

**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

SETTLEMENT AGREEMENT

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

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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.¹ 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

¹ 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 Wells 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 Releasors 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 Releasors 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 Releasors, 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 Releasors 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 Releasors 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

Karen Kellett, kkellett@kblawtx.com

If directed to Wells Fargo, email address notice to:

William C. Mayberry, bill.mayberry@troutman.com

Amy P. Williams, amy.williams@troutman.com

Andrew Atkins, 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: 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

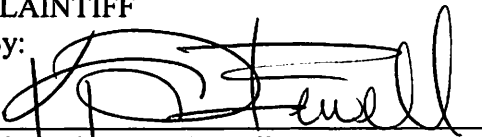
By:

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:

✓ 

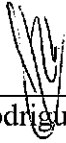
Beatriz Villegas-Rodriguez

Date: 03, 26, 2024

PLAINTIFF

By:

✓



Rodolfo Rodriguez

Date: 3/26, 2024

DEFENDANT WELLS FARGO BANK, N.A.

By:

Title: _____

Date: _____, 2024

PLAINTIFF

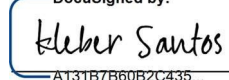
By:

Rodolfo Rodriguez

Date: _____, 2024

DEFENDANT WELLS FARGO BANK, N.A.

By: DocuSigned by:



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Title: SEVP, CEO of Consumer Lending

Date: 03/22, 2024