all aspects of consumer litigation and consumer bankruptcy at local, regional and national seminars, including his work over the last several years as a regular co-teacher, along with O. Max Gardner, III, at Max Gardner’s Bankruptcy Boot Camps and other litigation skills trainings for consumer litigators.

**BAR ADMISSIONS:**

State: New York and Texas

Federal: Northern, Eastern, and Southern Districts of Texas (Bankruptcy and District Courts) and Southern District of New York (Bankruptcy and District Courts)

**EDUCATION:**

BENJAMIN N. CARDOZO SCHOOL OF LAW, J.D. 2002, New York, New York

- Cardozo Mediation Clinic
- Executive Editor, Cardozo Journal of International and Comparative Law
- Runner-up “Best Oralist” Jessup International Law Moot Court Competition (regional)

UNIVERSITY OF TEXAS AT AUSTIN, B.A. (Philosophy) 1998, Austin, Texas

SKIDMORE COLLEGE (Fall 1993- Spring 1995), Saratoga Springs, New York

**PROFESSIONAL ASSOCIATIONS & COMMUNITY INVOLVEMENT:**

*Co-Presenter*, Max Gardner’s Bankruptcy Boot Camp and Ultimate Litigation Boot Camp (2012-Present)

*State Chair*, National Association of Consumer Bankruptcy Attorneys (2016-Present/member since 2004)

*Member*, Dallas Area Young Bankruptcy Lawyers’ Association (2009-Present)

*American Red Cross*, Disaster Volunteer (2007-Present)

*Advisory Board Member*, Safe Horizon Mediation Program (New York 2003-2005)

*Volunteer Mediator*, Civil Court and Small Claims Court for New York City (2001-2005)

**NOTEWORTHY DECISIONS:**

*Anderson v. Wells Fargo Bank, N.A.*, 2018 WL 3426269 (N.D. Tex. July 13, 2018).

*In Bruner-Haltzman (Bruner-Haltzman v. ECMC)*, 2016 WL 1427085 (Bankr. N.D. Tex. April 8, 2016).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2015 WL 1207012 (Bankr. S.D. Tex. Mar. 12, 2015)(slip copy).



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TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: THAD@KBLAWTX.COM

**NOTEWORTHY DECISIONS (CONT.):**

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2015 WL 5438850 (Bankr. S.D. Tex. Sept. 24, 2015)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2015 WL 7572097 (Bankr. S.D. Tex. Nov. 24, 2015)(slip copy) leave to appeal denied by *Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2016 WL 4546884 (S.D. Tex. Sept. 1, 2016)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2017 WL 3382099 (Bankr. S.D. Tex. Mar. 20, 2017)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC*, 2017 WL 3336086 (S.D. Tex. Aug. 4, 2017)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 576 B.R. 84 (Bankr. S.D. Tex. Sept. 28, 2017).

*In re Trevino (Trevino v. HSBC Mortgage Services, Inc. et al.)*, 535 B.R. 110 (Bankr. S.D. Tex. 2015).

*Haynes v. Wells Fargo Bank, N.A.*, 2014 WL 2761260 (E.D. Tex. 2014).

*Haynes v. Wells Fargo Bank, N.A.*, 2015 WL 6746256 (E.D. Tex. 2015).

*In re Hammond (Hammond v. Adam Ross Paul, Inc. et al.)*, 2014 WL 2761260 (Bankr. N.D. Tex. 2014).

*Bibolotti v. American Home Mortgage Servicing, Inc. et al.*, 2013 WL 2147949 (E.D. Tex. 2013).

*In re Rodriguez (Rodriguez v. Countrywide Home Loans, Inc. et al)*, 695 F.3d 360 (5<sup>th</sup> Cir. 2012).

*In re Rodriguez (Rodriguez v. Countrywide Home Loans, Inc. et al)*, 517 B.R. 724 (Bankr. S.D. Tex. 2014).

*McGuinness v. Dodeka LLC et. al*, Slip Copy, 2010 WL 1856450 (E.D. Tex. 2010).

*In re Pastran*, Slip Copy, 2010 WL 2773243 (Bankr. N.D. Tex. 2010).

*In re Pastran*, 462 B.R. 201 (Bankr. N.D. Tex. 2011).

*In re Gulley (Gulley v. Countrywide)*, --- B.R. ----, 2010 WL 3342193 (Bankr. N.D. Tex., August 23, 2010) (NO. 07-33271-SGJ-13, ADV 08-03467).

*In re Guevara (Guevara v. Wells Fargo)*, (unpublished) Opinion and Order on Motion for Summary Judgment (J. Hale) TXNB Adv. Proc. No. 08-03191 Docket No. 68 (2009), affirmed on appeal by TXND: *In re Guevara (Guevara v. Wells Fargo)*, (J. Ferguson) Civil Action No. 3:10-cv-0547-F Docket No. 13 (8/18/2010).

**PUBLICATIONS & HONORS:**

National Association of Consumer Bankruptcy Attorneys (NACBA), *Distinguished Service Award*, 2016.

American Bankruptcy Institute (ABI) Journal, April 2014 33. Am. Bankr. Inst. J. 44 (2014), *Are Post-Discharge Loan Modification Solicitations the New Sears Cases?*

National Conference of Bankruptcy Judges Rules Committee’s Mortgage Mini-Conference, Representative on behalf of NACBA, Portland, Oregon 2012.



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### **SPEAKING ENGAGEMENTS:**

Max Gardner’s Regulation X and Z Boot Camp, July 2018

University of Texas Advanced Consumer Bankruptcy Conference – Discharge & Dischargeability, June 2018

Northern District of Texas Bankruptcy Bench-Bar – Mortgage Issues in Bankruptcy, May 2018

National Conference of Bankruptcy Judges Annual Conference, October 2017

ABI Media Webinar - SCOTUS opinion in *Midland v. Johnson*, May 2017

National Consumer Law Center (NCLC) Consumer Rights Litigation Conference - Recovering Legal Fees Under Fee Shifting Statutes, October 2016

ABI Midwest Fall Leadership Conference - Great Debates: Does filing a time-barred proof of claim violate the FDCPA?, 2016

University of Texas School of Law’s 12<sup>th</sup> Annual Consumer Bankruptcy Practice Seminar - RESPA’s Impact on Chapter 13 and Monthly Escrow Payments, 2016

National Consumer Law Center - TCPA Webinar, 2016

Texas Bar Association Bankruptcy and Commercial Law Section’s International Seminar Bali, Indonesia - Using the FDCPA and RESPA in Bankruptcy, 2015

ABI Annual Winter Leadership Conference - Great Debates: Does filing a time-barred proof of claim violate the FDCPA?, 2015

Jay L. Westbrook Bankruptcy Conference - Using RESPA in Chapter 13, 2015

FDCPA and Bankruptcy Proofs of Claim Webinar with Max Gardner, 2015

ABI Annual Spring Meeting - Consumer Track: Use of Governmental Assistance Programs in Chapter 13, 2014

Texas Bar Association Annual Advanced Consumer Bankruptcy / Bankruptcy 101 Course - Prosecuting and Defending Motions for Relief from Stay, 2013, 2014, 2015, 2016

NACBA Annual Convention – Various Topics, 2012, 2015, 2016, 2017

Oklahoma Bar Association 26<sup>th</sup> Annual Advanced Bankruptcy Seminar, 2011

West Texas Bankruptcy Institute - Reasons to Choose Chapter 13 instead of Chapter 7, 2010

NACBA Members Only Conferences – Various Topics, 2010, 2011, 2013, 2014

Max Gardner’s Bankruptcy Boot Camp and Max Gardner’s Litigation Skills Seminar [numerous]

### **MEDIA COVERAGE:**

Matt Egan, *New Wells Fargo Scandal Over Modifying Mortgages Without Authorization*, CNN Money, June 15, 2017, available at <http://money.cnn.com/2017/06/15/investing/wells-fargo-mortgage-modification-lawsuit/index.html>.



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TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: THAD@KBLAWTX.COM

**MEDIA COVERAGE (CONT.):**

Michael Hiltzik, *Borrowers Say “Stealth” Mortgage Modifications by Wells Fargo Could Cost Them Their Homes*, Los Angeles Times, June 15, 2017, available at <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-wells-mortgages-20170615-story.html>.

Gretchen Morgenson, *Wells Fargo Is Accused of Making Improper Changes to Mortgages*, N.Y. Times, June 14, 2017 available at <https://www.nytimes.com/2017/06/14/business/wells-fargo-loan-mortgage.html>.

Jonnelle Marte, *Lawsuits Claim Wells Fargo Modified Mortgages Without Customer Permission*, Washington Post, June 2017, available at [https://www.washingtonpost.com/news/get-there/wp/2017/06/15/lawsuits-claim-wells-fargo-modified-mortgages-without-customer-permission/?utm\\_term=.af610dd02248](https://www.washingtonpost.com/news/get-there/wp/2017/06/15/lawsuits-claim-wells-fargo-modified-mortgages-without-customer-permission/?utm_term=.af610dd02248).

Kevin Krause, *Bankrupt Allen Couple Sues NTTA for Trying to Collect \$26,000 in Tolls and Fees*, Dallas Morning News, Dec. 2016, available at <https://www.dallasnews.com/news/courts/2016/12/29/went-bankrupt-say-tollway-agency-still-demanded-26000-tolls-fines-erased-court>.

*Facing Foreclosure? With Document Scandal, It's Vital to Act*, Dallas Morning News, Oct. 2010, available at <https://www.dallasnews.com/business/money/2010/10/22/Facing-foreclosure-With-document-scandal-5011>.

**LEGAL EMPLOYMENT HISTORY:**

KELLETT & BARTHOLOW PLLC, *Partner* (October 2015-Present)  
Dallas, Texas

ARMSTRONG KELLETT BARTHOLOW PLLC, *Partner* (December 2009-October 2015)  
Dallas, Texas

BARTHOLOW & BARTHOLOW P.C., *Partner* (2008-2009)  
Dallas, Texas

BARTHOLOW & BARTHOLOW / LAW OFFICE OF MOLLY BARTHOLOW, *Associate* (2004-2008)  
Dallas, Texas

BOGRE & BARTHOLOW, *Partner* (2003-2004)  
Brooklyn, New York

LONDON FISCHER LLP, *Associate* (2002-2003)  
New York, New York

**ARTWORK/ EXHIBITIONS:**

*Bar Matchless Gallery*, Williamsburg (Bklyn), NY (2004)

*Dallas Public Library*, Dallas, Texas (2009)

Online portfolio: [www.thadbartholow.com](http://www.thadbartholow.com)

# EXHIBIT B

## HARLOW ADVERSARY EXPENSE SUMMARY

### KELLETT & BARTHOLOW, PLLC

EXPENSE	AMOUNT
Administration	\$2.89
Certificate of Service	\$663.69
Conference	\$25.67
Depositions	\$6,075.90
Expert	\$10,340.00
Filing Fee	\$299.00
Mediation	\$14,143.13
Out-of-Town Meals	\$2,273.07
PACER Charges	\$3,341.90
Postage and Shipping	\$217.12
Process Server	\$624.05
Research	\$3,675.03
Travel	\$11,212.30
Witness Fee	\$316.50
	<b>\$53,210.25</b>

# EXHIBIT C

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

TROY SHANNON HARLOW,

Debtor.

Case No. 17-71487

Chapter 13

---

TROY SHANNON HARLOW, MARK  
STEPHEN ESTES, KIMBERLY PORTER  
FEWELL, BEATRIZ VILLEGAS-  
RODRIGUEZ and RODOLFO  
RODRIGUEZ, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Adversary No. 20-07028

**SETTLEMENT AGREEMENT**

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SETTLEMENT AGREEMENT

*Harlow v. Wells Fargo Bank, N.A., Adversary No. 20-07028*

**TABLE OF CONTENTS**

	<b>Page</b>
I. DEFINITIONS.....	3
II. PRELIMINARY APPROVAL ORDER, NOTICE ORDER, AND SETTLEMENT HEARING.....	111
A. Certification of Class and Appointment of Class Counsel. ....	111
B. Motion for Preliminary Approval and Motion to Withdraw the Reference. ....	112
C. Class Notices.....	12
D. Class Action Fairness Act Notices.....	13
E. Motion for Final Approval and Entry of Final Judgment. ....	133
F. Stay Order. ....	166
III. RELEASES.....	16
A. Plaintiffs and Class Release of Wells Fargo. ....	16
1. No Future Actions Following Release.....	17
2. Covenant Not to Sue. ....	17
3. Waiver of California Civil Code § 1542 and Similar Laws.....	188
4. Dismissal.....	199
5. Agreement To Be Bound. ....	19
IV. SETTLEMENT CONSIDERATION .....	19
A. Settlement Fund. ....	19
B. Distribution of Net Settlement Amount.....	20
1. Subclass 1 Member Payments. ....	20
2. Subclass 2 Member Payments. ....	20
3. Claims Fund.....	20
C. Fee and Expense Award and Class Representative Service Awards.....	222
D. Administrative Costs and Expenses.....	222
V. NOTICE AND ADMINISTRATION OF SETTLEMENT.....	233
A. Claim Form. ....	233
B. Notice.....	233
C. Time to Appeal. ....	233
D. No Liability for Distribution of the Settlement Fund. ....	233

VI.	DUTIES OF THE SETTLEMENT ADMINISTRATOR.....	244
A.	The Settlement Administrator will Administer the Settling Parties’ Settlement. ....	244
VII.	SERVICE AWARDS, ATTORNEYS’ FEES, AND REIMBURSEMENT OF EXPENSES.....	288
A.	Fee and Expense Application.....	288
B.	Payment of Fee and Expense Award. ....	288
C.	Award of Attorneys’ Fees and Expenses Shall Not Impact the Effectiveness of this Agreement. ....	288
D.	No Liability for Attorneys’ Fees and Expenses of Class Counsel.....	299
E.	Class Representatives’ Service Award Application. ....	299
VIII.	CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION .....	30
A.	Effective Date. ....	30
B.	Failure of Effective Date to Occur.....	31
C.	Requests for Exclusion/Opt-Outs. ....	311
D.	Objections. ....	333
E.	Termination.....	333
F.	Other Orders.....	355
IX.	NO ADMISSION OF LIABILITY.....	355
A.	Final and Complete Resolution.....	355
B.	Federal Rule of Evidence 408.....	355
C.	Use of Agreement as Evidence. ....	355
X.	REPRESENTATIONS AND WARRANTIES.....	366
XI.	MISCELLANEOUS PROVISIONS.....	388
A.	Voluntary Settlement. ....	388
B.	Reasonable Best Efforts to Effectuate This Settlement. ....	388
C.	Subsequent Events Impacting Administration.....	399
D.	Claims in Connection with Administration. ....	399
E.	Binding Effect.....	399
F.	Authorization to Enter Settlement Agreement.....	399
G.	Notices. ....	40
H.	No Party Deemed to Be the Drafter. ....	40

I.	Choice of Law.....	40
J.	Amendment.....	41
K.	Waiver.....	411
L.	Execution in Counterparts.....	411
M.	Integrated Agreement.....	411
N.	Attorneys’ Fees and Costs. ....	422
O.	Return or Destruction of Confidential Materials. ....	422
P.	Intended Beneficiaries. ....	422
Q.	Regular Course of Business.....	433
R.	Tax Consequences. ....	433
S.	Qualified Settlement Fund. ....	433
T.	Taxes for the Settlement Fund. ....	444
U.	Bankruptcy Proceedings. ....	444
V.	No Conflict Intended; Headings. ....	444
W.	Class Member Obligations.....	444
X.	Press Release.....	455
Y.	Further Disputes.....	455

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered as of the Execution Date between the Plaintiffs, both individually and on behalf of the Class, and Defendant Wells Fargo.<sup>1</sup> This Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the claims described herein, upon the following terms and conditions.

WHEREAS, Plaintiffs are prosecuting the above captioned Action on their own behalf and on behalf of the proposed Class against Wells Fargo;

WHEREAS, Wells Fargo asserts that, in an attempt to help those Customers who were concerned they would not be able to make their next Mortgage payment, Wells Fargo provided Mortgage Forbearances to certain Customers who had expressed hardship or potential hardship, but had not explicitly requested a Forbearance, including some customers who did not want a Forbearance;

WHEREAS, a Forbearance temporarily suspends a Customer’s obligation to make payments on their Mortgage;

WHEREAS, Wells Fargo filed Notices of Forbearance in the Chapter 13 bankruptcy cases of certain Customers whom Wells Fargo provided a Forbearance;

WHEREAS, Wells Fargo asserts that it believes that the vast majority of Customers who received a Forbearance requested or wanted and used the Forbearance;

WHEREAS, Wells Fargo asserts that since 2020, Wells Fargo has worked to address any Customer complaints regarding Forbearances and to make any injured Customers whole;

WHEREAS, Plaintiffs’ Second Amended Complaint filed in this Action alleged, among other things, that Wells Fargo placed Customers, including Plaintiffs, into a Forbearance without their informed consent and filed some Notices of Forbearance that were not accurate, and asserted

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<sup>1</sup> Capitalized terms are defined in Section I.

claims for violation of Fed. R. Bankr. P. 3002.1, violation of the automatic stay, abuse of process, and contempt, among others;

WHEREAS, Wells Fargo denies each and all of the claims and allegations of wrongdoing made by Plaintiffs; denies that Defendant has violated any law or other duty; denies that Defendant has engaged in any wrongdoing or any other act or omission that would give rise to liability or cause Plaintiffs' injuries, damages, or entitlement to any relief; denies that Defendant placed any individual into a Forbearance in an attempt to make a profit; and would contest certification of a non-settlement Rule 23(b)(3) damages class and/or a Rule 23(b)(1) or Rule 23(b)(2) declaratory and injunctive relief class if Plaintiffs sought to certify such classes; and states that Defendant is entering into this Agreement to avoid the further uncertainty, expense, inconvenience, delay, and distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to Plaintiffs and the Class and avoid the risks inherent in complex litigation;

WHEREAS, the Parties have engaged in extensive formal and informal discovery concerning the strength and value of Plaintiffs' claims;

WHEREAS, Plaintiffs and Wells Fargo participated in a mediation session in front of David Geronemus on November 30, 2023, which resulted in a settlement in principle;

WHEREAS, Plaintiffs and Wells Fargo have agreed to the terms of this arm's-length Agreement, which embodies all of the terms and conditions of the Settlement between the Settling Parties, subject to the approval of the Court as provided below, and which is intended to supersede any and all prior agreements between the Settling Parties, including, but not limited to, the Term Sheet entered into by the Parties on February 5, 2024.

WHEREAS, the Plaintiffs have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action's Second Amended Complaint, the legal and factual defenses thereto and the applicable law, that the claims asserted in the Action have merit and it is in the best interests of the Plaintiffs and the Class to enter into this Agreement to avoid the uncertainties of litigation and to assure that

the benefits set forth below are obtained for the Plaintiffs and the Class, and, further, that Class Counsel consider the Settlement set forth in this Agreement to be fair, reasonable, and adequate and in the best interests of the Plaintiffs and the Class; and

WHEREAS, the Plaintiffs and Wells Fargo stipulate that the fact of this Agreement, any of the terms in this Agreement, any documents filed in support of this Agreement, or any statement made in the negotiation thereof shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law, (ii) any liability or wrongdoing by Wells Fargo, (iii) liability on any claims or allegations or the value thereof, or (iv) the propriety of certifying a litigation class in any proceeding, and shall not be used by any person for any purpose whatsoever in the Action or any other legal proceeding, including but not limited to arbitrations, mediations, or subsequent litigations other than a proceeding to enforce the terms of this Agreement;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their attorneys of record, that, subject to the approval of the Court, the Action and the Class Released Claims shall be finally and fully settled, compromised, and dismissed on the merits and with prejudice upon and subject to the terms and conditions of this Agreement, as follows:

## I. DEFINITIONS

As used in the Agreement, the following terms have the meanings specified below:

1. “Action” means *Harlow v. Wells Fargo Bank, N.A.*, Adversary Proceeding No. 20-07028, currently pending in the United States Bankruptcy Court for the Western District of Virginia.
2. “Additional Compensation” means payment from the Claims Fund for which Eligible Class Members may be considered by submitting the Claim Form to the Settlement Administrator as set forth in Paragraph IV.B.3. of the Agreement.

3. “Administrator” or “Settlement Administrator” or “Claims Administrator” means Epiq Class Action & Claims Solutions, Inc. (“Epiq”).

4. “Agreement” means this settlement agreement entered into by the Settling Parties.

5. “At-Issue Forbearance” means a Forbearance initially provided by Wells Fargo to a Class Member on or between March 1, 2020 and December 31, 2021 without regard for the Forbearance’s end date.

6. “Bankruptcy Court” shall refer to the United States Bankruptcy Court for the Western District of Virginia.

7. “Claim Form” means the form, in substantially the same form and with substantially the same content as **Exhibit A**, that Eligible Class Members will need to complete and submit to the Settlement Administrator to be considered for Additional Compensation out of the Claims Fund as set forth in Paragraph IV.B.3. of the Agreement.

8. “Claim Form Deadline” means the date by which Eligible Class Members must submit a completed Claim Form to the Settlement Administrator in accordance with the requirements set forth in Paragraph IV.B.3. of the Agreement and which shall be one hundred and eighty (180) Days from the Notice Deadline.

9. “Claims Fund” means the fund that the Settlement Administrator will create and utilize to distribute Additional Compensation to Eligible Class Members who complete and submit a Claim Form pursuant to the criteria set forth in Paragraph IV.B.3. of the Agreement. The Claims Fund will consist of the amounts remaining in the Settlement Fund after accounting for: (a) payments to Subclass 1 Members; (b) payments to Subclass 2 Members; (c) the Fee and Expense Award approved by the District Court; (d) the Service Awards approved by the District Court; and (e) the Settlement Administrator’s Costs and Expenses.

10. “Class” or “Class Member” means all persons in the United States who: (a) had a Mortgage serviced by Wells Fargo that was placed into a Forbearance on or between March 1, 2020 and December 31, 2021; and (b) were a debtor or the Co-Borrower of a debtor in a Chapter

13 bankruptcy case on the date that the Mortgage was placed into the Forbearance; and (c) are not Wells Fargo's officers, directors, or employees, Counsel for Wells Fargo, or Class Counsel. The Class and Class Members include all individuals who signed the deed of trust, mortgage or other security document associated with a Mortgage even if they did not sign the underlying promissory note or loan.

11. "Class Counsel" shall refer to the law firms Kellett & Bartholow, PLLC, Giles & Lambert, P.C., and Limon Law Office, which are counsel of record representing the Class Representatives in this Action.

12. "Class List" means the list of Class Members to be created by Wells Fargo using the data and methodology that Wells Fargo previously provided to Plaintiffs' Counsel. The Class List will include information for the Class Members that is accessible to Wells Fargo in its system of record, including, to the extent that it is available, Class Member names; last known addresses and email addresses; Chapter 13 bankruptcy case numbers; Chapter 13 debtor's counsel names and contact information; and Chapter 13 trustee names and contact information.

13. "Class Notice" has the meaning set forth in Paragraph II.C. of the Agreement.

14. "Class Released Claims" has the meaning set forth in Paragraph III.A. of the Agreement.

15. "Class Releasers" has the meaning set forth in Paragraph III.A. of the Agreement.

16. "Class Releasees" has the meaning set forth in Paragraph III.A. of the Agreement.

17. "Class Representatives" or "Plaintiffs" means Troy Harlow, Mark Estes, Kimberly Fewell, Beatriz Villegas-Rodriguez, and Rodolfo Rodriguez.

18. "Co-Borrower" means an individual who is a co-signer on a Mortgage that Wells Fargo placed into an At-Issue Forbearance.

19. "Counsel for Wells Fargo" shall refer to William Mayberry, Amy Williams, and Andrew Atkins of Troutman Pepper Hamilton Sanders, LLP and Christopher Viapiano and Brendan Cullen of Sullivan & Cromwell LLP.

20. “Court” shall refer to the Bankruptcy Court or the District Court, as applicable in the context of the proceedings described in the provisions of this Agreement.

