UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers

CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

Pursuant to the Court's July 29, 2024 Order Preliminarily Approving Settlement; and pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, Counsel for Class Representatives Luis Castro, Pamela Delpapa, Jenna Doctor, Samara Green, Patrick Healy, Barbara Prado, and Renrick and Vivian Robinson "(Consolidated Counsel") respectfully move this Court for (a) attorneys' fees of $37,000,000 (20%); (b) reimbursement of $628,240.19 in litigation expenses incurred by Consolidated Counsel in this litigation; and (c) $12,500 Class Representative Service Awards for the time, effort, and risk associated with acting as class representatives. If awarded, these amounts will be paid from the $185,000,000 settlement fund. Approval of the Settlement is separate from the approval of Counsel's applications for awards of fees and expenses, and any appeal of a fee decision would not delay the settlement from being administered. *See* Decl. of Derek Loeser in Supp. of Consolidated Pls.' Mot. for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards ("Loeser Decl."), Ex. F (Amended Settlement Agreement, § 7(C).

The grounds for this motion are set forth in the accompanying Memorandum in Support.

Dated: October 28, 2024 Respectfully submitted,

s/ Robert J. Wagoner

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MEMORANDUM IN SUPPORT

I. INTRODUCTION & PRELIMINARY STATEMENT

Imagine a community of gardeners, who grow a pumpkin in a pea patch. They research and select the best conditions, till, plant, and fertilize a seedling, and tend to the vine as it grows. They protect the plant from pests and attacks, care for it and give it water and mulch, and monitor and protect the gourd as it begins to grow. An interloper, who has done none of the work, leans over the garden fence and attempts to harvest the still-green pumpkin in September, proclaiming it will not grow any larger than its current 5-pound weight, and that leaving it on the vine will lead to rot. The community intervenes, and the original group of gardeners continue their work. Ultimately, they harvest the pumpkin in October, bright orange, and weighing nearly ten pounds. Yet the impatient interloper seeks all of the profits associated with the first 5-pounds, and half of the profits from the rest of it. As a matter of public policy, no community would consider such an interloper's request to be reasonable, and for essentially the same public policy reasons, the Court should give no more weight to *Echard* Counsel's fee request in this case.[1]

Skilled class action attorneys are like these community gardeners. Through years of labor, they learn the terroir and the specific needs and potential blights for a particular crop. They plant (file complaints); mulch, fertilize, and water (develop claims through motion practice); provide sunlight (take discovery); prune (strategically discard unmeritorious claims); and ultimately harvest, when ripe, to maximize the yield for the class.

Throughout the life cycle of this litigation, the work that contributed to the outstanding $185,000,000 settlement has been performed uniquely by the Consolidated Plaintiffs and their Counsel. In the interest of resolving this litigation, the Consolidated Plaintiffs do not oppose a fee

[1] Throughout this memorandum, Consolidated Counsel have focused on the conduct of counsel, avoiding *ad hominem* attacks in accordance with the Court's Standing Order and the Southern District of Ohio's Statement of Civility. The Statement of Civility emphasizes the importance of both common courtesy and truthfulness, reprimanding attorneys who "shade the truth," "take extreme or marginally defensible legal positions," and who treat litigation as a game, as well as those who are impolite or disrespectful. Loc. R. Civ. P., Introductory Statement on Civility.

award for *Echard* Counsel, provided that it is for work that benefitted the Class, and does not exceed $9,250,000.[2]

In spite of extraordinary challenges, detailed below, the proposed $185 million settlement that Consolidated Counsel achieved is an outstanding result for the class. The first $69,000,000 will be distributed in direct, non-reversionary cash payments to the Class. Additional $166.66 automatic payments will be provided for households with two borrowers associated with a loan. Approximately $577,500 will be used to pay for settlement administration, including the costs of administrating the Supplemental Payment Fund, from which class members who have been uniquely harmed can seek supplemental payments for individualized harms. Less the fees, costs, and service awards herein requested, the Supplemental Payment Fund will have approximately $39,500,000 to further distribute to class members. Loeser Decl., Ex. F, at pp. 24-26. Any remainder in the Supplemental Payment Fund, after eligible claims have been awarded, will be distributed to Class Members on a *pro rata* basis. *Id.* Consolidated Counsel fully support the settlement and believe it is a superior outcome for class members than the alternative of litigating this Action for several years with the risk of recovering nothing, and it is facially superior to the since supplanted $94 million *Echard* Settlement.

As detailed below and in the attached Declarations of Consolidated Counsel ("Declarations"), Consolidated Counsel dedicated substantial resources to prosecuting this litigation in both this Court and others, collectively in excess of 18,669.5 hours, with substantial additional hours anticipated in the future for settlement approval and administration. Consolidated Counsel's efforts included, among other things: drafting multiple detailed complaints; briefing six motions to dismiss; consolidating multiple related actions over Wells Fargo's vigorous objections; arguing at several substantive hearings, successfully litigating two discovery disputes; propounding and responding to dozens of formal written discovery requests; taking eight all-day

[2] Any greater award to *Echard* Counsel, if combined with the Consolidated Counsel's request, would exceed the 25% fee cap under the Settlement Agreement. *See* Loeser Decl., Ex. F at PageID 1046.

depositions of key Wells Fargo witnesses; participating in three day-long mediation sessions with Robert Meyer; two day-long mediation sessions with Judge Layn Phillips (Ret.) and numerous follow-up calls and negotiations; and working collaboratively to resolve the Court's concerns regarding the details of the $185 million proposed settlement. Loeser Decl. at ¶¶ 4-74.

The Settlement was achieved despite considerable risks and challenges confronting this Action, even more than typical for complex class action litigation. The Consolidated Plaintiffs faced substantial legal and practical hurdles in maintaining their claims, not least of which was *Echard* Counsel's attempt to settle the case for half of its value. Settlement did not occur until this Court stayed the *Echard* matter, multiple of Consolidated Plaintiffs' claims survived Wells Fargo's motion to dismiss, and key discovery was secured relating to Wells Fargo's potential Early Pool Buyout (EPBO) profits and knowledge of the forbearance program's faults. Consolidated Counsel faced tremendous risk – of losing on contested substantive motions, of the *Echard* settlement extinguishing the litigation for substantially less than its true value, or of unfavorable findings of fact. Consolidated Counsel persevered through those turbulent waters and safely navigated to the $185,000,000 settlement.

As compensation for their successful efforts on behalf of the Class, Consolidated Counsel request the Court award them fees in the amount of $37,000,000, which is 20% of the overall $185,000,000 settlement. Consolidated Counsel further seek the reimbursement of reasonable litigation expenses totaling roughly $628,240.19, and approval of Class Representative Service Awards of $12,500.00 for each of the eight Consolidated Plaintiffs.

The Settlement Agreement authorizes the Parties to request attorney fee awards up to 25%. Consolidated Counsel are confident that the work they have performed in this litigation entitles them to nearly all of the fees awarded. Not only is this the opinion of Consolidated Counsel, one of the preeminent authorities on attorneys' fees, Professor Robert Klonoff, reached the same conclusion after his independent review of the pleadings. *See* Decl. of Prof. Robert H. Klonoff re Allocation of Attorneys' Fees Between *Echard* Counsel and Consolidated Plaintiffs' Counsel ("Klonoff Decl.") at ¶ 58. Chief Justice Roberts appointed Professor Klonoff as the sole academic

member of the Federal Civil Rules Advisory Committee, and in that capacity, Professor Klonoff was instrumental in the work leading to the 2018 amendments to Rule 23. *Id.* at ¶ 9. Professor Klonoff is a co-author of the Wright & Miller treatise, *Federal Practice and Procedure*, with sole responsibility for the three volumes of that treatise focusing on class actions, has litigated more than 100 class actions, and has written numerous texts on class actions and MDL's, including attorney's fees issues, used by practitioners and law students across the country. *Id.* at ¶ 8. Professor Klonoff concludes that the Consolidated Plaintiffs' Counsel are "fully deserving of the lion's share of attorneys' fees," and that the Court would be justified in awarding *Echard* Counsel no fees at all. *Id.* at ¶¶ 57-58.

However, rather than request the entire 25%, the Consolidated Plaintiffs' request of 20% leaves the remaining 5% ($9,250,000) awardable in fees under the Settlement Agreement to the further sound discretion of the Court. Whether added to the Consolidated Plaintiffs' requested fees, awarded to *Echard* Counsel for what little compensable work they may have done, left in the Claim Fund as additional compensation for the Class, or a combination of those options, the Consolidated Plaintiffs defer to the Court's judgment.

Consolidated Plaintiffs' requested fee is at the bottom of the 20% to 30% range commonly awarded in comparable settlements, particularly for a case providing direct payments that exceed the estimated out of pocket losses class members likely incurred and involving considerable complexity and risk. A cross-check of Consolidated Counsel's lodestar reveals that a 2.6 multiplier would result for the Consolidated Plaintiffs, a multiplier well below what is often awarded in complex class actions with substantial contingency risks such as this one. In addition, the Settlement has been exceedingly well-received by the Class, as indicated by the absence of *any* objections to date and just 13 opt-outs thus far from a class that comprises approximately 400,000 members.

II. FACTUAL BACKGROUND

In the spring and summer of 2020, and during the height of the pandemic, Consolidated Counsel, and Consolidated Counsel alone, investigated the underlying facts and potential legal

claims that resulted in this litigation, drafting the first six complaints which became the Consolidated Plaintiffs' operative Consolidated Complaint. The Consolidated Complaint asserted unique and valuable claims which were never addressed by the *Echard* litigation, as explained below. In the fall and winter of 2020, Consolidated Counsel prevailed in contested motions practice, including a valuable injunction preventing Wells Fargo from continuing to place borrowers into forbearances without an informed and adequate request, *Forsburg* Dkt. 54, and compelling Wells Fargo to issue a corrective notice informing borrowers that, contrary to Wells Fargo's original statements, a forbearance was more likely than not to result in credit harm. *In re* Dkt. 61 at PageID 678. Based on the Consolidated Complaint and following argument on their motion for corrective notice, Judge Donato ordered the Parties to participate in an early mediation, which they then scheduled with a well-known mediator, Robert Meyer. *Id.* At this time, *Echard* Counsel had not yet filed his copy-cat complaint.

Consolidated Counsel and Wells Fargo, with the assistance of Mr. Meyer, engaged in a contentious, multiday mediation spanning months. Over the course of those negotiations, Consolidated Counsel and Wells Fargo negotiated the framework that would ultimately become the $185 million settlement. The key characteristics negotiated in the Meyer mediation included a class comprised of (1) borrowers placed into a forbearance after utilizing the IVR and Online systems, before a certain date; (2) borrowers placed into a forbearance due to a Business Decision; and (3) borrowers that were placed into forbearances as a result of a servicing error. Loeser Decl. at ¶¶ 32-37. It included the utilization of objective indicia of borrower intent as "screens," to ensure borrowers who legitimately requested a forbearance were not in the class. The key liability aspects (compensation based upon delayed or prevent refinance ability and credit harm) were the basis of the proposed relief. *Id.*

It was while these negotiations were ongoing that *Echard* Counsel first appeared. On January 28, 2021, the original *Echard* complaint was filed in the Western District of Washington, copying large swaths of the then-operative *Delpapa* and *Forsburg* complaints and adding a claim for violation of the Servicemembers Civil Relief Act (SCRA) on behalf of the sole named plaintiff,

an Ohio resident who was not an active duty servicemember. *See* Loeser Decl., Ex. B On May 3, 2021, *Echard* filed an amended complaint, dropping the SCRA claim. *See Echard* Dkt. 14.

The *Echard* Complaint added nothing new and provided no actual value to the ongoing litigation. *Echard* Counsel, for his part, made his self-serving motivations clear from his very first contact with Consolidated Counsel: he demanded to be joined as class counsel with a guarantee of a substantial portion of attorneys' fees awarded in the case. *See* Loeser Decl. at ¶ 40; *Echard* Dkt. 125 at PageID 1360-61; *Echard* Dkt. 124 at PageID 1349-51.

Meanwhile, Wells Fargo sought to transfer *Echard* to this district, a transfer that *Echard* counsel vehemently opposed, and to dismiss *Echard* in its entirety. *Echard* Dkt. 30, 52. Weeks later, in a surprising about-face, the naturally adversarial relationship between *Echard* and Wells Fargo as party opponents transformed into overt coordination. *See* Loeser Decl. at ¶ 39, Exs. C, D. *Echard* and Wells Fargo jointly moved to effectuate the very transfer that *Echard* had previously opposed, and Wells Fargo withdrew its motion to dismiss. *Echard* Dkt. 53. Tellingly, this change in heart took place right after impasse was reached in the Meyer mediation. Thus, as soon as it became evident that the Meyer mediation reached an impasse, Wells Fargo and *Echard* Counsel agreed to transfer the *Echard* Action to Ohio in order to settle the case without involving the Consolidated Counsel who investigated, initiated, and consolidated the litigation, and who refused to settle on an inadequate basis. *Echard* Dkt. 71.[3]

Consolidated Counsel sought to prevent this, offering for *Echard* to join the Consolidated Counsel's working group and work the sole unique aspect of their initial case, the SCRA claim that *Echard* Counsel pledged to revive. *See* Loeser Decl. at ¶ 40, Ex C. *Echard* Counsel continued to insist on a substantial fixed percentage of fees as a condition of joining with Consolidated Counsel. *Id. Echard* Counsel's fixation on fees became more overt, with threats to take the case and settle it without Consolidated Counsel. *Echard* Dkt. 124 at PageID 1349-51. Consolidated

[3] That is a classic "reverse auction," where "a defendant selects among attorneys for competing classes and negotiates an agreement with the attorneys who are willing to accept the lowest class recovery[.]" Manual Complex Lit. § 21.61 (4th ed.).

Counsel sought to prevent *Echard* Counsel from negotiating an inferior settlement in their first motion to intervene. *Echard* Dkt. 71. That motion was denied, and Consolidated Counsel continued to litigate in California, prevailing on highly contested discovery motions, transfer motions, and a motion to dismiss, and taking key depositions, including several 30(b)(6) depositions. Loeser Decl. at ¶¶ 44-49. In doing so, Consolidated Counsel expended substantial time and resources, work that carried an extremely high risk of being uncompensated given *Echard* Counsel's express goal of settling Consolidated Plaintiffs' claims, and Wells Fargo's apparent interest in doing the same.

That risk nearly came to pass. *Echard* Counsel announced a proposed settlement they had reached with Wells Fargo, without having taken any formal discovery of their own,[4] without substantive motion practice, and without the input of Consolidated Counsel. The basic structure of the settlement was familiar – having been largely negotiated in the Meyer mediation by the Consolidated Plaintiffs, but the class excluded a large number of victims, and the settlement amount was inadequate. Loeser Decl. at ¶¶ 32-36. This flawed deal only was able to happen because the Consolidated Plaintiffs were excluded from the negotiations. *Id.*

What's more, when conveying the settlement to Consolidated Counsel, *Echard* Counsel offered a poison pill – service award payments for the Consolidated Plaintiffs, despite their having no role in the *Echard* matter, and payment to Consolidated Counsel, in exchange for Consolidated Counsel's agreement not to object to the $94 million *Echard* settlement. *Echard* Dkt. 124 at ¶ 19-20 (*Echard* Counsel stated that if Consolidated Plaintiffs, or their counsel, publicly opposed the *Echard* settlement, or did so before Judge Watson, it would "close the door" on "getting [Consolidated Plaintiffs] and their counsel compensated.").

[4] *Echard* Counsel served two requests for production on Wells Fargo, continuing the theme of appropriating the work of the Consolidated Plaintiffs. *See Echard* Dkt. 29 at PageID 419-20. (**Request for Production No. 1**: Produce all documents which you have produced to plaintiffs in any of the related matters in advance of any mediation which may be occurring in those related matters, including any privilege logs. . . **Request for Production No. 2:** Produce all documents which you have produced to plaintiffs in any of the related matters as a result of discovery in those related matters, including any privilege logs.)

Again, placing the best interests of the putative class above our own, and incurring a substantial risk of loss, Consolidated Counsel rejected that dubious offer and instead renewed the intervention motion. *Echard* Dkt. 123. In response to that intervention motion, this Court stayed *Echard*, under the first-to-file doctrine, and allowed the Consolidated Action to continue in California. *Echard* Dkt. 154. *Echard* Counsel sought interlocutory review of the stay, attacked the merits of the Consolidated Action in public filings, and represented that their $94 million settlement was "the best deal for the class," a deal "unlikely to come around again." *Echard* Dkt. 157 at PageID 2072. The Consolidated Plaintiffs' $185 million settlement shows the truth—while the *Echard* settlement would have been better for *Echard* Counsel and Wells Fargo, it drastically undervalued the claims that Consolidated Plaintiffs investigated, initiated, and litigated.[5]

Echard Counsel's fixation on fees continued to serve as an impediment to expeditiously and justly resolving this litigation even after the inadequacy of their settlement had been made clear. The $185 million settlement amount was the result of a mediators' proposal, made from Judge Phillips to Wells Fargo and the Consolidated Plaintiffs, not to *Echard* Counsel. *See* Dkt. 240-1 at PageID 1018. Once that bilateral proposal had been accepted by both Wells Fargo and the Consolidated Plaintiffs, *Echard* Counsel was informed of the new settlement. *Id.* However, *Echard* Counsel refused to sign the term sheet memorializing the $185 million settlement for months. Only after Wells Fargo and the Consolidated Plaintiffs filed notices with this Court, seeking an order that would allow Wells Fargo to finalize the $185 million settlement in California without *Echard* Counsel's continued roadblocks, did *Echard* Counsel relent and sign the term sheet. *Echard* Dkt. 175, 176, 179.[6]

[5] By refusing to withdraw their motion for preliminary approval and refusing to sign the term sheet memorializing the $185 million settlement, *Echard* Counsel left these representations, that their $94 million settlement was the best deal possible for the class, pending in open court for *months* after Wells Fargo agreed to pay nearly twice that amount. *See Echard* Dkt. 157.

[6] Judge Phillips has authorized the Consolidated Plaintiffs to invite the Court to contact him should the Court wish to obtain information from Judge Phillips that he can provide consistent with the mediation privilege and Loc. R. Civ. P. 16-3(c)(3)(A)(iii).

Thus, at every stage of this litigation, the work that resulted in this settlement was uniquely, efficiently, and adeptly performed by Consolidated Counsel, often in the face of interference, distraction, and delay caused by *Echard* Counsel. *See* Klonoff Decl. at ¶ 50.

III. LEGAL ARGUMENT

A. Counsel Should Be Compensated Based on Enriching the Class.

"When awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Yet not all work is equal. Counsel should not be compensated for work that is duplicative, or if their work did not contribute to the common fund or benefit the class. *See, e.g., In re Volkswagen 'Clean Diesel' Mktg., Sales Practs., and Prods. Liab. Litig.*, 914 F.3d 623, 641 (9th Cir. 2019) ("Appellants would be entitled to attorneys' fees only if they contributed to the creation of a common fund or otherwise benefited the class."); *id.* at 642 ("[T]he central issue [is] whether Appellants' efforts meaningfully benefited the class . . . .").

When more than one group of Plaintiffs' attorneys attests to have enriched the class, the allocation of an appropriate fee can be nuanced. But here, the analysis is not so difficult. This is because, of all the different types of work that can lead to value in a class action case, almost *none* of it was performed by *Echard* Counsel. *See* Klonoff Decl. at ¶¶ 45-46, 49. Judge Posner, in *In re Trans Union Corporation Privacy Litigation*, likened a class action case to a diamond. The stone must be mined, through investigating the litigation, filing the initial cases, and litigating against the Defendant. 629 F.3d 741, 747 (7th Cir. 2011); *accord In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 196-97 (3d Cir. 2005).

Continuing Judge Posner's analogy, once mined, the stone must be cut and polished. *Trans Union*, 629 F.3d at 747. In this analogy, that is the work of accurately identifying the value of a case and negotiating a fair settlement. In *Trans Union*, the MDL counsel was the counsel responsible for investigating the litigation, filing the initial cases, and litigating, while a *separate* attorney (Wheelahan) enriched the class by more accurately valuing the litigation. *Id.* Here, on the

other hand, all of this work was done by the *same* lawyers, Consolidated Counsel. We investigated the litigation, filed the initial complaints, and extensively litigated the claims through motions practice and discovery, *and* we accurately identified the value of the case and negotiated the one and only fair settlement. *See* Klonoff Decl. at ¶¶ 39-44. *Echard* Counsel did none of this work. Indeed, they did not litigate the merits of the case and they negotiated an unfair settlement that *inaccurately* identified the value of the case. In short, *Echard* Counsel did not mine, cut or polish the diamond. They merely came upon it and tried to sell it for half its value.

