

CLERKS OFFICE U.S. DISTRICT COURT
AT ROANOKE, VA
FILED

OCT 11 2024

LAURA A. JUSTIN, CLERK
By: 
DEPUTY CLERK

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

TROY SHANNON HARLOW

§

MARK STEPHEN ESTES

§

§

KIMBERLY PORTER FEWELL,

§

§

BEATRIZ VILLEGAS-RODRIGUEZ

§

§

and

§

ADVERSARY NO. 20-07028

RODOLFO RODRIGUEZ,

§

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

§

DISTRICT COURT NO. 7:24-cv-00424

Plaintiffs,

§

§

v.

§

§

WELLS FARGO BANK, N.A.

§

§

Defendant.

§

§

§

**ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF
SETTLEMENT CLASS PURSUANT TO FED. R. CIV. P. 23**

Pending before this Court is Plaintiffs' Motion for Final Approval of Class Action Settlement and Certification of Settlement Class Pursuant to Fed. R. Civ. P. 23 (the "Motion"). After consideration of the Motion, the arguments of counsel and the record, the Court is of the opinion that the Settlement should be approved, and finds as follows:

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing on the application of the Parties for approval of the Settlement Agreement and Release attached to the Brief in Support of the Motion as Exhibit 1.A. (the "Settlement Agreement" or "Agreement"). On May 22, 2024, the United States

Bankruptcy Court for the Western District of Virginia (the “Bankruptcy Court”) granted preliminary approval to the proposed class action settlement between Plaintiffs Troy Harlow, Mark Estes, Kimberly Fewell, Beatriz Villegas-Rodriguez, and Rodolfo Rodriguez (the “Class Representatives”), on behalf of themselves and all members of the Class, and Defendant Wells Fargo Bank, N.A (“Wells Fargo Bank,” or “Defendant”). The Bankruptcy Court also provisionally certified the Class for settlement purposes and approved the procedure for giving Class Notice to the members of the Settlement Class. This Court granted the Parties’ Joint Motion to Withdraw the Bankruptcy Reference (Docket No. 5) and set the Final Approval Hearing for October 11, 2024 (Docket No. 4). This Court finds that the Class Notice substantially in the form approved by the Bankruptcy Court in the Preliminary Approval Order, as amended by this Court at Docket No. 9, was given in the manner ordered by the Bankruptcy Court and this Court, constitutes the best practicable notice, and was fair, reasonable, and adequate.

On October 11, 2024, this Court held a duly noticed Final Approval Hearing to consider, among other things: (1) whether to certify the Class for settlement purposes; (2) whether the terms and conditions of the Agreement are fair, reasonable and adequate; (3) whether a judgment should be entered dismissing the Class Representatives’ Released Claims on the merits and with prejudice; and (4) whether and in what amount to award attorneys’ fees and expenses to Class Counsel for the Class.

IT IS THEREFORE ORDERED that:

1. **Definitions.** This Judgment incorporates by reference the definitions in the Agreement, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Agreement.

2. **Jurisdiction.** This Court has personal jurisdiction over Plaintiffs and all Class Members and has subject matter jurisdiction to approve the Settlement and the Settlement Agreement.

3. **Settlement Class is Certified.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally 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 Effective Date not occur), this Action as a class action, with Subclass 1 defined as 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, and Subclass 2 defined as the collective group of Eligible Class Members who are not in Subclass 1. The Court finds, for settlement purposes only, that class certification under Fed. R. Civ. P. 23(b)(3) is appropriate in that, in the settlement context: (a) the Members of the Class are so numerous that joinder of all Class Members in the class 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 will fairly and adequately represent and protect the interests of the Class Members; (e) the class is ascertainable; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. **Settlement Approval.** Pursuant to Federal Rule of Civil Procedure 23, this Court hereby fully and finally approves the Settlement set forth in the Agreement and its terms, and finds that the Settlement is, in all respects, fair, reasonable and adequate within the meaning of Fed. R. Civ. P. 23 and directs the Agreement's consummation pursuant to its terms and conditions. The

Court further finds that the Settlement set forth in the Agreement is the result of good faith arm's-length negotiations between experienced counsel representing the interests of the Parties. Accordingly, the Settlement embodied in the Agreement is hereby finally approved in all respects, there is no just reason for delay, and the Parties are hereby directed to perform its terms.

5. **Binding on the Parties.** The Agreement and the Final Approval Order and Judgment is binding on the Parties.

6. **Approval of Class Notice.** The Court finds that the notice given to the Class Members pursuant to the Notice Plan and Class Notice, as modified by Court order, (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.

7. **Adequacy of Class Counsel and Plaintiffs.** The Court hereby finds that Class Counsel and Plaintiffs adequately represented Class Members and will adequately represent the Class Members.

8. **Dismissal.** The Court directs that the Action and claims for damages be dismissed with prejudice and, except as otherwise explicitly provided for in the Agreement, without costs.

9. **Releases.** The Class Releasees are hereby discharged and released from all Class Released Claims. The Class Releasers are permanently barred and enjoined from the institution and prosecution of any and all of the Class Released Claims.

10. **Approval of Opt-Out List.** The Court hereby approves the Opt-Out List and determines 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. **Use of Order.** The Court hereby determines 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 the Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the Agreement.

12. **Continuing Jurisdiction.** The Court hereby reserves continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation, and enforcement of the Agreement.

13. **Modifications.** The Court authorizes the Settling Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the 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.

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

15. **Attorneys' Fees and Expenses.** Entry of an Order granting Class Counsel their reasonable attorneys' fees and expenses shall in no way disturb or affect this Judgment and shall be considered separate from this Order entering Final Judgment.

16. **Termination of Settlement.** In the event that the Settlement does not become effective in accordance with the terms of the Agreement, or the Agreement is terminated pursuant to Section VIII.E of the Agreement, the Parties shall be restored to their respective positions in the Action prior to the execution of the Agreement, the certification of the Settlement Class shall be automatically vacated, and this Judgment shall be rendered null and void to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

17. **CAFA Notice.** Defendants have provided notification to all appropriate federal and state officials regarding the Settlement as required by 28 U.S.C. § 1715.

18. **Class Notice List.** No later than thirty (30) days after the Effective Date (as defined in the Agreement), the Settlement Administrator shall file with this Court, under seal (in order to protect the names and addresses of Class Members), a list of the names and addresses of all Members of the Class to whom the Class Notice was sent.

19. **Preservation.** Upon the Effective Date, the Defendants shall have no obligation to preserve documents and evidence with respect to Released Claims for purposes of the Action, and the Class Representatives and Class Counsel may not pursue any spoliation claims or other actions or sanctions against Defendants with respect to documents or evidence related to the Released Claims. The Parties shall continue to follow and be bound by the terms of the Stipulated Protective Order entered in this Action to the extent it is not inconsistent with this Order.

20. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed.

CONCLUSION

IT IS THEREFORE ORDERED that:

Plaintiffs' Motion for Final Certification of Settlement Class and Final Approval of Class Action Settlement is GRANTED. Specifically, Final Judgment is hereby entered with respect to the Released Claims of all Settlement Class Members, and the Released Claims in this Action are hereby dismissed in their entirety with prejudice; it is further

ORDERED, that the Clerk of the Court is directed to close this Action.

SIGNED: _____

10/11/2024



Honorable Robert S. Ballou
UNITED STATES DISTRICT JUDGE

Submitted by:

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