21. “Customers” means individuals who had a Mortgage serviced by Wells Fargo.

22. “Day” or “Days” has the meaning ascribed to it in Federal Rule of Civil Procedure 6, and all time periods specified in this Agreement shall be computed in a manner consistent with that rule. All references to days shall be interpreted to mean calendar days, unless otherwise noted.

23. “District Court” shall refer to the United States District Court for the Western District of Virginia.

24. “Effective Date” means the first date by which all of the events and conditions specified in Paragraph VIII.A. of the Agreement have occurred and have been met.

25. “Eligible Class Member” means a Class Member who did not exclude himself or herself from the Settlement by the Exclusion/Objection Deadline.

26. “Exclusion/Objection Deadline” means the deadline for requesting exclusion from the Class or objecting to the Settlement, which shall be sixty (60) Days from the Notice Deadline.

27. “Execution Date” means the latest date associated with a signature on the fully executed Agreement as set forth on the Agreement’s signature pages.

28. “Fee and Expense Application” means the application submitted by Class Counsel to the District Court for an award of attorneys’ fees and reimbursement of reasonable expenses incurred in connection with prosecuting this Action not to exceed the amount set forth in Paragraph VII.A. of the Agreement.

29. “Fee and Expense Award” means any amounts that are awarded by the Court in response to the Fee and Expense Application.

30. “Final” means, with respect to any order of the Court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when: (a) no appeal has been filed and the prescribed time for commencing any

appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Agreement, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order issued with respect to an application for attorneys’ fees and expenses consistent with this Agreement shall not in any way delay or preclude the Judgment from becoming Final.

31. “Final Approval” has the meaning set forth in Paragraph II.E. of the Agreement.

32. “Final Approval Hearing” means the hearing, to be scheduled by the District Court, at which the District Court will consider the Motion for Final Approval.

33. “Final Approval Order” has the meaning set forth in Paragraph II.E. of the Agreement.

34. “Forbearance” means any temporary suspension of a Customer’s monthly Mortgage payment obligations.

35. “Judgment” means the order of judgment and dismissal of the Action with prejudice.

36. “Mortgage” means a loan secured by residential real estate, including a purchase money loan (aka “mortgage” loan), home equity loan, or home equity line of credit.

37. “Net Settlement Amount” means all amounts in the Settlement Fund, including interest, which is available for distribution to Eligible Class Members after payment of the Fee and Expense Award approved by the District Court, the Service Awards approved by the Court, and the Settlement Administrator’s Costs and Expenses.

38. “Notice Deadline” means the deadline for the Settlement Administrator to send the Notice of Settlement to the Class Members in accordance with the Notice Plan and which shall be fifty (50) Days after Preliminary Approval.

39. “Notice of Forbearance” means any notice of Forbearance that Wells Fargo filed in the Chapter 13 bankruptcy cases of certain Class Members relating to an At-Issue Forbearance on either the bankruptcy case docket or the claims docket regardless of the format of the notice or means of filing.

40. “Notice of Settlement” means the written notice of the Settlement that will be provided to the Class in substantially the same form and with substantially the same content as **Exhibit B**.

41. “Notice Plan” has the meaning set forth in Paragraph II.C. of the Agreement concerning the proposed form of notice to the Class.

42. “Opt-Out” means a person who falls within the definition of the Class who has timely and validly elected to be excluded from the Class pursuant to the procedures set forth in Paragraph VIII.C. of the Agreement. It does not include any person whose request for exclusion is challenged by Defendant and the challenge is not overruled by the District Court or withdrawn by Defendant, any person whose communication is not treated as a request for exclusion, and/or any person whose request for exclusion is not valid or is otherwise void.

43. “Opt-Out List” is the list of Class Members who submit valid and timely Requests for Exclusion from the Class as set forth in Paragraph VIII.C. of the Agreement.

44. “Preliminary Approval” has the meaning set forth in Paragraph II.B. of the Agreement.

45. “Preliminary Approval Order” has the meaning set forth in Paragraph II.B. of the Agreement.

46. “Proactive Wells Fargo Business Decision” means:

- a. Customers who requested Forbearance on one Mortgage account between March 9, 2020 and April 7, 2020, and were provided a Forbearance on one or more other Mortgage accounts;

- b. Customers who contacted Wells Fargo by phone between March 9, 2020 and March 31, 2020, expressing COVID-19 impact and who were provided a Forbearance without an express request;
- c. Customers who had a pending application in the home preservation process as of March 25, 2020 and who were provided a Forbearance without an express request; and
- d. Customers who filed a document with the bankruptcy court that Wells Fargo interpreted as expressing COVID impact or requesting payment relief between March 18, 2020 and June 8, 2020 and who were provided a Forbearance without an express request.

47. “Protective Order” means the Stipulated Protective Order entered in the Action on September 8, 2020 (Dkt. 35).

48. “Remaining Amounts” means any monies that remain in the Settlement Fund after the Settlement Administrator distributes: (a) payments to Subclass 1 Members; (b) payments to Subclass 2 Members; (c) the Fee and Expense Award approved by the Court; (d) the Service Awards approved by the Court; and (e) the Settlement Administrator’s Costs and Expenses.

49. “Service Award” means any amounts that are awarded by the District Court to Plaintiffs for their service as Class Representatives as described in Paragraph VII.E of the Agreement.

50. “Service Award Applications” has the meaning set forth in Paragraph VII.E of the Agreement.

51. “Servicing Error” means that Wells Fargo previously determined that the Forbearance was provided in error.

52. “Settlement” means the settlement of the claims released by the Agreement.

53. “Settlement Administrator’s Costs and Expenses” means all of the Settlement Administrator’s costs and expenses to administer the Settlement, including, but not limited to, the processing and review of Claim Forms.

54. “Settlement Fund” means the \$15,000,000 that will be deposited by Well Fargo into an interest bearing account administered by the Settlement Administrator, plus any interest earned thereon, to cover the amounts to be paid for: (a) payments to Subclass 1 Members; (b) payments to Subclass 2 Members; (c) any Fee and Expense Award approved by the District Court; (d) any Service Awards approved by the District Court; (e) the Settlement Administrator’s Costs and Expenses; and (f) Additional Compensation to Eligible Class Members.

55. “Settlement Website” means the website created by the Settlement Administrator with a URL acceptable to the Settling Parties subject to Wells Fargo’s final right of approval.

56. “Settling Parties” means the Plaintiffs, both individually and on behalf of the Class, and Wells Fargo.

57. “Subclass 1” means the collective group of Eligible Class Members (a) who received a Forbearance as a result of a Proactive Wells Fargo Business Decision or Servicing Error, and (b) for whom Wells Fargo filed a Notice of Forbearance in the Chapter 13 bankruptcy case associated with the Forbearance.

58. “Subclass 1 Member” means any person who is a member of Subclass 1.

59. “Subclass 2” means the collective group of Eligible Class Members who are not in Subclass 1.

60. “Subclass 2 Member” means any person who is a member of Subclass 2.

61. “Term Sheet” means the Term Sheet agreed to by the Settling Parties on or about February 5, 2024.

62. “Wells Fargo” means Wells Fargo Bank, N.A..

63. As used in the Agreement, the plural of any defined terms includes the singular thereof and vice versa, except where the context requires otherwise.

## **II. PRELIMINARY APPROVAL ORDER, NOTICE ORDER, AND SETTLEMENT HEARING**

### **A. Certification of Class and Appointment of Class Counsel.**

For settlement purposes only, the Settling Parties agree to certification of the Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3) and to the appointment of Kellett & Bartholow, PLLC, Giles & Lambert, P.C., and Limon Law Office as Class Counsel for the Class under Fed. R. Civ. P. 23(g). The Settling Parties do not agree to, and Plaintiffs do not pursue, class certification pursuant to Rule 23(b)(2). The Settling Parties' stipulation to the certification of the Class is for purposes of the Settlement set forth in this Agreement only. Wells Fargo's agreement to certification of the Fed. R. Civ. P. 23(b)(3) Class is solely for the purpose of this Agreement and does not, and shall not, constitute, in this or any other proceeding, an admission by Wells Fargo of any kind or any determination that certification of a class for trial or other litigation purposes in the Action or any other separate action is, or would be, appropriate. If the Settlement is not granted Final Approval or this Agreement is otherwise terminated or rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence of or any determination that the requirements for certification of a class for trial or other litigation purposes in the Action or any other action are satisfied; in such circumstances, Wells Fargo reserves all rights to challenge certification of any class for trial or other litigation purposes in the Action or in any other action on all available grounds as if no class had been certified in the Action for purposes of the Settlement.

### **B. Motion for Preliminary Approval and Motion to Withdraw the Reference.**

As soon as practicable following the Execution Date, but no later than March 27, 2024, Class Counsel shall file a Motion for Preliminary Approval of this Agreement (including all

Exhibits) with the Bankruptcy Court and shall apply for entry of an order (“Preliminary Approval Order”) that would, for settlement purposes only: (1) preliminarily approve this Settlement (“Preliminary Approval”); (2) certify a conditional settlement class pursuant to Fed. R. Civ. P. 23(a) and (b)(3); and (3) appoint Class Counsel pursuant to Fed. R. Civ. P. 23(g). Concurrently with the filing of the Motion for Preliminary Approval of this Agreement with the Bankruptcy Court, the Settling Parties shall file a joint conditional motion to withdraw the reference with the Bankruptcy Court, requesting the entry of an order withdrawing the reference to the District Court, so that the District Court may schedule and conduct the Final Approval Hearing. The motion to withdraw the reference shall be conditioned upon the Bankruptcy Court’s entry of an order granting the Motion for Preliminary Approval, which once entered, will allow the District Court to grant the motion to withdraw the reference to consider and approve the Settlement in accordance with Rule 23(c) and (e) of the Federal Rules of Civil Procedure.

**C. Class Notices.**

As part of the Motion for Preliminary Approval, Class Counsel shall submit to the Bankruptcy Court for approval a proposed form of, method for, and schedule for dissemination of notice to the Class that is acceptable to Wells Fargo (the “Notice Plan”). The Notice Plan shall include, at a minimum, direct notice by email, where an email address is available from Wells Fargo’s records, and via first-class mail, and the exterior of the envelope conveying the notice shall contain no reference to the term “bankruptcy”. The notice shall also be translated into Spanish, which will be made available to class members on the settlement administration website. For Class Members who are in an active Chapter 13 bankruptcy case when the Settlement Administrator sends out the Notice of Settlement, the Settlement Administrator will send the Notice of Settlement to such Class Members’ counsel of record and the Chapter 13 trustee for the respective Class Members’ bankruptcy cases by email. In addition, a Settlement Website will be established by the Settlement Administrator, with a URL acceptable to the Settling Parties subject to Wells Fargo’s

final right of approval. The Motion for Preliminary Approval shall ask the Bankruptcy Court to find that the proposed form of and method for dissemination of notice to the Class constitutes valid, due, and sufficient notice to the Class; constitutes the best notice practicable under the circumstances; and complies fully with the requirements of Fed. R. Civ. P. 23 and constitutional due process. The proposed form of notice to the Class pursuant to the Notice Plan (“Class Notice”) is attached hereto as **Exhibit B**. The Preliminary Approval Order, Class Notice, and Notice Plan must be agreed to by Wells Fargo before submission to the Bankruptcy Court.

Wells Fargo shall provide the Class List to Class Counsel and the Settlement Administrator as soon as practicable after the Execution Date but no later than five (5) Days after Preliminary Approval. Wells Fargo bears no responsibility for validating or ensuring that the contact or bankruptcy information provided in the Class List is accurate as of the time of the mailing of the Class Notice and for purposes of distribution. The Settlement Administrator will use reasonable efforts to update and confirm the accuracy of the Class Members’ contact and bankruptcy information in the Class List through PACER and the United States Postal Service change of address system.

On or before the Notice Deadline (fifty (50) Days after Preliminary Approval), the Settlement Administrator shall send the Notice of Settlement to the Class Members in accordance with the Notice Plan.

**D. Class Action Fairness Act Notices.**

Wells Fargo, through the Settlement Administrator, shall be responsible for providing all notices required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

**E. Motion for Final Approval and Entry of Final Judgment.**

As soon as practicable following the Exclusion/Opt Out Deadline and not less than 30 days prior to the Final Approval Hearing, Class Counsel shall submit a Motion for Final Approval of the Settlement by the District Court. Class Counsel shall seek entry of the Final Approval Order

and Judgment, which shall be approved as to form and content by Wells Fargo prior to submission by Class Counsel, containing at least the following:

1. Finding that the District Court has personal jurisdiction over Plaintiffs and all Class Members and that the District Court has subject matter jurisdiction to approve this Settlement and Agreement;

2. Certifying the Class, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), solely for purposes of this Settlement;

3. Fully and finally approving this Agreement and its terms as being fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and directing its consummation pursuant to its terms and conditions;

4. Declaring this Agreement and the Final Approval Order and Judgment to be binding on and to have res judicata and preclusive effect in all pending and future lawsuits, motions or other proceedings encompassed by the Class Released Claims maintained by or on behalf of the Class Releasers;

5. Finding that the notice given to the Class Members pursuant to the Notice Plan and Class Notice (i) constituted the best notice practicable under the circumstances; (ii) constituted notice that was reasonably calculated under the circumstances to apprise Class Members of the pendency of the Action, of their right to object to or exclude themselves from the proposed Settlement as applicable, of their right to appear at the Final Approval Hearing, and of their right to seek relief; (iii) constituted reasonable, due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) complies in all respects with the requirements of Fed. R. Civ. P. 23, due process, and any other applicable law;

6. Finding that Class Counsel and Plaintiffs adequately represented Class Members and will adequately represent Class Members;

7. Directing that the Action and claims for damages be dismissed with prejudice and, except as otherwise explicitly provided for in the Agreement, without costs;
8. Discharging and releasing the Class Releasees from all Class Released Claims;
9. Permanently barring and enjoining the institution and prosecution, by Class Releasees, of any and all of the Class Released Claims;
10. Approving the Opt-Out List and determining that the Opt-Out List is a complete list of all persons who have timely and validly requested exclusion from the Class, and accordingly, who shall neither share in nor be bound by the Final Approval Order and Judgment;
11. Determining that the Agreement and the Settlement provided for therein and any proceedings taken pursuant to it are not and should not in any event be offered or received as evidence of a presumption, concession, acknowledgment, or an admission of liability or of any wrongdoing by Wells Fargo or the Class Releasees or of the suitability of these or similar claims to class treatment for litigation, trial, or any other purpose except settlement; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the Agreement;
12. Reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation, and enforcement of this Agreement;
13. Authorizing the Settling Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement as shall be consistent in all material respects with the Final Approval Order and Judgment and not limit the rights of the Settling Parties or Class Members; and
14. Containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

**F. Stay Order.**

Upon the date that the Bankruptcy Court enters the Preliminary Approval Order, Plaintiffs and all Class Members shall be barred and enjoined from commencing or instituting any new action or any proceeding of any kind (including, but not limited, to an action or motion for actual damages, statutory damages, and/or exemplary or punitive damages) in any court of law, arbitration tribunal, administrative forum, or other forum of any kind worldwide, based on the Class Released Claims.

**III. RELEASES**

Upon the Effective Date, and pursuant to the District Court's entry of the Final Approval Order and Judgment, the Settling Parties provide the following releases:

**A. Plaintiffs and Class Release of Wells Fargo.**

Plaintiffs and each and every Class Member, individually or together, and each and every one of their former, present, or future agents, predecessors, successors, heirs, legatees, executors, administrators, insurers, assigns, trustees, and spouses ("Class Releasers") release and fully discharge Wells Fargo, and each of its former, present, or future agents, insurers, predecessors, successors, subsidiaries, parent company(ies), affiliates, officers, directors, employees, and attorneys ("Class Releasees") from any and all past and/or present claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, motions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, under the laws of any jurisdiction, including but not limited to any claims arising under the United States Bankruptcy Code or the Federal Rules of

Bankruptcy Procedure, which they, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, from the beginning of time to the date of this Agreement resulting from, arising from, or relating in any way to the At-Issue Forbearances or the Notices of Forbearance (the “Class Released Claims”).

**1. No Future Actions Following Release.**

The Class Releasers shall not after the Effective Date seek (directly or indirectly) to commence, institute, maintain, or prosecute any suit, action, complaint or motion of any kind (including, but not limited to, claims for actual damages, statutory damages, restitution, and exemplary or punitive damages) against Class Releasees (including pursuant to the Action), based on the Class Released Claims, in any forum worldwide, whether on his or her own behalf or as part of any putative, purported, or certified class or as part of an action by any other plaintiff on his or her behalf.

**2. Covenant Not to Sue.**

Class Releasers hereby covenant not to sue the Class Releasees or to bring a motion in their bankruptcy case with respect to any Class Released Claims, including any claims that Class Releasers, or any of them, does not know or suspect to exist in his or her favor at the time of the release that if known by him or her, might have affected his or her settlement with and release of the Class Releasees, or might have affected his or her decision not to object to or opt-out of this Settlement. Class Releasers shall be permanently barred and enjoined from instituting, commencing, or prosecuting any claims or motions against the Class Releasees of any kind (including, but not limited to, for actual damages, statutory damages, restitution, and exemplary or punitive damages) based on the Class Released Claims. The Class Releasers contemplate and agree that this Agreement may be pleaded as a bar to a lawsuit or motion, and an injunction may be obtained preventing any action from being initiated or maintained, in any case sought to be

prosecuted on behalf of any Class Releasers (including, but not limited to, for actual damages, statutory damages, and exemplary or punitive damages) based on the Class Released Claims.

**3. Waiver of California Civil Code § 1542 and Similar Laws.**

In addition, the Class Releasers expressly acknowledge that they are familiar with and, upon Final Approval of this Settlement, waive and release with respect to the Class Released Claims any and all provisions, rights, and benefits conferred (a) by Section 1542 of the Civil Code of the State of California, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

(b) by any and all equivalent, similar, or comparable federal or state rules, regulations, laws, or principles of law of any other jurisdiction that may be applicable herein; and/or (c) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth in the Agreement. The Class Releasers expressly agree that for the consideration received under this Agreement, it is their intention to release, and they are releasing, all Class Released Claims, including any claims that Class Releasers, or any of them, does not know or suspect to exist in his or her favor at the time of the release that if known by him or her, might have affected his or her settlement with and release of the Class Releasees, or might have affected his or her decision not to object to or opt-out of this Settlement. The Class Releasers acknowledge that they may hereafter discover claims or facts other than or different from those which they know, believe, or suspect to be true with respect to the subject matter of the Class Released Claims, but the Class Releasers expressly waive and fully, finally, and forever settle and

release the Class Released Claims. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is contractual and not a mere recital.

**4. Dismissal.**

Subject to Court approval, all Class Releasers shall be bound by this Agreement, and all of their claims shall be dismissed with prejudice and released, even if they never received actual notice of the Action or this Settlement.

**5. Agreement To Be Bound.**

All members of the Class shall be subject to and bound by the provisions of this Settlement Agreement, the Class Released Claims, and the Judgment with respect to all Class Released Claims regardless of whether such Class Members obtain payment pursuant to the Settlement.

**IV. SETTLEMENT CONSIDERATION**

In full, complete, and final settlement of any and all claims in the Action, and as consideration for the releases provided by this Agreement, Wells Fargo agrees as follows:

**A. Settlement Fund.**

Within forty-five (45) Days after Preliminary Approval of the Settlement, Wells Fargo shall deposit the sum of \$15 million (\$15,000,000.00) into an escrow account maintained by the Settlement Administrator as the Settlement Fund. The non-reversionary Settlement Fund shall be used to pay for the following obligations under this Agreement: (1) payments to Subclass 1 Members; (2) payments to Subclass 2 Members; (3) Additional Compensation to Eligible Class Members; (4) any Fee and Expense Award approved by the District Court; (5) any Service Awards approved by the District Court; (6) the Settlement Administrator's Costs and Expenses; and (7) any *cy pres* award approved by the Court. In no event shall Wells Fargo deposit any additional funds into the Settlement Fund to cover any obligations set forth in the Agreement. Wells Fargo shall have no responsibility or liability for the maintenance, preservation, investment, or distribution of any amount of the Settlement Fund.

**B. Distribution of Net Settlement Amount.**

The Net Settlement Amount shall be distributed as follows:

**1. Subclass 1 Member Payments.**

Within thirty (30) Days of the Effective Date, the Settlement Administrator shall remit payment, in the amount of \$2,500.00 per Mortgage account that received an At-Issue Forbearance, to the Subclass 1 Members. Payments shall be made by check payable jointly to any and all co-borrowers on the account associated with the payment. For purposes of receiving this distribution, co-borrowers on a single Mortgage account shall be treated as a single Class Member, such that the co-borrowers receive one \$2,500.00 payment.

**2. Subclass 2 Member Payments.**

Within thirty (30) days of the Effective Date, the Settlement Administrator shall remit payment, in the amount of \$500.00 per Mortgage account that received an At-Issue Forbearance, to the Subclass 2 Members. Payments shall be made by check payable jointly to any and all co-borrowers on the account associated with the payment. For purposes of receiving this distribution, co-borrowers on a single Mortgage account shall be treated as a single Class Member, such that the co-borrowers receive one \$500.00 payment.

**3. Claims Fund**

**i.** The remainder of the Net Settlement Amount shall be placed into a Claims Fund and available to pay Additional Compensation to Eligible Class Members who submit a valid claim demonstrating damages proximately caused by the Forbearance in excess of the payment received by the Eligible Class Members pursuant to Paragraph IV.B.1 or 2 of the Agreement.

**ii.** Additional Payments to Eligible Class Members from the Claims Fund will be determined by the Claims Administrator, and to the extent appropriate, a claims ombudsman. A Claim Form will be mailed to Class Members with the Class Notice, in

substantially the same format as the Claim Form attached hereto as Exhibit A, and will also be available on the Settlement Website. Eligible Class Members may return the Claim Form to the Claims Administrator by mail or complete and submit it online through the Settlement Website. The Claims Administrator will process any valid Claim Forms that can be calculated mechanically by reference to the documentation provided by the Eligible Class Members with the Claim Form, and/or by referencing publicly available information, such as court dockets and Chapter 13 trustee records for the Eligible Class Members' bankruptcy cases. The claims ombudsman will evaluate Claim Forms that cannot be determined mechanically, i.e. those claims that require judgment and expertise to determine their validity and/or amount, and/or claims that require additional documentation.

**iii.** Class Counsel will select an independent and disinterested claims ombudsman with expertise in the areas of consumer bankruptcy and consumer litigation. The claims ombudsman's expenses and compensation (at an agreed upon hourly rate, not to exceed \$600.00/hour and subject to Court approval) shall be paid from the Claims Fund by the Claims Administrator.

**iv.** The decisions of the Claims Administrator and/or claims ombudsman regarding the claims will be final and binding, and the results of the claims process will be reported by the Claims Administrator and claims ombudsman to Class Counsel. The decisions of the Claims Administrator and/or claims ombudsman shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, any liability or wrongdoing by Wells Fargo, or liability on any claims or allegations or the value thereof. Further, any decision shall not be admissible in any proceeding for any purpose, and shall not be used by any person for any purpose whatsoever in the Action or any other legal proceeding, including but not limited to arbitrations, mediations, or subsequent litigations.

v. Wells Fargo will not play any role, have any responsibility for, or any liability whatsoever in or from the processing, review, or consideration of the Claim Forms submitted by Class Members.

vi. If any funds are remaining in the Claims Fund after the Settlement Administrator makes payments to all Eligible Class Members who submit a valid claim, those funds shall be distributed *pro-rata* to all Eligible Class Members who cashed a previous Settlement check, unless each such Class Member would receive less than \$10, in which case the Remaining Amount would be distributed to a *cy pres* recipient agreed to by the Settling Parties and approved by the Court. In the event the Settling Parties are unable to agree on a *cy pres* recipient, the Settling Parties will each submit their proposal for a *cy pres* recipient to the Court, who the Settling Parties agree will have authority to make the final decision on the *cy pres* recipient.

vii. In the event that the Claims Fund does not contain sufficient funds to pay all valid claims for Additional Compensation received by the Settlement Administrator, the claim amounts shall be reduced and paid on a *pro rata* basis.