Taking the most extreme hypothetical—what would have happened if *Echard* Counsel had *never* filed their copy-cat complaint—it is likely that the settlement here would have still been reached, substantially earlier, and much more efficiently. The *Echard* team were late filers who plagiarized the Consolidated Actions and attempted to extract a rent from the Consolidated Counsel while the Meyer mediation was underway. *See* Loeser Decl. at ¶ 31, Ex. C. When that failed, they worked with Wells Fargo to splinter *Echard* away from its brethren and attempted to settle the litigation they had copied for half of its value. *See* Loeser Decl. at ¶ 35. When that failed, they represented to the Court that $94 million was the best possible deal for the class, and that the *Echard* settlement should be approved without delay. *Id.* at ¶ 60. They left that request pending for months after they knew it to be false, months in which they delayed signing the $185 million settlement term sheet. *Id.* at ¶¶ 64-67. And when the ultimate $185 million settlement proved the inadequacy of their $94 million deal, *Echard* Counsel exaggerated their involvement and role in the Phillips mediation in court filings. Dkt. 227. Because none of this work benefitted the class, it is not compensable. Klonoff Decl. at ¶¶ 47-49, 54-56; *In re Trans Union Corp. Priv. Litig.*, No. 00 C 4729, 2009 WL 4799954, at *20 (N.D. Ill. Dec. 9, 2009).

B. Consolidated Counsel Are Entitled to an Award of Attorneys' Fees.

As this Court has previously recognized, district courts apply a two-part analysis to assess the reasonableness of an attorney fee petition. *See In re Cardinal Health Inc. Sec. Litigs.*, 528 F.Supp.2d 752, 760 (S.D. Ohio 2007). First, the Court must determine the appropriate method to calculate the fees, using either the percentage of fund or the Lodestar approach. *See, e.g., Gascho*

v. Global Fitness Holdings, LLC, 822 F.3d 269, 279 (6th Cir. 2016). Whichever method is utilized, the United States Court of Appeals for the Sixth Circuit requires "only that awards of attorney's fees by federal courts in common fund cases be reasonable under the circumstances." *Rawlings*, 9 F.3d at 516.

The percentage of the fund approach is the superior approach, here. This methodology is preferred in this district for common fund cases, with a Lodestar crosscheck ensuring reasonableness. *See Kimber Baldwin Designs, LLC v. Silv Commc'n, Inc.*, No. 1:16-cv-448, 2017 WL 5247538, at *5 (S.D. Ohio Nov. 13, 2017) (Black, J.).

C. Consolidated Counsel's Request Is Fair and Reasonable.

The second part of the two-step analysis requires considering the six *Moulton* factors to assess the reasonableness of the fee. *See Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009). Those factors are: (1) the value of the benefit rendered to the class; (2) whether the services were undertaken on a contingent fee basis; (3) the value of the services rendered by the attorneys, if measured on an hourly basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides. *Id.*; *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996). As described below, Consolidated Counsel's fee request in this case is reasonable under each of the *Moulton* factors applied by courts within the Sixth Circuit and should be approved.

1. The value of the benefit rendered to the Class supports the requested fee.

This class action was filed on behalf of residential mortgagees who were unilaterally placed into forbearances without an informed request for that relief. While forbearances relieve the obligation to make timely monthly mortgage payments, they are not without cost. Forbearances are significant scarlet letters on a borrowers' creditworthiness and prevented class members from refinancing at a time of historically low interest rates, from securing personal lines of credit, from accessing existing lines of credit, and caused substantial decreases in credit scores. While an

informed borrower may, under the CARES Act, request that relief, it is an important financial decision that a loan servicer should not make unilaterally.

The benefit rendered to Class Members of over $135 million in direct payments, after factoring in attorneys' fees and expenses, settlement administration fees and expenses, and Class Representative Service Awards, is a tremendous recovery. *See* Loeser Decl., Ex. D. Renowned economist Ted Stockton opined that systematic economic harm from the alleged misconduct in this case amounted to approximately $109,420,000. *Id.* at pp. 3-4. For a household with two borrowers on a loan, Mr. Stockton opined approximately $455.70 in damages. *Id.* (2 x $97.3 in credit impact damages + $ 261.11 in frustrated refinance damages.) The Consolidated Plaintiffs' settlement will provide $466.76 to such a household in automatic payments, assuming 33.3% of the Additional Compensation Fund is redistributed, and 30% for costs, fees, and settlement administration expenses, thus providing make-whole relief. The *Echard* settlement, by way of comparison, proposed $94 million for a class of 212,500 loans. *Echard* Dkt. 108. Less the same 30% for fees, costs, and expenses, and making the same 33.3% redistribution assumption, that same household would have received $212.54 in automatic payments – less than *half* of both what the Consolidated Plaintiffs' $185,000,000 settlement will provide and that families' damages.

Proposed Settlement	***Echard* $94M Settlement**	**Consolidated Plaintiffs' $185M Settlement**
Total Automatic Payments to Married Household, Assuming 33.3% Redistribution of Additional Compensation Fund	$212.54	$466.76
Estimated Damages for Married Household	$455.70	$455.70
Percent of Estimated Out-of-Pocket Damages Automatically Recovered	46.7%	102.5% (make whole)

Thus, not only does this settlement provide make-whole relief for the most common sources of consumer harm, but it does so also with tens of millions of additional dollars, to compensate any class members with individualized harms that occurred for reasons other than delayed refinancing or increased borrowing costs associated with credit injury. *Echard* Counsel has claimed they provided a benefit by ensuring that the $185 million Settlement did not dilute the

recovery provided by the deficient deal they negotiated. However, there was never any possibility of dilution under the $185 million settlement–it provided more money for more people.

2. The value of the services on an hourly basis supports the requested fee.

Where the percentage approach is reasonable a lodestar cross-check is not strictly necessary, though it can assist in determining the reasonableness of the requested fee. *See, e.g.*, *Wright v. Premier Courier, Inc.*, No. 2:16-CV-420, 2018 WL 3966253, at *6 (S.D. Ohio Aug. 17, 2018). In successful class action cases, fees representing multiples above the lodestar are regularly awarded to reflect the contingency fee risk and other relevant factors. Here, the lodestar cross check provides the added benefit of allowing the Court to observe and contrast the amount of work performed by Consolidated Counsel and *Echard* Counsel and the multipliers that their respective fee requests would provide.

Here, Counsel for Consolidated Plaintiffs spent a total of 18,669.5 hours of attorney and other professional support time prosecuting this Action – the result of several years of hard fought litigation.[7] This yields a lodestar for Consolidated Counsel equal to approximately $14,233,384.80. The requested 20% fee for Consolidated Counsel, which amounts to $37,000,000 represents a relatively modest multiplier of 2.6.

Multipliers equal to or greater than 2.6 are often used in the Sixth Circuit for similar complex class actions involving significant contingency risks. *See e.g. In re Nationwide Fin. Servs. Litig.*, No. 2:08-CV-00249, 2009 WL 8747486, at *13 (S.D. Ohio Aug. 19, 2009) (2.4 multiplier appropriate); *also see In re Sulzer Hip Prosthesis and Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907, 939 n.45 (N.D. Ohio 2003) (noting that a review of 1,120 class action cases from 1973 through 2003 had effective multipliers averaging: "(a) 3.89 across all 1,120 cases, (b) 4.50 across the 64 cases where the recovery exceeded $100 million, and (c) 2.97 across the 10 mass tort

[7]Consolidated Counsel have used current fee rates when calculating the lodestar, *see Basile v. Merrill Lynch*, 640 F.Supp. 697, 703 & n. 7, rates that have recently been confirmed as reasonable. *See Grey Fox, LLC v. Plains All Am. Pipeline*, 2:16-cv-3157-PSG, Dkt. 386 at pp. 7-8 (C.D. Cal. Sept. 17, 2024).

cases."). Thus, the 2.6 multiplier is consistent with the law in this Circuit and confirms the reasonableness of the award.

Further, Consolidated Counsel will continue to spend substantial time working on this case in preparing for the Fairness Hearing and working with Epiq to administer the Settlement. *See* Loeser Decl. at ¶¶ 78-79 (noting that Consolidated Counsel reasonably anticipate spending an additional 1,000 hours from now until the end of this Action). This additional time and effort has not been considered when calculating the lodestar total and resulting multiplier listed above, which further supports the reasonableness of Consolidated Counsel's fee request.[8]

3. The risk of no compensation supports the requested fee.

Consolidated Counsel prosecuted this case entirely on a contingent fee basis. Accordingly, Consolidated Counsel took the considerable risk that they would never be compensated for either the time expended or out-of-pocket expenses incurred in litigating this Action. "[C]ontingency fee arrangements indicate that there is a certain degree of risk in obtaining a recovery." *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio 2001). Plaintiffs faced real legal risks through the continued prosecution of this case. *See* Loeser Decl. at ¶¶ 50-62.

While these risks are present in most contingency fee class actions, this case presented unique and extreme risks of non-compensation, stemming from *Echard* Counsel's conduct. When Consolidated Counsel would not promise *Echard* Counsel a fixed percentage of fee award, regardless of work performed, *Echard* Counsel threatened that they would "settle the case and the case will be [theirs]." *See Echard* Dkt. 124 at PageID 1350.This threat nearly materialized, and would have, had the Court not stayed *Echard* and declined to approve *Echard* Counsel's $94 million settlement.

[8] Assuming an additional 1,000 hours to finalize settlement administration, the final lodestar multiplier would be less than 2.5. *See in re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672CRB (JSC), 2017 WL 1474312, at *2 (N.D. Cal. Apr. 24, 2017), aff'd, 914 F.3d 623 (9th Cir. 2019), and aff'd, 760 F. App'x 525 (9th Cir. 2019) (supporting the inclusion of future hours necessary to finalize settlement in lodestar crosscheck calculation).

This Court's stay allowed Consolidated Counsel to reach this tremendous outcome swimming upstream and against cross currents. Wells Fargo settled this case for $94 million and went on the record supporting the settlement. It is a noteworthy accomplishment that Consolidated Plaintiffs not only got Wells Fargo to agree to revisit its earlier settlement, but essentially do a "do-over" in which they nearly doubled the settlement amount – and they did this despite *Echard* counsel fighting to prevent the new negotiation from even occurring. *Echard* Dkt. 164. *Echard* Counsel increased the risk faced by the Consolidated Plaintiffs, further justifying the Consolidated Plaintiffs' fee request. *In re: Urethane Antitrust Litig.*, MDL No. 1616, 2016 WL 4060156, at *6 (D. Kan. July 29, 2016) (acknowledging the "incredible result achieved for the class, in a case with an extreme amount of risk at all stages of the litigation," notwithstanding the "very real risk that they would not recover anything[.]").

In sharp contrast, *Echard* Counsel's risk was nominal. Their duplicative complaint was the sixth such case, filed months after the other cases were filed and mere days after being contacted by Mr. Echard. *Echard* Dkt. 87 at PageID 655. *Echard* Counsel took no depositions, made no unique discovery requests, and accepted an inadequate settlement. *Echard* Counsel did not actually litigate the merits of this case, and thus, did not assume real risk.

4. Public policy considerations support the requested fee award.

In evaluating the reasonableness of a fee request, Courts consider society's stake in rewarding attorneys who produce a common benefit for class members to maintain an incentive to others: "[e]ncouraging qualified counsel to bring inherently difficult and risky but beneficial class actions like this case benefits society." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534 (E.D. Mich. 2003).

As Judge Spiegel stated in *In re Telectronics*:

> [I]n litigating this case, Class and Plaintiff's Counsel expended significant resources of both time and monies … We believe that, without such a class action, small individual claimants would lack the resources to litigate a case of this magnitude. Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling such small claimants to pool their claims and resources.

137 F. Supp. 2d at 1042-43

Here, Consolidated Counsel's efforts in pursuing this Action provided and continue to provide a substantial benefit to society. Holding a national bank responsible for conduct that harmed hundreds of thousands of borrowers while enriching the bank is firmly a public good, disincentivizing such conduct in the future. Further, Consolidated Counsel's work obtaining a $185 million settlement, with direct payments to hundreds of thousands of class members, provides a tremendous benefit to the class.

While public policy supports awarding Consolidated Counsel's requested fees, thereby incentivizing the efficient and efficacious litigation of future claims as a unified Plaintiff front, the same is not true for *Echard* Counsel. *Echard* Counsel plagiarized Consolidated Counsel's complaints, needlessly duplicating the actions on file. *See* Klonoff Decl. at ¶ 46, n. 25. *Echard* Counsel splintered the *Echard* action away from the Consolidated Actions, creating a risk of inconsistent rulings, judicial inefficiency, and the potential for a reverse auction. *Echard* Counsel settled the case for half its value and pushed to obtain approval of the settlement, claiming wrongly, that it was the best possible result for the class. *See* Loeser Decl., Ex. D; Klonoff Decl. at ¶ 54. A Awarding *Echard* Counsel a hefty fee would reward them for conduct that did not benefit the class, and promote similar conduct in other cases.

From a public policy and sound practice perspective, such conduct warrants a substantial reduction in fees for *Echard* Counsel. *See e.g. Estep v. Blackwell*, No. 1:06-CV-106-MHW, 2006 WL 3469569, at *3 (S.D. Ohio Nov. 29, 2006) (reducing requested fees by more than 30% when it was clear that counsel used an earlier-filed complaint as a "template"); *A.L. v. Chicago Pub. Sch. Dist. No. 299,* No. 10 C 494, 2012 WL 3028337, at *6 (N.D. Ill. July 24, 2012) (reducing fee request by 90% due to unaccredited copying); *In re Metro. Life Derivative Litig.*, 935 F. Supp. 286, 299 (S.D.N.Y. 1996) (firm that filed a sixth complaint, which largely copied the previously filed complaints, and did not explain why a sixth case was necessary, was not entitled to any fees); *Altmann v. Rushmore Loan Mgmt. Servs., Inc.*, No. 1:15-CV-880-LJO-MJS, 2015 WL 8483111,

at *7 (E.D. Cal. Dec. 10, 2015) (issuing monetary sanction for plaintiff who did "little more than copy and paste" from previously filed complaint).

5. The complexity of the litigation supports the Consolidated Counsel's requested fee.

Courts in this Circuit also consider the complexity of the litigation in determining the reasonableness of an attorneys' fee award. While "[m]ost class actions are inherently complex," *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001), this Action presented a number of complicated legal and factual issues concerning: (1) novel claims involving newly passed federal legislation; (2) technical banking practices and mortgage servicing standards, including the early pool buyout; (3) frequently changing regulatory guidance; (4) common law and statutory claims across multiple jurisdictions; (5) Wells Fargo's hard fought motion practice, opposing discovery requests and moving to dismiss the operative Consolidated Complaint *six* times. *See* Loeser Decl. at ¶¶ 4-67.

This hard-fought settlement followed hard-fought litigation in the Consolidated Action, including negotiating an early nationwide preliminary injunction, obtaining a ruling on a motion to dismiss, multiple contested discovery motions, five full-day mediations with Mr. Meyer and Judge Phillips, and tens of thousands of hours of legal work. *Id*. This settlement efficiently resolved both the Consolidated Action and the *Echard* action, achieved additional substantial payments to Class Members after Wells Fargo had reached an agreement with *Echard* Counsel to settle the case for less, and added tens of thousands of additional Class Members to the Class definition. *Id.* at ¶ 67, Ex. E. Accordingly, this factor supports an award of attorneys' fees.

6. The skill and standing of counsel involved on both sides supports the requested fee.

Courts in this Circuit evaluate the skill and standing of counsel in determining the reasonableness of a fee request. Here, the skill and standing of counsel was of the highest caliber. Consolidated Counsel include the law firms of (1) Keller Rohrback LLP; (2) Kazerounian Law Group, APC; and (3) Kellett and Bartholow PLLC. These law firms have considerable experience

in complex litigation, including consumer class actions against mortgage servicers and other financial institutions involving the complex fact dependent statutory and common law claims asserted in Consolidated Plaintiffs' complaints. Collectively, Consolidated Counsel have recovered billions of dollars for consumers in such cases.[9]

The quality of opposing counsel is also important in evaluating the quality of services rendered by Consolidated Counsel. *See In re Delphi Corp. Sec., Deriv. & ERISA Litig.*, 248 F.R.D. 483, 504 (E.D. Mich. 2008). Defendants have been represented throughout this litigation by the law firm Troutman Pepper, a first-tier law firm with more than a thousand attorneys in over 20 offices across the nation. Additionally, Wells Fargo had in-house counsel lending their internal expertise and knowledge. Finally, at the Phillips mediation, the world-class law firm Sullivan Cromwell also represented Defendants in this matter. That Consolidated Counsel were able to negotiate a $185,000,000 settlement, despite the addition of such prestigious and sophisticated counsel to the negotiating table only further demonstrates their skill and acumen.

D. The Requested Fees Are Reasonable as a Percentage of the Fund.

An award of 20% of the common fund is at the bottom of the range most often awarded in class actions in the Sixth Circuit. In this Circuit, "[a]ttorneys fees awards typically range from 20 to 50 percent of the common fund." *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 380-81 (S.D. Ohio 2006) (collecting cases); *see also Gascho v. Global Fitness Holdings, LLC*, No. 2:11-CV-436, 2014 WL 1350509, at *37 (S.D. Ohio Apr. 4, 2014) (21%); *Mullins v. S. Ohio Pizza, Inc.*, No. 1:17-cv-426, 2019 WL 275711, at *4 (S.D. Ohio Jan. 18, 2019) (33.33%); *Dillow v. Home Care Network, Inc.*, No. 1:16-cv-612, 2018 WL 4776977, at *5 (S.D. Ohio Oct. 3, 2018) (noting that "whether 24.9% or 33%, this Court finds Plaintiff's request is reasonable and well within the ranges of fees typically approved by courts in the Sixth Circuit.").

Taking into account the inherent complexity of this class action, the several years of work performed, and the outstanding result, awarding Consolidated Counsel 20% of the common fund

[9] Loeser Decl., at ¶ 84; Kazerounian Decl. at ¶ 91; Bartholow Decl. at ¶¶ 79-82.

is justified and reasonable under the percentage of the fund method, given the skill and labor required to successfully litigate this action. If the Court also awards the remaining 5% of awardable fees to *Echard* Counsel, Consolidated Counsel, or some combination thereof, the total attorneys' fees paid from the common fund would then equal 25% of the fund. This also is at the low end of the range typically awarded in the Sixth Circuit.

E. Consolidated Counsel Should Be Reimbursed for Reasonably-Incurred Out-of-Pocket Litigation Expenses.

Consolidated Counsel are also requesting reimbursement of the out-of-pocket expenses necessarily incurred and advanced by Consolidated Counsel in the prosecution of the litigation in the amount of $628,240.19 The charts set forth in the Loeser, Kazerounian, and Bartholow Declarations detail the expenses broken down by category that Consolidated Counsel incurred and underwrote during the prosecution of this Action, all of which were at risk in this litigation. These expenses were a necessary part of litigation of this magnitude and scale and were essential to enable Plaintiffs to achieve the results now before this Court. Similar to the common fund doctrine, "class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel and other litigation-related expenses." *In re Cardizem*, 218 F.R.D. at 535.

Consolidated Counsel's expenses in this case are reasonable. There are three major categories of expenses: fees paid to mediators, expenses related to legal research and document hosting, and travel for mediation, depositions, and hearings. *See* Loeser Decl., Kazerounian Decl., Bartholow Decl.

From the beginning of the case, Consolidated Counsel recognized that they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Consolidated Counsel also understood that, even assuming that the case was ultimately successful, an award of expenses would not compensate them for the lost use of the funds advanced to prosecute this Action. Thus, Consolidated Counsel were motivated to, and

did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

F. The Court Should Approve Service Awards for the Consolidated Plaintiffs

Consolidated Counsel are also requesting Service Awards of $12,500 for eight Consolidated Plaintiffs (Luis Castro, Pamela Delpapa, Jenna Doctor, Samara Green, Patrick Healy, Barbara Prado, and Renrick and Vivian Robinson). Loeser Decl., Exs. H, I, J; Kazerounian Decl., Exs. C-D; Bartholow Decl., Exs. L-O. Service awards are payments that are intended to cover the time and money that class representatives spend fulfilling their responsibilities. Courts approving service awards "have stressed that incentive awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class." *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). Such an award is fair and proper, given the amount of time and energy the Class Representatives have spent. *See Bartell v. LTF Club Operations Co.*, No. 2:14-cv-401, 2020 WL 7062834, at *19-20 (S.D. Ohio Aug. 7, 2020) (approving service awards of $20,000 in case that was litigated for more than five years).

The Class Representatives devoted their time to this case without any guarantee of a service award. Their initiative, time, and effort were essential to the prosecution of the case and were central to the remarkable results achieved. The Class Representatives also participated in settlement talks, provided discovery in response to Wells Fargo's requests for production and interrogatories, and reviewed filings to ensure factual accuracy. The Class Representatives had several meetings with Consolidated Counsel and willingly gave of their time. Despite *Echard* Counsel's attempts to buy-off the Consolidated Plaintiffs, they held firm and continued to work hand-in-hand with the Consolidated Counsel to achieve this stellar outcome.

IV. CONCLUSION

For the foregoing reasons, Consolidated Counsel respectfully request this Court to grant their motion for: an award of attorney's fees of $37,000,000, plus any accrued interest; for reimbursement of Consolidated Counsel's litigation costs and expenses incurred totaling $628,240.19; and for service awards of $12,500 for each of the Class Representatives.

DATED this 28th day of October, 2024.

s/ Robert J. Wagoner

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2024, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF System, which shall send electronic notification to all counsel of record who have appeared in this action.

s/ Robert J. Wagoner

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD **DECLARATION OF PROFESSOR ROBERT H. KLONOFF REGARDING THE ALLOCATION OF ATTORNEYS' FEES BETWEEN *ECHARD* COUNSEL AND CONSOLIDATED PLAINTIFFS' COUNSEL** Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers

DECLARATION OF PROFESSOR ROBERT H. KLONOFF REGARDING THE ALLOCATION OF ATTORNEYS' FEES BETWEEN *ECHARD* COUNSEL AND CONSOLIDATED PLAINTIFFS' COUNSEL

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APPENDIX A: Curriculum Vitae

I. INTRODUCTION

1. I am an expert on class actions and attorneys' fees. My opinions have been relied upon by numerous courts.

2. In their motion for attorneys' fees, Consolidated Plaintiffs' Counsel propose that they receive an award of at least 20 percent of the $185 million common fund (*i.e.*, $37 million), and that *Echard* Counsel receive an amount not exceeding 5 percent of the common fund (*i.e.*, $9.25 million). I have been asked by Consolidated Plaintiffs' Counsel to evaluate whether their 20 percent request (with at most 5 percent going to *Echard* Counsel) is a reasonable allocation. Specifically, Consolidated Plaintiffs' Counsel have asked me to: (1) compare the contributions of Consolidated Plaintiffs' Counsel with those of *Echard* Counsel in achieving the $185 million settlement; and (2) address the relevance, if any, of the abandoned $94 million dollar settlement that *Echard* Counsel negotiated.

3. For purposes of this Declaration, I assume the reasonableness of a 25 percent total fee award and focus solely on whether the allocation suggested by Consolidated Plaintiffs' Counsel is fair. In any event, my opinion regarding the fairness of the proposed allocation (80% versus 20%) would be the same regardless of whether the Court awards a total of 20 percent, 25 percent, 30 percent, or some other percentage of the settlement fund as attorneys' fees.

4. In this Declaration, after discussing my qualifications and the relevant facts, I assess the contributions of Consolidated Plaintiffs' Counsel in achieving the $185 million settlement. Next, I assess the contributions of *Echard* Counsel regarding that settlement. Finally, I discuss the relevance of the abandoned $94 million settlement. Based on these analyses, I conclude that

Consolidated Plaintiffs' Counsel should receive the lion's share of fees and that their proposed allocation is reasonable.

5. I recognize that my role is limited and that this Court will determine the proper allocation (and total amount) of the attorneys' fees. I offer my opinions with the possibility that they may be helpful to the Court in making this determination.

II. QUALIFICATIONS

6. As discussed below (¶¶ 13-14), I have qualified as an expert in numerous class action and other aggregate cases and have opined on attorneys' fees issues in many of those cases. I have not testified as an expert at trial or by deposition within the last four years.

7. I am currently the Jordan D. Schnitzer Professor of Law at Lewis & Clark Law School and have held that position since June 1, 2014. This is an endowed, tenured position at the rank of full professor. From July 1, 2007, to May 31, 2014, I served as the Dean of Lewis & Clark Law School, and I was also a full professor at Lewis & Clark during that time. Immediately prior to assuming the deanship at Lewis & Clark, I served for four years as the Douglas Stripp/Missouri Professor of Law at the University of Missouri-Kansas City School of Law (UMKC). That appointment was an endowed, tenured position at the rank of full professor. Before joining the academy in a full-time capacity, I served for more than a dozen years as an attorney with the international law firm of Jones Day, working in the firm's Washington, D.C. office. I was an equity partner at the firm for most of that time. I continued to work for Jones Day while I was employed at UMKC; my status with the firm during that period changed from partner to of counsel. I ended my relationship with Jones Day in 2007, when I became Dean of Lewis & Clark Law School.

While working at Jones Day (before joining the UMKC faculty), I also served for many years as an adjunct professor of law at Georgetown University Law Center. Before joining Jones Day, I served as an Assistant United States Attorney and as an Assistant to the Solicitor General of the United States. Immediately after graduating from law school, I served as a law clerk for Chief Judge John R. Brown of the U.S. Court of Appeals for the Fifth Circuit. I received my law degree from Yale Law School in 1979.

8. In my various academic positions, I have taught (among other subjects) complex litigation, class actions, civil procedure, federal courts, and federal appellate procedure. With respect to my scholarship, I am a co-author of the Wright & Miller treatise, *Federal Practice and Procedure*. I have sole responsibility for the three volumes of the treatise focusing on class actions (including attorneys' fees in class actions). In addition, I co-authored the first casebook devoted specifically to class actions, and I am now the sole author of that book: *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017, with annual supplements). I am also the sole author of the West Nutshell on class actions, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 6th ed. 2021), and the West Nutshell on federal multidistrict litigation, *Federal Multidistrict Litigation in a Nutshell* (West 2020). These texts, which address attorneys' fees issues, are used at a number of law schools and have been cited by many courts and commentators.[1] I have also authored or co-authored numerous scholarly articles on class actions

[1] As just a small sample, *see, e.g.*, *Forsythe v. Teva Pharm. Indus. Ltd*, 102 F.4th 152, 156 n.9 (3d Cir. 2024) (*citing* casebook); *Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 468 (1st Cir. 2013) (*citing Class Action Nutshell*); *Culver v. City of Milwaukee*, 277 F.3d 908, 913 (7th Cir. 2002) (*citing Class Action Nutshell*); *Adams v. United Servs. Auto. Ass'n*, No. 2:14-CV-02013, 2016 WL 1465433, at *7 (W.D. Ark. Apr. 14, 2016) (*citing Class Action Nutshell*), *rev'd on other grounds*, 863 F.3d 1069 (8th Cir. 2017); *LaRocque ex rel. Spang v. TRS Recovery Servs., Inc.*, 285 F.R.D. 139, 151 (D. Me. 2012) (*citing Class Action Nutshell)*; *Soileau v. Churchill Downs Louisiana Horseracing Co., L.L.C.*, 2021-0022 (La. App. 4 Cir. 12/22/21), 334 So. 3d 901, 940,

and other topics.[2] In October 2014, I was elected to membership in the International Association of Procedural Law ("IAPL"), an organization of preeminent civil procedure scholars from around the world. I was selected in a competitive process to present a scholarly article on class actions at the May 2015 Congress of the IAPL, an event held once every four years.

9. In September 2011, Chief Justice John G. Roberts, Jr., appointed me to serve a three-year term as the academic voting member of the Judicial Conference Advisory Committee on Rules of Civil Procedure ("Advisory Committee"). The Advisory Committee considers and recommends amendments to the Federal Rules of Civil Procedure. Only one professor in the United States is selected by the Chief Justice to serve in that role during any three-year term. In May 2014, Chief Justice Roberts reappointed me to serve a second three-year term on the Advisory Committee. I completed that service in May 2017. (The maximum period of service on the Advisory Committee is six years.) I also served on the Advisory Committee's Class Action Subcommittee, which took the lead for the full Advisory Committee on proposed amendments to

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writ denied, 2022-00243 (La. 4/12/22), 336 So. 3d 83 (*citing* casebook); Samir D. Parikh, *The New Mass Torts Bargain*, 91 FORDHAM L. REV. 447, 476 (2022) (*citing Federal Multidistrict Litigation Nutshell)*; Brian T. Fitzpatrick, *Many Minds, Many MDL Judges*, 84 LAW & CONTEMP. PROBS. 107, 108 (2021) (*citing Federal Multidistrict Litigation Nutshell)*.

[2] My articles have been frequently cited. For example, my 2013 article, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729 (2013), has been cited well over 350 times by courts and commentators. As just a small sample, *see, e.g.*, *In re Parish*, 81 F.4th 403, 419 (5th Cir. 2023); *Mielo v. Steak 'n Shake Operations, Inc.*, 897 F.3d 467, 484 & n.18 (3d Cir. 2018); *In re Nat'l Football League Players' Concussion Injury Litig.*, 775 F.3d 570, 576 (3d Cir. 2014); *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014) (Posner, J.); *In re Johnson*, 760 F.3d 66, 75 (D.C. Cir. 2014); *Gordon v. Sig Sauer, Inc.*, No. CV H-19-585, 2019 WL 4572799, at *20 (S.D. Tex., Sept. 20, 2019); *Immigration-Remedies-Garland v. Aleman Gonzalez*, 136 Harv. L. Rev. 410, 419 (2022); Helen Hershkoff and Luke Norris, *The Oligarchic Courthouse: Jurisdiction, Corporate Power, and Democratic Decline*, 122 MICH. L. REV. 1, 54 (2023); Christine P. Bartholomew, *Antitrust Class Actions in the Wake of Procedural Reform*, 97 IND. L.J. 1315, 1317 (2022); J. Maria Glover, *Mass Arbitration*, 74 STAN. L. REV. 1283, 1291 (2022).

the federal class action rule, Federal Rule of Civil Procedure 23. Those proposed amendments became effective on December 1, 2018.

10. I have been a member of the American Law Institute ("ALI") since 2003, and I serve on the ALI Council, the organization's governing body. I was an Associate Reporter for the ALI's class action (and other multi-party litigation) project, *Principles of the Law of Aggregate Litigation*. I was the principal author of Chapter 3, which addresses class action settlements and attorneys' fees. The ALI project was unanimously approved by the membership of the American Law Institute at its annual meeting in May 2009 and was published by the American Law Institute in May 2010. It has been frequently cited by courts and commentators.[3]

11. In addition to my academic work, I have 44 years of experience as a practicing lawyer. I have had eight oral arguments before the U.S. Supreme Court, and numerous oral arguments in other federal and state appellate courts throughout the country, including oral arguments in eight federal circuits. As an attorney at Jones Day, I personally handled more than 100 class action cases, mostly (but not entirely) on the defense side. I have also served as co-

[3] As just a small sample, *see, e.g.*, *Smith v. Bayer Corp.*, 564 U.S. 299, 316, n.11 (2011); *Home Depot USA, Inc. v. Lafarge N. Am.*, 59 F.4th 55, 67, 68 (3d Cir. 2023); *In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102, 1122–23 (9th Cir. 2021) (Bade, J., concurring), *cert. denied*. 143 S. Ct. 107 (2022); In *re Google Inc. Cookie Placement Consumer Priv. Litig.*, 934 F.3d 316, 331 (3d Cir. 2019); *Keepseagle v. Perdue*, 856 F.3d 1039, 1069–70 (D.C. Cir. 2017) (Brown, J., dissenting); *Hill v. State St. Corp.*, 794 F.3d 227, 229 (1st Cir. 2015); *Burns v. SeaWorld Parks & Entm't, Inc.*, No. CV 22-2941, 2024 WL 1621337, at *12 (E.D. Pa. Apr. 15, 2024); *In re Splunk Inc. Sec. Litig.*, No. 20-CV-08600-JST, 2024 WL 923777, at *7 n.2 (N.D. Cal. Mar. 4, 2024); *Hawes v. Macy's Inc.*, No. 1:17-CV-754, 2023 WL 8811499, at *14 (S.D. Ohio Dec. 20, 2023); Matthew Shapiro, *Democracy, Civil Litigation, and the Nature of Non-Representative Institutions*, 109 CORNELL L. REV. 113, 168 n.268 (2023); Abbe R. Gluck & Elizabeth Chamblee Burch, *MDL Revolution*, 96 N.Y.U. L. REV. 1, 30 (2021); Elizabeth Chamblee Burch & Margaret S. Williams, *Judicial Adjuncts in Multidistrict Litigation*, 120 COLUM. L. REV. 2129, 2121–22 (2020).

counsel in numerous high-profile class actions and MDLs post-Jones Day, including cases in the U.S. Supreme Court and numerous federal circuits.

12. I have lectured and taught on class actions and other litigation topics throughout the United States and abroad, including presentations at law schools in Australia, Cambodia, Canada, China, Colombia, Croatia, Ecuador, France, Germany, India, Israel, Italy, Japan, the Philippines, Russia, South Africa, South Korea, Taiwan, and Turkey. Over the years, I have frequently appeared as an invited speaker at class action symposia, conferences, and continuing legal education programs.[4]

13. I have testified as an expert in numerous class action cases and in other cases raising civil procedure issues. These include, among many others:

- *In re College Athlete NIL Litig.*, No. 4:20-cv-03919-CW (N.D. Cal.) (submitted expert declaration on 9/24/24 on whether a separately represented subclass was required with respect to the injunctive claims in a class settlement);
- *Burnett v. Nat'l Ass'n of Realtors*, No. 4:19-cv-00332-SRD (W.D. Mo.), and *Gibson v. Nat'l Ass'n of Realtors*, No. 4:23-cv-00788 (W.D. Mo.) (submitted expert declarations, dated 8/20/24, and 9/13/24, on attorneys' fees requested by class counsel);
- *In re JUUL Labs, Inc. Mktg., Sales Pracs., and Prods. Liab. Litig.*, No. 19-md-02913-WHO (N.D. Cal.) (submitted expert declaration, dated 6/23/23, on attorneys' fees for settlement with JUUL; submitted expert declaration, dated 1/11/24, on attorneys' fees for settlement with Altria);

[4] Examples of those courses and speaking engagements are contained in my attached curriculum vitae (Appendix A).

- *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-cv-00203-RK (W.D. Mo.) (submitted expert declaration, dated 2/13/23, in support of class counsel's motion for attorneys' fees, costs, and service awards for class plaintiffs);
- *In re Marjory Stoneman Douglas High School Shooting FTCA Litig.*, No. 01:18-62758-WPD (S.D. Fla.) (*Parkland Shooting*) (submitted expert declaration, dated 2/8/22, on a motion to terminate lead counsel; submitted supplemental expert declaration, dated 10/28/22, on attorneys' fees issues in Federal Tort Claims Act civil litigation);
- *Githieya v. Global Tel Link Corp.*, No. 1:15-cv-00986-AT (N.D. Ga.) (submitted expert declaration, dated 4/1/22, on attorneys' fees issues; submitted expert declaration, dated 7/22/22, on class certification and fairness issues in connection with a proposed class settlement);
- *Rosie D. v. Baker*, C.A. No. 01-30199-RGS (D. Mass.) (submitted expert declaration, dated 11/23/21, on attorneys' fees issues);
- *Bahn v. Am. Honda Motor Co.*, No. 2:19-cv-5984 RGK (C.D. Cal.) (submitted expert declaration, dated 11/22/21, on attorneys' fees issues);
- *In re Broiler Chicken Antitrust Litig.*, No. 1:16-CV-08637 (N.D. Ill.) (submitted expert declaration, dated 9/15/21, on attorneys' fees issues raised by the court);
- *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020) (submitted expert declaration on attorneys' fees, dated 10/29/19; submitted supplemental expert declaration on class settlement terms, dated 12/15/19);
- *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Pracs. & Prods. Liab. Litig.*, No. 3:17-md-02777-EMC (N.D. Cal.) (submitted expert declaration on settlement fairness, dated 4/25/19);
- *In re Syngenta AG MIR162 Corn Litig.*, No. 2:14-MD-02591-JWL-JPO (D. Kan.) (submitted expert declaration on attorneys' fees, expenses, and service

awards, dated 7/10/18; submitted supplemental declaration on attorneys' fees, dated, 8/17/18);

- *In re Chinese-Manufactured Drywall Litig.*, MDL No. 2047 (E.D. La.) (submitted expert declarations on attorneys' fees issues, dated 5/4/17 and 8/1/18);
- *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC (N.D. Cal.) (submitted expert declaration on class certification, settlement fairness, attorneys' fees, costs, and incentive payments in unauthorized accounts litigation, dated 1/19/18; submitted supplemental declaration, dated 5/21/18);
- *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs. and Prods. Liab. Litig.*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 3.0-liter and Bosch settlements, dated 4/28/17);
- *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs. and Prods. Liab. Litig.*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration, dated 9/30/16, addressing objections by class members to proposed 2.0-liter settlement);
- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, Nos. 12-970, 15-4143, 15-4146, and 15-4645 (E.D. La.) (submitted expert declaration on class certification, settlement fairness, and attorneys' fees relating to proposed Halliburton/Transocean class settlement) (dated 8/5/16);
- *Skold v. Intel Corp.*, Case No. 1-05-CV-039231 (Super. Ct. of Cal., Santa Clara Cnty.) (submitted expert declaration, dated 12/30/14, on class settlement approval, attorneys' fees, and incentive payments to class representatives);
- *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB (E.D. Pa.) (submitted expert declaration, dated 11/12/14, on class certification, class notice, and settlement fairness);

- *MBA Surety Agency, Inc. v. AT&T Mobility, LLC,* Case No. 1222-CC09746 (Mo. 22d Dist.) (submitted expert declaration on class certification and settlement fairness, dated 2/13/13; submitted a supplemental expert declaration, dated 2/19/13; and testified in court on 2/20/13);
- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, No. 2:10-md-02179-CJB-SS (E.D. La.) ("Deepwater Horizon") (submitted expert declarations on class certification, fairness, and attorneys' fees for the economic and property damages settlement (Doc. No. 7104-3) and class certification, fairness, and attorneys' fees for the personal injuries settlement (Doc. No. 7111-4) (both dated 08/13/12), and submitted supplemental expert declarations for both class settlements (Doc. No. 7727-4) (economic), (Doc. No. 7728-2) (medical) (both dated 10/22/12)); and
- *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, MDL No. 2147, Case No. 1:10-cv-02278 (N.D. Ill.) (submitted expert declarations on the fairness of a proposed class action settlement (Doc. No. 163-3) and on attorneys' fees and incentive payments (Doc. 164-1) (both dated 03/08/11) and testified in court on March 10, 2011)).

14. Courts evaluating attorneys' fees and class settlements have relied extensively on my testimony. For example:

- In the *Syngenta MIR 162 Corn* MDL litigation, Judge John Lungstrum cited my two declarations on attorneys' fees issues numerous times in his two opinions.[5]

[5] *See In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1112 (D. Kan. 2018) (granting final approval of class settlement and awarding total attorneys' fees), *aff'd., Kellogg v. Watts Guerra LLP*, 41 F.4th 1246, 1257 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1022 (2023); *In re Syngenta AG MIR 162 Corn Litig*., No. 14-MD-2591-JWL, 2018 WL 6839380 (D. Kan. Dec. 31, 2018) (allocating attorneys' fees among common benefit counsel and individually retained private attorneys), *aff'd, Kellogg v. Watts Guerra LLP*, 41 F.4th 1246, 1257 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1022 (2023), and *aff'd, In re Syngenta AG MIR 162 Corn Litig. (Hossley-Embry Grp. II)*, No. 21-3110, 2024 WL 3684788 (10th Cir. Aug. 7, 2024).

Indeed, Judge Lungstrum credited my opinions on attorneys' fees over the contrary opinions of five law professor experts retained by various objectors.[6]

- In the *Deepwater Horizon* MDL litigation, Judge Carl Barbier cited and quoted my declarations (relating to a proposed settlement with British Petroleum) more than 60 times in his two opinions analyzing class certification and fairness.[7] In a later order in that MDL, Judge Barbier repeatedly cited another declaration of mine—which I filed in connection with a class settlement involving defendants Transocean and Halliburton.[8]

- In the *Volkswagen Clean Diesel* MDL litigation, Judge Charles Breyer repeatedly cited and quoted my two declarations in his three opinions—relating to the 2.0-liter VW class settlement, the 3.0-liter VW class settlement, and the class settlement with VW's co-defendant, Bosch.[9]

- In the *AT&T Mobility* MDL litigation, then–District Judge (now Seventh Circuit Judge) Amy St. Eve cited and quoted my declarations more than 20 times in approving a class settlement and awarding attorneys' fees.[10]

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[6] *In re Syngenta*, 2018 WL 6839380, at *4.

[7] *See In re Deepwater Horizon*, 910 F. Supp. 2d 891, 903, 914–16, 918–21, 923–24, 926, 929–33, 938, 941, 947, 953, 955, 960, 962 (E.D. La. 2012) (approving economic and property damages settlement), *aff'd,* 739 F.3d 790 (5th Cir. 2014); *In re Deepwater Horizon*, 295 F.R.D. 112, 133–34, 136, 138–41, 144–45, 147 (E.D. La. 2013) (approving medical benefits settlement).

[8] *See* Order and Reasons, Case No. 2:10-md-02179-CJB-JCW (Doc. No. 22252) (E.D. La. Feb. 15, 2017), *available at* https://www.laed.uscourts.gov/sites/default/files/OilSpill/2152017 OrderAndReasons%28HESI% 26TOsettlement%29.pdf (last visited Aug. 15, 2024).

[9] *See In re Volkswagen "Clean Diesel" Mktg., Sales Pracs. & Prods. Liab. Litig.*, No. 3:15-md-02672-CRB, 2016 WL 6248426, at *18, *19, *20 (N.D. Cal. Oct. 25, 2016), *aff'd sub nom. In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 895 F.3d 597 (9th Cir. 2018), and *aff'd sub nom. In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 741 F. App'x 367 (9th Cir. 2018); Order Granting Final Approval of the Consumer and Reseller Dealership 3.0-Liter Class Action Settlement, Case No. 3:15-md-02672-CRB (Doc. No. 3229) (filed 05/17/17), at 34, 35, 38; Order Granting Final Approval of the Bosch Class Action Settlement, Case No. 3:15-md-02672-CRB (Doc. No. 3230) (filed 05/17/17), at 18.

[10] *See In re AT&T Mobility Wireless Data Serv. Sales Tax Litig.*, 789 F. Supp. 2d 935, 956–59, 961, 963–65 (N.D. Ill. 2011) (approving class settlement); *In re AT&T Mobility Wireless Data Serv. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1032 n.3, 1034–35, 1037, 1040, 1042 (N.D. Ill. 2011) (awarding attorneys' fees).