**C. Fee and Expense Award and Class Representative Service Awards.**

Class Counsel may submit (i) a Fee and Expense Application requesting a Fee and Expense Award, and (ii) Service Award Applications requesting Service Awards on behalf of the Class Representatives, in accordance with Paragraph VII of this Agreement. Any Fee and Expense Award and Service Award shall be paid out of the Settlement Fund before any Remaining Amounts are made available for the Claims Fund.

**D. Administrative Costs and Expenses.**

All necessary costs to administer the terms of this Settlement, including but not limited to the costs of the Notice Plan and the Settlement Administrator, and payment of taxes, shall be paid for exclusively out of the Settlement Fund. Wells Fargo shall have no responsibility or liability for the maintenance, preservation, investment, or distribution of any amount of the Settlement

Fund. Up to \$100,000.00 from the Settlement Fund may be used to pay the Settlement Administrator for initial costs and expenses for implementing the terms of the Agreement after Preliminary Approval but before Final Approval.

## **V. NOTICE AND ADMINISTRATION OF SETTLEMENT**

### **A. Claim Form.**

The Claim Form shall be substantially in conformance with the format and content set forth in **Exhibit A** to this Agreement, subject to reasonable modifications required by the Court. The Claim Form will allow Eligible Class Members to submit and complete the Claim Form online and by electronic signature and will include a link to the Settlement Website and/or a QR Code or any other appropriate available technology to allow Eligible Class Members to submit claims electronically. Eligible Class Members will also be able to complete, sign, and mail a copy of the completed Claim Form to the Settlement Administrator, or upload it to the Settlement Website.

### **B. Notice.**

The Notice shall be substantially in conformance with the format and content set forth in **Exhibit B** to this Agreement, subject to reasonable modifications required by the Court.

### **C. Time to Appeal.**

The time to appeal from an approval of the Settlement shall commence upon the District Court's entry of the Judgment regardless of whether or not the Fee and Expense Application has been submitted to the District Court or resolved.

### **D. No Liability for Distribution of the Settlement Fund.**

The Settling Parties shall not have any liability with respect to the distribution of payments; the determination, administration, or calculation of claims; or any losses incurred in connection with any such matters. In addition to the releases set forth herein, the Class Releasers hereby fully, finally, and forever release, relinquish, and discharge the Class Releasees, and their counsel from

any and all such liability. No Person shall have any claim against the Settlement Administrator based on the distributions made substantially in accordance with this Agreement.

## **VI. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

### **A. The Settlement Administrator will Administer the Settling Parties' Settlement.**

The Settlement Administrator shall be responsible for the following tasks:

1. Conducting National Change of Address and PACER searches to obtain up-to-date address and bankruptcy information for Class Members prior to disseminating the Notice of Settlement;
2. Printing and disseminating the Notice of Settlement by email (where available) and first-class mail to each and every Class Member;
3. Printing and disseminating the Notice of Settlement by email (where available) and first-class mail (where email is not available) to counsel of record for each and every Class Member that is in an active Chapter 13 bankruptcy case as of the date that the Notice of Settlement is sent, which shall contain a header explaining why counsel of record is receiving the Notice of Settlement;
4. Printing and disseminating the Notice of Settlement by email (where available) and first-class mail (where email is not available) to the Chapter 13 trustees for each and every Class Member that is in an active Chapter 13 bankruptcy case as of the date that the Notice of Settlement is sent, which shall contain a header explaining why the Chapter 13 trustee is receiving the Notice of Settlement;
5. Printing and disseminating the applicable Claim Form by email (where available) and by first-class mail to each and every Class Member;
6. Furnishing promptly to counsel for the Settling Parties copies of any Requests for Exclusion, Opt-Out Forms, objections, or other written or electronic communications from each Class Member that the Settlement Administrator receives;

7. Keeping track of each request for exclusion and Opt-Out form, including maintaining the original mailing envelope in which the request for exclusion or Opt-Out form was mailed and reporting to Counsel for both sides the total number and identities of those who have requested exclusion or returned completed Opt-Out forms;
8. Taking all steps necessary to distribute payments from the Settlement Fund, as set forth in this Agreement and ordered by the Court, including issuing payments to Eligible Class Members;
9. Skip-tracing or otherwise attempting to ascertain current address information for each Settlement check returned as undeliverable;
10. Placing a stop-pay order on all Settlement checks not cashed before their void date;
11. Performing all tax reporting duties required by federal, state, and/or local law related to the administration of the Settlement Fund, any payments to Eligible Class Members, the Fee and Expense Award, and the Service Awards pursuant to this Settlement Agreement;
12. Responding to inquiries of Class Members regarding the terms of Settlement and procedures for filing objections and requests for exclusion, and Claim Forms;
13. Referring to Class Counsel all inquiries by Class Members regarding matters not within the Settlement Administrator's duties specified herein and contemporaneously giving Counsel for Wells Fargo notice of all such inquiries;
14. Responding to inquiries of Class Counsel regarding Class Members who have contacted Class Counsel regarding the terms of the Settlement and contemporaneously giving Counsel for Wells Fargo notice of all such inquiries;
15. Apprising Class Counsel and Counsel for Wells Fargo of the activities of the Settlement Administrator via a weekly report, including status reports regarding the Class Notice, requests for exclusion, completed Opt-Out forms, and completed Claim Forms received, and promptly providing copies to Class Counsel and Counsel for Wells Fargo of such documents

and all electronic, written or oral communications between the Settlement Administrator and any Class Member;

17. Apprising Class Counsel via a weekly report of Class Members who have not cashed checks, the total dollar amount of checks cashed by Subclass 1 Members and Subclass 2 Members after the first checks are sent pursuant to Paragraph IV.B.1 and 2 of this Agreement, the amount awarded to each Class Member who submits a claim pursuant to Paragraph IV.B.3 of this Agreement, the total dollar amount of checks cashed by Class Members who submit a claim, the total dollar amount of checks cashed by Subclass 1 Members and Subclass 2 Members pursuant to Paragraph IV.B.3.iii of this Agreement, and the fees and expenses of the Settlement Administrator.

16. Responding to requests for further information from Class Members via a toll-free number or email, including providing a copy of this Settlement Agreement, the Second Amended Complaint, or any other materials available on the Settlement Website, to any Class Member who requests such documents;

17. Creating and maintaining the Settlement Website, and removing the Settlement Website from the Internet promptly if the Settlement is terminated or if the Court denies Final Approval of the Settlement, and, in any event, within one-hundred and eighty (180) Days after the Effective Date;

18. Obtaining approval from the Settling Parties for the name of the Settlement Website before publishing;

19. Maintaining adequate records of its activities, including the dates of the mailing of Class Notice(s), second mailing, requests for exclusion, and Opt-Out forms, returned mail and other communications, and attempted written or electronic communications with Class Members;

20. Confirming in writing the substance of its activities and its completion of the administration of the Settlement;

21. Responding timely to communications from Class Counsel or Counsel for Wells Fargo;

22. To the extent required by applicable law, reporting timely each payment to Eligible Class Members on an IRS Form W-2 and IRS Form 1099 to each applicable Class Member;

23. Reporting timely on an IRS Form 1099 the Fee and Expense Award and Service Awards to Class Counsel and Class Representatives, respectively;

24. Providing assistance with mailing the CAFA notices required by the Settlement Agreement which shall be provided to the appropriate federal and state officials within ten (10) Days after the filing of the Preliminary Approval Motion pursuant to 28 U.S.C. § 1715;

25. Emailing and/or calling Eligible Class Members who did not cash their Settlement checks so that a new Settlement check can be issued;

26. Complying with the claims criteria and claims process as set out in Section IV.B.3.ii in this Agreement, and otherwise complying with the Settlement Administrator's duties set out in this Agreement.

27. Performing such other tasks as the Settling Parties mutually agree or that are specified in this Agreement.

**B.** The Settlement Administrator shall keep all information it obtains relating to the identification and contact information of Class Members strictly confidential pursuant to the Protective Order previously entered in the Action and use it only for the sole purposes described herein and shall destroy or return all such information to Counsel for Wells Fargo upon completion of the Settlement administration tasks. Furthermore, upon completion of its duties, the Settlement Administrator shall destroy or return to Class Counsel and Counsel for Wells Fargo all documents related to the Action, including all documents it received in connection with this case from the

Settling Parties, Class Members, Plaintiffs, or any other individuals (including, but not limited to, objections, Requests for Exclusion, and Opt-Out Forms).

**C.** Class Counsel and Counsel for Wells Fargo will provide the Settlement Administrator with a copy of this Settlement Agreement which identifies and lists duties to be performed by the Settlement Administrator, as described above.

**D.** All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be resolved jointly by Class Counsel and Counsel for Wells Fargo consulting in good faith. If the Settling Parties are unable to reach agreement, either may raise the disagreement with the Court.

## **VII. SERVICE AWARDS, ATTORNEYS' FEES, AND REIMBURSEMENT OF EXPENSES**

### **A. Fee and Expense Application.**

Class Counsel may submit an application (the "Fee and Expense Application") to the Court for payment of: (a) an award of attorneys' fees; plus (b) reimbursement of reasonable and actual expenses incurred in connection with prosecuting the Action. Class Counsel agree that the Fee and Expense Application will not seek an amount in excess of thirty-three percent (33%) of the Settlement Fund for attorneys' fees, plus reasonable and actual expenses.

### **B. Payment of Fee and Expense Award.**

Any amounts that are awarded by the Court pursuant to the paragraph above (the "Fee and Expense Award") shall be paid by the Settlement Administrator from the Settlement Fund within thirty (30) Days of the Effective Date unless ordered otherwise by the Court.

### **C. Award of Attorneys' Fees and Expenses Shall Not Impact the Effectiveness of this Agreement.**

The procedure for and the allowance or disallowance by the Court of the Fee and Expense Application is not part of the Settlement set forth in this Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of

the Settlement set forth in this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall not operate to (i) delay the implementation of this Agreement, including making the distributions to Eligible Class Members as further set forth in paragraph IV.B. of this Agreement, or (ii) terminate or cancel this Agreement. Further, no order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award shall constitute grounds for delaying the implementation, or cancellation or termination of, this Agreement.

**D. No Liability for Attorneys' Fees and Expenses of Class Counsel.**

Neither the Class Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to any payment(s) to Class Counsel pursuant to this Agreement and/or to any other person who may assert some claim thereto or any Fee and Expense Award that the Court may make in the Action, other than as set forth in this Agreement. Similarly, neither the Class Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

**E. Class Representatives' Service Award Application.**

Class Counsel and Class Representatives may submit an application to the Court for a Service Award ("Service Award Applications"). Class Counsel and Class Representatives agree that the Service Award Application shall not exceed \$12,500 for each Class Representative for their time, effort, and expense in prosecuting this litigation and achieving this Settlement. Any Service Awards that are awarded by the Court shall be paid from the Settlement Fund. Any Service Awards, plus interest that has accrued on the Service Award while held in escrow, shall be paid by the Settlement Administrator from the Settlement Fund within thirty (30) Days of the Effective Date.

## VIII. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

### A. Effective Date.

The Effective Date of this Agreement shall be conditioned on the occurrence of all of the following events:

1. Wells Fargo no longer has any right to terminate this Agreement, nor is there a possibility of termination of this Agreement as set forth herein or, if Wells Fargo does have such right, Wells Fargo has given written notice to Class Counsel that it will not exercise such right;

2. The District Court has finally approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Fed. R. Civ. P. 23, and has entered the Final Approval Order and Judgment;

3. The Class Released Claims and the Action are dismissed with prejudice pursuant to the Final Approval Order and Judgment; and

4. The expiration of appeal periods and/or resolution of all appeals:

a. If no appeal is taken from the Final Approval Order or Judgment, the date after the time to appeal therefrom has expired; or

b. If any appeal is taken from the Final Approval Order or Judgment, the date after all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing en banc, and petitions for certiorari or any other form of review, have been finally disposed of, such that the time to appeal therefrom has expired, in a manner resulting in an affirmance without material modification of the relevant order or judgment.

**B. Failure of Effective Date to Occur.**

If all of the conditions specified in this Section are not met, then this Settlement Agreement shall be cancelled and terminated and any funds deposited with the Settlement Administrator, including any interest thereon accrued, shall be returned to Wells Fargo, subject to and in accordance with the provisions set forth herein unless the Settling Parties mutually agree in writing to proceed with this Settlement Agreement. The effectiveness of the Settlement is expressly conditioned on the Settlement Agreement being approved by the Court and any appellate court reviewing the Settlement without it being rejected or required to be materially modified by any Court ruling or any order resulting from an appeal or other review. If the Settlement is not finally approved by the District Court and any appellate court reviewing it without material modification, the Agreement shall terminate and cease to have any effect, unless mutually agreed otherwise in writing by the Settling Parties.

**C. Requests for Exclusion/Opt-Outs.**

Any Class Member who wishes to opt-out of the Class must do so on or before the Exclusion/Objection Deadline specified in the Class Notice in the manner laid out in the Class Notice.

1. In order to become an Opt-Out, a Class Member must mail a request for exclusion to the Settlement Administrator with a post-mark date no later than the Exclusion/Objection Deadline. The request for exclusion must be personally signed by the Class Member and include all information specified in the Class Notice. Opt-Outs may opt-out of the Class only on an individual basis; so-called “mass” or “class” opt-outs shall not be allowed and shall be of no force or effect. For the avoidance of doubt, no Class Member, or any person acting on behalf of or in concert with that Class Member, may submit a request for exclusion of any other Class Member. If a Class Member submits both a request for exclusion and a Claim Form, the Claim Form shall take precedence and the Class Member shall not be deemed to have validly

excluded themselves from the Settlement. In the event that two Class Members are co-borrowers on the same Mortgage account and one Class Member opts out of the Settlement, both Class Members will be treated as opt-outs and neither Class Member will be eligible to receive a Settlement payment.

2. No later than five (5) Days after the Exclusion/Objection Deadline, the Settlement Administrator shall provide Class Counsel and Counsel for Wells Fargo a complete and final list of Opt-Outs. With the Motion for Final Approval of the Settlement, Class Counsel will file with the District Court a complete list of Opt-Outs, including the name, city, and state of the person requesting exclusion (the “Opt-Out List”).

- a. With respect to any Opt-Outs, Wells Fargo reserves all legal rights and defenses, including, but not limited to, any defenses relating to whether the person qualifies as a Class Member and/or has standing to bring any claim.
- b. Wells Fargo may challenge the validity of any Opt-Out by filing a motion with the Court within five (5) Days of the Settlement Administrator providing Counsel for Wells Fargo a complete and final list of Opt-Outs. The Court shall have jurisdiction to resolve any disputes regarding the validity of Opt-Outs. Any decision by Wells Fargo not to dispute an Opt-Out shall not be a waiver, determination, or preclusive finding against the Class Releasees in any proceeding.
- c. In the event that the number of Opt-Outs meets the conditions set forth in a confidential supplemental letter agreement between the Parties, Wells Fargo, in its sole discretion, may terminate this Agreement pursuant to Paragraph VIII.E. The supplemental letter shall not be submitted to the Court except in the event of a dispute

thereunder or a separate Court order, in which case the Parties shall seek to file it only under seal.

**D. Objections.**

Class Members who wish to object to any aspect of the Settlement, including any Fee and Expense Application, must file with the District Court a written statement containing their objections prior to the Exclusion/Objection Deadline and abide by the requirements laid out in the Class Notice. The written objections must also be mailed to the Settlement Administrator with a post-mark date no later than the Exclusion/Objection Deadline, with a copy to Class Counsel and Wells Fargo's Counsel. The written statement must include all required information as specified in the Notice of Settlement, including but not limited to a description of all objections to the Settlement, the reasons for said objections, and any legal authority supporting the objections. Class Members who opt-out of the Settlement shall not have the right to object to the Settlement and shall not have standing to do so. Any award or payment of attorneys' fees made to the counsel of an objector to the Settlement shall be made only by Court order and upon a showing of a substantial benefit conferred to the Class. Any award of attorneys' fees by the District Court will be conditioned on the objector and his or her attorney stating under penalty of perjury that no payments shall be made to the objector based on the objector's participation in the matter other than as ordered by the District Court.

Neither the Settling Parties nor any person acting on their behalf shall seek to solicit or otherwise encourage anyone to object to the Settlement, or appeal from any order of the Court that is consistent with the terms of this Settlement.

**E. Termination.**

Plaintiffs, through Class Counsel, and Wells Fargo shall have the right, but not the obligation, to terminate this Agreement if: (1) the Court rejects, modifies, or denies approval of any portion of this Agreement or the proposed Settlement that results in a substantial modification

to a material term of the proposed Settlement; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters, narrows, or expands, any portion of the Final Approval Order, that results in a substantial modification to a material term of the proposed Settlement. Further, Wells Fargo shall have the right, but not the obligation, to terminate the Agreement if: (1) the number of Opt-Outs meets the conditions set forth in the confidential supplemental letter agreement between the Settling Parties; or (2) the Bankruptcy Court does not enter the Preliminary Approval Order within one hundred and twenty (120) days of Plaintiffs' filing the Motion for Preliminary Approval; or (3) the District Court does not enter the Final Approval Order within one hundred and twenty (120) days of Plaintiffs filing the Motion for Final Approval. The terminating party must exercise the option to withdraw from and terminate this Agreement, as provided in this Section, by a signed writing served on the other Settling Parties no later than ten (10) Days after receiving notice of the event prompting the termination. If, but only if, this Agreement is terminated pursuant to this Section then:

1. The Settling Parties will be returned to their positions *status quo ante* and this Agreement shall be null and void and shall have no force or effect and all of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Plaintiffs, Wells Fargo, or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Agreement, except that the Settling Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights are prejudiced by the settlement negotiations and proceedings; and

2. Neither this Agreement, the fact of its having been made, nor the negotiations leading to it, shall be admissible or entered into evidence for any purpose whatsoever.

**F. Other Orders.**

No Settling Party shall have any obligation whatsoever to proceed under any terms other than those substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense Application, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Settling Party. Without limiting the foregoing, Wells Fargo shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action and the Class Released Claims.

**IX. NO ADMISSION OF LIABILITY**

**A. Final and Complete Resolution.**

The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action, and to compromise claims that are contested, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Action.

**B. Federal Rule of Evidence 408.**

The Settling Parties agree that this Settlement Agreement, its terms, and the negotiations surrounding this Settlement Agreement shall be governed by Federal Rule of Evidence 408 and any state-law equivalents and shall not be admissible or offered or received into evidence in any suit, action, or other proceeding, except upon the written agreement of the Settling Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give effect to, declare, or enforce the rights of the Settling Parties with respect to any provision of this Agreement.

**C. Use of Agreement as Evidence.**

Whether or not this Agreement becomes Final or is terminated pursuant to its terms, the Settling Parties expressly agree that neither this Agreement nor the Settlement, any act performed

or document executed pursuant to or in furtherance of this Agreement or the Settlement may be deemed to be or may be used as an admission of, or evidence of: (a) the validity of any claims released by the Agreement, any allegation made in the Action, or any violation of any statute or law or of any wrongdoing or liability of Wells Fargo, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other proceeding; or (b) any liability, fault, or omission of the Class Releasees in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement; provided, however, in the event this Settlement becomes Final, the Class Releasees may file this Agreement (including the Exhibits), the Final Approval Order, and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

## **X. REPRESENTATIONS AND WARRANTIES**

A. This Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Fed. R. Civ. P. 23. Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Plaintiffs and Wells Fargo represent and warrant that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use reasonable efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. This includes the obligation to (a) oppose non-meritorious objections and to defend the Agreement and the Settlement before the Court and on appeal, if any;

(b) seek approval of this Agreement and of the Settlement by the Court; (c) move for the entry of the orders required to effectuate Preliminary and Final Approval; and (d) join in the entry of such other orders as are necessary to effectuate this Agreement.

B. Any Fee and Expense Award that Class Counsel may seek upon application to the Court pursuant to this Agreement shall include all attorneys' fees and litigation costs that Class Counsel and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Class Counsel, seek or may have any right or claim to in connection with the Action and the Class Released Claims.

C. Plaintiffs represent and warrant that other than Class Counsel, as that term is defined herein, there is no other person having any interest in any award of attorneys' fees, expenses, or litigation costs in connection with the Action, Agreement, or Settlement.

D. Plaintiffs and Wells Fargo represent and warrant that he, she, it, or they have full authorization and capacity to enter into this Agreement and to carry out the obligations provided for herein. Each Person executing this Agreement on behalf of a Settling Party, entity, or other Person(s) covenants, warrants, and represents that he, she, or it has been fully authorized to do so by that Settling Party, entity, or other Person(s). Plaintiffs and Wells Fargo represent and warrant that he, she, it, or they intend to be bound fully by the terms of this Agreement.

E. Plaintiffs and Wells Fargo represent and warrant that they have not, nor will they, unless expressly authorized to do so by the terms of this Agreement, (a) attempt to void this Agreement in any way; (b) Opt-Out of the Settlement under this Agreement; (c) solicit or encourage in any fashion a member of the Class to Opt-Out; or (d) solicit or encourage in any fashion any effort by any Person to object to the Settlement under this Agreement.

F. If any Person breaches the terms of any of the representations and warranties in this section, the Court shall retain jurisdiction over this matter to entertain actions by a Settling Party against such Person for breach and/or any Settling Party's request for a remedy for such breach.

G. Class Counsel represent and warrant that they (a) will not seek out or solicit, and (b) have no present intention to pursue individual or class claims against Wells Fargo or any of the Class Releasees with respect to matters within the scope of the Class Released Claims unless this Settlement is not granted Preliminary or Final Approval by the Court. The Settling Parties understand and agree that nothing in this paragraph imposes or shall be construed to prohibit or restrict Class Counsel from representing persons who seek representation for such claims arising subsequent to the date of this Agreement.

H. Plaintiffs and Class Counsel represent and warrant that they will comply with the Protective Order that applies to this Action and will not use or seek to use the fact or content of the Settlement in this Action in connection with any other claim, action, or litigation against any Class Releasee (excepting only actions to enforce or construe this Agreement).

I. Class Counsel represent and warrant to Wells Fargo that they have the authority to execute this Agreement on behalf of Plaintiffs, and themselves, and thereby to bind Plaintiffs, to all terms and conditions of this Agreement, and, subject to Court approval, to bind all Class Members to the terms and conditions of this Agreement.

## **XI. MISCELLANEOUS PROVISIONS**

### **A. Voluntary Settlement.**

The Settling Parties agree that the terms of the Settlement as described herein were negotiated in good faith by the Settling Parties with the assistance of an independent mediator, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

### **B. Reasonable Best Efforts to Effectuate This Settlement.**

The Settling Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms

and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement.

**C. Subsequent Events Impacting Administration.**

In the event that there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Settling Parties, and failing agreement, as shall be ordered by the Court.

**D. Claims in Connection with Administration.**

No Person shall have any claim against Plaintiffs, Wells Fargo, Counsel for Wells Fargo, Class Counsel, the Settlement Administrator, or the Class Releasees or their agents based on administration of the Settlement substantially in accordance with the terms of the Agreement or any order of the Court or any appellate court.

**E. Binding Effect.**

This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs shall be binding upon all Class Members.

**F. Authorization to Enter Settlement Agreement.**

The undersigned representatives of Wells Fargo represent that they are fully authorized to enter into and to execute this Agreement and any modifications or amendments to the Agreement on behalf of Wells Fargo. Class Counsel, on behalf of Plaintiffs and the Class, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of the Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

**G. Notices.**

All notices and responses to notices under this Agreement shall be in writing. Each such notice or response shall be given either by email unless otherwise specified herein or in the notice to the Class; and, if directed to any Class Member, shall be addressed to Plaintiffs' counsel at their email addresses set forth below, and if directed to Wells Fargo, shall be addressed to Counsel for Wells Fargo at the email addresses set forth below or such other email addresses as Class Counsel or Wells Fargo may designate, from time to time, by giving notice to all Settling Parties hereto in the manner described in this paragraph.