- In the *JUUL* MDL, Judge Orrick utilized my proposed methodology for determining the lodestar cross-check.[11] The settlement for which fees were sought was a consumer class settlement involving JUUL, but the work performed by class counsel also related to separate government entity cases and personal injury cases, as well as to a consumer class action against Altria. Judge Orrick noted, in a fee issue of first impression, that "Professor Klonoff's method of roughly calculating a lodestar cross-check [was] helpful," and he adopted that approach over a number of alternatives offered by plaintiffs as the one that "makes the most sense[.]"[12] In a subsequent settlement of a consumer class action involving a different defendant—Altria—Judge Orrick again found my methodology "helpful" and once again used it conducting a lodestar cross-check with respect to a settlement of the consumer class against Altria.[13]
- In *In re Broiler Chicken Antitrust Litig.*, Judge Thomas Durkin cited and quoted my declaration numerous times in awarding attorneys' fees of more than $55 million; he specifically stated that he found my declaration (and one other) to be "very helpful[.]"[14]
- In *Zakikhani v. Hyundai Motor Co.*, Judge Stanley Blumenfeld, Jr., cited my declaration in approving attorneys' fees to class counsel.[15]
- In *Githieya v. Global Tel Link Corp.*, Judge Amy Totenberg cited and quoted my declaration several times in awarding attorneys' fees to class counsel.[16]

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[11] *In re JUUL Labs, Inc. Mktg., Sales Pracs., and Prods. Liab. Litig.*, No. 19-md-02913-WHO, 2023 WL 11820531, at *3 (N.D. Cal. Dec. 18, 2023).

[12] *Id*. at *2, 3 n.5.

[13] *In re JUUL Labs, Inc. Mktg., Sales Pracs., and Prods. Liab. Litig.*, No. 19-md-02913-WHO, 2024 WL 2202009, at *3 (N.D. Cal. May 15, 2024).

[14] *In re Broiler Chicken Antitrust Litig.*, No. 16 C 8637, 2021 WL 5578878, at *2 n.4, *3–4 & n.5 (N.D. Ill. Nov. 30, 2021).

[15] *Zakikhani v. Hyundai Motor Co.*, No. 8:20-CV-01584-SB-JDE, 2023 WL 4544774, at *8 (C.D. Cal. May 5, 2023), *reconsideration denied*, No. 8:20-CV-01584-SB-JDE, 2023 WL 4544771 (C.D. Cal. June 14, 2023).

[16] *Githieya v. Global Tel Link Corp.*, No. 1:15-cv-00986-AT (N.D. Ga. Aug. 30, 2022) (Doc. No. 369).

- In the *Equifax Data Breach* case, Judge Thomas Thrash considered various expert reports relating to a class settlement and proposed attorneys' fees; he noted that, although he exercised his own independent judgment, he found my declaration to be "particularly helpful."[17]
- In the *Wells Fargo Unauthorized Accounts* litigation, Judge Vince Chhabria cited my declaration in connection with the issue of whether objectors to a class settlement should be ordered to post an appeal bond.[18]
- In *Skold v. Intel Corp.*, Judge Peter Kirwan cited my declaration in approving a class settlement and awarding attorneys' fees.[19]

15. For my expert work in the present litigation, I am being compensated at my standard 2024 hourly rate of $1,125.00. Payment for my services is not contingent on the outcome of Consolidated Plaintiffs' Counsel's request for attorneys' fees. Nor is it contingent on my taking any particular position on Consolidated Plaintiffs' Counsel's request for attorneys' fees.

16. Additional information regarding my qualifications and experience—including a list of my publications—can be found in my curriculum vitae (attached hereto as Appendix A).

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[17] *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020), *aff'd in relevant part*, No. 20-10249, 2021 WL 2250845 (11th Cir. June 3, 2021).

[18] *Jabbari v. Wells Fargo & Co.*, No. 15-CV-02159-VC, 2018 WL 11024841, at *7 (N.D. Cal. June 14, 2018).

[19] *See Skold v. Intel Corp.*, No. 1-05-CV-039231 (Cal. Super. Ct. Santa Clara County) (Jan. 29, 2015), at 7, *available at* http://lawzilla.com/blog/janet-skold-et-al-vs-intel-corporation/. I should also note that in *Rogowski v. State Farm Life Insurance Company*, No. 4:22-cv-00203-RK (W.D. Mo.) although the court did not cite my declaration, it did award—consistent with my testimony—33⅓ of a mega-fund. *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-cv-00203-RK, 2023 WL 5125113, at *5 (W.D. Mo. Apr. 18, 2023).

III. MATERIALS RELIED UPON

17. I have reviewed the pleadings and supporting declarations in the above-captioned litigation, drafts of Consolidated Plaintiff's' Counsel's motion for attorneys' fees, a draft and final declaration of attorney Derek Loeser in support of that motion for attorneys' fees, and a transcript of the motion hearing proceedings before this Court (May 22, 2024). I reviewed some sealed materials after signing the protective order, but I rely solely on publicly available information.

IV. FACTUAL OVERVIEW[20]

18. This Court is thoroughly familiar with the claims in this case and the facts surrounding the proposed settlement. I discuss only those facts that are relevant to my opinions.

19. In March 2020, Wells Fargo Bank N.A. (Wells Fargo) started placing borrowers into unsolicited mortgage forbearances, causing harm to borrowers. Consolidated Plaintiffs' Counsel filed six putative nationwide class actions between June and August 2020 (two in the Northern District of California, two in the Southern District of California, and two in the Western District of Virginia). Loeser 10/28/24 Decl. ¶ 19; *Echard*, Doc. 71 at 2.

20. On September 14, 2020, in response to a motion for preliminary injunction filed by Consolidated Plaintiffs' Counsel in *Forsburg*, Wells Fargo stipulated to an agreed order barring it from placing customers in forbearances or extending forbearances without the customer's request

[20] All page numbers for court filings cited herein refer to court-assigned pagination, as opposed to page numbers assigned by the parties.

to do so. Loeser 10/28/24 Decl. ¶ 20. Consolidated Plaintiffs' Counsel achieved this relief from Wells Fargo without any involvement of *Echard* Counsel. Loeser 10/28/24 Decl. ¶ 28.

21. On December 3, 2020, Northern District of California District Judge Donato, at the initial hearings in the *Green* and *Delpapa* cases, granted Consolidated Plaintiffs' Counsel's motion to order Wells Fargo to send a corrective notice to borrowers whom Wells Fargo had stated (inaccurately) would not suffer credit harm as a result of a forbearance. Again, Consolidated Plaintiffs' Counsel achieved this relief without any involvement of *Echard* Counsel. Judge Donato also ordered the parties to pursue mediation. Loeser 10/28/24 Decl. ¶ 23.

22. In July and August 2021, Consolidated Plaintiffs' Counsel and Wells Fargo engaged in mediation efforts (three all-day sessions) using mediator Robert Meyer. The cases were not settled at that time. Loeser 10/28/24 Decl. ¶¶ 29-37. Nonetheless, public information reveals that Consolidated Plaintiffs' Counsel and Wells Fargo formulated the infrastructure that would be used in the $185 million settlement. May 22, 2024 Hearing Tr. at 12:18-15:10; Loeser 10/28/24 Decl. ¶¶ 9, 36.

23. On January 28, 2021, while mediation discussions with Mr. Meyer were ongoing, *Echard* Counsel first appeared in this litigation by filing the *Echard* case in the Western District of Washington. Loeser 10/28/24 Decl. ¶ 29. Consolidated Plaintiffs' Counsel have shown that large portions of the *Echard* complaint were copied from two of their cases, *Forsburg* and *Delpapa*. *Echard*, Doc. 71 at 3; *Echard*, Doc. 125 at 2-3; Loeser 10/28/24 Decl. ¶ 29. This copying included copying Consolidated Plaintiffs' Counsel's erroneous citation to an inapposite consumer complaint, Loeser 10/28/24 Decl. ¶ 29., suggesting that *Echard* Counsel lifted the language from Consolidated Plaintiffs' Counsel's complaint without doing an independent verification of the

allegations, let alone even checking for errors in the lifted passages. *Echard* Counsel did add a new claim: an alleged violation of the Servicemembers Civil Relief Act (SCRA). However, *Echard* Counsel subsequently amended their complaint to dismiss the SCRA claim. *Echard* Counsel insisted on joining the litigation against Wells Fargo as class counsel, with a guarantee of a substantial portion of the attorneys' fees. Consolidated Plaintiffs' Counsel agreed to work cooperatively with *Echard* Counsel but did not deem it appropriate to guarantee significant fees to that group. Loeser 10/28/24 Decl. ¶ 31.

24. On August 25, 2021, the district court judge in *Echard* at the time (Judge Coughenour) issued a show cause order seeking the parties' explanation why the case should not be transferred. In response, Wells Fargo urged transfer to this Court; *Echard* counsel, by contrast, sought transfer to the Northern District of California and opposed transfer to this Court. *Echard* Counsel's opposition was vigorous; they called a transfer to this Court a "venue purgatory" that would "delay justice for the victims of Wells Fargo's COVID-relief scam." *Echard*, Doc. 136 at 10. The district court agreed with *Echard* Counsel and ordered that the case be transferred to the Northern District of California. Loeser 10/28/24 Decl. ¶¶ 38-39.

25. Upon transfer to the Northern District of California, the case was assigned to Judge Tigar. Wells Fargo subsequently moved to have the case transferred to this Court. *Echard* counsel opposed that transfer motion. Consolidated Plaintiffs' Counsel sought to relate the case to their cases pending before Judge Donato, but Wells Fargo would not stipulate to that relation. As a result, the motion to relate was a contested motion. Before Judge Donato could rule on Consolidated Plaintiffs' Counsel's relation motion, and shortly after the unsuccessful mediation had ended, *Echard* Counsel did an abrupt about face: *Echard* Counsel jointly stipulated with Wells

Fargo to transfer the case to the Southern District of Ohio, and Wells Fargo agreed to withdraw its pending motion to dismiss. Thus, the case was transferred and assigned to this Court. Loeser 10/28/24 Decl. ¶ 40.

26. Consolidated Plaintiffs' Counsel filed a motion to intervene in this Court, arguing, *inter alia*, that there was a "risk" of a "reverse auction," *i.e.*, a situation in which *Echard* Counsel could offer Wells Fargo a low-priced settlement, and a concern that "*Echard* Counsel negotiating alone would reach a far inferior settlement for the class . . . ." *Echard*, Doc. 71 at 17; Loeser 10/28/24 Decl. ¶ 42. The Court, however, denied the motion.

27. For the next many months, Consolidated Plaintiffs' Counsel actively litigated the cases, litigating numerous motions and pursuing extensive discovery. Loeser 10/28/24 Decl. ¶¶ 44-62.

28. On September 9, 2022, Wells Fargo and *Echard* Counsel reached a class settlement of $94 million. Loeser 10/28/24 Decl. ¶ 50. I am advised by Consolidated Plaintiffs' Counsel that *Echard* Counsel agreed to this settlement without having conducted their own formal discovery (apart from asking Wells Fargo to produce what it produced to Consolidated Plaintiffs' Counsel), without substantive motions practice, and without the input of Consolidated Plaintiffs' Counsel into the terms of the settlement.

29. In seeking preliminary approval of the settlement, and in later filings, *Echard* Counsel touted the settlement as highly favorable to the class. Loeser 10/28/24 Decl. ¶ 60. In their motion for preliminary approval, *Echard* Counsel called the settlement "a major victory for the proposed settlement class" and said it constituted "the 'gold standard' for this type of consumer claim." *Echard*, Doc. 108 at 2, 10 (citation omitted). By contrast, Consolidated Plaintiffs' Counsel

have represented that they "would not have accepted the *Echard* $94 million settlement, had they been consulted, and were not willing to support it after learning of it." Loeser 10/28/24 Decl. ¶ 51. *Echard* Counsel informed Consolidated Plaintiffs' Counsel that if they opposed the settlement publicly or objected before this Court, that action would "close the door" on "getting [Consolidated Plaintiffs] and their counsel compensated." *Echard*, Doc. 124 at 6; Loeser 10/28/24 Decl. ¶ 50.

30. Consolidated Plaintiffs' Counsel articulated their concerns about the settlement and the way it was negotiated in a renewed motion to intervene. In response, this Court stayed the *Echard* case on March 15, 2023, under the first-to-file doctrine. Loeser 10/28/24 Decl. ¶ 55. *Echard* Counsel moved to reconsider, calling the settlement "the best deal for the class" and "unlikely to come around again." Loeser 10/28/24 Decl. ¶ 60. Importantly, *Echard* Counsel did not attempt to withdraw the pending motion for preliminary approval.

31. In November 2023, Consolidated Plaintiffs' Counsel began a new round of mediation negotiations with Wells Fargo, with Retired Judge Layn Phillips serving as the mediator. *Echard* Counsel attended the mediation. On November 7, 2024, Judge Phillips made a mediator's proposal for a $185 million settlement. As the Settlement Agreement (and later filings by Wells Fargo and Consolidated Plaintiffs' Counsel) make clear, the mediator's proposal was made *solely* to Wells Fargo and Consolidated Plaintiffs. Wells Fargo and Consolidated Plaintiffs' Counsel both agreed to the proposal. Only after both of those parties had accepted the proposal was *Echard* Counsel informed of it. Loeser 10/28/24 Decl. ¶ 63. The settlement substantially expanded the class as defined in the $94 million settlement—by tens of thousands of class members. Loeser 10/28/24 Decl. ¶¶ 53-54. It also significantly increased the amount awarded to each class member—from $503 per loan to $677 per loan. May 22, 2024 Hearing Tr. at 18:12-18:13 (remarks

of Mr. Lowney); *Echard*, Doc. 175 at 2; *Echard*, Doc. 176 at 1. The settlement also cured an inequitable term whereby co-borrowers (*e.g.*, spouses) were all released even though only one award was provided. Loeser 10/28/24 Decl. ¶ 52.

32. Once *Echard* Counsel learned about the settlement to which Wells Fargo and Consolidated Plaintiffs' Counsel had agreed, they inexplicably delayed the implementation of the settlement. Thus, for three months, they would not release Wells Fargo from the earlier $94 million settlement agreement (which was the subject of a still pending motion for preliminary approval); moreover, they would not sign the term sheet embodying the $185 million settlement. Loeser 10/28/24 Decl. ¶ 65. In addition, they did not withdraw their motion to reconsider, which had urged the Court to lift the stay and approve the $94 million settlement. Loeser 10/28/24 Decl. ¶ 65. Yet, they represented to this Court that "Our priority is obtaining relief for the class without delay." May 22, 2024 Hearing Tr. at 25:8-25:9 (remarks of Mr. Lowney). Moreover, the harm to the class was not just the delay in providing relief; that delay could have resulted in the entire settlement being scuttled because Judge Donato made clear he would be ruling promptly on Wells Fargo's motion to dismiss the Fourth Amended Complaint, which had provided the basis of the $185 million settlement. Loeser 10/28/24 Decl. ¶ 66.

33. On February 9, 2024, Wells Fargo raised this impasse with this Court in a notice requesting a status conference. Wells Fargo noted that it had reached an agreement in principle with Consolidated Plaintiffs, "in which Wells Fargo agreed to [1] pay materially more money for the benefit of the settlement class," and to [2] add "tens of thousands of additional individuals" who would not have benefited under the $94 million settlement." *Echard*, Doc. 175 at 1. Wells Fargo explained that it was "unable to execute a term sheet reflecting the new settlement" because

"it remain[ed] a signatory to the *Echard* settlement." *Echard*, Doc. 175 at 2. That same day, Consolidated Plaintiffs' Counsel filed a notice stating that "Wells Fargo has indicated that it [could not] sign the term sheet until the motion for preliminary approval of the proposed *Echard* settlement is declined by this Court." *Echard*, Doc. 176, at 2. Importantly, the notices by both Wells Fargo and Consolidated Plaintiffs' Counsel made clear that the new settlement was reached solely by Consolidated Plaintiffs' Counsel and Wells Fargo, with no mention of *Echard* Counsel playing any role in reaching that agreement. *Echard*, Doc. 175 at 1; *Echard*, Doc 176 at 1. Indeed, as noted above, the mediator's proposal was sent *only* to Consolidated Plaintiffs' Counsel and Wells Fargo, not to *Echard* Counsel. Only after the filing of the notices by Wells Fargo and Consolidated Plaintiffs' Counsel, which highlighted *Echard* Counsel's obstinance, did *Echard* Counsel agree to sign the term sheet for the $185 million settlement and withdraw the $94 million settlement. Loeser 10/28/24 Decl. ¶ 67. *Echard* Counsel made no attempt to correct the notices filed by Wells Fargo and Consolidated Plaintiffs' Counsel to assert that *they*, not Consolidated Plaintiffs' Counsel, were the ones who spearheaded and promoted the new $185 million settlement.

V. SUMMARY OF OPINIONS

34. I have evaluated the relative contributions of Consolidated Plaintiffs' Counsel and *Echard* Counsel to the achievement of the $185 million settlement. In my view, Consolidated Counsel made enormous contributions. Even before the settlement, and before any involvement by *Echard* Counsel, they had secured critical injunctive relief and a corrective notice by Wells Fargo. They researched the claims extensively, conducted vast discovery and motions practice,

and in their original mediation developed the infrastructure ultimately used in the $185 million settlement. They, not *Echard* Counsel, actually negotiated the $185 million, and they ensured that the deficient $94 million settlement negotiated by *Echard* Counsel was not implemented.

35. By contrast, *Echard* Counsel belatedly entered the litigation by copying key passages of Consolidated Plaintiffs' Counsel's complaints (including typos), did no independent discovery or motions practice, negotiated a deficient settlement, focused excessively on their own fee recovery, and (most seriously) impeded the implementation of the $185 million settlement, not only delaying recovery to the class but putting in jeopardy the entire $185 million settlement.

36. I do not believe that *Echard* Counsel can rely on the withdrawn $94 million settlement to secure fees. It was not the first step leading to the $185 million settlement; rather, but for the vigorous advocacy of Consolidated Plaintiffs' Counsel, *Echard* Counsel would have pressed for preliminary and final approval of the $94 million settlement, thereby preventing the class from achieving the far stronger $185 million settlement. The $185 million settlement demonstrated beyond any doubt that the withdrawn $94 million settlement was *not* the "gold standard" or the "best deal for the class," ¶¶ 29, 30, *supra*, as *Echard* Counsel had contended.

VI. DETAILED DISCUSSION OF OPINIONS

37. In this Section, I discuss the contributions of Consolidated Plaintiffs' Counsel to the achievement of the $185 million settlement. I then discuss the contributions of *Echard* Counsel to that settlement. Finally, I consider the relevance of the original, now-abandoned $94 million settlement to the award of fees. Based on those analyses, I conclude that the lion's share of attorneys' fees should go to Consolidated Plaintiffs' Counsel, and that Consolidated Plaintiffs'

Counsel's proposed division of the fee award is a reasonable one that reflects the two groups' relative contributions.

38. The underlying principles are not in dispute. "[C]lass counsel's compensation must be proportioned to the *incremental* benefits they confer on the class, not the total benefits."[21] As the Ninth Circuit noted earlier this month: "It is well established that an award of attorneys' fees from a common fund depends on whether the attorneys' '*specific services* benefited the fund—whether they tended to create, increase, protect or preserve the fund.'"[22] More generally, "[t]he result obtained is typically regarded as the 'single most important factor' in determining the reasonableness of fees."[23] As the Sixth Circuit has noted: "When awarding attorney's fees in a class action," a court must examine "the results achieved."[24]

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[21] *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 286 (7th Cir. 2002) (Posner, J.); *see also, e.g., Olden v. Gardner*, 294 Fed. Appx. 210, 221 (6th Cir. 2008) ("Fees and costs may be awarded to the counsel for objectors to a class action settlement if the work of the counsel produced a beneficial result for the class"); *Etter v. Thetford Corp.*, No. SACV 13-00081, 2017 WL 1433312, at *3-4 (C.D. Cal. Apr. 14, 2017) (focusing on whether counsel's work "substantially benefited the class").

[22] *In re Cathode Ray Tube (CRT) Antitrust Litig., (Purchaser v. Cooper & Kirkham, P.C.)*, No. 22-16534, 2024 BL 355482, at *2 (9th Cir. Oct. 7, 2024) (emphasis added; citing authority). *Accord, e.g., In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 389 (S.D.N.Y. 2013) (attorney "work is compensable only to the extent the attorney's work confer[red] substantial benefits on the class") (citation and external quotation marks omitted).

[23] *Macaluso v. Zirtual Startups, LLC*, 2:19-CV-3616, 2021 WL 3639665, at *8 (S.D. Ohio Aug. 17, 2021) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983))

[24] *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016) (quoting *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993)). *Accord, e.g., Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) ("[the] monetary results achieved [in the case] predominate over all other criteria"); *Jasper v. C.R. Eng., Inc.*, No. CV 08-5266-GW(CWx), 2014 WL 12577426, at *11 (C.D. Cal. Nov. 3, 2014) ("Unlike in pee wee soccer, [] Counsel is not entitled to 'participation' fees just for showing up. Instead, it is entitled to fees incurred while pursuing successful objectives[.]"); *Clement v. Am. Honda Fin. Corp.*, 176 F.R.D. 15, 31 (D. Conn. 1997) ("The key element in assessing the reasonableness of an attorney's fee and any adjustment made in the amount requested is the relationship between the amount of the fee awarded and the results obtained") (quoting *In re Presidential Life Secs.*, 857 F. Supp. 331, 335

A. Contributions of Consolidated Plaintiffs' Counsel

39. In my opinion, Consolidated Plaintiffs' Counsel have performed in an exemplary fashion throughout this litigation, and it was their services that led to the $185 million settlement. As reflected in the Factual Overview, they filed the first lawsuits, and their six complaints reflect extensive investigation and a thorough understanding of the facts. Based on my approximately four decades litigating class actions (and three decades teaching and writing about the subject), I am impressed that early on, they achieved a stipulation by Wells Fargo barring it from placing customers in forbearances or extending forbearances without the customer's request to do so. Also early on, they secured an order granting Consolidated Plaintiffs' Counsel's motion to order Wells Fargo to send a corrective notice to borrowers whom Wells Fargo had stated (inaccurately) would not suffer credit harm as a result of a forbearance. *See* ¶¶ 19-20, *supra.* Securing such critical structural relief at the outset of a contentious and massive lawsuit is a notable and rare achievement.[25]

(S.D.N.Y. 1994), in turn quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)); *In re E.I. du Pont de Nemours & Co. C-8 Pers. Injury Litig.*, No. 2-13-MD-2433, 2018 U.S. Dist. LEXIS 171387, at *101 (S.D. Ohio Oct. 1, 2018) (analyzing "the value and quality of each firm's contribution to the overall litigation and ultimate settlement"), *In re E.I. Du Pont De Nemours Co. C-8 Pers. Injury Litig.*, No. 2-13-MD-2433, 2018 WL 4771524, at *1 (S.D. Ohio Oct. 3, 2018) (affirming special master).

[25] Numerous cases have considered injunctive relief secured by class counsel in addition in awarding attorneys' fees. *See, e.g., Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *3 (W.D. Mo. Aug. 16, 2019) (injunctive relief obtained by class counsel supported one-third fee award because "the actual benefit to the Settlement Class is in excess of the monetary benefit received"); *Hooper v. Advance Am.*, No. 08-4045-CV-C-NKL, 2010 WL 11469807, at *3 (W.D. Mo. Nov. 4, 2010) (noting that "counsel has fought for and obtained future injunctive relief" in finding that requested fees were justified); *Phillips v. Caliber Home Loans, Inc.*, No. 19-CV-2711 (WMW/LIB), 2022 WL 832085, at *2 (D. Minn. Mar. 21, 2022) (considering injunctive relief in finding that the results obtained by class counsel supported a one-third fee award).

40. Consolidated Plaintiffs' Counsel engaged in extensive mediation efforts in July and August 2021, and established the infrastructure that would ultimately be used in the final $185 million settlement. Nonetheless, the mediation failed. *See* ¶ 22, *supra*. This suggests to me that Consolidated Plaintiffs' Counsel were *not* interested in a rapid settlement that (1) would yield prompt attorneys' fees but (2) would be a bargain to Wells Fargo at the expense of the class.

41. As detailed in myriad paragraphs of the Loeser Declaration, *see e.g.*, Loeser 10/28/24 Decl. ¶¶ 7, 45, 56-58, Consolidated Plaintiffs' Counsel engaged in extensive discovery and motions practice. Moreover, they were vigilant in their effort to ensure that *Echard* Counsel and Wells Fargo would not run off and enter into a settlement that was good for Wells Fargo and *Echard* Counsel but bad for the class. Consolidated Plaintiffs' Counsel attempted (unsuccessfully) to intervene to prevent what they deemed to be a potential reverse auction situation, and after the $94 million settlement was announced, they again sought to intervene. In the latter attempt, they convinced this Court to stay the *Echard* case, and with it to suspend attempts by *Echard* Counsel and Wells Fargo to implement the deficient $94 million settlement. *See* ¶ 30, *supra*.

42. Although *Echard* Counsel was fully prepared to implement the inadequate $94 million settlement, Consolidated Plaintiffs' Counsel understood that a new, superseding agreement was essential. With the assistance of the mediator, Judge Layn Phillips, they achieved a $185 million settlement. That settlement was the result of a mediator's proposal to Consolidated Plaintiffs' Counsel and Wells Fargo, but *not* to *Echard* Counsel. *See* ¶ 31, *supra.*

43. Under the new settlement, the class was substantially expanded, and the amount per class member was significantly increased over the amount per class member in the prior $94 million settlement that *Echard* Counsel negotiated. *See* ¶ 31, *supra. Echard* Counsel held up the

new settlement for months by not signing the term sheet. Consolidated Plaintiffs' Counsel (and Wells Fargo) brought this bottleneck to the Court's attention, and only then did *Echard* Counsel sign the term sheet. *See* ¶ ¶ 32, 33, *supra*.

44. I have seen nothing to suggest that Consolidated Plaintiffs' Counsel put their own interest in attorneys' fees over seeking the best possible settlement for the class. To the contrary, it is my opinion that they consistently worked to ensure that the class received the best possible settlement.

B. Contributions of *Echard* Counsel

45. At the outset, it is important to emphasize that *Echard* Counsel had nothing to do with the extremely impressive structural relief (injunctive and notice) that Consolidated Plaintiffs' Counsel achieved early in the litigation. Indeed, *Echard* Counsel had not even filed their lawsuit at that point. *See* ¶¶ 20, 21, *supra.*

46. When *Echard* Counsel did appear, they filed a complaint that copied large portions of Consolidated Plaintiffs' Counsel's complaints. The failure even to catch typographical errors in the Consolidated Plaintiffs' Counsel's complaints (*see* ¶ 23, *supra*) suggests to me that *Echard* Counsel was interested in getting something on file quickly, as opposed to first conducting their own thorough analysis and identifying their own critical facts and claims.[26] Although *Echard*

[26] *See, e.g., In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 181 (3d Cir. 2005) ("copycat complaints do not benefit the class, and are merely entrepreneurial efforts taken by firms attempting to secure lead counsel status"); *Garr v. U.S. Healthcare*, 22 F.3d 1274, 1276 (3d Cir. 1994) (upholding sanctions where two attorneys copied from a complaint previously filed by attorney Malone, noting that "they filed the complaint Malone had prepared, changing only the name of the plaintiffs and number of shares owned"; "Rule 11 requires that an attorney signing a pleading must make a reasonable inquiry *personally*") (emphasis in original). I do not contend that this initial copying, standing alone, should disqualify *Echard* Counsel from receiving fees. Nor am

Counsel added one new claim (SCRA), they subsequently dismissed that claim. *See* ¶ 23, *supra.* Thus, they ultimately retracted their one material change to Consolidated Plaintiffs' Counsel's complaints.

47. As discussed above, *Echard* Counsel appeared heavily focused on attorneys' fees; in their dealings with Consolidated Plaintiffs' Counsel, they tried to use fees as both a carrot and a stick. *See* ¶¶ 23, 29, *supra*. *See also* Loeser 10/28/24 Decl. ¶¶ 31, 41. Moreover, *Echard* Counsel's initial vigorous opposition to transferring their case to this Court, followed by a complete about face, *see* ¶ 25, *supra,* suggests to me that their maneuvering may have been designed to work out a low-value deal that Wells Fargo would accept, thus enabling *Echard* Counsel to earn the entirety of attorneys' fees. As the Eleventh Circuit explained in addressing similar concerns, "If, as it appears, [counsel] was indeed motivated by a desire to grab attorney's fees instead of a desire to secure the best settlement possible for the class, it violated its ethical duty to the class."[27]

48. *Echard* Counsel and Wells Fargo ultimately negotiated a $94 million settlement, which *Echard* Counsel touted as the "gold standard, "the best deal for the class," and something that was "unlikely to come around again." ¶¶ 29, 30, *supra*. In most cases, one can only speculate whether different attorneys could have negotiated a better settlement. Here, we know the answer. But for the persistence of Consolidated Plaintiffs' Counsel, the deficient $94 million settlement likely would have become the final settlement. Instead, with the assistance of the mediator, Judge

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I contending that this copying somehow establishes a reverse auction. I note it as one of many facts I have considered in reaching my opinion that *Echard* Counsel should receive only a small portion of attorneys' fees.

[27] *Tech. Training Assocs., Inc. v. Buccaneers Ltd.*, 874 F.3d 692, 697 (11th Cir. 2017).

Layn Phillips, Consolidated Plaintiffs' Counsel and Wells Fargo reached a new settlement that was almost double the one negotiated by *Echard* Counsel. In addition to expanding the class significantly, it increased the recovery per loan from $503 to $677, a point that even *Echard* Counsel conceded at the May 22, 2024 hearing. May 22, 2024 Hearing Tr. at 18:12-18:13. *See* ¶ 31, *supra.* In the words of one court, there was a "colossal discrepancy"[28] between the settlement negotiated by *Echard* Counsel and the one reached by Consolidated Plaintiffs' Counsel and Wells Fargo. The $94 million settlement was indisputably *not* the "best deal for the class."

49. Viewed another way, *Echard* counsel negotiated a demonstrably deficient settlement that ultimately was *replaced* with a robust settlement because of the intervention and negotiation of Consolidated Plaintiffs' Counsel. As a result, *Echard* Counsel did not ultimately recover any common fund but instead worked to delay the implementation of the subsequent settlement. And "only those lawyers who 'recover[] a common fund' for the plaintiffs are entitled to a portion of the common fund as reasonable attorneys' fee."[29]

50. It would have been concerning enough if *Echard* Counsel had just stayed on the sidelines and allowed the new $185 million settlement to be implemented. But the record reflects far more serious concerns. *Echard* Counsel *delayed* signing the term sheet for about three months, and gave their approval only after their intransigence was made clear to the Court by both Consolidated Plaintiffs' Counsel and Wells Fargo. *See* ¶¶ 32-33, *supra*. In my opinion, this is a very troublesome course of conduct by *Echard* Counsel because those actions caused significant delay in the class's recovery, for no valid reason. Moreover, as explained above (¶ 32, *supra*), that

[28] *Acosta v. Trans Union*, 243 F.R.D. 377, 391 (C.D. Cal. 2007).

[29] *Arkin v. Pressman, Inc.*, 38 F.4th 1001, 1008 (11th Cir. 2022).

delay could have jeopardized the entire $185 million settlement because Judge Donato made clear he would soon rule on the pending motion to dismiss. In my opinion, such conduct was directly contrary to the interests of the class. As the Ninth Circuit found in holding that the district court did not abuse its discretion in reducing requested fees, counsel's conduct that "*delayed payments to class members*" justify a reduction in fees.[30] *Echard* Counsel did not acknowledge this effort to delay the settlement during the May 22, 2024 hearing. To the contrary, they represented incorrectly that they had done just the opposite: "Our priority is obtaining relief for the class without delay." May 22, 2024 Hearing Tr. at 25:8-25:9.

3. Relevance of the Now Abandoned $94 Million Settlement

51. As noted in ¶ 48, *supra*, in my opinion, the $185 million settlement shows that the prior $94 million settlement was deficient. In this section, I offer my opinions as to whether the now-abandoned $94 million settlement nonetheless provides a basis for *Echard* Counsel to seek substantial fees. In my opinion, as explained below, the $94 million settlement, which was replaced by one almost twice the size, *undercuts* any claim by *Echard* Counsel for fees.

52. I can think of three conceivable arguments for claiming that the initial settlement is a fact in favor of awarding substantial fees to *Echard* Counsel, all of which are suggested in *Echard*

[30] *Cathode Ray*, *supra* note 22, at *2. Other courts, including this Court, have similarly noted concerns about delays in recovery by class members. *See, e.g., In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 374 (S.D. Ohio 2006) (approving settlement, *inter alia*, because continued litigation would "delay this matter further [which] would not substantially benefit the Class"); *Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 777 n. 13 (N.D. Ohio 2010) (noting that requiring additional notice to class members "would delay delivery of benefits to the Settlement class"); *1988 Trust for Allen Children*, 28 F.4th 513, 521 (4th Cir. 2022) (noting importance of "protect[ing] the class's interest" from "frivolous objectors (who may impede or delay valuable compensation to others"); *Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 272, 228 Cal. Rptr. 3d 106, 116, 409 P.3d 281, 289 (2018) (noting harm to class members by "delay [in] the provision of relief" to them).

Counsel's remarks at the May 22, 2024 hearing and foreshadowed in earlier filings: (1) the original $94 settlement was the catalyst that led to the $185 settlement, for which *Echard* Counsel deserves credit; (2) the original $94 million settlement can still be viewed as fair, reasonable, and adequate—and thus an appropriate basis to award substantial fees to *Echard* Counsel—notwithstanding the subsequent settlement; and (3) the transition from the $94 million settlement to the $185 million settlement was simply the effort of *Echard* Counsel to address concerns raised by objectors, as is routinely done in many class settlements. As discussed below, none of those theories is viable.

53. First, *Echard* Counsel have suggested that the settlement process, from the $94 million now-abandoned settlement to the current $185 million settlement, was simply one continuous process. *See* May 22, 2024 Hearing Tr. at 17:13-17:16 ("Four full days with Judge Guilford and then two full days and countless other sessions with retired Judge Phillips and the two other mediators [on] his team." (remarks of Mr. Lowney)).

54. Contrary to *Echard* Counsel, I do not believe it is reasonable to look at the initial settlement as step one of an ultimate two-step strategy: *i.e.*, negotiate the initial settlement and then use that agreement to leverage the higher settlement. That is simply not what happened. *Echard* Counsel *filed a motion for preliminary approval* based on the $94 million settlement. *Echard*, Doc. 108. Without the aggressive efforts of Consolidated Plaintiffs' Counsel, *Echard* Counsel would no doubt have proceeded with its motion for preliminary approval and, if that motion was granted, would have pressed hard for final approval. There was no two-step process. Rather, the $94 million settlement was *abandoned*, and a new $185 million settlement was negotiated by Consolidated Plaintiffs' Counsel. But even if the deficient initial $94 million settlement could somehow be

characterized as a *partial success* that factored into the later, larger settlement, the proportion of fees awarded to *Echard* counsel should still be only a small fraction of the overall fee award—with the bulk going to Consolidated Plaintiffs' Counsel. Like other Circuits, the Sixth Circuit has approved substantial reductions in fees based on the "limited success" of counsel.[31] But ultimately, it is not credible to characterize the $94 million settlement as even a *partial* success when it was scuttled in favor of a far larger one that *Echard* Counsel *affirmatively blocked* for several months.

55. Second, I do not think it is correct to characterize the $94 million settlement as still being fair, reasonable, and adequate, and thus providing an independent basis for awarding *Echard* Counsel substantial fees. In my mind, the negotiation of the new and much larger settlement is proof positive that the original one was inadequate. Indeed, the inadequacy of the original settlement is precisely why Consolidated Plaintiffs' Counsel mounted such an aggressive attack. In defending the original $94 million settlement, *Echard* Counsel rely heavily on the Declaration of the mediator (retired Judge Andrew Guilford) that the original settlement was fair. *Echard*, Doc. 133 at 17. But while it is true that a mediator's opinion is normally entitled to weight, subsequently uncovered facts may show that the mediator's opinion was not correct. In a similar vein, courts have made clear that "*the mere presence of a neutral mediator, though a factor weighing in favor of a finding of non-collusiveness, is not on its own dispositive of whether the end product is a fair, adequate, and reasonable settlement agreement*."[32] Here, the settlement may have appeared

[31] *See, e.g., Allen v. Allied Plant Maint. Co. of Tenn., Inc.*, 881 F.2d 291, 299-300 (6th Cir. 1989). *Accord, e.g., Richard v. Caliber Home Loans, Inc.*, 832 F. App'x 940, 947 (6th Cir. 2020) (noting that the Circuit has approved reductions in fees "justified by the plaintiffs' only partial success").

[32] *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 948 (9th Cir. 2011) (emphasis added). *Accord, e.g., Olden v. Gardner*, 294 F. App'x 210, 219 (6th Cir. 2008) ("The mediator's recommendation . . . does not completely eliminate the possibility that

reasonable to the mediator at the time it was negotiated, but subsequent facts show that it was inadequate, both in terms of the number of class members covered and the amount of compensation per class member. Thus, Judge Guilford's fairness opinion on a settlement that has now been abandoned in favor of a much larger one is no longer relevant. The class dodged a bullet (finalization of an inferior settlement), and the negotiation of the deficient—and repudiated—$94 million settlement is not the kind of performance that warrants any attorneys' fees.

56. Third, contrary to *Echard* Counsel,[33] this was not an attempt, typical in class actions, for class counsel to resolve concerns raised by objectors who did not actively litigate the case—or to address issues raised by the Court. In the typical situation in which a class settlement is challenged, class counsel negotiate a settlement that results in objections by members of the class—or concerns about the settlement raised by the Court. In response, class counsel may engage in further negotiations with the defendant to make changes, but class counsel remains in control. In that situation, "unlike class counsel—who often have invested substantial time and taken enormous risk—an objector may have devoted little effort to the case as a whole or to the objection in particular."[34] Here, *Echard* Counsel did not modify their $94 million settlement in response to

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there was collusion, because it is not clear why the mediator considered that to be a fair settlement value.").

[33] *See Echard*, Doc. 133 at 1 (referring to Consolidated Plaintiffs' Counsel as "objectors[] [whose] interests are adequately protected by Rule 23's procedures").

[34] Klonoff, *Class Action Objectors: The Good, the Bad, and the Ugly*, 89 FORDHAM L. REV. 475, 480 (2020); *see also, e.g., In re Cincinnati Radiation Litig.*, 187 F.R.D. 549, 551 (S.D. Ohio 1999) (class counsel "resume[d] negotiations" with the defendant "to resolve objections and address certain concerns expressed by the Court"); *In re AT&T Corp. Sec. Litig.*, MDL No. 1399, Civ. No. 00-5364 (GEB), at *3 (D.N.J. Sep. 25, 2006) ("[T]he district court has 'broad discretion' in deciding what fees to award, based on its own evaluation of whether the objector 'assisted the court and enhanced the '[class's] recovery.'" (quoting *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 201 n. 17 (3d Cir. 2005))); *McDonough v. Toys "R" Us, Inc.*, 80 F. Supp. 3d 626, 658, 661 (E.D. Pa. 2015); *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 422-

concerns raised by otherwise passive objectors—or concerns raised by this Court. Rather, Consolidated Plaintiffs' Counsel basically *took over* the settlement negotiations after years of doing their own heavy lifting prosecuting the cases. And there is no need to breach the mediation privilege to reach that conclusion. As the public record shows (¶ 31, *supra*), Wells Fargo and Consolidated Plaintiffs' Counsel reached the $185 million *without even the knowledge* of *Echard* Counsel. As noted, Judge Phillips's proposal was presented solely to Wells Fargo and Consolidated Plaintiffs' Counsel, and both accepted; only thereafter were the terms disclosed to *Echard* Counsel. Indeed, as noted (*see* ¶ 32, *supra*), far from helping to spearhead the new settlement, *Echard* Counsel resisted, *for three months*, signing the term sheet and agreeing to withdraw the motion for preliminary approval of the $94 million settlement. They simply did not make it a "priority" to "obtain[] relief for the class without delay," May 22, 2024 Hearing Tr. at 25:8-25:9 (remarks of Mr. Lowney). In my opinion, imposing significant obstacles to the $185 million settlement is the polar opposite of acting as fiduciaries for the class.

4. Overall Evaluation

57. Based on the foregoing, it is my opinion that Consolidated Plaintiffs' Counsel are fully deserving of the lion's share of attorneys' fees. They acted throughout the litigation to protect the interests of the class. By contrast, *Echard* Counsel began their efforts by filing a copy-cat complaint, appeared preoccupied with securing attorneys' fees, negotiated a $94 million settlement that, as subsequent events revealed, was woefully deficient, conducted no independent discovery

23 (3d Cir. 2016) (noting that the defendant *and class counsel who negotiated the original settlement* revised the settlement in response to concerns raised by the Court); *Faught v. American Home Shield*, 668 F.3d 1233, 1237-38 (11th Cir. 2012) (same); *In re Facebook Biometric Info. Privacy Litig.*, 522 F. Supp.3d 617, 622 (N.D. Cal. 2021) (same).

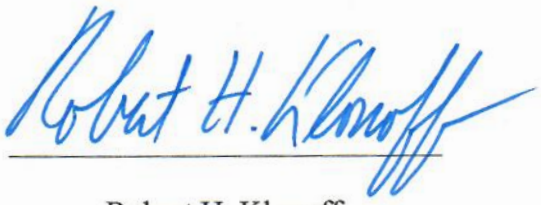
or motions practice, and then engaged in affirmative efforts to block the implementation of the subsequent $185 million settlement, thereby injuring the class. And the original $94 million settlement—which turned out to be anything but the "gold standard"— is a serious strike *against* *Echard* Counsel, not an independent reason to award them fees.

58. In short, it is my opinion that Consolidated Plaintiffs' Counsel's proposed allocation of a fee award is a reasonable one given my assessment of the facts and the conduct of both groups of attorneys. That is true regardless of whether this Court awards 25 percent of the fund in total or some other number. Indeed, given the entire course of conduct by *Echard* Counsel, including their disturbing and indefensible role in delaying the $185 million settlement, the Court would be justified in awarding *Echard* Counsel *no* fees whatsoever.