If directed to Plaintiffs or any Class Member, email address notice to:

Theodore Bartholow, III, [thad@kblawtx.com](mailto:thad@kblawtx.com)

Karen Kellett, [kkellett@kblawtx.com](mailto:kkellett@kblawtx.com)

If directed to Wells Fargo, email address notice to:

William C. Mayberry, [bill.mayberry@troutman.com](mailto:bill.mayberry@troutman.com)

Amy P. Williams, [amy.williams@troutman.com](mailto:amy.williams@troutman.com)

Andrew Atkins, [andrew.atkins@troutman.com](mailto:andrew.atkins@troutman.com)

**H. No Party Deemed to Be the Drafter.**

None of the Settling Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, rule of interpretation, or construction that would or might cause any provision to be construed against the drafter hereof.

**I. Choice of Law.**

This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Virginia, and the rights and obligations of the Settling Parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Virginia without giving effect to that State's choice of law principles.

**J. Amendment.**

This Agreement shall not be modified in any respect except by a writing executed by Wells Fargo, or at Wells Fargo's election, Counsel for Wells Fargo, and Plaintiffs or Class Counsel, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. Should an amendment occur before Final Approval, the Settling Parties shall file a notice with the Court and notify the Class through a posting on the Settlement Website. Up until the deadline for Service Award Applications, Plaintiffs retain sole discretion to name one or more Eligible Class Members as additional or substitute Class Representatives, without amendment of this Agreement, subject to the approval of the Court at the Final Approval Hearing.

**K. Waiver.**

The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement. Nothing in the Settlement Agreement (including the fact of Settlement) constitutes or shall be construed as a waiver by Wells Fargo of whatever rights it may have under any arbitration agreement, including with respect to any claim, lawsuit, or judicial proceeding initiated by a member of the Class who has opted-out of the Settlement.

**L. Execution in Counterparts.**

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Settling Parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

**M. Integrated Agreement.**

This Agreement constitutes the entire agreement between the Settling Parties with respect to the Settlement. This Agreement supersedes all prior negotiations and agreements, including but not limited to the Term Sheet, and may not be modified or amended except by a writing signed by

the Settling Parties and their respective counsel. The Settling Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each Settling Party or believed by such party to be true. Each Settling Party therefore expressly assumes the risk of the facts or law turning out to be different and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

**N. Attorneys' Fees and Costs.**

Except as otherwise expressly provided in this Agreement, each party shall bear its own costs and attorneys' fees.

**O. Return or Destruction of Confidential Materials.**

The Settling Parties agree to continue to comply with the Protective Order entered in the Action at the conclusion of the case. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Agreement.

**P. Intended Beneficiaries.**

No provision of this Agreement shall provide any rights to, or be enforceable by, any Person that is not one of the Plaintiffs, a Class Member, Wells Fargo, one of the Class Releasees, Class Counsel, or Counsel for Wells Fargo, except that this Agreement will be binding upon and inure to the benefit of the successors and assigns of the Settling Parties. No Class Representative,

Class Member, or Class Counsel may assign or otherwise convey any right to enforce any provision of this Agreement.

**Q. Regular Course of Business.**

The Settling Parties agree that nothing in this Agreement shall be construed to prohibit communications between Class Releasees, on the one hand, and Class Members, on the other hand, in the regular course of business.

**R. Tax Consequences.**

No representations or advice regarding the tax consequences of this Agreement have been made by any Settling Party. The Settling Parties further understand and agree that each Settling Party, each Class Member, each of Class Counsel, and Plaintiffs shall be responsible for his, her, its, or their own taxes, if any, resulting from this Agreement and any payments made pursuant to this Agreement.

**S. Qualified Settlement Fund.**

The Settling Parties agree that the Settlement Fund shall be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund. Defendants shall have no obligation to replenish the Settlement Fund as a result of any taxes owed or paid out of the Settlement Fund or for any other reason. The Settling Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible.

**T. Taxes for the Settlement Fund.**

All taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an administrative expense, and shall be timely paid by the Settlement Administrator without prior order of the Court.

**U. Bankruptcy Proceedings.**

1. Wells Fargo is under no obligation to notify any bankruptcy court that has, had, or may have jurisdiction over such Class Member's bankruptcy proceedings or any trustee or examiner appointed in such Class Member's bankruptcy proceedings of this Agreement or the benefits conferred by the Agreement and the Settlement.

2. The Settling Parties agree that any dispute concerning the rights of a bankruptcy estate to the proceeds of any payment under the Settlement or Service Award shall be adjudicated by the applicable bankruptcy court. The Settlement Administrator shall follow any order of the applicable bankruptcy court with respect to the proceeds of any payment or Service Award.

**V. No Conflict Intended; Headings.**

Any inconsistency between this Agreement and the exhibits attached hereto shall be resolved in favor of this Agreement. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

**W. Class Member Obligations.**

Under no circumstances shall the Settlement or Agreement or any release herein be deemed to alter, amend, or change the terms and conditions of any account or loan to which any Class Member is or was a party, or to provide a defense to any such loan, nor shall the Agreement or any release herein be deemed to have any effect in any bankruptcy case, in any foreclosure proceeding, or in any other action involving a Class Member hereto, nor shall the Settlement or the Agreement create or be construed as evidence of any violation of law or contract.

**X. Press Release.**

Plaintiffs and Class Counsel shall not issue, or otherwise cause to be issued, any press release, advertisement, or response to media inquiry without first obtaining Wells Fargo's approval on the fairness and accuracy of the content of such press release, advertisement, or response with respect to the Action. Under no circumstance shall Plaintiffs or Class Counsel disclose to any third party (i) any confidentially designated discovery obtained from Wells Fargo in the Action and/or (ii) any non-public information regarding the Settling Parties' negotiation of this Settlement and/or this Agreement, except as may be otherwise permitted in this Agreement. Nothing within this provision shall restrain Plaintiffs or Class Counsel from discussing publicly available information regarding the Action in any court filings or in non-public communications within their law firms, or with their lawyers, family members, clients or prospective clients provided that any such statements shall not be defamatory to Wells Fargo.

**Y. Further Disputes.**

If any disputes arise out of the finalization of the settlement documentation, said disputes are to be resolved by David Geronemus first by way of expedited telephonic mediation and, if mediation is unsuccessful, then by way of final, binding, non-appealable determination.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.

PLAINTIFF

By:

---

Troy Shannon Harlow

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

---

Mark Stephen Estes

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

---

Kimberly Porter Fewell

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

---

Beatriz Villegas-Rodriguez

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

\_\_\_\_\_  
Rodolfo Rodriguez

Date: \_\_\_\_\_, 2024

DEFENDANT WELLS FARGO BANK, N.A.

By:

\_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2024

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.

PLAINTIFF

By:

  
\_\_\_\_\_  
Troy Shannon Harlow

Date: 3-24, 2024

PLAINTIFF

By:

  
\_\_\_\_\_  
Mark Stephen Estes

Date: March 23, 2024

PLAINTIFF

By:

\_\_\_\_\_  
Kimberly Porter Fewell

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

\_\_\_\_\_  
Beatriz Villegas-Rodriguez

Date: \_\_\_\_\_, 2024

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.

PLAINTIFF

By:

\_\_\_\_\_  
Troy Shannon Harlow

Date: \_\_\_\_\_, 2024

PLAINTIFF


By:

\_\_\_\_\_  
Mark Stephen Estes

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

  
\_\_\_\_\_  
Kimberly Porter Fewell

Date: March 26, 2024

PLAINTIFF

By:

\_\_\_\_\_  
Beatriz Villegas-Rodriguez

Date: \_\_\_\_\_, 2024

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.

PLAINTIFF

By:

\_\_\_\_\_  
Troy Shannon Harlow

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

\_\_\_\_\_  
Mark Stephen Estes

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

\_\_\_\_\_  
Kimberly Porter Fewell

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

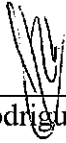
✓   
\_\_\_\_\_  
Beatriz Villegas-Rodriguez

Date: 03, 26, 2024

PLAINTIFF

By:

✓



\_\_\_\_\_  
Rodolfo Rodriguez

Date: 3/26, 2024

DEFENDANT WELLS FARGO BANK, N.A.

By:

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2024

PLAINTIFF

By:

\_\_\_\_\_  
Rodolfo Rodriguez

Date: \_\_\_\_\_, 2024

DEFENDANT WELLS FARGO BANK, N.A.

By:

DocuSigned by:

Heber Santos

A131B7B60B2C435...

Title: SEVP, CEO of Consumer Lending

Date: 03/22, 2024

# EXHIBIT D



**ORDER PRELIMINARILY APPROVING  
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, the above titled action is pending before this Court, which is referred to herein as the “Action”;

WHEREAS, Plaintiffs having made application, pursuant to Fed. R. Bankr. P. 7023(e) and Fed. R. Civ. P. 23(e) for an order approving the settlement of this Action, in accordance with the Settlement Agreement and Release dated March 26, 2024 (the “Settlement Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Settlement Agreement and the exhibits annexed thereto;

WHEREAS, Plaintiffs agreed to seek preliminary approval of the Settlement Agreement and proposed settlement from this Court, and the Parties agreed that concurrently with the Plaintiffs’ filing of their motion for preliminary approval of the Settlement Agreement, the Parties would file a conditional motion to withdraw the reference to the Bankruptcy Court with the United States District Court for the Western District of Virginia (the “District Court”), so that the District Court may decide whether to approve this settlement in accordance with Rule 23(c) of the Federal Rules of Civil Procedure; and

WHEREAS, all defined terms herein have the same meanings as set forth in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement.** Plaintiffs Troy Shannon Harlow, Mark Stephen Estes, Kimberly Porter Fewell, Beatriz Villegas-Rodriguez and Rodolfo Rodriguez, (together, “Named Plaintiffs”)

and all members of the Class, and Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) (collectively, the “Parties”), have negotiated a potential settlement to the Action to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Class Released Claims (as defined in the Settlement Agreement) against Wells Fargo and the Releasees.

2. **Review.** At the preliminary approval stage, the Court’s task is to evaluate whether the settlement is within the “range of reasonableness.” 4 Newberg on Class Actions § 11.26 (4th ed. 2010). The Court is not allowed to approve a settlement in a class action unless it finds “that the settlement is fair, reasonable, and adequate. *In re Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation*, 952 F.3d 471, 484 (4<sup>th</sup> Cir. 2020). A decision to approve a class action settlement will only be reversed if there is a “clear showing that the district court abused its discretion” in approving the settlement. *In re Jiffy Lube Securities Litig.*, 927 F.2d 155, 158 (4th Cir. 1991) (citations omitted). Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See id.* The Court has carefully reviewed the Settlement Agreement, as well as the files, records, and proceedings to date in the Action. The terms and conditions in the Settlement Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the meanings attributed to them in the Settlement Agreement.

3. **Jurisdiction.** This Court and the District Court have jurisdiction over the subject matter of the Action and over all parties to the Action, including all of the Class Members, and venue in this Court is proper.

4. **Preliminary Approval.** The Court does hereby preliminarily approve the Settlement Agreement and the settlement set forth therein because the Parties have shown that the

Settlement Agreement is fair, reasonable, and adequate, and was the product of informed, good-faith, arms'-length negotiations between the Parties and their counsel, and thus the Court believes that the District Court is likely to approve the Settlement under Fed. R. Bankr. P. 7023(e)(2) and Fed. R. Civ. P. 23(e)(2) and certify the class for purposes of judgment on the Settlement. The Settlement therefore meets the requirements for preliminary approval under Fed. R. Civ. P. 23(e)(1)(B).

5. **Settlement Class.** The Court conditionally certifies, for settlement purposes only (and for no other purpose and with no other effect upon the Action, including no effect upon the Action should the Settlement Agreement not receive final approval or should the Effective Date not occur), a class defined as: All persons in the United States who: (a) had a Mortgage serviced by Wells Fargo that was placed into a Forbearance on or between March 1, 2020 and December 31, 2021 ("At-Issue Forbearance"); and (b) were a debtor or the Co-Borrower of a debtor in a Chapter 13 bankruptcy case on the date that the Mortgage was placed into the Forbearance; and (c) are not Wells Fargo's officers, directors, or employees, Counsel for Wells Fargo, or Class Counsel. The Class and Class Members include all individuals who signed the deed of trust, mortgage or other security document associated with a Mortgage even if they did not sign the underlying promissory note or loan.

The Court also conditionally certifies the Subclasses, as defined in Sections I.57 and 59 of the Settlement Agreement. The Court finds, for settlement purposes only, that class certification under Fed. R. Bankr. P. 7023(a) and (b)(3) and Fed. R. Civ. P. 23(a) and (b)(3) is appropriate in that, in the settlement context: (a) the Class Members are so numerous that joinder of all Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual question; (c) the claims of the Class Representatives

are typical of the claims of the Class; (d) the Class Representatives and their counsel have fairly and adequately represented and protected the interests of the Class Members, and will fairly and adequately represent and protect the interests of the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. **Designation of Class Representatives and Class Counsel.** The Court appoints the Plaintiffs Troy Shannon Harlow, Mark Stephen Estes, Kimberly Porter Fewell, Beatriz Villegas-Rodriguez and Rodolfo Rodriguez as Class Representatives, and Theodore O. Bartholow and Karen L. Kellett of Kellett & Bartholow PLLC, Malissa L. Giles and Tracy A. Giles of Giles & Lambert, PC, and Abelardo Limon of Limon Law Office as Class Counsel.

7. **Final Approval Hearing.** A hearing (the “Final Approval Hearing”) shall be held before the District Court on October 11, 2024, at 10:00 a.m. in the United States District Court for the Western District of Virginia, Poff Federal Building, 210 Franklin Road S.W., Roanoke, VA 24011, to determine, among other things: (i) whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a Judgment as provided in Paragraph II.E. of the Settlement Agreement should be entered; (iii) whether Class Members should be bound by the Release set forth in the Agreement; (iv) any amount of fees and expenses that should be awarded to Class Counsel; and (v) and amount of Service Awards for the Class Representatives.

8. **Claim Form and Class Notice.** The Court approves the form, substance and requirements of the Claim Form annexed hereto as Exhibit A and the Notice of Proposed Settlement of Class Action (the “Notice”) annexed hereto as Exhibit B. The Court further finds that the form, content and mailing of the Claim Form and Notice, substantially in the manner and form set forth in Sections II.C., V.A and B, and VI of the Settlement Agreement, and in Exhibits

A and B, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The Court further finds that this is the best notice practicable under the circumstances and is reasonably calculated, under all the circumstances, to apprise potential Class Members of the pendency of the Action, to apprise persons who would otherwise fall within the definition of the Class of their right to exclude themselves from the proposed Class, and to apprise Class Members of their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing. The Court further finds that the Notice constitutes due and sufficient notice to all persons entitled thereto.

9. **Settlement and Claims Administrator.** Pursuant to Rule 7023(c) of the Federal Rules of Bankruptcy Procedure, the Court appoints Epiq Class Action & Claims Solutions, Inc. (“Epiq”) (“Settlement Administrator”) to supervise and administer the notice procedure, processing of payments to Settlement Class Members, and reviewing, determining and paying Claims submitted by Class Members, as more fully set forth below:

(a) No later than fifty (50) days from the entry of this Order (the “Notice Deadline”), the Settlement Administrator shall cause copies of the Notice, substantially in the form annexed as Exhibit B hereto, to be mailed by email if known and by first class mail to each individual on the Class List in accordance with their designated Subclass;

(b) No later than the Notice Deadline, the Settlement Administrator shall establish a website at [www.WellsFargoBankruptcyForbearanceClass.com](http://www.WellsFargoBankruptcyForbearanceClass.com) and shall post on the website the Settlement Agreement, the Class Notice, and the Claim Form;

(c) Following the mailing of the Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing and the other information in Section VI of the Settlement Agreement; and

(d) The Settlement Administrator shall otherwise carry out its duties as set forth in the Settlement Agreement.

10. **Exclusion from the Class.** Any Class Member may, upon request, be excluded from the Class. Any such Class Member must submit a written request to Opt Out no later than the Exclusion/Objection Deadline, which is sixty (60) days after the Notice Deadline. The written request to Opt Out must be sent to the Settlement Administrator: *Harlow, et al. v. Wells Fargo Bank, N.A.*, P.O. Box 5130 Portland, OR 97208-5130. To be valid, the request to Opt Out must include, the Class Member's name, address, telephone number, original signature, and date, and a statement that "I do not want to be a member of the class in *Harlow, et al. v. Wells Fargo Bank, N.A.*, Adv. Pro. No. 20-07028, pending in the United States District Court for the Western District of Virginia." All Class Members who submit valid and timely requests to Opt Out in the manner set forth in this paragraph shall have no rights under the Agreement, shall not receive a Settlement payment, and shall not be bound by the Settlement Agreement or any Final Judgment. Mass or class opt outs shall not be allowed. A Class Member who desires to opt out must take timely affirmative written action pursuant to this Order and the Settlement Agreement, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Parties.

11. **Copies of Requests to Opt Out.** The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely requests to Opt Out within five (5) days after the deadline to Opt-Out.

12. **Entry of Appearance.** Any member of the Class who does not exclude himself or herself from the Settlement Class may enter an appearance in the Action, at his or her own expense,

individually or through counsel of his or her own choice. If he or she does not enter an appearance, he or she will be represented by Class Counsel.

13. **Binding Effect on Class.** All Members who do not exclude themselves from the Settlement Class by properly and timely submitting an exclusion form shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

14. **Objections.** Any Class Member who does not timely and validly exclude himself or herself from the Settlement Class may appear and show cause, if he or she has any reason why the proposed Settlement of the Action should not be approved as fair, reasonable and adequate, why a Final Judgment should not be entered thereon, why attorneys' fees and expenses should not be awarded to Class Counsel or Service Awards awarded to the Class Representatives; provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment to be entered thereon approving the same, or any attorneys' fees and expenses to be awarded to Class Counsel or Service Award awarded to the Class Representatives, unless a written objection is filed with the Clerk of the United States District Court for the Western District of Virginia, Poff Federal Building, 210 Franklin Road S.W., Suite 540, Roanoke, VA 24011, on or before sixty (60) days from the Notice Deadline.

15. A copy of the objection must also be mailed to the Settlement Administrator, Class Counsel and Counsel for Wells Fargo, postmarked on or before sixty (60) days from the Notice Deadline.

To be valid, the objection must set forth, in clear and concise terms: (a) the Class Member's name, address, and telephone number; (b) a statement saying that Class Member objects to the

Settlement in *Harlow, et al. v. Wells Fargo Bank, N.A.*, Adv. Pro. No. 20-07028, and describing the nature of the objection; (c) a statement describing whether the Class Member's objection applies only to the Class Member, to a specific subset of the Class, or to the entire Class; (d) the specific grounds for the objection; (e) any legal authority that supports the objection; (f) a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; and (g) the Class Member's signature.

If a lawyer is asserting an objection on the Class Member's behalf, the lawyer must also: (a) file a notice of appearance with the Court on or before the deadline to object to the Settlement; (b) file a sworn declaration attesting that he or she represents the Class Member; and (c) file a sworn declaration that specifies the number of times during the prior five-year period that he or she has objected to a class action settlement on his or her own behalf or on behalf of a class member.

Any Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement Agreement at the Final Approval Hearing, and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Settlement Agreement, and to the award of Attorneys' Fees and Expenses to Class Counsel and the payment of Service Awards to the Class Representatives for their representation of the Class, unless otherwise ordered by the Court.

16. **Appearance of Objectors at Final Approval Hearing.** Any Class Member who files and serves a written objection in accordance with Paragraph 14 of this Order may appear, in person or by counsel, at the Final Approval Hearing held by the District Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the

objector: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the deadline to file an objection to the Settlement (“Notice of Intention to Appear”) indicating that the Class Member (or the Class Member’s attorney) would like to speak at the hearing; and (b) serves the Notice of Intention to Appear on Class Counsel and Defense Counsel by the deadline to file an objection to the Settlement. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objector will present to the District Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Settlement Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

17. **Service of Motion for Final Approval.** The motion in support of final approval of the Settlement shall be filed and served no later than thirty (30) calendar days prior to the Final Approval Hearing. Class Counsel’s application for Attorneys’ Fees and Expenses shall be filed and served and placed on the Settlement Website no later than forty (40) days before the Exclusion/Objection Deadline.

18. **Fees, Expenses, and Awards.** Neither Defendant nor the Releasees shall have any responsibility for any application for Attorneys’ Fees and Expenses submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. At or after the Final Approval Hearing, the District Court shall determine whether any application for Attorneys’ Fees and Expenses, and any award to the Class Representatives for their representation of the Class, should be approved.

19. **Releases.** If the Settlement is finally approved, the Releasors shall release the Releasees from all Released Claims.

20. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Settlement Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Defendant. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action.

21. **Adjournment of Final Approval Hearing.** This Court and the District Court reserve the right to adjourn the date of the Final Approval Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The District Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

22. **Stay of Proceedings.** All proceedings in this Action are stayed until further Order of this Court except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement.

23. **Termination of Settlement.** If the Agreement is terminated as provided in Section VIII.E. of the Agreement, then this Order may not be introduced as evidence or referred to in any actions or proceedings by any person or entity and shall be treated as vacated, *nunc pro tunc* (except paragraph 20 of this Order shall remain in effect), and each party shall be restored to his, her, or its respective position in this Action as it existed prior to the execution of the Settlement Agreement.

24. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

25. **Authority.** The Court hereby authorizes the Parties to take such further steps as necessary and appropriate to establish the means necessary to implement the terms of the Settlement Agreement.

26. **Jurisdiction.** This Court and the District Court retain jurisdiction over the Action to consider all further matters arising out of or connected with the Agreement and the Settlement.

\*\*\* End of Order \*\*\*

<p>Submitted by: <u>/s/Malissa L. Giles</u> Malissa L. Giles (VSB No. 33955) Tracy A. Giles (VSB No. 34594) Giles &amp; Lambert, PC P.O. Box 2780 Roanoke, VA 24001 Tel: (540) 981-9000 mgiles@gileslambert.com</p> <p>Theodore O. Bartholow III (“Thad”)* Texas State Bar No. 24062602 Karen L. Kellett* Texas State Bar. No. 11199520 Kellett &amp; Bartholow PLLC 11300 N. Central Expressway, Ste. 301 Dallas, TX 75243 Tel.: (214) 696-9000 Fax: (214) 696-9001 thad@kblawtx.com kkellett@kblawtx.com</p> <p>Abelardo Limon, Jr.* Texas State Bar No. 1235770 890 W. Price Road Brownsville, TX 78520 Tel: (956) 544-7770 Fax: (956) 544-4949 ALimon@limionlaw.com</p> <p>Counsel for Class Plaintiffs *Admitted Pro Hac Vice</p>	<p>Seen and Agreed: <u>/s/William C. Mayberry</u> William C. Mayberry (VSB No. 33584) Troutman Pepper Hamilton Sanders LLP 301 South College Street, Suite 3400 Charlotte, NC 28202 Tel: (704) 916-1501 E-mail: bill.mayberry@troutman.com</p> <p>Amy Pritchard Williams* Andrew Atkins* Troutman Pepper Hamilton Sanders LLP 301 South College Street, Suite 3400 Charlotte, NC 28202 Tel: (704) 916-1501</p> <p>Michael E. Hastings (VSB No. 36090) Justin E. Simmons (VSB No. 77319) Woods Rogers PLC P.O. Box 14125 Roanoke, Virginia 24011 Phone: (540) 983-7600 Fax: (540) 983-7711 mhastings@woodsrogers.com jsimmons@woodsrogers.com</p> <p>Counsel for Wells Fargo Bank, N.A.</p> <p>*Admitted Pro Hac Vice</p>
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# **Exhibit 2**



2. Class Counsel took the Harlow class action on a contingency basis, as the Class Representatives, Chapter 13 bankruptcy debtors, were obviously in no position financially to pay counsel for their services.