VII. CONCLUSION

59. In my opinion, the allocation of attorneys' fees proposed by Consolidated Plaintiffs' Counsel is reasonable.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on information known to me.



Robert H. Klonoff

October 28, 2024

Appendix A

CURRICULUM VITAE

ROBERT H. KLONOFF
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Date of Birth: March 15, 1955
Place of Birth: Portland, Oregon

EDUCATION:

J.D., Yale University, 1979

A.B., University of California, Berkeley, 1976, Majored in Political Science/Economics (Highest Honors)

WORK EXPERIENCE:

Current Positions:

Jordan D. Schnitzer Professor of Law, Lewis & Clark Law School (since 2014)

Panelist, FedArb (alternative dispute resolution)

Prior Positions:

Dean of the Law School, Lewis & Clark Law School (2007-2014)

Douglas Stripp/Missouri Endowed Professor of Law, University of Missouri-Kansas City School of Law (2003-2007)

Jones Day, Washington, D.C. (Partner, 1991-July 2003; Of Counsel, 1989-1991, 2003- 2007)

Adjunct Professor of Law, Georgetown University Law Center (class action law and practice) (1999-2003)

Visiting Professor of Law, University of San Diego School of Law (1988-1989)

Assistant to the Solicitor General of the United States (1986-1988)

Assistant United States Attorney (Criminal Division, District of Columbia) (1983-1986)

Associate, Arnold & Porter, Washington, D.C. (1980-1983)

Law Clerk to the Honorable John R. Brown, Chief Judge, United States Court of Appeals for the Fifth Circuit (1979-1980)

Summer Associate, Baker & Botts, Houston, and Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. (1978)

Summer Associate, Sidley & Austin, Washington, D.C. (1977)

SPECIAL HONORS AND ACHIEVEMENTS:

Member, Council of the American Law Institute

Recipient, Lewis & Clark Law School's 2020 Leo Levenson Award for Excellence in Teaching (the law school's most prestigious award)

Recipient, 2018 Albert Nelson Marquis Lifetime Achievement Award in the field of law from *Who's Who in America*

Member, 2011-2017, United States Judicial Conference Advisory Committee on Civil Rules (appointed by Chief Justice John G. Roberts, Jr., in 2011 as the sole voting member from the law school academy; reappointed May 2014 for a second three-year term)

Elected Member, International Association of Procedural Law

Fulbright Specialist Scholar at the University of Hong Kong Faculty of Law (2016)

Recipient, Oregon Consular Corps Award for Individual Achievement in International Outreach, Portland, Oregon (May 2013)

Associate Reporter, American Law Institute's *Principles of the Law of Aggregate Litigation* (class action project; drafts presented at several annual meetings; final version approved by full ALI in May 2009 annual meeting and published in May 2010)

Fellow, American Academy of Appellate Lawyers

Sustaining Life Fellow, American Bar Foundation

Academic Fellow, Pound Institute

Recipient, 2007 Award for Outstanding UMKC Law Professor (based on vote of 3d year class)

2007 UMKC Law School Commencement Speaker (based on vote of 3d year class)

Recipient, 2006 UMKC Law School Elmer Pierson Teaching Award for Most Outstanding Teacher in the Law School (selected by the Dean)

Recipient, 2005 President's Award for Outstanding Service from the UMKC Law School Foundation

Reporter, 2005 National Conference on Appellate Justice (co-sponsored by the Federal Judicial Center, National Center for State Courts, and other organizations)

Co-Recipient, District of Columbia Bar's Frederick B. Abramson Award for Superior Service to the Community (June 1998)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant to the Solicitor General of the United States (1986, 1987)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant United States Attorney (1984, 1985)

The Benjamin N. Cardozo Prize for Best Moot Court Brief for Academic Year 1978-1979, Yale Law School

Semi-Finalist, Moot Court Oral Argument, Yale Law School (Fall, 1978)

Phi Beta Kappa

U.C. Berkeley's Most Outstanding Political Science Student (1976)

The Edward Kraft Award for Outstanding Work as a Freshman Student, U.C. Berkeley (1974)

MEMBERSHIPS:

U.S. Supreme Court Bar

Various Federal Circuit and District Courts

District of Columbia Bar

Missouri State Bar

Oregon State Bar

Multnomah County Bar

American Law Institute

American Bar Association

American Bar Association Committee on Class Actions & Derivative Suits (Section of Litigation)

PUBLICATIONS:

Books:

Wright & Miller, *Federal Practice and Procedure* (co-author with sole ongoing responsibility for the three volumes devoted to class actions)

Klonoff, "Objections to Class Action Settlements: Ethical Considerations," chapter in *Class Actions and Other Complex Litigation: Ethics* (Lexis Nexis forthcoming 2025)

Castanias & Klonoff, *Federal Appellate Practice in a Nutshell* (West 3d ed. 2023)

Klonoff, *Introduction to the Study of U.S. Law: Cases and Materials* (West 2d ed. 2021) (with teacher's manual)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 6th ed. 2021)

Klonoff, *Federal Multidistrict Litigation in a Nutshell* (West 2020)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 5th ed. 2017)

Castanias & Klonoff, *Federal Appellate Practice in a Nutshell* (West 2d ed. 2017)

Klonoff, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017) (with teacher's manual)

Klonoff, *Introduction to the Study of U.S. Law: Cases and Materials* (West 2016) (with teacher's manual)

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Klonoff, Bilich & Malveaux, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 3d ed.) (2012) (with teacher's manual)

Klonoff (associate reporter), *Principles of the Law of Aggregate Litigation*, American Law Institute Publications (2010) (along with Samuel Issacharoff, reporter, and associate reporters Richard Nagareda and Charles Silver)

Castanias & Klonoff, *Federal Appellate Practice and Procedure in a Nutshell* (Thomson West) (2008)

Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (NITA 3d ed.) (2007)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (Thomson West 3d ed.) (2007)

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Klonoff & Colby, *Winning Jury Trials: Trial Tactics and Sponsorship Strategies* (Lexis Nexis 2d ed.) (2002)

Klonoff & Bilich, *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West Group 2000)

Klonoff, *Class Actions and Other Multi-Party Litigation in a Nutshell* (West Group 1999)

Klonoff & Colby, *Sponsorship Strategy: Evidentiary Tactics for Winning Jury Trials* (Michie Co. 1990)

Articles and Book Chapters:

Klonoff, *Federal Rule of Civil Procedure 23(f): Reflections After a Quarter Century*, 75 Syracuse L. Rev. __ (forthcoming 2025)

Klonoff, *COVID-19 Aggregate Litigation: The Search for the Upstream Wrongdoer*, 91 Fordham L. Rev. 385 (2022)

Klonoff, *3M's Bankruptcy Maneuver Raises Issues for Justice System* (Law 360, Aug. 11, 2022)

Francis McGovern: The Consummate Facilitator, Teacher, and Scholar, 84 Law & Contemporary Problems 1 (2021) (co-author)

Klonoff, *International Handbook on Class Actions*, chapter on the Future of U.S. Aggregate Litigation, Cambridge University Press (2021)

Klonoff, *The Judicial Panel on Multidistrict Litigation: The Virtues of Unfettered Discretion*, 89 UMKC L. Rev. 1003 (2021)

Klonoff, *Class Action Objectors: The Good, the Bad, and the Ugly*, 89 Fordham L. Rev. 475 (2020)

Klonoff, *Foreword—Class Actions, Mass Torts, and MDLs:The Next 50 Years*, 24 Lewis & Clark Law Review 359 (2020)

Application of the New Discovery Rules in Class Actions: Much Ado About Nothing, 71 Vanderbilt L. Rev. 1949 (2018)

Class Actions in the U.S. and Israel: A Comparative Approach, 19 Theoretical Inquiries in the Law 151 (2018) (co-author)

Class Actions Part II: A Respite from the Decline, 92 N.Y.U. L. Rev. 971 (2017)

The Remedy For Election Fraud Is A New Election, Law 360 (July 20, 2017) (www.law360.com/whitecollar/articles/946569/the-remedy-for-election-fraud-is-a-new-election)

Class Actions in the Year 2025: A Prognosis, 65 Emory L.J. 1569 (2016)

Why Most Nations Do Not Have U.S.-Style Class Actions, 16 BNA Class Action Litigation Report, Vol. 16, No. 10, at 586 (May 22, 2015) (selected for presentation at the May 2015 World Congress of the International Association of Procedural Law, Istanbul, Turkey)

Federal Rules Symposium: A Tribute to Judge Mark R. Kravitz -- Introduction to the Symposium, 18 Lewis & Clark L. Rev. 583 (2014) (co-author)

Class Actions for Monetary Relief Under Rule 23(b)(1)(A) and (b)(1)(B): Does Due Process Require Notice and Opt-Out Rights?, 82 Geo. Wash. L. Rev. 798 (2014)

The Decline of Class Actions, 90 Wash. U. (St. Louis) L. Rev. 729 (2013)

Reflections on the Future of Class Actions, 44 Loy. U. Chi. L.J. 533 (2013)

Richard Nagareda: In Memorium, 80 U. Cin. L. Rev. 289 (2012)

Introduction and Memories of a Law Clerk, 47 Houston L. Rev. 529, 573 (2010)

ALI's Aggregate Litigation Project Has Global Impact, 33 ALI Reporter 7 (Fall 2010)

Book Review, *In the Public Interest*, 39 Env. Law 1225 (2009)

The Public Value of Settlement, 78 Fordham L. Rev. 1177 (2009)(co-author)

Making Class Actions Work: The Untapped Potential of the Internet, 69 U. Pitt. L. Rev. 727 (co-author)(2008), adapted and published in 13 J. Internet Law 1 (2009)

The Class Action Fairness Act: An Ill-Conceived Approach to Class Settlements, 80 Tul. L. Rev. 1695 (co-author) (2006)

The Twentieth Anniversary of Phillips Petroleum v. Shutts, *Introduction to the Symposium*, 74 UMKC L. Rev. 433 (2006)

The Adoption of a Class Action Rule: Some Issues for Mississippi to Consider, 24 Miss. C. L. Rev. 261 (2005)

Antitrust Class Actions: Chaos in the Courts, 11 Stan. J. L. Bus. & Fin. 1 (2005), reprinted in Litigation Conspiracy: An Analysis of Competition Class Actions (Stephen G.A. Pitel ed. Irwin Law 2006), and 3 Canadian Class Action Review 137 (2006)

The Judiciary's Flawed Application of Rule 23's "Adequacy of Representation" Requirement, 2004 Mich. St. L. Rev. 671 (2004)

Class Action Rules — Are They Driven by Substance?, 1 Class Action Litigation Report 504 (Nov. 10, 2000) (co-author)

Response to May 2000 Article on Sponsorship Strategy, 63 Tex. B.J. 754 (Sept. 2000) (co-author)

A Look at Interlocutory Appeals of Class Certification Decisions Under Rule 23(f), 1 Class Action Litigation Report 69 (May 12, 2000) (co-author)

The Mass Tort Class Action Gamble, 7 Metro. Corp. Counsel 1, 8 (Aug. 8, 1999) (co-author)

"Legal Approaches to Sex Discrimination" (co-author), in H. Landrine & E. Klonoff, *Discrimination Against Women: Prevalence, Consequences, Remedies* (Sage Pub. 1997)

Sponsorship Strategy: A Reply to Floyd Abrams and Professor Saks, 52 Md. L. Rev. 458 (1993) (co-author)

A Trial Lawyer's Roadmap for Handling Bad Facts: The Role of Credibility, 16 Trial Diplomacy Journal 139 (July/Aug. 1993) (co-author)

Opening Statement, 17 Litigation 1 (ABA Spring 1991) (co-author)

Contributing Editor, *Criminal Practice Institute Trial Manual*, Young Lawyers Section, Bar Ass'n of D.C. (1986)

The Congressman as Mediator Between Citizens and Government Agencies: Problems and Prospects, 15 Harv. J. Legis. 701 (1979)

A Dialogue on the Unauthorized Practice of Law, 25 Villanova L. Rev. 6 (1979) (co-author)

The Problems of Nursing Homes: Connecticut's Non Response, 31 Admin. L. Rev. 1 (1979)

SIGNIFICANT LEGAL EXPERIENCE:

Argued eight cases before the U.S. Supreme Court

Authored dozens of U.S. Supreme Court filings (certiorari petitions, certiorari oppositions, merits briefs, reply briefs)

Briefed and argued numerous cases before various U.S. circuit and district courts and state trial and appellate courts

Tried dozens of cases (primarily jury trials)

Handled more than 100 class action cases as co-counsel, including *TransUnion v. Ramirez* (U.S. Supreme Court) and *In re National Prescription Opiate Litigation* (Sixth Circuit)

Served as an expert witness in numerous class action and other aggregate cases, including *NFL Concusssion, BP Deepwater Horizon, Wells Fargo Fraudulent Accounts, Volkswagen Clean Diesel, Parkland Shooting (Civil Litigation), Equifax Data Breach, JUUL Consumer Litigation,* and numerous others (*see* Appendix B, *infra*, for a sample list of courts citing my testimony)

Worked extensively with testifying and consulting experts on class action issues, including economists, securities experts, medical and scientific experts, and leading academics

Presented more than 100 cases to the grand jury while serving as an Assistant U.S. Attorney

Handled hundreds of sentencing hearings, preliminary hearings, and probation revocation hearings

SIGNIFICANT TEACHING AND SPEAKING ENGAGEMENTS

Speaker, Texas Tech School of Law MDL Judicial Summit, Aspen, Colorado (June 3, 2024)

Speaker, Private Law Course, Comparative (U.S./French) Aggregate Litigation, The Sorbonne Faculty of Law, Paris, France (November 6, 2023)

Speaker, Faculty Symposium, Comparative (U.S./South African) Aggregate Litigation, Stellenbosch University Faculty of Law, Stellenbosch, South Africa (October 26, 2023)

Bartlett Lecture Series, U.S. District Court, W.D. Mo., Kansas City, Mo. (June 30, 2023)

Speaker, Baylor MDL Judicial Summit, Aspen, Colorado (June 19, 2023)

Speaker, Navy JAG Corps Training on Litigation Strategy, Coronado, CA (May. 27, 2023)

Moderator, Panel on Federal Multidistrict Litigation, Duke University School of Law, Durham, North Carolina (May 25, 2023)

Speaker on Henrietta Lacks Case for Symposium, Southern University, Baton Rouge, LA (March 14, 2023)

Speaker on Multidistrict Litigation and Moderator on Case Management Breakout Session, Mass Tort MDL Certificate Program, Bolch Judicial Institute, Duke University School of Law (Nov. 7, 2022) (held remotely)

Speaker on Class Actions and Moderator of Class Actions Breakout Session, 2022 Transferee Judges' Conference (approximately 125 federal judges), the Breakers, Palm Beach, Fla. (Nov. 1, 2022)

Speaker, Class and Aggregate Litigation in Europe and North America, New York University School of Law's Campus in Florence, Italy (July 8, 2022)

Speaker and Co-Organizer, McGovern Symposium on Civil Litigation, Duke University School of Law, Durham, North Carolina (May 27, 2022)

Moderator of Panel, Advanced MDL Certificate Program, Duke University School of Law, Durham, North Carolina (May 26, 2022)

Speaker, The Jewish Influences, Life & Legacy of Justice Ruth Bader Ginsburg, Cardozo Society of Washington State and Philadelphia Brandeis Society (April 5, 2022) (held remotely)

Panelist, Mass Torts/Bankruptcy Conference, Fordham University School of Law, New York, New York (Feb. 25, 2022)

Speaker on the Legacy of Justice Ruth Bader Ginsburg (held remotely), Temple Beth Sholom Synagogue, Salem Oregon (June 27, 2021)

Panel Moderator, Mass-Tort MDL Bench-Bar Conference (held remotely), George Washington University Law School, Washington, D.C. (June 10, 2021)

Speaker on Class Actions (held remotely), Oregon Association of Defense Counsel, Portland Oregon (May 20, 2021)

Speaker on Class Actions and Multidistrict Litigation (held remotely), South Ural State University Institute of Law, Chelyabinsk, Russia (April 8, 2021)

Speaker on Class Actions and Multidistrict Litigation (held remotely), Northwestern Pritzker School of Law, Complex Litigation Seminar, Chicago, Illinois (March 31, 2021, and again on March 30, 2022)

Speaker on Multidistrict Litigation, Class Actions, and the *Volkswagen Clean Diesel* Case (held remotely), Bahcesehir University, Istanbul, Turkey (July 15, 2020)

Speaker, Multidistrict Litigation Conference (held remotely), Emory University School of Law, Atlanta, Georgia (June 19, 2020)

Speaker, Class Action Conference, Fordham Law Review and the Institute for Law & Economic Policy, New York, New York (Feb. 27-28, 2020)

Keynote Speaker, Harold Schnitzer Spirit of Unity Peace Leadership Award Ceremony, Salem, Oregon (Nov. 20, 2019).

Conference Chair and Participant, 2019 Symposium on Class Actions and Aggregate Litigation, Pound Civil Justice Institute and Lewis & Clark Law School, Portland, Oregon (Nov. 1-2, 2019).

Speaker, International Class Actions Conference, Vanderbilt Law School, Nashville, Tennessee (Aug. 23, 2019)

Keynote Speaker, Pound Civil Justice Institute, Aggregate Litigation in State Court: Conference of State Court Appellate Judges, San Diego, California (July 27, 2019)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July, 2019) (faculty member for summer program on Transnational Torts)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (May, 2019) (taught Introduction to U.S. Law)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (April 2019)

Speaker, Impact Fund Class Action Conference, San Francisco, California (Feb. 22, 2019)

Speaker on Class Actions, 17th Annual Impact Fund Class Action Conference, San Francisco, California (Feb. 23, 2019)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (December 2018) (taught course on U.S. Class Actions)

Speaker on the National Football League Concussion case, National Taiwan University, Taipei, Taiwan (December 20, 2018)

Speaker on Class Actions, Live Webinar Broadcast, Rule 23 Will Be Amended in Four Days: Are You Ready, American Bar Association (Nov. 27, 2018)

Speaker, American Bar Association's 22d Annual Institute on Class Actions, Chicago, Illinois (Oct. 18, 2018)

Speaker, MDL at 50 –The 50th Anniversary of Multidistrict Litigation, New York University School of Law, New York, New York (Oct. 12, 2018)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2018) (faculty member for environmental law program; lectured on environmental class actions)

Speaker on Class Actions, Freie University Faculty of Law, Berlin, Germany (June 26, 2018)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (April 2018) (taught course on Introduction to United States Law)

Co-Chair, Moderator, and Panelist, Posner on Class Actions, Columbia Law School, New York, New York (March 2, 2018)

Panelist on Civil Discovery, Vanderbilt University School of Law, Nashville, Tennessee (October 13, 2017)

Panelist on the Civil Rules Committee Process, University of Arizona College of Law, Tucson, Arizona (October 7, 2017)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2017) (faculty member for environmental law program; lectured on environmental class actions)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (May 2017) (taught course on Introduction to U.S. Law)

Panelist on Class Actions, Beard Group, Class Action Money and Ethics Conference, New York, New York (May 1, 2017)

Visiting Professor of Law, Tel Aviv University, Tel Aviv, Israel (January 2017) (taught course on class actions)

Panelist on Class Actions, Tel Aviv University, Fifty Years of Class Actions – A Global Perspective (January 4, 2017)

Panelist on Class Actions, New York University Law School Conference on Rule 23@50, New York, New York (December 2, 2016)

Panelist on Class Actions, Appellate Judges Education Institute, Philadelphia, Pennsylvania (November 11, 2016)

Speaker on Class Actions, National Legal Aid Defender Association National Farmworker Conference, Indianapolis, Indiana (November 10, 2016)

Panelist on Class Actions, American Bar Association Class Action Institute, Las Vegas, Nevada (October 20, 2016)

Panelist, Duke University Law School Conference on Class Action Settlements, San Diego, California (October 6, 2016)

Fulbright Scholar, Hong Kong University School of Law (August- September 2016) (taught course on class actions and delivered campus-wide lecture on criminal procedure)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (June 2016) (taught course on Introduction to United States Law)

Speaker on Class Actions, University of Zagreb Law School, Zagreb, Croatia (May 11, 2016)

Panelist on Civil Litigation, Association of American Law Schools Annual Meeting, New York, New York (January 8, 2016)

Visiting Professor of Law, Bahçeşehir University School of Law, Istanbul, Turkey (December 2015) (taught Introduction to United States Law)

Participant, Conference on Civil Justice (Pound Institute) Emory University Law School, Atlanta, Georgia (October 15, 2015)

Participant, Conference on Class Actions, Duke Law School, Arlington, Virginia (July 23-24, 2015)

Participant, Conference on Class Actions, Defense Research Institute, Washington, D.C. (July 23-24, 2015)

Participant, Civil Procedure Workshop, Seattle University Law School, Seattle, Washington (July 17, 2015)

Panelist on Class Actions, Annual Meeting, American Association for Justice, Montreal, Canada (July 12, 2015)

Speaker on Class Actions, International Association of Procedural Law, Istanbul, Turkey (May 28, 2015)

Panelist, Subcommittee on Class Actions of U.S. Judicial Conference Advisory Committee on Civil Rules, American Law Institute Annual Meeting, Washington, D.C. (May 17, 2015)

Moderator, Ethical Issues in Class Actions and Non-Class Aggregate Litigation, American Law Institute Annual Meeting, Washington, D.C., (May 17, 2015)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (March 2015) (taught U.S. Class Actions)

Speaker on Class Actions, European University Institute, Fiesole, Italy (February 23, 2015)

Visiting Professor of Law, University of Notre Dame, Fremantle Australia (January 2015) (taught course on U.S. Civil Rights and Civil Liberties)

Visiting Professor of Law, Universidad Sergio Arboleda, Bogota and Santa Marta, Colombia (December 2014) (taught course on Introduction to United States Law)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (November 2014) (taught course on Introduction to United States Law)

Panelist, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 23, 2014)

Visiting Professor of Law, East China University of Political Science and Law, Shanghai, China (October 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Herzen State Pedagogical University of Russia, St. Petersburg, Russia (September 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (July 2014) (taught Introduction to United States Law)

Speaker on U.S. Legal Education, Universidad Sergio Arboleda School of Law, Bogota, Colombia (June 3 and 5, 2014)

Speaker on Class Actions, Superintendencia de Industria y Comercio, Bogota, Colombia (June 3, 2014)

Speaker on Class Actions and the Fukushima Nuclear Accident, Waseda University School of Law, Tokyo, Japan (January 24, 2014)

Speaker on Class Actions, Osaka Bar Association, Osaka, Japan (January 23, 2014)

Speaker on Class Actions, East China University of Political Science and Law, Shanghai, China (January 15, 2014)

Speaker on Class Actions, AmCham Shanghai, Shanghai, China (January 14, 2014)

Speaker on Development of Animal Law in the Legal Academy, 2013 Animal Law Conference, Stanford Law School, Palo Alto, California (November 25, 2013)

Speaker on U.S. Law and Legal Education, Royal University of Law and Economics, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Law and Legal Education, Paññāsāstra University of Cambodia, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Legal Education, International Association of Law Schools International Deans' Forum, National University of Singapore Law School, Singapore (September 26, 2013)

Speaker on Class Actions, Japan Federation of Bar Associations, Tokyo, Japan (September 19, 2013)

Speaker on Class Actions, Waseda University School of Law, Tokyo, Japan (September 19, 2013)

Speaker on Ethics of Aggregate Settlements, American Association for Justice Annual Meeting, San Francisco, California (July 22, 2013)

Speaker on the British Petroleum Class Action Settlement, International Water Law Conference, National Law University of Delhi, Delhi, India (May 31, 2013)

Speaker on U.S. Supreme Court Confirmation Process, Jewish Federation of Greater Portland's Food for Thought Festival, Portland, Oregon (April 21, 2013)

Speaker on Class Actions, Class Action Symposium, George Washington University Law School, Washington, D.C. (March 8, 2013)

Speaker on Class Actions, Impact Fund Class Action Conference, Oakland, California (March 1, 2013)

Speaker on Class Actions, Hong Kong University Department of Law (November 15, 2012)

Speaker on Class Actions, Fudan University Law School (Shanghai, China) (November 13, 2012)

Keynote Speaker, National Consumer Law Center Symposium, Seattle, Washington (October 28, 2012)

Speaker, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 25, 2012)

Speaker, Conference on Class Actions, Washington University St. Louis School of Law and the Institute for Law and Economic Policy (April 27, 2012)

Speaker, Conference on Class Actions, Loyola Chicago School of Law (April 13, 2012)

Panelist on leadership and world peace with Former South African President F.W. De Klerk, University of Portland (February 29, 2012)

Panelist on class actions before the Standing Committee on Rules of Practice and Procedure, Phoenix, Arizona (January 5, 2012)

Speaker on Class Actions Lawsuits in the U.S., University of the Philippines, College of Law, Quezon City, Philippines (August 2011)

Speaker on Environmental Class Actions, Kangwon University Law School, Chuncheon, South Korea (August 2011)

Speaker on Class Actions, Federal Judicial Center Conference on Class Actions, Duke University School of Law (May 20, 2011)

Speaker, Conference on Aggregate Litigation, University of Cincinnati College of Law (April 1, 2011)

Speaker on Class Actions, Seoul National University School of Law (May 18, 2010)

Keynote Speaker (addressing US Supreme Court confirmation process), Alaska Bar Annual Meeting (April 28, 2010)

Speaker, Conference on the Future of Animal Law, Harvard Law School (April 11, 2010)

Speaker, Conference on Aggregate Litigation: Critical Perspectives, George Washington University Law School (Mar. 12, 2010)

Speaker, U.S. Supreme Court Confirmation Process, Multnomah County Bar Association and City Club of Portland, (Sept. 30, 2009)

Speaker on Class Actions, American Legal Institutions, and American Legal Education at National Law Schools of India in Bangalore, Hyderabad, Calcutta, Jodhpur, and Delhi (August 2009)

Speaker, China/U.S. Conference on Tort and Class Action Law, Renmin University of China School of Law, Beijing, China (July 11-12, 2009)

Speaker on Class Actions, Southeastern Association of Law Schools annual meeting, Palm Beach, Florida (August 1, 2008)

Speaker on Class Actions, National Foundation for Judicial Excellence (meeting of 150 state appellate court judges), Chicago, Illinois (July 12, 2008)

Speaker on Class Actions, Practising Law Institute, New York, NY (July 10, 2008)

Speaker at Conference on Class Actions in Europe and North America, sponsored by New York University School of Law, the American Law Institute, and the European University Institute, Florence, Italy (June 13, 2008)

Speaker on Class Actions at the American Bar Association Tort and Insurance Section Meeting, Washington, D.C. (Oct. 26, 2007)

Speaker on Antitrust Class Actions at the American Bar Association's Annual Antitrust Meeting, Washington D.C. (April 18, 2007)

Chair, Organizer, and Moderator of Class Action Symposium at UMKC School of Law (April 7, 2006) (other speakers (26 in all) included, *e.g.*, Professors Arthur Miller,

Edward Cooper, Sam Issacharoff, Geoffrey Miller, and Linda Mullenix, as well as several prominent federal judges and practicing lawyers)

Speaker on Class Actions, Missouri CLE (Nov. 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 29, 2005)

Speaker on Class Actions, Kansas CLE (June 23, 2005)

Speaker on Class Actions at Bureau of National Affairs Seminar on the Class Action Fairness Act of 2005 (June 17, 2005)

Visiting Lecturer on Class Actions, Peking University (May 30-June 3, 2005)

Speaker on Oral Argument, American Bar Association 2005 Section of Litigation Annual Conference (April 22, 2005) (part of panel including Second Circuit Chief Judge Walker and several others)

Speaker on Class Actions, Federal Trade Commission/Organization for Economic Co-operation and Development, Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace (April 19, 2005)

Speaker at Antitrust Class Action Symposium, University of Western Ontario College of Law (April 1, 2005)

Speaker at Class Action Symposium, Mississippi College of Law (February 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 30, 2004)

Visiting Lecturer on Class Actions, Peking University (June 2004)

Visiting Lecturer on Class Actions, Tsinghua University (June 2004)

Speaker at Class Action Symposium, Michigan State University (April 16-17, 2004)

Speaker on U.S. Supreme Court advocacy, David Prager Advanced Appellate Institute (Kansas City Metropolitan Bar Association) (Feb. 27, 2004)

Speaker on Class Actions, Institute of Continuing Legal Education in Georgia (Oct. 24, 2003)

Speaker on Class Actions, Practising Law Institute (July 31, 2003)

Speaker on Class Actions, Practising Law Institute (Aug. 5, 2002)

Speaker on Class Actions, Practising Law Institute (Aug. 16, 2001)

Speaker on many occasions throughout the country on “Sponsorship Strategy” (1990-present) and advocacy before the U.S. Supreme Court (1988-present)

OTHER PROFESSIONAL ACTIVITIES:

Member of American Bar Association Group Evaluating Qualifications of Merrick Garland to serve on the U.S. Supreme Court (reviewed Judge Garland's civil procedure opinions)

Member, Editorial Board of International Journal of Law in a Changing World (South Ural University, Chelyabinsk, Russia)

Board Member, The Judge John R. Brown Scholarship Foundation

Advisory Board, The Flawless Foundation (an organization that serves troubled children)

Member, Board of Directors, Citizens' Crime Commission (Portland, Oregon) (2007-2011)

Advisory Board Consulting Editor, *Class Action Litigation Report* (BNA)

Served on numerous UMKC School of Law committees, including Programs (Chair), Promotion and Tenure, Appointments, and Smith Chair Appointment

Chair of pro bono program for all 27 offices of Jones Day (2000-2004); also previously Chair of Washington office pro bono program (1992-2003)

Member, Board of Directors, Bread for the City (a D.C. public interest organization providing medical, legal, and social services) (2001-2003)

Master, Edward Coke Appellate Practice Inn of Court in Washington, D.C. (other participants include Ted Olson, Seth Waxman, Ken Starr, Walter Dellinger, and several sitting appellate judges) (2001-2003)

Member, Board of Directors, Washington Lawyers' Committee for Civil Rights and Urban Affairs (2000-2003); Advisory Board Member (2003-present)

Member, D.C. Court of Appeals Committee on Unauthorized Practice of Law (1997-2000)

Handled and supervised numerous pro bono matters (*e.g.*, death penalty and other criminal defense, civil rights, veterans' rights)

Played a major role in establishing a walk-in free legal clinic in Washington, D.C.'s Shaw neighborhood

VOLUNTEER WORK:

Numerous guest speaker appearances at public schools and retirement homes; volunteer at local soup kitchen; volunteer judge for Classroom Law Project.

APPENDIX A

SAMPLE LIST OF COURT AND ACADEMIC CITATIONS TO PROFESSOR KLONOFF'S SCHOLARSHIP

Court Citations:

In re Jefferson Parish, No. 23-30243, __ F4th __, 2023 WL 5445822 at *12 (5th Cir. Aug. 24, 2023);

Wolff v. Aetna Life Ins. Co., 77 F.4th 164, 167 n.1 (3d Cir. 2023);

Mielo v. Steak 'n Shake Operations, Inc., 897 F.3d 467, 484 & n.18 (3d Cir. 2018);

In re National Football League Players' Concussion Injury Litig., 775 F.3d 570, 576 (3d Cir. 2014);

Eubank v. Pella Corp., 753 F.3d 718, 719 (7th Cir. 2014) (Posner, J.);

In re Johnson, 760 F.3d 66, 75 (D.C. Cir. 2014);

Kolbe v. BAC Home Loans Servicing, LP, 738 F.3d 432, 468 (1st Cir. 2013);

Culver v. City of Milwaukee, 277 F.3d 908, 913 (7th Cir. 2002).

Academic Citations:

J. Maria Glover, *Mass Arbitration*, 74 STAN. L. REV. 1283, 1291 (2022);

Andrew Faisman, *The Goals of Class Actions*, 121 COLUM. L. REV. 2157, 2159 n. 8 (2021);

Abbe R. Gluck & Elizabeth Chamblee Burch, *MDL Revolution*, 96 N.Y.U. L. REV. 1, 60 (2021);

Pamela K. Bookman, *The Arbitration–Litigation Paradox*, 72 VAND. L. REV. 1119, 1143 n.146 (2019);

Zachary D. Clopton, *National Injunctions and Preclusion*, 118 MICH. L. REV. 1, 34 n. 203 (2019);

Libby Jelinek, *The Applicability of the Federal Rules of Evidence at Class Certification*, 65 UCLA L. REV. 280, 286 n.27, 291 n.65, 297 n.101, 316 n.206 (2018);

Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 HARV. L. REV. 2283, 2346 n. 507 (2018);

Andrew D. Bradt & D. Theodore Rave, *The Information-Forcing Role of the Judge in Multidistrict Litigation*, 105 CAL. L. REV. 1259, 1269 n. 47 (2017);

Brian T. Fitzpatrick, *Justice Scalia and Class Actions: A Loving Critique*, 92 NOTRE DAME L. REV. 1977, 1979 (2017);

Maureen Carroll, *Class Action Myopia*, 65 DUKE L.J. 843, 846 n.8, 876–78 & nn.181, 183 & 190–93, 881 nn.211 & 213, 883 n.225 (2016);

Robert G. Bone, *The Misguided Search For Class Unity*, 82 GEO. WASH. L. REV. 651, 654 n.6 (2014);

David Freeman Engstrom, *Private Enforcement's Pathways: Lessons From Qui Tam Litigation*, 114 COLUM. L. REV. 1913, 1920 n.17 (2014);

Thomas O. Main, *The Fourth Era of American Civil Procedure*, 162 U. PA. L. REV. 1839, 1853 n.80 (2014);

Arthur R. Miller, Keynote Address, *The Preservation and Rejuvenation of Aggregate Litigation: A Systemic Imperative*, 64 EMORY L.J. 293, 294 n.7 (2014);

Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 COLUM. L. REV. 149, 151 n.5 (2003).

APPENDIX B

SAMPLE LIST OF COURT CITATIONS TO PROFESSOR KLONOFF'S EXPERT TESTIMONY

Syngenta MIR 162 Corn MDL litigation:

> *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1112 (D. Kan. 2018), *aff'd., Kellogg v. Watts Guerra LLP*, 41 F.4th 1246, 1257 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1022 (2023);
>
> *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-MD-2591-JWL, 2018 WL 6839380, at *4 (D. Kan. Dec. 31, 2018) (accepting Klonoff testimony over contrary testimony by five other law professors), *aff'd., Kellogg v. Watts Guerra LLP*, 41 F.4th 1246, 1257 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1022 (2023).

Zakikhani v. Hyundai Motor Co., No. 8:20-cv-01584-SB-JDE, at *1 (C.D. Ca. May 5, 2023) (Doc. 160);

Githieya v. Global Tel Link Corp., No. 1:15-cv-00986-AT (N.D. Ga. Aug. 30, 2022) (Doc. 369);

In re Broiler Chicken Antitrust Litig., 2021 U.S. Dist. LEXIS 228367, at *47 n.4, *49–50 & n.5 (N.D. Ill. Nov. 30, 2021);

In re Equifax Inc. Customer Data Sec. Breach Litig., No. 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020), *aff'd in relevant part*, No. 20-10249, 2021 WL 2250845 (11th Cir. June 3, 2021);

Wells Fargo Unauthorized Accounts litigation: *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC, slip op. at 14 (N.D. Cal. June 14, 2018).

Volkswagen Clean Diesel MDL (numerous citations):

> *In re Volkswagen "Clean Diesel" Marketing, Sales Practices & Prod. Liab. Litig.*, No. 3:15-md-02672-CRB, 2016 WL 6248426, at *18, *19, *20 (N.D. Cal. Oct. 25, 2016), *aff'd*, 895 F.3d 597 (9th Cir. 2018);
>
> Order Granting Final Approval of the Consumer and Reseller Dealership 3.0-Liter Class Action Settlement, at *21, *24, *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2212783 (N.D. Cal. May 17, 2017) (Doc. No. 3229);
>
> Order Granting Final Approval of the Bosch Class Action Settlement, at *18, *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2212780 (N.D. Cal. May 17, 2017), *aff'd*, 746 F. App'x 655 (9th Cir. 2018) (Doc. No. 3230).

In re Deepwater Horizon (more than 60 cites to Klonoff testimony):

> *In re Deepwater Horizon*, 910 F. Supp. 2d 891, 903, 914–16, 918–21, 923–24, 926, 929–33, 938, 941, 947, 953, 955, 960, 962 (E.D. La. 2012), *aff'd*, 739 F.3d 790 (5th Cir. 2014);
>
> *In re Deepwater Horizon*, 295 F.R.D. 112, 133–34, 136, 138–41, 144–45, 147 (E.D. La. 2013);
>
> Order and Reasons, Case No. 2:10-md-02179-CJB-JCW, *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico*, on April 20, 2010, 2:10MD02179 (E.D. La. Feb. 15, 2017) (Doc. No. 22252);

AT&T Mobility MDL litigation:

> *In re AT&T Mobility Wireless Data Serv. Sales Tax Litig.*, 789 F. Supp. 2d 935, 956–59, 961, 963–65 (N.D. Ill. 2011);
>
> *In re AT&T Mobility Wireless Data Serv. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1032 n.3, 1034–35, 1037, 1040, 1042 (N.D. Ill. 2011).

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD **DECLARATION OF DEREK LOESER IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS** Judge Michael H. Watson Magistrate Judge Elizabeth Preston Deavers

I, DEREK LOESER, declare:

1. I am a partner at the law firm of Keller Rohrback L.L.P. ("Keller Rohrback") and submit this declaration in support of the Consolidated Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards (the "Motion").

2. I have personal knowledge of the information contained herein, except where expressly noted otherwise, and, if called as a witness, could and would testify competently thereto.

3. I am over the age of 18 and am fully competent to make this declaration.

I. SUMMARY

A. Overview of Litigation Process

4. Keller Rohrback, Kellett & Bartholow, and the Kazerouni Law ("Consolidated Counsel") joined forces at the outset of this litigation and through their commitment to the best interests of the class, achieved the $185 million settlement.

5. The litigation involved novel issues from the start, including the interplay between the CARES Act, state consumer protections statutes, mortgage servicing guidelines and regulations, and federal and state statutes related to credit reporting.

6. This case required a tremendous commitment of time and resources. Keller Rohrback counsel and staff alone dedicated more than 7,000 hours of time.

7. Consolidated Counsel researched and initiated the litigation, drafted and amended the complaint and successfully brought and opposed more than 50 motions before a series of Judges—this Court, Judge Donato in the Northern District of California, Judge Urbanski in the Western District of Virginia, and Judge Huff in the Southern District of California. We worked extensively to consolidate and organize the litigation to avoid duplication and waste and to streamline the litigation. Consolidated Counsel also served and successfully obtained extensive written and document discovery, through motions practice where necessary. We took eight depositions of Wells Fargo representatives, and reviewed hundreds of thousands of documents produced by Wells Fargo in this litigation as a result of the discovery drafted by Consolidated Counsel. We engaged in extensive mediation briefing and negotiations in which we drew on the knowledge we gained through the work we did in the litigation, first with Mr. Robert Meyer, and then with the Hon. Layn R. Phillips (ret.).

8. In short, Consolidated Counsel initiated this case, worked it up, and successfully resolved it. We did this work in the face of a concerted defense and the persistent interference of counsel who filed a copycat action, and then attempted to settle the case out from under the Consolidated Plaintiffs at a fraction of its full value.

9. The Settlement is built on the evidence Consolidated Counsel received through their litigation efforts. While I cannot divulge the course of the parties' negotiations, I can report, at a high level, the two mediations Consolidated Counsel participated in. In the first, before Mr. Robert Meyer, Consolidated Counsel and Wells Fargo negotiated the framework of a potential settlement class that was built on the different ways in which class members were enrolled without their authorization or consent in a Wells Fargo forbearance. The development of this structure required detailed and extensive analysis of records produced by Wells Fargo. This analysis was done by Consolidated Counsel. That framework is

nearly identical to the framework of the $185 million settlement later achieved by Consolidated Counsel through mediation before the Hon. Layn Phillips (Ret).

10. The Settlement will return meaningful economic value to class members, and will deter Wells Fargo and other similarly-situated mortgage servicers from placing borrowers into forbearances without a request from the borrower.

11. This has not been a normal case in which the plaintiffs fight the defendants to achieve the best possible result for the plaintiffs and the class. Unfortunately, we also had to fight interloper counsel who negotiated an inadequate settlement and who obstructed and interfered with Consolidated Counsel's work to protect the class and obtain a more favorable result. We are immensely grateful to the Court, and proud that we were able to bring this Settlement to the Court for approval.

B. Consolidated Counsel's Hours and Lodestar

12. From the inception of Keller Rohrback's investigation in early August of 2020 through October 10, 2024, Keller Rohrback has spent 7,005 hours litigating this action, with a total lodestar of $ $5,447,822.50 at current rates.[1] Consolidated Counsel's total hours, which include the participation of participating and local counsel, lead to a total lodestar of $14,233,384.80. Applied to the requested 20% fee for the Consolidated Plaintiffs ($37 million), this yields a multiplier of 2.6.

13. The chart below summarizes Keller Rohrback's hours for the following time periods. We have selected these time periods because they align with transition points in the litigation. Consolidated Counsel's efforts during each of these time periods are detailed below in § II. The list of each biller whose time is counted as part of Keller Rohrback's hours and lodestar in this case, along with the biller's experience level and billing rate, is at Exhibit A.[2]

[1] All hours and lodestar in this declaration are rounded estimates using current billing rates (as is conventional).

[2] Consolidated Counsel has written off some of the time it reasonably expended litigating this case.

July 23, 2020 through January 27, 2021: Case Commencement Through Negotiating Framework for Meyer Mediation: 979.9 hours.