3. I and my team have assisted the Settlement Administrator, Epiq Systems Inc., with the wording of the website and the email notices that were sent to class members. In addition, since the notices of the proposed settlement were mailed, I and my team have spoken to many class members, their bankruptcy counsel and Chapter 13 Trustees to answer their questions about the settlement. My team will also help the Settlement Administrator in obtaining correct addresses for notices and checks returned as non-deliverable, and will assist in reissuing checks as appropriate.

4. Based on my experience with this case, and the extended two-mediation settlement process – in conjunction with my overall experience litigating complex consumer bankruptcy class actions over the last 28 years, I believe that the proposed class settlement in this case is fair, reasonable, and adequate, and should be approved by the Court. I believe that the factors for awarding fees in the amount of 1/3 of the \$15,000,000 settlement fund in this case have been satisfied.

5. This settlement is an excellent result given the risks of litigation. The value of the benefits class members will receive under this settlement is enhanced by the fact that the initial benefits will be provided promptly, without the delay, burden, and risks of further litigation. This factor is especially important in this case, as the class members are in dynamic situations. Many are still in Chapter 13 bankruptcies, and most are still paying on their mortgage loans. It is likely that the overwhelming majority of class members would otherwise receive nothing in the absence of this case and the settlement Plaintiffs have negotiated.

6. Although our firm has brought numerous individual cases involving Fed. R. Bankr. P. 3002.1, Class Counsel has only brought one other class case based on violations of Bankruptcy Rule 3002.1—the *Cotton* case, as to which the United States District Court for the Western District of North Carolina certified a nationwide settlement class and finally approved the settlement in *Cotton v. Wells Fargo & Co., et al.*, Adv. P. No. 17-03056 (Bank. WDNC), Case No. 18-00499 (WDNC). In that case the Court awarded Class Counsel fees in the amount of 1/3 of the settlement fund in that case.

7. To Class Counsel's knowledge, no private debtor has brought a successful nationwide class action based on Rule 3002.1 except our firm. Class Counsel is aware of only two other class actions brought by Chapter 13 debtors to enforce 13 debtors to enforce Fed. R. Bankr. P. 3002.1. Neither of those certified a class.

8. This litigation would be costly if it were to be prosecuted through trial, with no guarantee of success. The volume of evidence that has been exchanged in discovery would require substantial efforts to synthesize for effective and efficient presentation at trial. Additional depositions would also be required to prepare the case for trial, the parties would need to retain additional testifying experts for class certification and trial to address a variety of issues, including the elements of manageability required to support class certification, the scale and scope of harms and costs imposed on Chapter 13 debtors and the bankruptcy process resulting from Wells Fargo's conduct, as well as the nature and extent of Wells Fargo's alleged profits from its forbearance practices.

9. In addition to the expenses, there would be substantial delay in resolving the issues in this case, as completing discovery and the process of litigating pre-trial motions and appeals will be contested and time-consuming, with the outcome uncertain.

10. The issues in this case were novel and complex, which added substantially to Class Counsel's risk in undertaking this litigation. The Coronavirus Aid, Relief, and Economic Security (CARES) Act was brand new when Defendants started to enact its program of placing people into forbearances without their request or informed consent. The captioned case, filed by Class Counsel, was the very first suit in the country seeking to stop Wells Fargo's alleged unlawful actions and seek redress for the damages caused by Wells Fargo. Based on the fact that this was a new law, and the financial motivation of Wells Fargo was largely unseen and unknown to the general public, this type of lawsuit based in part on the CARES Act was unprecedented.

11. In addition, Bankruptcy Rule 3002.1 itself was enacted December 1, 2011, and has been amended and modified several times since then. Fed. R. Bankr. P. 3002.1 Advisory Committee Notes.

12. Plaintiffs faced significant additional litigation risk as the litigation could go on for years if the case did not settle.

13. Wells Fargo is a massive and well-financed corporate defendant that had effectively unlimited resources to litigate this case and appeal any adverse results. Wells Fargo is the fourth largest bank in the U.S., with over \$1.73 trillion in assets.<sup>1</sup> Their counsel, Troutman Pepper Hamilton Sanders LLP., employs over 1,300 lawyers in 22 cities in the United States.<sup>2</sup> Although not listed as counsel, Wells Fargo brought in Sullivan & Cromwell, LLP, with respect to this case in 2023. Sullivan employs over 880 lawyers in 13 cities in the U.S., Europe, Australia and Asia.<sup>3</sup>

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<sup>1</sup> See <https://www.bankrate.com/banking/biggest-banks-in-america>, last reviewed on July 26, 2024.

<sup>2</sup> See <https://www.troutman.com/professionals/index.html>, last reviewed on July 26, 2024.

<sup>3</sup> See <https://www.sullcrom.com/LawyerListing>, last reviewed on July 26, 2024.

14. Throughout this litigation, Wells Fargo's position has been that, as a mortgage servicer, it had the unilateral ability to forbear or pause mortgage payments for its mortgagors. It constantly argued that the vast majority of class members "wanted," and "used" the forbearances that Wells Fargo imposed. It also continued to argue that Plaintiffs failed to identify any damages caused by the forbearances other than the Plaintiffs' attorneys' fees. As such, Wells Fargo argued that the class members were entitled to nothing.

15. Wells Fargo asserts it would win the case on summary judgment, so the parties would have to litigate that motion.

16. Wells Fargo would strenuously contest class certification, and it is a significant challenge to certify a class action over a defendant's objection. Even if the Court certified the class over Wells Fargo's objections, it is highly likely that Wells Fargo would seek a direct appeal of any class certification to Fourth Circuit pursuant to Fed. R. Bankr. P. 7023(f).

17. Among other arguments, Wells Fargo would argue over the nationwide scope of the class. It would also argue that the Court should not have certified the class because allegedly there are individual issues of liability, as Wells Fargo contends that some Class Members "asked for" or "wanted" the forbearance, and that class members' damages would have to be tried individually, allegedly making a class action unmanageable, and therefore not certifiable.

18. Finally, on the merits, Plaintiffs prevailed so far, but courts are split as to whether a bankruptcy court can impose sanctions for violations of Fed. Bankr. R. 3002.1 through that rule, 11 U.S.C. §105(a), and/or otherwise. *See Harlow*, 2022 WL 17586716 at \* 11-6, 8-11 (bankruptcy court can sanction and impose punitive damages on creditor for violations of Fed. R. Bankr. P. 3002.1 and abuses of the federal bankruptcy system) with *In re Tollstrup*, Case No. 15-33924, 2018 WL 1384378 \*5 (Bankr. Mar. 16, 2018)(court has no power under Fed. R. Bankr. P. 3002.1

or 11 U.S.C. § 105(a) to award sanctions for violation of Rule 3002.1); *In re Gravel*, 6 F.4<sup>th</sup> 503 (2<sup>nd</sup> Cir. 2021)(same).

19. Plaintiffs disagree that any of these arguments ultimately would defeat class certification or the merits, but Class Counsel can foresee substantial uncertainty in further litigation that would occur absent settlement.

20. For class counsel, the risk of non-payment was very real, and supports Class Counsel's fee request.

21. Kellett & Bartholow accepted this case because no attorneys in the Roanoke area would be able or willing to undertake the risk and expense involved in nationwide class litigation of these claims.

22. Debtors in bankruptcy with bankruptcy counsel generally cannot, by definition, afford to hire and pay counsel to prosecute a case like this, which involves complex legal and factual issues. *See Jones v. Wells Fargo Home Mortgage (In re Jones)*, 2012 WL 1155715, at \* 1-2, 6-10 (Bankr. E.D. La. Apr. 5, 2012)(slip opinion), *aff'd*, *Jones v. Wells Fargo Home Mortgage (In re Jones)*, 489 B.R. 645 (E.D. La. 2013)(discussing resources of chapter 13 debtors and awarding attorneys' fees). Moreover, most debtors' bankruptcy attorneys simply do not have the expertise and cannot afford either the time or expense of such complex litigation. *See Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 576 B.R. 84, 97-100 (Bankr. S.D. Tex. 2017). Kellett & Bartholow is one of the few firms in the country to bring and successfully litigate class actions on behalf of borrowers in or formerly in a Chapter 13 bankruptcy proceeding. Law firms will not bring these cases due to the substantial risks involved, and those that do usually fail due to the risks and obstacles inherent in a case of this type.

23. Because so few law firms will file and prosecute class actions for debtors in bankruptcy, we file cases throughout the country.

24. As such, Kellett & Bartholow routinely monitors the prevailing rates for experienced litigators in various forums nationwide. As a guide in setting our hourly rates, we regularly review published hourly rates received in contingent and non-contingent fee litigation, including the annual rate survey conducted by the National Law Journal.

25. In this case, we charged non-contingent rates and have not raised the rates in the over four years this litigation has been pending. Thus, the non-contingent hourly rates that we charged are lower than the non-contingent hourly rates charged by lawyers of similar experience handling complex consumer litigation on a national basis.

26. Even if it were not necessary to draw attorneys from a national or regional market for such legal services, it is my opinion that the non-contingent hourly rates set forth of Class Counsel are reasonable, and indeed low, for the risks and responsibilities undertaken in this proceeding, and for the results obtained.

27. Prior to and during this case, Kellett & Bartholow PLLC has committed substantial resources in both time and expenses over the last four years in this case. Our firm will continue to commit all the resources necessary to the case to bring it to completion, including through trial and any appeals, should the settlement ultimately not be approved. Our firm has sufficient resources to pursue this litigation should the Court not approve the settlement or should approval be overturned on appeal. As plaintiffs' litigation counsel to consumer debtors both in bankruptcy and after discharge, our firm has litigated class actions and individual cases for years when necessary, almost always against large national and international law firms that spare no effort or expense in

defending our opponents.<sup>4</sup>

### **Ms. Kellett's Background and Experience**

28. My curriculum vitae is attached to this declaration.

29. Theodore O. Bartholow, III and I have served as lead counsel in this litigation. We are co-counsel in this litigation with Malissa Giles, Tracy Giles, and Abelardo Limon.

30. I graduated *summa cum laude* from Texas A&M University in 1984, with a B.B.A. in Business Management.

31. I received my Doctor of Jurisprudence degree, with honors, from the University of Texas in 1987.

32. Since 1987, I have spent a significant portion of my legal career handling bankruptcy, insolvency, consumer-finance litigation, and general complex commercial litigation in cases throughout the United States. As reflected on my *curriculum vitae*, I have extensive experience in litigation of consumer class actions involving lenders and lending issues, including class actions in bankruptcy and federal district court for conduct arising in bankruptcy proceedings.

33. From 1987 until November of 1994, I practiced at Thompson & Knight in its Dallas office in the bankruptcy department. I primarily represented debtor corporations in large Chapter 11 bankruptcies, including Amdura Corporation and Southmark Corporation. At the time, Southmark was one of the largest Chapter 11 cases in the country. In addition, I represented bank lenders, other creditors, unsecured creditors' committees, indenture trustees, lessors, and other parties in bankruptcy cases and adversary proceedings. My work involved litigation of complex bankruptcy and bankruptcy-related issues, including litigation of class-action issues in debtor

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<sup>4</sup> As just one example, our *Rodriguez* class action against Countrywide and Bank of America took six and a half years, including an appeal to the Fifth Circuit in which the Court upheld class certification, prior to the bankruptcy court entering judgment in favor of the plaintiff class on August 25, 2014.

bankruptcy cases.

34. From November 1994 through June 2000, I was Vice-President and Assistant General Counsel at The Associates, then a Fortune 100 company. The primary business of The Associates was consumer lending, including mortgage and auto lending.

35. While I served as in-house litigation counsel for The Associates, I primarily was responsible for consumer-finance litigation across the country, including dozens of state and national class-action lawsuits.

36. Several of these suits were brought in bankruptcy court or involved bankruptcy issues. Many of the cases and class actions for which I was responsible were classes seeking nationwide status and alleged damages in the tens of millions of dollars.

37. In addition to being responsible for litigation, I was the attorney in charge for several projects concerning the institution and modification of policies and computer systems to comply with provisions of the Bankruptcy Code.

38. Because I managed class actions in jurisdictions throughout the country, I became well-versed in the federal and state laws pertaining to consumer lending and lending activities, including the laws governing lending activity as it relates to consumers in bankruptcy.

39. I started The Kellett Law Firm, A Professional Corporation, in June 2000. I represented many individuals and businesses in Chapter 7, 13, and 11 bankruptcy cases. I also defended commercial companies in complex litigation involving various issues such as UCC warranty claims and claims of breach of fiduciary duty, in cases in which the damages claimed by the plaintiffs exceeded \$140,000,000.

40. I also filed consumer suits, consumer class actions, or otherwise represented consumers as lead counsel in claims against banks, lenders, and mortgage servicers in state and

federal courts, including courts in the Northern, Eastern, and Southern Districts of Texas and the District of Massachusetts. These suits covered a broad range of mortgage servicing causes of action, including many causes of action derived from the Bankruptcy Code.

41. In January 2010, I joined Armstrong Kellett Bartholow P.C., a consumer bankruptcy and litigation firm, as a partner. In September of 2015, one of the named partners of Armstrong Kellett Bartholow P.C. left the firm and the practice of law. As a result, Theodore O. Bartholow, III and I formed a new firm, Kellett & Bartholow PLLC.

42. Our firm has represented consumers in litigation against mortgage servicers, banks, lenders, debt collectors and others in federal district and bankruptcy courts in Texas, California, Colorado, Louisiana, Missouri, Nevada, North Carolina, New York, Ohio, and Virginia. These suits covered a broad range of consumer-finance causes of action, including many causes of action based on the Bankruptcy Code and Rules, the Texas Debt Collection Act, FDCPA, RESPA, TILA, FCRA and other state and federal law. Many of these suits involved causes of action for abuse of bankruptcy processes. I participated in all phases of these cases, from investigation of the claims, filing the lawsuits, discovery, trials, and appeals.

43. Since I have been with Kellett & Bartholow, the majority of my practice has been mortgage servicing litigation. A good deal of this litigation has been devoted to representing debtors and former debtors in cases in which the mortgage servicer failed to comply with Bankruptcy Rule 3002.1 (or other rules), and, as a result, wrongfully demanded undisclosed amounts, threatened and filed motions for relief from stay, and attempted foreclosure when such amounts were not paid. In many cases, mortgage servicers waited until after the debtors had successfully completed their Chapter 13 plans before attempting to collect debts based on amounts not owed pursuant to bankruptcy law.

44. I was appointed as Class counsel for the settlement class in *Louis v. Chase Manhattan Mort. Co.*, AP No. 02-01073 (Bankr. D. Mass). In that case, the plaintiffs alleged that the mortgage servicer failed to acknowledge that debtors in bankruptcy stripped off or stripped down the lender's mortgage liens in their Chapter 13 bankruptcies, and then tried to collect and foreclose on those debtors' homes.

45. I was also appointed Class counsel for the nationwide settlement class in *Aldape v. Select Portfolio Servicing, Inc.*, Adversary Proceeding No. 08-01007 (Bankr. S.D. Tex.); Case No. 1:10cv35 (SDTX). The *Aldape* case involved alleged double-dipping and other mortgage escrow improprieties with respect to the mortgage loans of debtors in chapter 13 bankruptcies.

46. I was also appointed Class counsel for the nationwide settlement class in *Cano v. GMAC Mortgage Corp.*, Adversary Proceeding No. 08-01007 (Bank. S.D. Tex.); Case No. 02-70359 (SDTX). The plaintiffs in *Cano* alleged that the mortgage servicer defendant added hidden fees and expenses to Chapter 13 debtors' mortgage loans in violation of bankruptcy law, but tried to collect and foreclose on the debtors, nevertheless.

47. Similarly, in *Rodriguez v. Countrywide Home Loans, Inc.*, Adversary Proceeding No. 08-1004 (Bankr. S.D. Tex.), the plaintiffs in a district-wide case alleged those defendants engaged in the same wrongful bankruptcy practices as in *Cano*. The bankruptcy court held a three-day class certification hearing in December 2009, and certified the class. Defendants appealed the class certification to the Fifth Circuit. I argued the case for the plaintiffs at the Fifth Circuit. The Fifth Circuit upheld the bankruptcy court's certification of the class. The plaintiffs later won the *Rodriguez* class action lawsuit on summary judgment in April 2013.

48. I was appointed Class counsel for a nationwide settlement class of debtors in *Jones v. Atlas Acquisitions*, AP No. 16-03235 (Bankr. S.D. Tex.); 18-01194 (SDTX), where the

consumer debtor plaintiffs alleged that the defendant had filed proofs of claim in their bankruptcy cases for non-existent debt.

49. I also was appointed Class counsel for a nationwide settlement class in *Cotton v. Wells Fargo & Co., et al.*, Adv. P. No. 17-03056 (Bank. WDNC), Case No. 18-00499 (WDNC), in which plaintiffs alleged that Wells Fargo was filing Rule 3002.1 notices in debtors' bankruptcy cases, stating the debtors had entered into mortgage modifications, when in fact the debtors had not asked to enter into mortgage modifications and did not want to be in mortgage modifications. The alleged harm to debtors and the entire bankruptcy process in that case are similar to the harms alleged in this case.

50. Our firm was recently appointed as interim co-lead counsel for the forbearance class actions against Wells Fargo for borrowers not in bankruptcy. That case was filed as the *Forsburg* case in district court in the Western District of Virginia. That case and all the other class non-bankruptcy forbearance class actions against Wells Fargo have been consolidated in the United States District Court for the Southern District of Ohio, under the name, *In re Wells Fargo COVID Forbearance Litigation*.

51. I and my firm have also represented dozens and dozens of individuals in mortgage servicing litigation, almost all of which resulted in excellent settlements for the clients, but, in almost every case, only after extremely hard-fought litigation against some of the largest and best mortgage servicing defense firms in the country.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 31, 2024.

*/s/ Karen L. Kellett*

\_\_\_\_\_  
Karen L. Kellett

**EXHIBIT A**



## KAREN L. KELLETT

11300 N. CENTRAL EXPWY. SUITE 301 DALLAS, TEXAS 75243  
TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: KKELLETT@KBLAWTX.COM

**KAREN L. KELLETT** obtained her B.B.A. from Texas A&M University, where she graduated *summa cum laude* in 1984, and her law degree from the University of Texas, where she graduated with honors in 1987. Ms. Kellett was an attorney at Thompson & Knight from 1987-1994. She represented, among others, NYSE clients in commercial bankruptcy and insolvency proceedings and litigation, including representing Southmark Corporation and Amdura Corporation in their Chapter 11 bankruptcies. In 1994, Ms. Kellett joined The Associates as Vice President and Assistant General Counsel, where she was bankruptcy strategist and litigation manager for consumer financial services litigation. While at The Associates, Ms. Kellett primarily was responsible for consumer individual and class action litigation involving state and federal lending laws, including claims based on TILA, RESPA, FCRA, HOEPA, and federal bankruptcy laws, in suits filed throughout the country.

Ms. Kellett opened her own law firm in 2000 and formed Armstrong Kellett Bartholow PLLC in 2010. Ms. Kellett and Mr. Bartholow formed Kellett & Bartholow PLLC in 2015. Ms. Kellett has concentrated her practice in consumer bankruptcy and financial-services individual and class-action litigation. Ms. Kellett has successfully represented numerous plaintiffs in bankruptcy and in other consumer protection lawsuits against national creditors in multiple venues.

Ms. Kellett has served on local, state, and national bar committees and practice-group associations and writes and speaks frequently on bankruptcy and financial-services issues.

### **BAR ADMISSIONS:**

State: Texas

Federal: Northern, Eastern, and Southern Districts of Texas (Bankruptcy and District Courts), U.S. Court of Appeals for the 5<sup>th</sup> Circuit

### **EDUCATION:**

UNIVERSITY OF TEXAS SCHOOL OF LAW, J.D. with honors, 1987, Austin, Texas

TEXAS A&M UNIVERSITY, B.B.A. *summa cum laude*, 1984, College Station, Texas

### **PROFESSIONAL ASSOCIATIONS & HONORS:**

Texas Bar Foundation

Dallas Bar Association

The Hon. John C. Ford American Inn of Court, Dallas, Texas

Martindale-Hubbell AV Preeminent Peer Review Rating

National Association of Consumer Bankruptcy Attorneys (NACBA)

NACBA Champion of Consumer Rights – 2024

NACBA Distinguish Service Award - 2023

### **NOTEWORTHY DECISIONS:**

*Harlow v. Wells Fargo (In re Harlow)*, AP No. 20-07028, 2022 WL 17586716 (Bankr. W.D. Va. Dec. 12, 2022).

*Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, 396 B.R. 436 (Bankr. S.D. Tex. 2008).



**KAREN L. KELLETT**

11300 N. CENTRAL EXPWY. SUITE 301 DALLAS, TEXAS 75243  
TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: KKELLETT@KBLAWTX.COM

*Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, 421 B.R. 341 (S.D. Tex. 2009).

**NOTEWORTHY DECISIONS (CONT.):**

*Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, 421 B.R. 356 (Bankr. S.D. Tex. 2009).

*Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, 2010 WL 3943934 (Bankr. S.D. Tex. Oct. 5, 2010)(slip copy).

*Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, 432 B.R. 671 (Bankr. S.D. Tex. 2010), affirmed by *Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, 695 F.3d 360 (5th Cir. 2012).

*Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez)*, 2013 WL 1748800 (Bankr. S.D. Tex. Apr. 23, 2013).

*Cano v. GMAC Mortgage Corp. (In re Cano)*, 410 B.R. 506 (Bankr. S.D. Tex. 2009).

*Rojas v. Citi Corp Trust Bank FSB (In re Rojas)*, 2009 WL 2496807 (Bankr. S.D. Tex. Aug. 12, 2009).

*Vick v. NCO Financial Systems, Inc.*, 2011 WL 1157710 (E.D. Tex. Mar. 28, 2011).

*Blanco v. Bayview Servicing LLC*, 633 B.R. 714 (Bankr. S.D. Tex. 2021).

*Cotton v. Wells Fargo & Co., et al. (In re Cotton)*, 2019 WL 1233740 (W.D. N.C. Mar. 15, 2019)(slip copy).

*Trevino v. HSBC Mortgage Services, Inc., et al. (In re Trevino)*, 535 B.R. 110 (Bankr. S.D. Tex. 2015).

*Trevino v. Caliber Home Loans, Inc., et al. (In re Trevino)*, 564 B.R. 890 (Bankr. S.D. Tex. 2017).

*Trevino v. HSBC Mortgage Services, Inc., et al. (In re Trevino)*, 615 B.R. 108 (Bankr. S.D. Tex. 2020).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2015 WL 1207012 (Bankr. S.D. Tex. Mar. 12, 2015)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2015 WL 5438850 (Bankr. S.D. Tex. Sept. 24, 2015)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2015 WL 7572097 (Bankr. S.D. Tex. Nov. 24, 2015)(slip copy) leave to appeal denied by *Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2016 WL 4546884 (S.D. Tex. Sept. 1, 2016)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2017 WL 3382099 (Bankr. S.D. Tex. Mar. 20, 2017)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC*, 2017 WL 3336086 (S.D. Tex. Aug. 4, 2017)(slip copy).

*Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 576 B.R. 84 (Bankr. S.D. Tex. Sept. 28, 2017).

*Jones v. Atlas Acquisitions LLC*, (unpublished) Order Denying Atlas Acquisition LLC and Avi Schild's Motion to Dismiss Plaintiffs' Class Certification Claims (J. Bohm), TXSB Adv. Proc. No. 16-3235, Docket No. 44 (2017).

*Ross v. Convergent Outsourcing, Inc.*, 323 F.R.D. 656 (D. Co. January 17, 2018).



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11300 N. CENTRAL EXPWY. SUITE 301 DALLAS, TEXAS 75243  
TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: KKELLETT@KBLAWTX.COM

**SPEAKING ENGAGEMENTS & PUBLICATIONS:**

National Association of Consumer Bankruptcy Attorneys (NACBA) 31<sup>st</sup> Annual Convention 2023 –  
Discovery and Damages

NACBA Members' Only Meeting, November 2021- Litigating an Adversary Proceeding or Contested  
Matter

NACBA Annual Meeting, April 2020 – scheduled speaker prior to cancellation due to coronavirus

Northern District of Texas Bankruptcy Bench-Bar – Planning Committee, May 2018

Dallas Bar Association Family Law Section, “Family Law and Bankruptcy,” 2016, with Megan F. Clontz

Northern District of Texas Bankruptcy Bench/Bar Conference, “Mortgage Modifications: The New  
Principal Reduction Mortgage Loan Modifications,” 2016

23<sup>rd</sup> Annual ABI Southwestern Conference, “Avoiding Malpractice in Consumer Cases,” Panelist, 2015

Paper, “The Fair Debt Collection Practices Act and Bankruptcy: Can They Co-Exist?,” with Theodore O.  
Bartholow, III, 2015

22<sup>nd</sup> Annual ABI Southwestern Conference, “New Proof-of-Claim and Disclosure Rules,” 2014

American Bankruptcy Institute (ABI) Journal, “Rodriguez Clarifies that Bankruptcy Courts Can Certify  
Class Actions,” December/January 2013

Dallas Debtor’s Bankruptcy Bar, “The New Mortgage Proof-of-Claim and Disclosure Rules and the Cases  
Interpreting Them,” 2012

20<sup>th</sup> Annual American Bankruptcy Institute Southwest Bankruptcy Conference, “Hot Off the Press: First  
Opinions Analyzing the New Mortgage Proof-of-Claim and Disclosure Rules,” 2012

26<sup>th</sup> Annual American Bankruptcy Institute Winter Leadership Conference, 2010, and included in The Best  
of 2011 – Consumer Bankruptcy, ABI Press, “The Great Debates Resolved: A Mortgage Servicer Lacks  
Standing as a Real Party in Interest,” with Rudy J. Cerone, 2011

85<sup>th</sup> Annual National Conference of Bankruptcy Judges, “Emerging Trends in Class Actions in  
Bankruptcy,” 2011

29<sup>th</sup> Annual American Bankruptcy Institute Spring Meeting, Panelist, “Robosigning Clients, Phantom  
Notaries, Foreclosure and Bankruptcy Mills, and Other Tales from the Darkside,” 2011

National Association of Consumer Bankruptcy Attorneys (NACBA) Fall Members-Only Workshop,  
Panelist, Track 3, “Here in the Real World: Litigation Bootcamp,” 2010

NCLC Consumer Rights Litigation Conference, “Debtor Litigation Strategies for Lender Misconduct,  
Including Debtor Class Actions,” with Gary A. Armstrong and Theodore O. Bartholow, III, 2009

Kansas Bar Association Meeting, “Consumer Remedies for Lender Misconduct,” 2009

Advanced Consumer and Commercial Law Course, “Bankruptcy Basics,” 2009

Bankruptcy Law Seminar, Corpus Christi Bar Association, “Predatory Lending Practices and Claims  
Against Lenders in Bankruptcy,” 2008



**KAREN L. KELLETT**

11300 N. CENTRAL EXPWY. SUITE 301 DALLAS, TEXAS 75243  
TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: KKELLETT@KBLAWTX.COM

**SPEAKING ENGAGEMENTS & PUBLICATIONS (CONT.):**

30th Annual ABI Spring Meeting, Panelist, Consumer Ethics, “Balancing Business and Practice – the Multiple Roles of Consumer Debtor’s Counsel: Can you Be a Watchdog, a Counselor and Run Your Law Practice Simultaneously?” 2012

State Bar of Texas Annual Meeting, Consumer & Commercial Law Section Meeting, “The New Bankruptcy Provisions in Practice,” with Jennifer P. Garner, 2006

The Conference on Consumer Finance Law, Real Estate Mortgage and Home Equity Finance Conference, “Bankruptcy Issues Concerning Mortgage Loans, Including Update on Current Trends in Litigation,” 2002

3<sup>rd</sup> Annual Texas A&M Bar Association Conference, “Overview of Bankruptcy: Chapter 7, Chapter 13 and Chapter 11,” 2002

Advanced Consumer Bankruptcy Course, “Lender Liability Issues in Consumer Bankruptcy Proceedings: HOEPA, Texas Home Equity, and Unfair Debt Collection Practices,” 2001

35<sup>th</sup> Annual William W. Gibson, Jr. Mortgage Lending Institute, “Manufactured Home Repossession and Foreclosure Rules, and Bankruptcy Issues Affecting the Manufactured Home Lender,” with Jerald M. Pomerantz, 2001

Rio Grande Valley Bankruptcy Bar Association, “Texas Home Equity Issues and Litigation,” 2000

Dallas Bar Association Bankruptcy Section, “Lender Liability Issues in Consumer Bankruptcy Proceedings, Including Class Actions and Texas Home Equity,” 2000

Dallas Bar Association Bankruptcy Section, “Treatment of Environmental Liabilities in a Chapter 11 Plan of Reorganization,” with Robert W. Jones, 1994

Dallas Bar Association Environmental Law Section, “The Role and Treatment of Environmental Claims in the Bankruptcy Context,” with Robert W. Jones, 1993

SMU Bankruptcy Law Institute: Representing Debtors in Bankruptcy – Practice Strategies, “Jurisdictional Stumbling Blocks,” with Scotta E. McFarland, 1990

SMU Bankruptcy Law Institute: Representing Debtors in Bankruptcy – Litigating in the Bankruptcy Court, “Attorneys and Experts: The Perfect Couple,” with Scotta E. McFarland, 1989

**MEDIA COVERAGE:**

Jonnelle Marte, *Lawsuits Claim Wells Fargo Modified Mortgages Without Customer Permission*, Washington Post, June 15, 2017, available at [https://www.washingtonpost.com/news/get-there/wp/2017/06/15/lawsuits-claim-wells-fargo-modified-mortgages-without-customer-permission/?utm\\_term=.af610dd02248](https://www.washingtonpost.com/news/get-there/wp/2017/06/15/lawsuits-claim-wells-fargo-modified-mortgages-without-customer-permission/?utm_term=.af610dd02248).

Gretchen Morgenson, *Wells Fargo Is Accused of Making Improper Changes to Mortgages*, New York Times, June 14, 2017, available at <https://www.nytimes.com/2017/06/14/business/wells-fargo-loan-mortgage.html>.



**KAREN L. KELLETT**

11300 N. CENTRAL EXPWY. SUITE 301 DALLAS, TEXAS 75243  
TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: KKELLETT@KBLAWTX.COM

**LEGAL EMPLOYMENT HISTORY:**

KELLETT & BARTHOLOW PLLC (October 2015-Present)  
Dallas, Texas

ARMSTRONG KELLETT BARTHOLOW PLLC (December 2009-October 2015)  
Dallas, Texas

THE KELLETT LAW FIRM, PC (2000-2010)  
Dallas, Texas

THE ASSOCIATES, *Vice President and Assistant General Counsel* (1994-2000)  
Dallas, Texas

THOMPSON & KNIGHT LLP (1987-1994)  
Dallas, Texas

# **Exhibit 3**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>In re:</b>	§	
	§	
<b>Troy Shannon Harlow</b>	§	<b>Case No. 17-71487</b>
	§	<b>Chapter 13</b>
<b>Debtor</b>	§	
<hr/>		
	§	
<b>TROY SHANNON HARLOW,</b>	§	
	§	<b>ADVERSARY NO. 20-07028</b>
<b>MARK STEPHEN ESTES,</b>	§	
	§	<b>DISTRICT COURT NO. 7:24-cv-00424</b>
<b>KIMBERLY PORTER FEWELL,</b>	§	
	§	
<b>BEATRIZ VILLEGAS-RODRIGUEZ</b>	§	
<b>and RODOLFO RODRIGUEZ,</b>	§	
	§	
<b>on behalf of themselves and all</b>	§	
<b>others similarly situated,</b>	§	
	§	
<b>Plaintiffs,</b>	§	
	§	
<b>v.</b>	§	
	§	
	§	
<b>WELLS FARGO BANK, N.A.,</b>	§	
	§	
<b>Defendant.</b>	§	

**DECLARATION OF MALISSA LAMBERT GILES IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES AND NON-TAXABLE COSTS AND CLASS  
REPRESENTATIVE SERVICE AWARDS**

I, Malissa Lambert Giles, hereby declare the following is true and accurate and based on my personal knowledge:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify.

2. I am currently a partner of the law firm Giles & Lambert, PC. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so. I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Non-Taxable Costs and Class Representative Service Award. ECF 6.

**Giles & Lambert's Fees and Expenses.**

3. My firm's engagement agreements with Mr. Harlow and Mr. Estes included a contingency agreement for attorneys' fees of up to 40% of the recovery in a common fund, in addition to expenses to be paid from the common fund. However, in the settlement negotiations for this case, my firm (and Class Counsel as a whole) have reduced their contingent fee to 33% of the Settlement Fund. Expenses allowed by the Court are paid from the Settlement Fund as well. Wells Fargo does not oppose Class Counsel seeking fees and expenses on this basis.

4. As shown in the chart below, multiplying my firm's reasonable billable hours by my historical hourly rates yields a total lodestar of \$227,320.00 for the dates shown below.

5. When using lodestar method as a "cross-check," the Court needs not apply the "exhaustive scrutiny" typically mandated, and the Court may accept the hours estimates provided by counsel. *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D. Va. 2009). If the Court would like, I can provide my firm's time records to the Court for *in camera* review.

6. The following summarizes Giles & Lambert's times and rates for their work in this case, excluding hours no-billed in the exercise of billing judgment:

Timekeepers at Giles & Lambert <sup>1</sup>	Hours	Rates	Total
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<sup>1</sup> For Giles & Lambert's time through July 12, 2024.

Malissa Giles	568.3	\$400 per hour <sup>2</sup>	\$227,320.00
Tracy Giles	90.8	\$400 per hour <sup>3</sup>	\$36,320.00
<b>Total</b>	<b>659.1</b>		<b>\$263,640.00<sup>4</sup></b>

7. Giles & Lambert’s historical hourly rates are reasonable and have been approved in several cases in the Western District of Virginia.

8. Giles & Lambert is also entitled to reimbursement of its reasonable expenses. Giles & Lambert requests that the Court award it \$6,433.60 in the reasonable expenses incurred by our firm in this matter, which are summarized in Exhibit A.

9. I am familiar with the rates of other consumer bankruptcy attorneys who practice in the Western District of Virginia, and our historical hourly rates are equal to or below market average for attorneys with the same degree of experience, skill and reputation as me.

10. Additionally, my current rate of \$500.00 per hour (not charged in this case) has been approved by the US Bankruptcy Court, Western District of Virginia since 2023.

11. Prior to and during this case, my firm and I have committed time and resources to this case. I will continue to commit resources from my firm as necessary to bring this case to completion, and I have co-counseled with Kellett & Bartholow PLLC, who have resources to pursue this class action to completion.

**Procedural History of Giles & Lambert’s Involvement in this Case**

12. Giles & Lambert, PC partners’ experience in class action litigation arises primarily

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<sup>2</sup> My current rate is \$500 per hour and has been at that rate since Jan. 1, 2023.

<sup>3</sup> Mr. Giles’ current rate is \$500 per hour.

<sup>4</sup> If the lodestar is calculated using my and Mr. Gile’s current hourly rate, the total is \$329,550.00.

out of events starting in 2020 during the Covid Pandemic. At that time, we identified and prosecuted actions against Wells Fargo Bank, N.A. and Wells Fargo & Co. which arose out of consumer mortgage accounts being placed into forbearance at the start of the pandemic.

13. I previously filed a declaration in Adversary Proceeding No. 20-07028 in the Bankruptcy Court for the Western District of Virginia on April 8, 2024, in support of Plaintiffs' (amended) motion for a preliminary approval of class settlement in the *Harlow* class action. Harlow AP Docket No. 123-3.<sup>5</sup> My declaration describes the harmful effects of the 3002.1 notices filed in various bankruptcy cases within the Western District of Virginia—including in the Harlow and Estes bankruptcy proceedings—my efforts to investigate the extent of these filings, and my efforts to object to these filings in my clients' underlying Chapter 13 cases, which ultimately resulted in Wells Fargo agreeing to withdraw its notices. My declaration also discusses how we joined with Kellett & Bartholow PLLC and the Limon Law Firm to pursue the filing of an action that could address the issue nationwide and provide relief to the debtors, the trustees, and courts struggling to address the issue of unwanted and unnecessary forbearances. These efforts culminated in the filing of *Harlow, et. al., vs. Wells Fargo Bank, NA*, Case 20-07028, as a nationwide class action in the United States Bankruptcy Court for the Western District of Virginia, on June 26, 2020.<sup>6</sup>

14. After we filed this case, Tracy Giles and I started meeting weekly with co-counsel to review motions and pleadings and strategize about the direction of the litigation. We worked

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<sup>5</sup> Reference to the docket in the *Harlow* adversary proceeding, Adversary Proceeding No. 20-07028, pending in the United States Bankruptcy Court for the Western District of Virginia, will be referred to as "Harlow AP Docket No."

<sup>6</sup> The filing of the case generated a fair amount of publicity, and we started receiving many calls, including from non-bankruptcy individuals who had also been involuntarily placed into forbearance. After continuing investigating those claims and potential causes of action, the plaintiffs' counsel in *Harlow* filed *Forsburg vs. Wells Fargo Bank, NA* (20-cv-00046) in the United States District Court for the Western District of Virginia on July 23, 2020, on behalf of borrowers who were not Chapter 13 debtors.

with co-counsel and gave editing input into the filing of the initial complaint and the two amended complaints filed in this case. We provided input for Plaintiffs' motion for preliminary injunction filed against Wells Fargo early in the case.

15. We also participated in reviewing the two motions to dismiss filed by Wells Fargo, as well as editing the Plaintiffs' substantial legal briefs filed in response thereto. We provided comments on the numerous other motions, responses and other documents filed when *Harlow* was consolidated with the *Forsburg* case when it was pending in the district court.

16. We have been an active part of the litigation since it was filed, drafting and reviewing pleadings, attending depositions, and participating in mediation. We have communicated with the named class plaintiffs, attended hearings and coordinated the tasks to be done in the case weekly (and often more frequently than that) with our co-counsel.

17. Throughout the case, we prosecuted our clients' claims in the litigation, including preparing and responding to discovery requests, and actively engaging in the strategic deliberations necessary to move the case forward.

18. We worked directly with class plaintiffs Troy Shannon Harlow and Mark Stephen Estes in responding to discovery requests, and we worked with other team members in reviewing and analyzing voluminous discovery production from the defendant.

19. In July of 2023, my co-counsel and I discussed the fact that a global resolution of the *Harlow* case might be possible, and we agreed with Wells Fargo to go to mediation to try to resolve the case. We assisted co-counsel in preparing for the mediation.

20. Along with Mr. Harlow, my co-counsel and I attended a mediation held in New York City on November 30, 2023, where the case settled in principle. David Geronumus was the mediator. I participated in discussions and negotiations prior to and during the mediation. I also

participated in post-mediation discussions with my co-counsel regarding the term sheet and the settlement agreement itself, and related documents such as the Claim Form and Notice.

21. Both prior to and after the filing of this case, I have worked closely with Mr. Harlow and Mr. Estes and my co-counsel in litigating the *Harlow* adversary proceeding. Since the November 2023 mediation, I have consulted with co-counsel on the remaining settlement terms and relief for the class.

22. My firm and I have no conflict of interest with respect to the class representatives and, to my knowledge, have no conflict of interest with respect to any of the members of the class that we are seeking to certify in this case.

#### **Ms. Giles' Background and Experience**

23. I have been licensed to practice law in the Commonwealth of Virginia since 1992 and am a member of the Mississippi State Bar (inactive), U.S. Bankruptcy Court Western District of Virginia, U.S. District Court Western District of Virginia, and Fourth Circuit Court of Appeals.

24. I graduated from the University of Mississippi in 1987 and from the University of Mississippi School of Law in 1991. I then clerked for Justices James L. Robertson and Edwin L. Pittman of the Mississippi Supreme Court.

25. I and my partner Tracy A. Giles opened our firm in Roanoke Virginia in 1993, and have specialized in the area of bankruptcy law, both for individuals and businesses, and related consumer claims since that time.

26. I have taught at numerous bankruptcy and consumer seminars during the last twenty-five years including most recently the National Association of Consumer Bankruptcy Attorneys' 31<sup>st</sup> Annual Convention. I have been a frequent speaker at the Mid-Atlantic Institute on Bankruptcy and Reorganization and for the Virginia State Bar, the Virginia Bar Association,


and Virginia CLE. Additionally, I have presented for the American Bankruptcy Institute as well as the Commonwealth of Virginia's annual statewide Legal Aid Conference. I have served as editor of the Virginia State Bar's *Bankruptcy Law News*, and have served as Chair of the Board of the Virginia State Bar's Bankruptcy Section. I currently serve on the council of the Virginia Bar Association's Bankruptcy Law Section and as a board member for the Virginia International Women's Insolvency & Restructuring Confederation. Additionally, I have served two terms on the 8<sup>th</sup> District Subcommittee for the Virginia State Bar, including one term as chair, reviewing ethical complaints filed against bar members.

27. Over the past three decades I, and my partner Tracy A. Giles, have represented thousands of consumers successfully in the U.S. Bankruptcy Court and in related consumer federal litigation since the firm opened its doors.

28. My curriculum vitae is attached hereto as Exhibit B.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on 31<sup>st</sup> day of July 2024 in the City of Roanoke, Virginia.

By :   
\_\_\_\_\_  
Malissa Lambert. Giles  
Virginia State Bar No. 33955  
Giles & Lambert PC  
PO Box 2780  
Roanoke VA 24001  
540-981-9000  
mgiles@gileslambert.com

# EXHIBIT A

**HARLOW ADVERSARY EXPENSE SUMMARY**

**GILES & LAMBERT, PC**

EXPENSE	AMOUNT
Administration	
Certificate of Service	
Conference	
Depositions	\$240.66
Expert	
Filing Fee	
Mediation	
Out-of-Town Meals	\$271.53
PACER Charges	
Postage and Shipping	
Process Server	
Research	\$39.60
Travel	\$5,881.81
Witness Fee	
	<b>\$6,433.60</b>

# EXHIBIT B



**MALISSA LAMBERT GILES**  
Email: [mgiles@gileslambert.com](mailto:mgiles@gileslambert.com)

BAR ADMISSIONS:

State: State Bar of Mississippi, 1991  
State Bar of Virginia, 1992  
Federal: Western District of Virginia U.S. Bankruptcy Court, 1993  
Western District of Virginia U.S. District Court, 1993  
Fourth Circuit Court of Appeals, 1997

EDUCATION

University of Mississippi School of Law, Oxford, Mississippi. Juris Doctorate (J.D.), May 1991  
University of Mississippi, Oxford, Mississippi. Bachelor of Arts in Journalism (B.A.), May 1987

LEGAL EMPLOYMENT HISTORY

Partner, Giles & Lambert, PC. April 1993- present. The firm of Giles & Lambert, PC, has three offices in Southwest Virginia and specializes in bankruptcy law and consumer related issues such as Fair Debt Collections Act and Fair Credit Reporting Act. The firm has successfully represented thousands of debtors in the U.S. Bankruptcy Courts over the past 31 years and has a reputation for excellence.

Law Clerk to Justice Edwin L. Pittman, Mississippi Supreme Court, 1992  
Law Clerk to Justice James L. Robertson, Mississippi Supreme Court, 1991-1992

HONORS, AWARDS

Western District Virginia US Bankruptcy Court, Clerk Selection Committee, Member, 2017  
Fourth Circuit Merit Selection Panel, Member, 2012  
Virginia Super Lawyers, 2011-2024  
US News and World Report Tier 1, 2011-2024  
Best Lawyer of the Year: Roanoke Bankruptcy and Creditor/ Debtor Rights/Insolvency and Reorganization, Best Lawyers, 2012, 2017, 2020, 2021  
The Roanoker, Platinum ranking as top attorney in Roanoke Valley, 2012

PRESENTER, RECENT LEGAL EDUCATION SEMINARS:

Richmond Bar Association, 2023, Discharging Student Loans (Guidance)  
Virginia Bar Association, 24<sup>th</sup> Annual Bankruptcy Law Conference, 2023 (Discharging Student Loans)  
Stretto Online National Seminar, 2023 (Discharging Student Loans DOJ Guidance)  
National Association of Consumer Bankruptcy Attorneys, 2023 National Conference (Jury Trials in Bankruptcy)  
Mid-Atlantic Institute on Bankruptcy and Reorganization, 2006-2014, 2017, 2021, 2022, 2023  
Western District of Virginia Bankruptcy Conference, 2017, 2019, 2020, 2021, 2022, 2023  
Virginia CLE, Domestic Relations Section, 2022 (The Intersection of Bankruptcy & Divorce: How to Avoid Collisions)  
Forbearance, CARES Act and Wells Fargo, NACBA, 2020  
Annual Bankruptcy Practice Seminar, Virginia CLE, 2020

PROFESSIONAL AFFILIATIONS

Virginia State Bar, 1992  
8<sup>th</sup> District, Disciplinary Committee, 2012-2021  
Past President, Bankruptcy Law Section  
Past Editor, Bankruptcy Law News  
Mississippi State Bar, 1991 (inactive)  
Virginia Bar Association  
Council, Bankruptcy Law Section, 2024-  
International Women's Insolvency & Restructuring Confederation  
Board, Virginia Chapter, 2024  
Roanoke Bar Association  
American Bar Association  
American Bankruptcy Institute  
Member, National Association Consumer Bankruptcy Attorneys

NOTEWORTHY OPINIONS:

*Johnston v Speedway*, 2021 US Dist. LEXIS 80891 (W.D. Va. 2021) (denying motion to dismiss and finding there is a private right of action under 11 U.S.C. 525(b))  
*Harlow v Wells Fargo & Co.*, 608 F.Supp. 377 (W.D. Va. 2022) (successful defense of Motion to Dismiss with remaining counts referred back to US Bankruptcy court)  
*In re Comer*, 2019 Bankr. LEXIS 3599 (Bankr. WD Va. 2019) (successful prosecution of violation of stay action)  
*Pence v. Carr*, 2017 Bankr. LEXIS 3605 (Bankr. WD Va 2017) (successful defense of dischargeability complaint)  
*In re Cooke*, 455 B R 503 (Bankr. WD Va 2011) (successful defense of dischargeability and assertion of debt as domestic support obligation)  
*Smith Mountain Building Supply LLC vs. Shreve*, 386 BR 602 (Bankr. WD Va 2008) (successful defense of dischargeability complaint)

# **Exhibit 4**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>In re:</b>	§	
	§	
<b>TROY SHANNON HARLOW</b>	§	<b>Case No. 17-71487</b>
	§	<b>Chapter 13</b>
	§	
<b>Debtor</b>	§	
<hr/>		
	§	
<b>TROY SHANNON HARLOW</b>	§	
	§	
<b>MARK STEPHEN ESTES</b>	§	
	§	
<b>KIMBERLY PORTER FERWELL,</b>	§	
	§	
<b>BEATRIZ VILLEGAS-RODRIGUEZ</b>	§	
<b>and</b>	§	<b>ADVERSARY NO. 20-07028</b>
<b>RODOLFO RODRIGUEZ,</b>	§	
<b>on behalf of themselves and all</b>	§	<b>DISTRICT COURT NO. 7:24-cv-00424</b>
<b>others similarly-situated,</b>	§	
	§	
<b>Plaintiffs,</b>	§	
	§	
<b>v.</b>	§	
	§	
	§	
<b>WELLS FARGO BANK, N.A.</b>	§	
	§	
	§	
<b>Defendant.</b>	§	

**DECLARATION OF ABELARDO LIMON IN SUPPORT OF PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES AND NON-TAXABLE COSTS AND CLASS  
REPRESENTATIVE SERVICE AWARDS**

Abelardo Limon hereby declares:

1. My name is Abelardo Limon. I am over the age of eighteen years, am of sound mind, and am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct. I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees and Non-Taxable Costs and Class Representative Service Awards. ECF 6.

## **Limon Law Office's Fees and Expenses**

2. My firm's engagement agreement with the Rodriguezes included a contingency agreement for attorneys' fees of up to 40% of the recovery in a common fund, in addition to expenses to be paid from the common fund. However, in the settlement negotiations for this case, my firm (and Class Counsel as a whole) have reduced their contingent fee to 33% of the Settlement Fund. Expenses allowed by the Court are paid from the Settlement Fund as well. Wells Fargo does not oppose Class Counsel seeking fees and expenses on this basis.

3. As shown in the chart below, multiplying my reasonable billable hours by my historical hourly rates yields a total lodestar of \$88,985.00 for the dates shown below.

4. When using lodestar method as a "cross-check," the Court needs not apply the "exhaustive scrutiny" typically mandated, and the Court may accept the hours estimates provided by counsel. *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D. Va. 2009). If the Court would like, I can provide my time records to the Court for *in camera* review.

5. The following summarizes my hours and rates for work in this case, excluding hours no-billed in the exercise of billing judgment:

Timekeepers at the Limon Law Office <sup>1</sup>	Hours	Rates	Total
Abelardo Limon	273.8	\$325 per hour <sup>2</sup>	\$88,985.00
<b>Totals</b>	<b>273.8</b>		<b>\$88,985.00<sup>3</sup></b>

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<sup>1</sup> For Limon Law Office's time through June 24, 2024.

<sup>2</sup> My current rate is \$500 per hour.

<sup>3</sup> If the lodestar is calculated using my current hourly rate, the total is \$136,900.00.

6. The Limon Law Office's historical hourly rates are below market and thus objectively reasonable. These rates have been approved in several cases in the Southern District of Texas and the Western District of North Carolina.

7. The Limon Firm is also entitled to reimbursement of its reasonable expenses. The Limon Firm requests that the Court award it \$2,652.51 in the reasonable expenses incurred by it in this matter, which consist of expenses summarized in Exhibit A. At the Court's request, I will provide copies of my receipts documenting these expenses.

8. I am familiar with the rates of other consumer bankruptcy attorneys who practice in the Southern District of Texas, and my historical hourly rate is lower than the market average for attorneys with a comparable degree of experience, skill and reputation as me.

9. Prior to and during this case, my firm and I have committed time and resources to this case. I will continue to commit resources from my firm as necessary to bring this case to completion, and I have co-counseled with Kellett & Bartholow PLLC, who have resources to pursue this class action to completion.

**Procedural History of Mr. Limon's Involvement in this Case**

10. I represent Beatriz Villegas-Rodriguez and Rodolfo Rodriguez (hereinafter "the Rodriguezes") in their chapter 13 bankruptcy case, Case No. 20-10074, pending in the United States Bankruptcy Court for the Southern District of Texas, Brownsville Division.

11. Mr. and Mrs. Rodriguez filed for Chapter 13 bankruptcy on February 25, 2020.

12. Mr. & Mrs. Rodriguez were not behind on their monthly mortgage payments prior to filing their Chapter 13 bankruptcy and were initially paying their mortgage directly to Wells Fargo through automatic withdrawals deducted from their bank account twice monthly.

13. I became aware of Wells Fargo's practices because Wells Fargo filed a Bankruptcy

Rule 3002.1 payment change notice in the Rodriguez bankruptcy case on May 12, 2020 (hereinafter “the 3002.1 notice). The 3002.1 notice stated that the Rodriguezes had requested a “Notice of forbearance arrangement based on debtor's(s') request (COVID19),” when in fact they allege they had not requested a forbearance. They were surprised and upset that Wells Fargo had placed their loan into a forbearance as the Rodriguezes were current on their mortgage loan and had intended to stay current on their mortgage loan.

14. The 3002.1 notice alleged that the Rodriguezes’ home mortgage payment had changed starting April 1, 2020, more than a month prior, as a result of the alleged forbearance, despite the fact that the Rodriguezes had already paid their April and May 2020 monthly mortgage payments.

15. I filed an objection to the Wells Fargo 3002.1 notice on June 19, 2020.

16. I previously filed a declaration in Adversary Proceeding No. 20-07028 in the Bankruptcy Court for the Western District of Virginia on April 8, 2024, in support of Plaintiffs’ (amended) motion for a preliminary approval of class settlement in the *Harlow* class action. Harlow AP Docket No. 123-5.<sup>4</sup> My declaration describes the harmful effects of the 3002.1 notice, my efforts to object to that filing, and subsequent negotiation with Wells Fargo’s bankruptcy counsel abate the Rodriguez bankruptcy proceedings concerning Wells Fargo’s Rule 3002.1 notice while the *Harlow* litigation is pending.

17. After filing the objection, I contacted Mr. Bartholow to discuss the matter, as he had previously discussed with me allegations that Wells Fargo was unilaterally putting Chapter 13

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<sup>4</sup> Reference to the docket in the *Harlow* adversary proceeding, Adversary Proceeding No. 20-07028, pending in the United States Bankruptcy Court for the Western District of Virginia, will be referred to as “Harlow AP Docket No.,” and reference to the docket in the Rodriguez’s underlying bankruptcy proceeding, Bankruptcy Case No. 20-10074, pending in the United States Bankruptcy Court for the Southern District of Texas, will be referred to as “Rodriguez BK Docket No.”

debtors into unwanted forbearances, often without the debtors' knowledge, and filing 3002.1 notices that incorrectly alleged that the debtors had requested the forbearances.

18. After contacting Mr. Bartholow, I became aware that Wells Fargo was involved in similar COVID-19 forbearance practices in other jurisdictions, such as Virginia, specifically in the *Harlow* bankruptcy case and other bankruptcy cases.

19. I recommended to the Rodriguezes that they join this lawsuit as two of the named plaintiffs. I explained to them their duties as class representatives, they understood those duties and have carried out those duties in this case.<sup>5</sup>

20. After the initial national publicity that the Harlow case garnered, homeowners throughout the country began contacting me via email with similar stories of Wells Fargo placing their mortgage loans into unwanted forbearances unilaterally. Many of these homeowners were not in a bankruptcy proceeding.<sup>6</sup> I spent numerous hours reviewing the facts of the Rodriguez case and other cases in support of our contention that Wells Fargo's forbearance practices with respect to Chapter 13 bankruptcy debtors were widespread.

21. After we filed this case, I started meeting weekly with co-counsel to review motions and pleadings and strategize about the direction of the litigation. I worked with co-counsel and gave editing input into the filing of the initial complaint and the two amended complaints filed in this case. I provided input for Plaintiffs' motion for preliminary injunction filed against Wells Fargo early in the case.

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<sup>5</sup> After I filed the objection to the Wells Fargo 3002.1 notice in the Rodriguez bankruptcy case, I eventually worked with counsel for Wells Fargo for an agreed order abating the Rodriguez bankruptcy proceedings concerning Wells Fargo's Rule 3002.1 notice while the Harlow litigation is pending.

<sup>6</sup> Our continued investigations led to our filing another class action lawsuit against Wells Fargo for similar forbearance practices with respect to homeowners who were not in bankruptcy. That case was initially styled *Forsburg, et al. v. Wells Fargo & Co. and Wells Fargo Bank, N.A.*, and filed in the United States District Court for the Western District of Virginia, cause number 5:20-cv-00046.

22. I also participated in reviewing the two motions to dismiss filed by Wells Fargo, as well as editing the Plaintiffs' substantial legal briefs filed in response thereto. I provided comments on the numerous other motions, responses and other documents filed when *Harlow* was consolidated with the *Forsburg* case when it was pending in the district court.

23. I helped the Rodriguezes in reviewing and responding to the request for production of documents and interrogatories Wells Fargo served on each of them in this case. This involved, among other tasks, research into damages, the dates of mortgage payments and chapter 13 payments, and the Chapter 13 Trustee's records. Several months later, I also helped the Rodriguezes prepare and serve updated answers to the interrogatories and document production requests. I have assisted with the review of some of the documents Wells Fargo produced in this case.

24. I have attended various virtual court hearings and status conferences in this case, both before the bankruptcy court and before the district court during the time this case was consolidated with *Forsburg*.

25. In July of 2023, my co-counsel and I discussed the fact that a global resolution of the *Harlow* case might be possible, and we agreed with Wells Fargo to go to mediation to try to resolve the case. I assisted my co-counsel in preparing for the mediation.

26. Along with Mr. Harlow, my co-counsel and I attended a mediation held in New York City on November 30, 2023, where the case settled in principle. David Geronumus was the mediator. I participated in discussions and negotiations prior to and during the mediation. I also participated in post-mediation discussions with my co-counsel regarding the term sheet and the settlement agreement itself, and related documents such as the Claim Form and Notice.

27. In addition to reviewing all pleadings related to the final approval of this settlement,

I also reviewed all Spanish versions of the class notice that was placed on the settlement website, along with related notices and debtor communications relating to the settlement. I am fluent in the Spanish language. Many of the affected homeowners in this proceeding speak only Spanish, including the Rodriguezes.

28. Both prior to and after the filing of this case, I have worked closely with Mr. and Mrs. Rodriguez and my co-counsel in litigating the Harlow adversary proceeding. Since the November 2023 mediation, I have consulted with co-counsel on the remaining settlement terms and relief for the class.

**Mr. Limon's background and experience**

29. My curriculum vitae is attached hereto as Exhibit B.

30. I graduated with a degree in journalism from the University of Texas at Austin in 1983. Thereafter, I graduated from a joint degree program at the University of Texas at Austin in 1987, receiving a law degree from the University of Texas School of Law and a Master's degree in Public Affairs/Public Administration from the Lyndon B. Johnson Graduate School of Public Affairs.

31. I have been practicing consumer bankruptcy law predominantly since 1988. After working for two local bankruptcy and business litigation firms in the Rio Grande Valley, I opened my own practice as a sole practitioner in 2002. My experience in bankruptcy matters involves representing debtors in chapter 7, chapter 11, chapter 12, and chapter 13 cases, both business and consumer cases. I have experience with chapter 13 matters that involve payment of home mortgages in the plan through the Chapter 13 Trustee ("conduit" plans) since the late 1990s. The Southern District of Texas Bankruptcy Court (Judge Richard Schmidt, presiding) was one of the first courts in the country that established a conduit plan for chapter 13 debtors. I have handled


more than 6,500 consumer cases since 1988. Over the course of time, I have also been counsel for chapter 7 trustees and our local chapter 13 trustee on selected cases. My practice also involves real estate transactions, selected real estate litigation, and probate matters.

32. I am a member of the Texas Bar, the Texas Bar Foundation, the Rio Grande Valley Bankruptcy Bar Association, the National Association of Consumer Bankruptcy Attorneys, and a past member of the American Bankruptcy Institute.

33. I, as well as Kellett & Bartholow and another co-counsel, were appointed class counsel pursuant to Fed. R. Civ. P. 23(g) in *Cotton, et al. vs. Wells Fargo Bank, N.A.*, Adv. Proceeding No. 17-03056 (USBK WDNC), Case No. 18-00499 (USDC WDNC).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on July 31, 2024.

  
\_\_\_\_\_  
Abelardo Limon

# EXHIBIT A

**HARLOW ADVERSARY EXPENSE SUMMARY**

**LIMON LAW OFFICE**

EXPENSE	AMOUNT
Administration	
Certificate of Service	
Conference	
Depositions	
Expert	
Filing Fee	
Mediation	
Out-of-Town Meals	\$171.55
PACER Charges	
Postage and Shipping	
Process Server	
Research	
Travel	\$2,480.96
Witness Fee	
	<b>\$2,652.51</b>

# EXHIBIT B

ABELARDO (“ABE”) LIMON  
890 W. Price Rd.  
Brownsville, Texas 78520  
Email: alimon@limonlaw.com

BAR ADMISSIONS:

State: State Bar of Texas, 1987  
Federal: Southern District of Texas (Bankruptcy and District Courts), 1988

EDUCATION

The University of Texas at Austin School of Law, Austin, Texas. Juris Doctorate (J.D.), May 1987.

The University of Texas at Austin Lyndon B. Johnson School of Public Affairs, Masters of Public Affairs (M.P.A), May 1987.

The University of Texas at Austin, Austin, Texas. Bachelor of Journalism (B.J.), May, 1983.

Texas Southmost College, Brownsville, Texas. Associate of Arts (A.A.), May 1981.

LEGAL EMPLOYMENT HISTORY

Solo Practitioner, The Limon Law Office, January 2002 to present. The practice handles primarily consumer debtor/creditor cases, consumer real estate transactions, wills and probate matters, and advising churches and church-related entities regarding legal and organizational matters.

Ch. 13 Hearing Officer for Cindy Boudloche, Chapter 13 Bankruptcy Trustee, 2006 to 2010. Presided over Chapter 13 creditor meetings and attended chapter 13 matters for the Chapter 13 trustee as needed.

Staff Attorney, The Law Office of John Ventura. 1995 to 2001. Handled primarily consumer and business bankruptcy cases as well as some probate cases. This included court appearances, adversary matters, contested chapter 13 confirmations, and appearances at creditor meetings.

Staff Attorney, Paul Lee Wiley & Associates. 1990 to 1995. Handled a mix of consumer and business bankruptcy cases, including chapter 11 cases. Also handled real estate matters. Also represented creditors, banks, and bankruptcy trustees.

Staff Attorney, Ford & Ventura, April 1988 to 1990. Handled a mix of consumer and business bankruptcy cases.

## PROFESSIONAL AFFILIATIONS AND CERTIFICATIONS

Licensed to practice law by the Supreme Court of the State of Texas, 1987.

Admitted to practice before the Southern District of Texas, May 1988.

Admitted to practice before the 5<sup>th</sup> Circuit Court of Appeals, May 1997.

Member, Texas Bar Foundation since 1998.

Member, South Texas Bankruptcy Bar Association since 1998.

Member, American Bankruptcy Institute, 1999 to 2024.

Certified in Probate/Guardianship Ad Litem Attorney Program, since May 2006.

Member, National Association Consumer Bankruptcy Attorneys since March 2007.

## NOTEWORTHY OPINIONS OR CASES:

*In re Shank*, 569 B.R. 238 (Bankr. S.D. Tex., 2017)

*Wright v. Csabi*, 578 B.R. 570 (Bankr. S.D. Tex., 2017)

Served as co-counsel for the Class Plaintiffs in Adversary Proceeding No. 17-03056, styled *Cotton et.al. v. Wells Fargo Bank, N.A.*, a national class action filed in the United States Bankruptcy Court for the Western District of North Carolina, Charlotte Division, which after extensive litigation, reached a final settlement to the class claimants, plus attorneys' fees in May, 2019. The success of the case for consumers was demonstrated by the fact that no one objected to the terms and conditions of the Consumer Class Action Settlement Agreement. The case involved damages caused to Plaintiffs for allegedly unilaterally placing Chapter 13 Debtors into unsolicited mortgage modifications.

Currently serving as co-counsel for the Class Plaintiffs in Adversary Proceeding No. 20-07028, styled *Harlow et.al. v. Wells Fargo Bank Co. and Wells Fargo Bank, N.A.*, a national class action filed in the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, which after extensive litigation, reached a mediated settlement to the class claimants, plus attorneys' fees in December of 2023. Preliminary and final motions to approve the settlement are pending. The case involves damages caused to Plaintiffs for allegedly unilaterally placing Chapter 13 Debtors into unsolicited mortgage forbearances during the 2020 COVID pandemic.

## OTHER AFFILIATIONS

Chairman of the Board and Past President, World Radio Network dba Inspiracom, 2010 to present.

Member, Board of Directors, World Radio Network, 1993 to 2010.

Lay Pastor, Iglesia Cristiana del Principe de Paz, Brownsville, TX. since 2018.

Radio Host/Instructor, Academia Cristiana Del Aire, a 15 minute daily Bible correspondence radio program that airs via FM and Shortwave Radio to prisoners internationally, 1995 to present.

Radio Host of Prayer Program/Volunteer, KBNR Radio, 1988 to present.

# **Exhibit 5**



subcommittees. Members of Congress and their staff often request that I assist them in the development of proposed mortgage servicing and bankruptcy legislation.

5. In 2009, I was appointed to the committee formed by the United States Department of Treasury to provide proposals for the treatment under the HAMP mortgage modification program of borrowers who are in bankruptcy. The proposals of the committee, comprised of mortgage industry, Chapter 13 trustee and consumer representatives, were included in Treasury's guidelines for the servicing of borrowers under the HAMP program.

6. In 2014, I was invited by the Consumer Financial Protection Bureau (CFPB) to participate with mortgage servicing industry representatives in a roundtable discussion of a proposed regulation on providing periodic mortgage statements to borrowers in bankruptcy. Several of the positions adopted at the roundtable, including those related to the information on statements for debtors in Chapter 13 cases, were included in the CFPB's final regulation. I also drafted detailed comments and consulted with CFPB rule making staff on the proposed periodic statement regulation.

7. I have submitted extensive comments to the CFPB in several other rule making dockets involving proposed loss mitigation and mortgage servicing regulations. I have been asked by the CFPB to provide input on specific provisions of proposed servicing regulations, including a request for input before issuance of an Interim Final Rule under the Real Estate Settlement Procedures Act (RESPA) and Regulation X on the treatment of COVID-19 related loss mitigation options, including forbearance options authorized by the CARES Act.

8. I was asked to provide legislative proposals and input on draft legislation to staff of the relevant House and Senate committees on mortgage loss mitigation options following the COVID-19 pandemic, including provisions that were enacted in the CARES Act, the COVID-19 Bankruptcy Relief Extension Act of 2021, and the Consolidated Appropriations Act of 2021.

9. I was a member of the federal Judicial Conference Advisory Committee on Bankruptcy Rules from 2006-2012, appointed by Chief Justice John Roberts. I provided a leadership role in the development of bankruptcy rules dealing with the treatment and servicing of home mortgage claims in Chapter 13 cases (Bankruptcy Rule 3002.1 and amendments to Rule 3001) and related Official Forms. Following the completion of my two, three-year terms on the Committee, I remained until 2014 as a member of the Committee's working group on the development of a national Chapter 13 plan form proposal and the Bankruptcy Forms Modernization project. I later served as a consultant to the Committee on a project to restyle the bankruptcy rules.

10. In 2017, I was appointed as a Commissioner for the American Bankruptcy Institute's Commission on Consumer Bankruptcy. The ABI Commission was charged with researching and recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure. As a commissioner, I helped develop, in consultation with members of the mortgage servicing industry and Chapter 13 trustees, several recommendations on the treatment of loan modifications in bankruptcy cases and suggestions for improving the mortgage servicing requirements under Bankruptcy Rule 3002.1. The Commission's final report containing its recommendations was issued in April, 2019.

11. I have also participated in meetings convened by the National Association of Chapter 13 Trustees with members of the mortgage servicing industry to discuss the treatment of mortgage borrowers in bankruptcy, including borrower communications and compliance with RESPA, TILA, and Bankruptcy Rule 3002.1.

12. I frequently appear as a speaker and panelist at national conferences held by the National Conference of Bankruptcy Judges (NCBJ), National Association of Chapter 13 Trustees, National Association of Consumer Bankruptcy Attorneys, American Bankruptcy Institute, as well as numerous local and regional trainings. I have on two occasions served on the NCBJ education committee charged with planning its annual conferences. I have appeared as a speaker at seminars provided exclusively for bankruptcy judges organized by the Federal Judicial Center (FJC). I also appeared in a video production sponsored by the FJC on loss mitigation mediation programs that was made available to bankruptcy judges. In 2017, I received the NCBJ Excellence in Education award.

13. I am a conferee of the National Bankruptcy Conference and a fellow of the American College of Bankruptcy. I am also a member of the Board of Editors of Collier on Bankruptcy, member of the Board of Directors of the National Consumer Bankruptcy Rights Center, and former member of the Board of Directors of the National Association of Consumer Bankruptcy Attorneys (2001-2016) and the American Bankruptcy Institute (2006-2008). I was an adjunct faculty member at Boston College School of Law from 2008 to 2011, teaching a course on consumer bankruptcy law.

14. I am co-author of NCLC's treatise entitled Mortgage Servicing and Loan Modifications, NCLC Consumer Credit and Legal Practice Series (2nd Ed. 2023), which includes chapters I author on federal and state mortgage servicing law. I am co-author of NCLC's Home Foreclosures (2nd Ed. 2023). Previously I was co-author of all five editions of NCLC's Foreclosures and Mortgage Servicing (last published in 2014).

15. I am editor and contributing author to Consumer Bankruptcy Law and Practice, NCLC Consumer Credit and Legal Practice Series (13th Ed. 2023). I am co-author of NCLC's Bankruptcy Basics (3<sup>rd</sup> Ed. 2023).

16. I am a contributing author to Collier on Bankruptcy and the Collier Bankruptcy Practice Guide. In the Collier on Bankruptcy treatise, I am the current author of Chapter 362 Automatic Stay, Chapter 522 Exemptions, and the chapters on the 3000 series of the Bankruptcy Rules, including Chapter 3002.1 Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence.

17. My statements and opinions in this Declaration are based on my education and experience, and my review of the motion for preliminary approval of class action settlement, this Court's order preliminarily approving settlement and providing for notice, the application for compensation submitted by Plaintiffs' counsel, and various pleadings and documents in the docket for this case and those produced in discovery.

18. My statements and opinions are also based on my personal knowledge over a period of years of the work of Plaintiffs' counsel, Kellett & Bartholow PLLC. I previously reviewed the firm's work in a nationwide class action case involving the misuse of Rule 3002.1(b) payment change notices, as I provided a declaration in support of the class action settlement in that case, Cotton v. Wells Fargo, United States District Court, Western District of North Carolina, No. 18-00499 (Kellett & Bartholow

served as co-counsel). I submitted a declaration in support of the application for compensation for Kellett & Bartholow in *Trevino v. Caliber*, United States Bankruptcy Court, Southern District of Texas, a case that also involved the application of Rule 3002.1. I have also served as a co-panelist with Ms. Kellett and Mr. Bartholow at several continuing legal education programs on consumer and bankruptcy law topics. I served as co-counsel with Kellett & Bartholow in *Bryant v. Navient Corp*, et al., No. 12-36689-BJH13, A.P. No. 19-03227-BJH, United States Bankruptcy Court, Northern District of Texas, a case seeking the crediting of unclaimed funds on the student loan accounts of a putative class of bankruptcy debtors. I am also familiar with the work of Plaintiffs' counsel, attorney Malissa Giles and attorney Abelardo Limon.

19. This case involves novel and complex issues in highly specialized areas of law. One such area concerns the treatment of home mortgage loss mitigation in pending bankruptcy cases and the application of Bankruptcy Rule 3002.1 in Chapter 13 cases. A loan forbearance is a type of mortgage loss mitigation option.

20. Chapter 13 is used often by debtors to save their homes from foreclosure. Debtors who are behind on their home mortgage when they file a Chapter 13 case are given the opportunity to cure defaults over the course of their bankruptcy plan and continue to make their regular monthly mortgage payments. Bankruptcy Rule 3002.1 is intended to facilitate the exchange of information between mortgage creditors, debtors and trustees when debtors are attempting to cure a mortgage default and/or maintain ongoing payments. The rule is designed to ensure that debtors and trustees are given accurate information about the amount of postpetition payment obligations, including any changes based on escrow or interest rate adjustments, so as to facilitate a successful final cure by the debtor and to prevent unexpected deficiencies in a mortgage when a Chapter 13 case is completed and closed. The purpose of the rule is to help the debtor exit a Chapter 13 bankruptcy with a current mortgage loan. The practices, policies, and procedures of Defendants, as alleged by the Plaintiffs in this action, raise very serious concerns in light of the purpose of Bankruptcy Rule 3002.1 and its implementing Official Forms.

21. Another factor that bears significantly on the allegations in this case is the mortgage industry practice with respect to the making of loss mitigation offers to borrowers by servicers. A mortgage servicer acting with reasonable diligence, consistent with the industry standards of the servicing industry, would not modify the terms of a mortgage pursuant to a loss mitigation option to avoid foreclosure without the borrower's affirmative consent. Except in the very limited situation involving a natural disaster where communication systems may not be operational, unsolicited loss mitigation offers, including temporary, short-term offers such as a forbearance suspension of payments, are put into effect only after there has been communication with the borrower and acceptance of the offer. Mortgage servicers acting prudently do not impose forbearances or other options on debtors who did not request them or offer them only on an opt-out basis, and certainly would not falsely represent in court filings that a borrower requested a forbearance or other loss mitigation option when they did not.

22. The Defendants asserted in this case that as a response to the COVID-19 pandemic, they were justified in departing from industry standards and putting debtors in forbearance without their consent and on an opt-out basis. Plaintiffs brought this action to challenge Defendants' actions, contending that the CARES Act required an explicit request for forbearance relief by the borrower. The unsettled posture of the CARES Act requirements and the unprecedented nature of the COVID-19 pandemic added to the complexity of this case. Ultimately, the legal theory adopted by Plaintiffs' counsel proved

to be consistent with that of mortgage industry (other than Wells Fargo). Even following the extreme hardships many borrowers faced immediately following COVID-19, mortgage investors, the Federal Housing Administration, and the government-sponsored enterprises (Fannie Mae and Freddie Mac) required that mortgage servicers provide forbearances in accordance with the CARES Act only upon request of the borrower and some indication that the borrower had a hardship, and any unsolicited loss mitigation offers required some form of acceptance by the borrower.

23. The potential harm to borrowers in providing unsolicited forbearances and other loss mitigation offers is greatly magnified when the borrower is a debtor in Chapter 13 case. The payment obligations of the debtor during the Chapter 13 case, the structure for making and distributing those payments, and the process for any modification of those payment obligations are strictly determined by the terms of the debtor's confirmed plan, the requirements of the Bankruptcy Code, federal Bankruptcy Rules and local rules, and the oversight provided by of the Chapter 13 trustee. Specifically, with respect to home mortgages, the payment change procedures under Bankruptcy Rule 3002.1(b) and the Official Bankruptcy Form 410A, Notice of Mortgage Payment Change, have become an essential component of this process in mortgage cure cases where debtors must maintain ongoing mortgage payments during the case so that they will be current on their loans when they complete their Chapter 13 plan.

24. Debtors in mortgage cure cases have come to expect, based on the advice of their counsel, that they will receive payment change notices from their mortgage servicer during their case and that they must begin paying the new payment amount stated in the notice (either directly to the mortgage servicer or through an adjustment to their trustee payment in conduit districts) in order to avoid dismissal of their case or the granting of stay relief. The process creates an expectation by debtors, debtors' attorneys, trustees and the court that accurate information about payment changes will be provided by mortgage servicers and that compliance with payment change notices is mandatory, subject only to objection if a party believes the new payment amount is not required by the contract terms.

25. Wells Fargo used this structure of the payment change procedures under Bankruptcy Rule 3002.1(b) and the Official Bankruptcy Form 410A to implement its unsolicited, nonconsensual loan forbearance program upon debtors in bankruptcy. Plaintiffs' counsel, based on their extensive formal and informal discovery, have alleged that the Wells Fargo manipulated this process by falsely stating on payment change notices that class members had requested forbearances. Examples of the payment changes notices I reviewed also show that Wells Fargo altered Official Form 410A by adding a "Notice of Temporary Forbearance" and by including confusing and contradictory statements. For example, the payment change notices state that Wells Fargo provided a temporary suspension of the debtor's mortgage payments, but also that the "use of this form in no way implies that a payment change is occurring or has occurred on the account," and that "this filing does not imply that the provisions of FRBP 3002.1 apply to this filing."

26. Many attorneys would be challenged by the issues presented in this case, because they are at the intersection of bankruptcy and mortgage servicing loss mitigation practice. Attorneys who handle mortgage servicing cases often lack knowledge of bankruptcy and would be hamstrung in understanding the nuances of Chapter 13 practice and the impact a potential nationwide settlement would have on debtors. Such counsel would not be aware of the different ramifications of Wells Fargo's alleged misuse of Official Form 410A and its nonconsensual forbearance program in ongoing Chapter 13 cases. For example, they would not understand the differences in how a debtor or Chapter

13 trustee would respond to a payment change notice in districts in which Chapter 13 trustees disburse ongoing mortgage payments (conduit) and those in which debtors pay directly.

27. Conversely, bankruptcy counsel generally are not familiar with complicated mortgage servicing issues, particularly those related to the use of unsolicited loss mitigation offers and non-consensual forbearances. They would have had difficulty in this case in identifying the unlawful practices, determining appropriate legal claims, and crafting targeted discovery. Most consumer bankruptcy attorneys are not skilled at handling complex litigation and lack the resources to handle it successfully.

28. As a frequent speaker at national and local conferences on bankruptcy and mortgage servicing issues, and in my leadership roles in bankruptcy and consumer organizations, I have had occasion to become familiar with many lawyers throughout the nation who practice in these different areas. Based on this experience, I have observed that there are very few attorneys who are skilled in both practice areas. Thus, it is my opinion that Plaintiffs' counsel in this case were uniquely qualified to represent the class because they have knowledge and experience in both bankruptcy and mortgage servicing. This brought efficiency to the handling of the case, ensuring that time spent by Plaintiffs' counsel directly benefitted the class at all times.

29. This was not a case where defendants quickly acknowledged that the challenged actions caused harm to class members and then proceeded to negotiate a settlement. Wells Fargo has steadfastly contended that it has done nothing wrong and vigorously defended its actions at all stages of this litigation. It challenged Plaintiffs' legal claims, necessitating time-consuming formal and informal discovery and extensive briefing on motions to dismiss. This case also involved proceedings in the district court, after the initial withdrawal of the reference, and in this court. Only after almost four years of litigation and several mediation sessions did the parties reach a settlement.

30. Wells Fargo strongly disputed that Plaintiffs' legal claims could result in any relief for class members. For example, Wells Fargo argued that Rule 3002.1 could not be enforced through a private right of action or an award of substantial sanctions. Plaintiff's counsel took on this case knowing full well that the availability and extent of sanctions under Rule 3002.1(i) was unsettled and that there was a significant risk that there would be no recovery for the class.

31. The Defendants also strongly contested the appropriateness of class action relief in this case. This is an area in which the experience and knowledge of Plaintiffs' counsel related to bankruptcy class action practice created value for the class. Quite simply, nothing about bankruptcy class action practice is routine or formulaic. While obtaining class certification is difficult in typical consumer litigation, the challenges are compounded when seeking class certification in a bankruptcy case. The law in this area is unsettled, particularly as it relates to nationwide class actions. The Defendants also asserted that there were individualized questions about whether some class members had requested forbearance. If this case had not settled and the bankruptcy court had certified a nationwide class, the Defendants would have almost certainly appealed that decision. There are few attorneys other than Plaintiffs' counsel who have experience in successfully handling bankruptcy class actions and the acumen to negotiate a settlement agreement providing appropriate and substantial relief to bankruptcy debtors nationwide.

32. The settlement agreement appropriately recognizes that not all class members were harmed in the same way. For class members in Subclass I, Wells Fargo put them into forbearances without their

request and filed Notices of Forbearance in their Chapter 13 bankruptcy cases that were embedded in payment change notices. Some of these class members who did not wish to be in forbearance took steps to rectify the problem, incurring costs by having their attorneys contact local counsel for Wells Fargo and the Chapter 13 trustee or by filing formal objections under Rule 3002.1(b)(2) or other court filings. As is often the case in Chapter 13 cases, some debtors are unable to afford the costs of representation for responding to postconfirmation events. Some of these class members were thus unable to address the problem and suffered the consequences of an unwanted forbearance. Due to the ambiguous and confusing statements that Wells Fargo added to the payment change notices, and the improper use of such notices, other debtors and their counsel may not have understood the impact of the notices or that they were being placed in a forbearance without their consent, and therefore did not take action in response. These debtors were later forced to address a postpetition arrearage caused by the unwanted forbearance. In conduit districts in which trustees honored the improper payment change notice and there was no attempt to modify the plan, some class members plan payments may have been diverted to other creditors rather than applied to their home mortgages.

33. The settlement provides class members in Subclass I with a substantial payment of \$2,500, and affords them the opportunity to submit a claim for any additional damages they may have incurred. Class members in Subclass II will receive a payment of \$500 and also the opportunity to submit a claim for any additional loss. The parties to the settlement estimate that there will be a claims fund of approximately \$3.1 million after other distributions are made from the \$15 million settlement. Any remaining settlement funds after the distributions are made will be provided to class members as a second payment rather than revert to the Defendants. This combination of an automatic payment that may fully compensate many of the members of Subclass I and II, the opportunity for all class members to seek compensation for any damages that exceed the fixed payments, and the distribution of any surplus to class members is an exemplary method of targeting monetary relief in class action litigation. In addition, Plaintiffs' counsel's knowledge of bankruptcy practice helped them to appropriately weigh the relative harm to class members from Wells Fargo's practices in determining the distribution levels for the subclasses from the settlement fund. In sum, this is a highly successful outcome for class members.

34. Unlike some class cases in which consumers receive only a nominal amount, the relief here can make a real difference in helping class members. For example, these funds can be used by class members to cure defaults that may still exist from the unwanted forbearances or improper payment change notices. To cure defaults after the unwanted forbearances, other class members may have entered into deferral agreements that defer the forborne payments and create a balloon payment obligation at the end of the loan term. The settlement funds can be used by those class members to help pay the deferred amounts and avoid the payment shock from a balloon payment.

35. For the reasons stated above, based on the circumstances of this case and accounting for the case's difficulties and the results obtained, it is my opinion that the requested fee of one-third of the common fund is reasonable and appropriate. My conclusion is reinforced by the special risks in this case undertaken by Plaintiffs' counsel. While there is always the risk that a case accepted on a contingency basis will result in no fee at all, the unsettled nature of bankruptcy class actions and the unique subject matter here magnified the risk for Plaintiffs' counsel. When weighing potential risks, class counsel often look to other similar litigation. Plaintiffs' counsel in this case had few examples to use for comparison or as a benchmark. In fact, I am aware of only one other similar case dealing with

Rule 3002.1 that resulted in successful nationwide class action relief that they could have considered, and it was handled by several of the same attorneys representing the class in this case.

36. Another factor related to risk is the anticipated and actual response by the defendant. As Plaintiffs' counsel surely contemplated, Wells Fargo took the position that its practices were completely proper and lawful. As mentioned earlier, this was not a case where the defendant quickly rolled over and offered to settle. Rather, the settlement here was hard fought and came only after aggressive litigation, extensive discovery, and two well-conducted mediated negotiations with highly-regarded mediators.

37. In my opinion, the requested fee is also reasonable when viewed in terms of a lodestar "cross-check." Using a lodestar cross-check in this case results in a multiplier of 2.62 (which will be further reduced in the future as additional work is done by class counsel). This multiplier is justified based on the special skills, risks and difficulties encountered in this case. Given the contingent nature, complexity and duration of this case, I believe that a multiplier of at least 2 or 3 is needed to attract skilled counsel to undertake such litigation.

38. I have submitted reports and provided testimony as an expert witness on a variety of consumer and bankruptcy issues, in the following cases: Tom Simon and Cyndie Simon v. Specialized Loan Servicing, LLC, Civil Action No. 1:23-cv-01159, United States District Court for the Eastern District of Virginia, Alexandria Division; Harry R. Hall and Cynthia Hall v. Ocwen Loan Servicing, et al, United States District Court for the Middle District of Alabama, Northern Division Case No.: 2:19-CV-254-MHT (WO); Anthony Hovanky and Nigel Jackson v. Realpage, Inc., United States District Court for the Eastern District of Virginia, Civil Action No. 3:20cv586-JAG; *In re* Edgar and Elizabeth Constantino, United States Bankruptcy Court, District of Nevada, Case No. BK-11-26898-MKN; *In re* Willie and Adnette Moon, United States Bankruptcy Court, District of Nevada, Case No. BK-13-12466-MKN; Davin LW Pope v. U.S. Bank, et al., United States Bankruptcy Court, District of New Hampshire, BK No. 14-11393-BAH, Adv. No. 18-01011-BAH; Cotton v. Wells Fargo, United States District Court, Western District of North Carolina, No. 18-00499; Ronnie and Joan McKinney, United States Bankruptcy Court, District of Nevada, Case No. BK-N-10-50597-BTB; Matthew and Amber Benner, Debtors, United States Bankruptcy Court, Northern District of Indiana, South Bend Division, Case No. 15-31477; Jeremy D. Ruehle vs. Ocwen Loan Servicing, LLC, et al, District Court Of Cleveland County, State Of Oklahoma, Case No. CJ-2015-867; Larry I. Milder vs. Landmark American Insurance Co., State of Rhode Island Superior Court, C.A. No. PC 2015-3475; Roy and Jennifer Burris v. Ocwen Loan Servicing, L.L.C., et al., United States District Court, Western District of Oklahoma, No. CIV-16-120-R; Arnold and Lynell Pinkney v. Roundpoint Mortgage Serving Corp., et al., United States District Court, Western District of Washington, No. 15-cv-00260-TSZ; Cythina and Samuel Chy v. Taing, et al., Middlesex Superior Court, Commonwealth of Massachusetts, C.A. No. 1581-CV-06781; Benoit Dorvil v. Woodbridge Sterling Capital, et al., Suffolk Superior Court, Commonwealth of Massachusetts, C.A. No. 00-3905-B; James P. Knapp and Pamela K. Knapp v. American General Finance, Inc., United States District Court, District of W. Va., C.A. No. 2:99-0571; Lonnie C. Kirk, Jr. and Dora Kirk v. American General Home Equity, Inc., Circuit Court of Bonne County, W.Va., C.A. No. 96-C-141; Robert W. Perkins v. Accredited Home Lenders, Inc., Superior Court, District of Columbia, PR No. 00ca002486; Clark v. Wells Fargo National Bank, Bankruptcy Court, C.D. Cal., Ca. No. LA00-11658-VZ.

39. In addition to reasonable costs and expenses incurred, my compensation for preparation of this report and testimony is at the rate of \$450 per hour, paid to the National Consumer Law Center (NCLC). Neither this nor any other expert work that I perform affects my compensation from NCLC.

/s/ John Rao

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John Rao  
National Consumer Law Center, Inc.  
July 31, 2024

## **John Rao**

National Consumer Law Center  
7 Winthrop Square, 4<sup>th</sup> Floor  
Boston, MA 02110-1245  
(617) 542-8010 (phone)  
(617) 542-8028 (fax)  
jrao@nclc.org

### **Professional Experience**

#### **National Consumer Law Center, Inc.**

Boston, Mass.

Senior Attorney (1996 – Present)

Mr. Rao has been an attorney at the National Consumer Law Center since 1996, providing policy analysis and advocacy on consumer credit, mortgage servicing and bankruptcy issues. His duties include writing and editing a number of NCLC legal treatises and publications, and serving as a panelist and instructor at numerous trainings and legal education seminars on consumer law and bankruptcy topics. Mr. Rao also provides testimony, comment and assistance to members of Congress, Congressional staff, and federal regulatory agencies on issues affecting low income consumers. He has filed many *amicus curiae* briefs in cases before the United States Supreme Court and various Courts of Appeal.

#### **Rhode Island Legal Services, Inc.**

Providence, R.I.

(1982 - 1999)

Mr. Rao served as a managing attorney in the Providence office of Rhode Island Legal Services and headed the program's Consumer Unit. His practice included a broad range of cases dealing with consumer and utility issues, requiring representation of low-income clients before federal, state and bankruptcy courts, and before administrative agencies. He continued to work for RILS on a part-time basis from 1996 to 1999.

### **Bar Admissions**

- Supreme Court of the United States
- First Circuit Court of Appeal
- United States District Court, District of Rhode Island
- Supreme Court of Rhode Island

## **Education**

- 1982            Juris Doctor  
                  Hastings College of Law - University of California
- 1978            Bachelor of Arts  
                  Boston University

## **Professional Activities**

- 2006 - 2012     Member of the Federal Judicial Conference Advisory Committee on Bankruptcy Rules from, appointed by Chief Justice John Roberts
- 2007 - 2014     Member of the United States Bankruptcy Court for the District of Massachusetts Advisory Committee on Local Rules
- 2017 - 2019     Commissioner, American Bankruptcy Institute's Commission of Consumer Bankruptcy
- 2012 - present   Member of the Board of Editors of Collier on Bankruptcy
- 2011 - present   Conferee, National Bankruptcy Conference
- 2008 - present   Fellow, American College of Bankruptcy
- 2008 - 2011     Adjunct faculty member at Boston College School of Law, teaching a course on consumer bankruptcy

## **Publications**

### **Treatises**

Contributing Author, *Collier on Bankruptcy* (16th Ed.).

Contributing Author, *Collier Bankruptcy Practice Guide*.

Editor and Contributing Author, *Consumer Bankruptcy Law and Practice*, Consumer Credit and Legal Practice Series (13th Ed. 2023).

Co-author, *Mortgage Servicing and Loan Modifications*, Consumer Credit and Legal Practice Series (2nd Ed. 2023).

Co-author, *Foreclosures and Mortgage Servicing*, Consumer Credit and Legal Practice Series (5th Ed. 2014).

Co-author, *Foreclosures and Mortgage Servicing*, Consumer Credit and Legal Practice Series (last published in 2014).

Co-author, NCLC's *Bankruptcy Basics* (3rd Ed. 2023).

Co-author, NCLC's *Guide to Surviving Debt* (7th Ed. 2008).

Co-author, *Consumer Bankruptcy Law and Practice: Special Guide to the 2005 Act*, Consumer Credit and Legal Practice Series (2005).

Contributing Author, *Stop Predatory Lending: A Guide for Legal Advocates* (2d Ed. 2007).

Contributing Author, *Student Loan Law*, Consumer Credit and Legal Practice Series (3d Ed. 2006 and 2008 Supp.).

## **Articles**

Author, "New Rule Gives Chapter 13 Bankruptcy Debtors Credit Toward Student Loan Forgiveness," NCLC Digital Library, Apr, 2024.

Author, "Supreme Court Stops Equity Theft in Property Tax Foreclosures," NCLC Digital Library, June, 2023.

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Co-Author, "New CFPB Rule Protects Homeowners Facing Foreclosure," NCLC Digital Library, Aug., 2021.

Author, "New Consumer Bankruptcy Protections Now Effective," NCLC Digital Library, Jan., 2021.

Author, "New Rights for Homeowners Exiting COVID-19 Forbearances," NCLC Digital Library, Sep., 2020.

Author, "Supreme Court: Bankruptcy Stay Relief Determination Is a Final, Appealable Order," NCLC Digital Library, Feb., 2020.

Co-Author, "Bankruptcy News: Added Veterans' Protections; New Rules; Student Loan Dischargeability," NCLC Digital Library, Nov., 2019.

Co-Author, "Effective April 19, New Mortgage Servicing Rights for Heirs, Spouses, and Debtors in Bankruptcy," NCLC Digital Library, Apr., 2018.

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Author, “The Other Foreclosure Crisis: Property Tax Lien Sales,” National Consumer Law Center, 2012.

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Author, “‘Proof of Claim’ and Bankruptcy Fees: Are They Really Attorneys' Fees?,” American Bankruptcy Institute Journal, Vol. XXIX, No. 12, Mar. 2010.

Co-Author, “Foreclosing a Dream: State Laws Deprive Homeowners of Basic Protections,” National Consumer Law Center, February 2009.

Author, “Servicing of Home Mortgages in Bankruptcy: When Worlds Need Not Collide,” *American Bankruptcy Institute Journal*, Vol. XXVIII, No. 1, Feb. 2009.

Author, “A Fresh Look at Curing Mortgage Defaults in Chapter 13,” *American Bankruptcy Institute Journal*, Vol. XXVII, No. 14, Feb. 2008.

Author, “Impact of *Marrama* on Case Conversions: Addressing the Unanswered Questions,” *American Bankruptcy Institute Law Review*, Vol. 15, No. 2, Winter 2007.

Author, “Testing the Limits of Statutory Construction Doctrines: Deconstructing the 2005 Bankruptcy Act,” *American University Law Review*, Vol. 55, No. 5, 2006.

Author, “Debt Buyers Rewriting of Rule 3001: Taking the ‘Proof’ Out of the Claims Process,” *American Bankruptcy Institute Journal*, Vol. XXIII, No. 6, July/August 2004.

Co-author, “The Match Continues: First Circuit Rules on Remedies for Discharge Violations,” *American Bankruptcy Institute Journal*, Vol. XIX, No. 10, December/January 2001.

Author, “Sovereign Immunity: Don’t Assume That Student Loan Agency Is An Arm Of The State,” *Consumer Bankruptcy News*, April, 2000.

Author, NCLC REPORTS, Bankruptcy and Foreclosure Edition (2000-2014).

## **Board Member Affiliations**

2012 – present	Board of Editors of Collier on Bankruptcy
2010 – present	National Consumer Bankruptcy Rights Center
1998 – 2015	National Association of Consumer Bankruptcy Attorneys
2002 – 2008	American Bankruptcy Institute
2000 – 2008	Rhode Island Legal Services, Inc., Providence, Rhode Island
1992 – 1998	Action Community Land Trust, Kingston, Rhode Island

## **Educational Programs**

Mr. Rao has presented as speaker, panelist and trainer at continuing legal education programs on numerous occasions, sponsored by the following entities, among others:

American Bankruptcy Institute	Judge Joe Lee Bankruptcy Institute
American Bar Association	Institute for Foreclosure Legal Assistance
American College of Bankruptcy	Illinois State Bar Association
American University College of Law	Hon. Alexander L. Paskay Annual Bankruptcy Seminar
AARP Foundation	Hudson Valley Bankruptcy Bar Association
Bankruptcy Section of Minnesota State Bar Association	Hon. Frank W. Koger Bankruptcy Symposium
Barnstable County Bar Association	Mid-Hudson Bankruptcy Bar Association
Boston Bar Association Education Committee	Mississippi Center for Legal Services
Central Florida Bankruptcy Law Association	Maine State Bar Association
City of Seattle, Office of Housing	Massachusetts Office of the Attorney General
Cleveland Metropolitan Bar Association	Massachusetts Continuing Legal Education, Inc.
Connecticut Bar Institute and Bar Association	New Orleans Legal Assistance
Detroit Consumer Bankruptcy Conference	National Legal Aid and Defender Association
Department of Housing and Urban Development	National Association of Consumer Advocates
Drake University Law School	National Association of Consumer Bankruptcy Attorneys
East Palo Alto Community Legal Services	National Consumer Law Center
Empire Justice Center	National Conference of Bankruptcy Judges
Erie County Bar Association	National Association of Bankruptcy Trustees
Harvard University Journal on Legislation	New York University
Federal Judicial Center	National Housing Law Project
Florida Legal Services	Nevada State Bar Association
Greater Boston Legal Services	Neighborhood Legal Services, Inc., (Danvers)
Georgetown University School of Law	

New Center for Legal Advocacy, Inc.  
New Hampshire Legal Assistance  
Land of Lincoln Legal Assistance, Inc.  
Legal Assistance of North Dakota  
Legal Services New York City  
Legal Services of Eastern Missouri.  
Legal Aid Services of Oklahoma, Inc.  
Legal Services for Cape Cod and Islands, Inc.  
O'Neill Great Lakes Regional Bankruptcy  
Institute  
Oregon Bar Association  
Peabody Neighborhood Legal Services  
Volunteer Lawyer Program  
Practicing Law Institute  
Roger Williams University  
Rhode Island Bar Association

Rhode Island Law Institute  
Sacramento Valley Bankruptcy Forum  
South Middlesex Legal Services Pro Bono  
Program  
Southeastern Bankruptcy Law Institute  
South Carolina Bankruptcy Law Assoc.  
Syracuse University College of Law  
State Bar Association of North Dakota  
State Bar of Wisconsin  
Trial Lawyers of America Association  
Texas Lawyers Care  
The Foundation of the State Bar of California  
Univ. of Missouri – Kansas City School of Law  
Univ. of New Hampshire School of Law  
U.S. Bankruptcy Court Dist. Of Nevada  
Volunteer Lawyer Project of Boston Bar Assoc.