January 28, 2021 through September 14, 2021: Meyer Mediation and Attempts to Coordinate and Consolidate Litigation: 968.8 hours

September 15, 2021 through April 25, 2022: Attempt to Enforce First-To-File-Rule to Prevent Reverse Auction and Increase Efficiency: 885.1 hours

April 26, 2022 through September 9, 2022: Contested Discovery, 30(b)(6) Depositions, Successful Contested Transfer Motions: 773 hours

September 9, 2022 through July 26, 2023: Continued Motion Practice, Discovery, and Preventing *Echard* Counsel's $94 Million Settlement: 1446.9 hours

July 27, 2023 through November 7, 2023: Phillips Mediation: 702.8 Hours

November 8, 2023 through February 9, 2024: *Echard* Counsel Refuse to Sign Term Sheet or Withdraw Motion for Preliminary Approval of $94 Million Settlement, Holding Up $185 Million Settlement: 335.5 Hours

February 9, 2024 through October 10, 2024: Motions for Settlement Approval, Settlement Administration and Communications with Class Members: 1,062 Hours

14. Finally, we anticipate approximately 1,000 additional hours of time before this litigation is completed. As discussed in more detail below, this would increase Consolidated Counsel's lodestar to $14,883,384.80 (using a blended rate of $650), yielding a multiplier of 2.5.

C. Summary Case Statistics

15. The scale of this litigation was massive. Consolidated Counsel filed over 1,000 pages of pleadings and other briefing; participated in dozens of meet and confers with opposing counsel; participated in five all day discovery mediation sessions; took eight depositions, and filed dozens of successful contested motions.

16. These efforts resulted in tens of thousands of documents—totaling more than 145,000 pages—produced by Wells Fargo. Consolidated Counsel deposed eight critical witnesses and corporate designees under Rule 30(b)(6). The documents and depositions yielded evidence that Consolidated Counsel used to advance Plaintiffs' claims and secure the proposed $185 million settlement.

II. CONSOLIDATED COUNSEL'S WORK ON THE CASE

A. July 23, 2020 through January 27, 2021: Case Commencement Through Negotiating Framework for Meyer Mediation

17. Consolidated Counsel's primary activities during this period were the initial investigation, the drafting of a consolidated complaint and an amended consolidated complaint, briefing of and hearings on defendants' motions to dismiss those complaints, successfully procuring a preliminary injunction preventing Wells Fargo from placing borrowers into new unrequested forbearances, successfully moving for a corrective notice informing borrowers of the potential credit impact of forbearances, negotiating a coordinated and collaborative team, and receiving an order from Judge Donato instructing Wells Fargo to engage in early mediation.

18. Consolidated Counsel began investigating Wells Fargo's practice of placing borrowers into unrequested forbearances in July of 2020. In connection with their investigations, Class Counsel communicated with hundreds of borrowers whose loans were serviced by Wells Fargo about the circumstances of their loans being placed into forbearances, as well as about the information they received related to the potential negative impact of a forbearance. They also scoured public reports for information about Wells Fargo's loan servicing practices, both historically and in the immediate aftermath of the COVID pandemic. From that research, Consolidated Counsel were able to conclude that Wells Fargo was unique among major loan servicers in both the volume and percentage of residential loans placed into forbearances. Consolidated Counsel's research also revealed the potential profit incentive for Wells Fargo placing loans into forbearances – the potential to exercise an early pool buyout ("EPBO") right to purchase, at par value, certain loans out of underlying security pools, and resecuritize them for a profit once the loans are brought current.

19. Between July 23, 2020 and August 9, 2020, all of Consolidated Counsel's initial complaints were on file, in the Northern District of California, Southern District of California, and Western District of Virginia.

20. On September 14, the Virginia contingency filed for a Motion for Preliminary Injunction (*Forsburg*, Dkt. 23), barring Wells Fargo from engaging in the complained-of-conduct on a going-forward basis. On November 2, 2020, the Court entered an agreed order to that effect. *Forsburg* Dkt. 54.

21. On September 11, 2020, Wells Fargo filed a Motion to Stay or in the Alternative Motion to Transfer, Dkt. 12, which Consolidated Plaintiffs opposed on September 25, 2020, Dkt. 19. That motion was ultimately denied on October 23, 2020. Dkt. 30. On October 9, 2020, Wells Fargo filed a Motion to Dismiss the First Amended Complaint in the *Delpapa* Action, Dkt. 25, which plaintiffs opposed on October 30, 2020, Dkt. 34.

22. On November 3, 2020, Wells Fargo filed a Motion for Clarification as to the Court's denial of the Motion to Stay. Dkt. 36. Plaintiffs filed a response in opposition to that motion on November 17, 2020. Dkt. 44.

23. On December 3, 2020, I appeared as lead counsel at the Initial Status Conference in the *Delpapa* Action where the Court terminated the pending Motion to Dismiss without prejudice, denied the Motion to Transfer for a second time, and ordered the parties to file a consolidated complaint. *See* Dkt. 61. The Court also directed the Parties to explore early mediation, and set a deadline for filing a status report identifying a mediator. *Id.*

24. On December 24, 2020, in accordance with the Court's December 3, 2020 Order, the *Delpapa* Action was consolidated with a related case, in the matter of *Green v. Wells Fargo Bank, N.A., et al*, No. 3:20-cv-05296 (N.D. Cal) ("*Green* Action") via a Consolidated Amended Complaint ("CAC") filed on December 24, 2020 (Dkt. 70). Zachary Gussin of my firm was the primary drafter of the CAC, which included detailed allegations of Wells Fargo's potential profits from exercising EPBO options and resecuritizing loans.

25. On January 21, 2021, Consolidated Counsel and Wells Fargo filed a joint statement regarding the identification of a mediator, a signal that the case was headed to a global mediation per the Court's order. Dkt. 79. As that filing reflects, by January 21, 2021, the Parties then-on-file had already agreed to the underlying structure of a global mediation. As a precondition to those negotiations, Counsel for the Plaintiffs then on file entered into a joint prosecution agreement, addressing the delegation of responsibilities and work between them.

26. While there were seven firms on file at the time (Keller Rohrback, Kellett & Bartholow, Kazerouni Law Group, Temecula Consumer Attorneys, BLC Law Center, Giles & Lambert, and Limon Law Office) they jointly agreed to a leadership team of Keller Rohrback, Kellett & Bartholow, and Kazerouni Law Group. That leadership team ("Consolidated Leadership Team") efficiently staffed the case, engaged in collaborative strategic decisions making, and met regularly to ensure alignment throughout the litigation.

27. In Virginia, on January 12, 2021, Consolidated Counsel opposed Wells Fargo's motion to dismiss that case, and filed a contested transfer motion seeking to have that case sent to the Northern District of California, so it could be consolidated. *Forsburg* Dkt. 80, 81.

28. During this first period, ending on January 27, 2021, Consolidated Counsel uniquely (1) secured valuable injunctive relief in the form of the consent order and corrective notice; (2) investigated and drafted the factual and legal claims that would form the basis for the $185 million settlement; (3) collaborated to coordinate between the Plaintiffs, forming the Consolidated Leadership Team; (4) demonstrated Wells Fargo's admissions, leading to an order compelling the Parties to pursue mediation; and (5) negotiated the contours of a global mediation between Wells Fargo and all of the Plaintiffs on file; and (6) filed motions to transfer and coordinate cases and oppose Wells Fargo's motions to dismiss. This valuable work was performed exclusively by the Consolidated Counsel, as *Echard* Counsel had not yet filed its copy-cat complaint. Keller Rohrback alone performed 979.9 hours of work in this period.

B. January 28, 2021 through September 14, 2021: Meyer Mediation and Attempts to Coordinate and Consolidate Litigation

29. After all the work described in the preceding section had occurred, on January 28, 2021, *Echard v. Wells Fargo*, No. 2:21-cv-00112 was filed in the Western District of Washington. That complaint copied nearly verbatim large swaths of the CAC. *See* Declaration of Matthew Preusch in Support of Renewed Motion to Intervene, *Echard* Dkt. 125, re-attached as Exhibit B for the Court's convenience. Indeed, the copying was so blatant that a misplaced hyperlink in a citation was preserved. *Id.*

30. Counsel for Wells Fargo represented that the *Echard* case was facially deficient, relating to SCRA claims that Mr. Echard did not have standing to pursue, and that Wells Fargo would move for dismissal or summary judgment, rather than attempt to negotiate separately with *Echard* Counsel. *See Echard* Dkt. 124, Bartholow Decl. at ¶ 16, PageID 1351-52.

31. Meanwhile, *Echard* Counsel demanded a fixed guarantee of any attorney fees as a precondition of collaborating with the Consolidated Counsel. Ex. B. Consolidated Counsel remained focused on the mediation with Wells Fargo, negotiating a stipulated protective order (which *Echard* Counsel would later use in that case) and the scope of mediation information exchanges, drafting mediation briefing and strategizing in advance of the mediation, and reviewing tens of thousands of documents produced as part of that exchange, including data sets with millions of points of data.

32. The negotiations in the Meyer mediation primarily related to the analysis of loan-level-data to determine appropriate screens to define a potential settlement class. Wells Fargo provided this data in response to discovery requests by the Consolidated Plaintiffs. As a result of these negotiations, a settlement class structure was proposed. These negotiations did not result in an agreement, and as a result, the parties returned to active litigation.

33. The $94 million *Echard* Settlement utilized the same basic structure that the Parties had negotiated in the Meyer mediation, without the presence or contribution of *Echard* Counsel.

34. The $185 million settlement is based on this same structure negotiated in the Meyer mediation, with modifications that increased the number of included loans.

35. Thus, *Echard* Counsel's sole contribution was agreeing to settle the litigation for half its value, since the structure of the settlement was negotiated by Consolidated Counsel in the Meyer mediation.

36. In addition to creating the framework that would become the $185 million settlement, Consolidated Counsel worked to maximize efficiencies if the mediation was unsuccessful, by transferring cases not in the Northern District to that venue. Wells Fargo opposed such transfers.

37. The Meyer mediation reached impasse in mid-September of 2021. While the details of the Parties' positions at the time of impasse are protected by the mediation privilege, the details of the $185 million Settlement negotiated by Wells Fargo and the Consolidated Plaintiffs conclusively demonstrate that Consolidated Plaintiffs would not have accepted the *Echard* Settlement's monetary or specific class composition terms. Keller Rohrback spent 968.8 hours during this period, and the fruits of that labor eventually blossomed into the $185 million settlement before the Court.

C. September 15, 2021 through April 25, 2022: Attempts to Prevent Echard Splintering and Enforce First-To-File-Rule to Prevent Reverse Auction and Increase Efficiency

38. *Echard* counsel's first venue, the Western District of Washington, was improper. Judge Coughenour there asked for the parties' positions on where to transfer the matter, and *Echard* Counsel argued for transfer to the Northern District of California. *Echard* Dkt. 32.

39. Wells Fargo sought for *Echard* to be transferred to this District, both before Judge Coughenour and in a motion for reconsideration once *Echard* was transferred to California. *Echard* Dkt. 40. In addition, Wells Fargo filed a motion to dismiss on the pleadings. *Echard* Dkt. 52. *Echard* Counsel, initially opposed to such a transfer as against the best interests of the class, performed an about-face shortly after the Meyer mediation reached impasse.

Echard Dkt. 53. Wells Fargo agreed to withdraw its dispositive motion, and *Echard* agreed to the transfer, splintering that case away from the more-developed cases it had copied. *Id.*

40. Consolidated Counsel sought to administratively relate *Echard* to the other cases, pursuant to the Local Rules, so it could be reassigned to Judge Donato. Dkt. 96. Wells Fargo would not agree to such relation, Dkt. 97, leading to contested briefing, Dkt. 98, 99, 101, 104. The *Echard* stipulated transfer request was ruled on by Judge Tigar, before Judge Donato could rule on the administrative motion to relate. Dkt. 110.

41. Consolidated Counsel sought to promote judicial efficiency (and prevent a potential reverse auction) by inviting *Echard* to join the working group to represent the interests of servicemembers, and perform any work related to the SCRA claim that *Echard* Counsel had added (and later removed) when copying the Consolidated Counsel's complaints. *See* Ex. B. *Echard* Counsel refused, insisting again on an inappropriate fixed percentage of attorney's fees, despite having done no work that benefited the class. *Id.*

42. In communications with other members of the Consolidated Leadership Team, I was told that *Echard* Counsel had threatened to take the case and settle it alone. *See Echard* Dkt. 124, Bartholow Decl. at ¶ 16, PageID 1352. Consolidated Counsel feared that *Echard* Counsel negotiating alone would reach a far inferior settlement for the class – fears that were later proven true. Thus, to protect the interest of the class and to promote judicial efficiency, Consolidated Counsel moved to intervene and have *Echard* transferred back to the Northern District of California, pursuant to the first-to-file doctrine. *Echard* Dkt. 71. This led to extensive briefing before this Court, a hearing before Magistrate Judge Jolson, and supplemental briefing for Judge Jolson.

43. While that motion was denied, with leave to renew, the first-to-file doctrine ultimately provided the basis for this Court's Order staying *Echard*. During this phase, Consolidated Counsel opposed Wells Fargo's Motion to Dismiss the Consolidated Complaint (Dkt. 109), prevailed on contested transfer motions in two member cases (Dkt. 116), and filed a Second

Amended Consolidated Complaint, including the named plaintiffs of those member cases (Dkt. 123). In total, Keller Rohrback spent 885.1 hours litigating during this period.

D. April 26, 2022 through September 9, 2022: Contested Discovery, 30(b)(6) Depositions

44. During this period of time, Consolidated Counsel invested substantial resources and time into the case, despite the very real threats issued by *Echard* Counsel that they would settle the case alone. This highlights the substantial risk of non-compensation Consolidated Counsel faced throughout this litigation, above and beyond the normal risks of contingency-fee based representation.

45. In Virginia, Consolidated Counsel finalized the briefing and argument on their opposition to Wells Fargo's motion to dismiss, as well as their contested transfer motion, which had been stayed during the pendency of the Meyer mediation. *See Forsburg* Dkts. 103, 111, 112, 114, 115. Ultimately, the Forsburg plaintiffs were instructed to file an amended complaint with additional allegations establishing the Northern District of California's jurisdiction over Wells Fargo, which was done. *Forsburg* Dkt. 116, 117, 118. With those allegations on file, Wells Fargo consented to transfer to the Northern District of California. *Forsburg* Dkt. 123.

46. On January 4, 2022, Consolidated Counsel served a first set of written discovery on Wells Fargo, which Wells Fargo responded to on March 7, 2022. The parties engaged in numerous meet and conferrals throughout March, April, and May of 2022, until an impasse was reached on certain discovery responses in June of 2022 requiring court intervention (*see* Dkt. 131, 135, 146-147, 156). Consolidated Counsel successfully lodged motions seeking to compel the production of documents related to Wells Fargo's EPBO profits and audio recordings of borrowers who had been placed into forbearances as a result of phone calls. Dkt. 151.

47. Wells Fargo also propounded written discovery, and during this time Consolidated Counsel responded to 20 sets of requests for production and requests for admission, and engaged in meet and conferrals with Wells Fargo regarding that discovery.

48. In addition, during this period of time, Consolidated Counsel began taking 30(b)(6) depositions of Wells Fargo's designees. Zachary Gussin co-chaired a 30(b)(6) deposition on July 20, 2022, with Thad Bartholow, and second-chaired and assisted with the preparation for another on August 11, 2022. *Echard* Counsel took no depositions – this valuable testimony was secured solely through the efforts of Consolidated Counsel.

49. At the same time that this critical discovery was taking place, the Parties continued to brief dispositive motions. As a new case was transferred into the Northern District of California, the filing of the further consolidated complaint would moot the dispositive motions on file. Thus, when *Forsburg* was transferred, a Third Amended Consolidated Complaint was filed (Dkt. 162), which mooted the fully completed briefing on the motion to dismiss directed at the Second Amended Consolidated Complaint (Dkt. Nos. 128, 137, 141-44). During this period, Keller Rohrback spent 773 hours on the litigation. Before the motion to dismiss could be decided, *Echard* Counsel dropped the bombshell of their $94 million proposed Settlement, negotiated without the participation or input of Consolidated Counsel.

E. September 9, 2022 through July 26, 2023: Continued Motion Practice, Discovery, and Preventing Echard Counsel's Attempts to Force through $94 Million Settlement

50. On September 9, 2024, *Echard* Counsel sent a message announcing their settlement to the Consolidated Counsel, attempting to bargain for the support of Consolidated Plaintiffs and their Counsel. *Echard* Counsel offered to seek compensation for the Consolidated Plaintiffs and Consolidated Plaintiffs' Counsel, provided that they agreed not to oppose the *Echard* settlement. *See Echard* Dkt. 134, Ex. D. The offer came with a concomitant threat—if Consolidated Plaintiffs' Counsel opposed the *Echard* settlement, it would "close the door" to getting the Consolidated Plaintiffs, and Consolidated Plaintiffs' Counsel compensated under the *Echard* settlement. *Id.*

51. Consolidated Counsel would not have accepted the *Echard* $94 million settlement, had they been consulted, and were not willing to support it after learning of it. Instead, we lodged a renewed motion to intervene, to be heard on the many flaws in that proposed

settlement and providing a declaration from a leading expert on complex litigation and class actions regarding the perils of approving a settlement under those circumstances. *See Echard* Dkt. 123-25, 136-38.

52. One of the serious flaws of the *Echard* settlement is that it released the claims of co-borrowers without any additional compensation. Meaning a married household, where both spouses signed the deed and faced potential credit score declines, would receive the same distribution under the *Echard* settlement as a single borrower. *See Echard* Dkt. 108-1 at PageID 1013. The Consolidated Plaintiffs' settlement cures this defect and treats class members equitably.

53. Additionally, the *Echard* Settlement arbitrarily excluded tens of thousands of borrowers who were placed into forbearances without an adequate informed request. For instance, tens of thousands of borrowers were excluded from the Echard settlement because they made no payment will in a forbearance, despite Wells Fargo having turned off their previously scheduled automatic payments when they were placed into the forbearance. *Id.* Those borrowers are included in the new settlement.

54. As well, the *Echard* Settlement excluded tens of thousands of borrowers who utilized the IVR or Online systems at a time when those lacked adequate information, if the borrower had already been placed into a forbearance automatically by Wells Fargo as a business decision. *Id.* Those borrowers, and thousands of others that were arbitrarily excluded from the *Echard* settlement are included in the Consolidated Plaintiffs' $185,000,000 Settlement.

55. After Consolidated Counsel raised these concerns, on March 15, 2023, the Court sagaciously stayed *Echard*, pending the outcome of the Consolidated Litigation, under the first-to-file doctrine that the Consolidated Counsel had earlier sought to enforce. *See Echard* Dkt. 154.

56. Not only were Consolidated Counsel expending substantial time and energy renewing the motion to intervene, to protect the putative class from an inferior settlement, they continued to aggressively litigate in California, through discovery and motion practice.

57. Consolidated Counsel took six more depositions during this period, the seventh and eighth taken in the litigation, all taken by Consolidated Counsel. These occurred after multiple meet and confers with Wells Fargo regarding the scope of the deposition notices. To prepare for these depositions, Plaintiffs conducted exhaustive factual review, including analysis of documents produced by Wells Fargo and independent investigation. Some deponents were the authors or recipients of thousands of documents. Plaintiffs also completed outside factual research related to each deponent. The attorneys who conducted these depositions developed expertise in areas including Wells Fargo's mortgage servicing policies and practices, mortgage underwriting and credit standards and practices, guidelines and procedures for securitizing and servicing federally-backed mortgages, machine-learning assisted quality assurance, and project management, to increase the efficiency of preparing for and conducting the depositions. These depositions yielded important evidence, deposition testimony that *Echard* Counsel played no role in securing.

58. In addition to developing the litigation through discovery, Consolidated Counsel continued to succeed in motions practice. Wells Fargo moved to dismiss the Third Consolidated Complaint, (Dkt. 172, 173, 180, 181) which Consolidated Counsel opposed (Dkt. 178, 179). In the resulting Order, issued on May 2, 2023, multiple federal and state statutory claims, and common law claims, survived.

59. Consolidated Counsel's Fair Credit Reporting Act claim, California Consumer Credit Reporting Agencies Act claim, and their Gross Negligence claim, were not challenged by Wells Fargo, and the Truth in Lending Act and California Unfair Competition Law claims were found to have been adequately pled. Dkt. 191. The unjust enrichment and breach of implied contract claims were dismissed with leave to amend to provide the applicable choice of law for those common law claims. *Id.* The RICO claim was dismissed with leave

to amend, as was the RESPA claim under 12 C.F.R. § 1024.41. *Id.* The state law claims were dismissed only to the extent they related to credit reporting. *Id.* Only the RESPA claim under 12 C.F.R. § 1024.38 was dismissed with prejudice in its entirety. *Id.* Consolidated Counsel filed the Fourth Amended Complaint on May 19, 2023, Dkt. 192, and Wells Fargo moved to dismiss again on June 16, 2023, (Dkt. 197, 198, 200), which Consolidated Counsel opposed, (Dkt. 199).

60. Consolidated Counsel were not the only litigants with motion practice at this time. *Echard* Counsel sought reconsideration of this Court's decision. In doing so, *Echard* Counsel remarkably argued against the merits of the claims that the Consolidated Counsel were asserting in the then-operative complaint. *See Echard* Dkt. 157, at PageID 2072-78 (challenging validity of live claims in *In re Wells Fargo Forbearance Litigation*, including unjust enrichment, FCRA, RESPA, and RICO). *Echard* Counsel even argued that this Court had a fiduciary duty to approve the $94 million settlement, while insisting that it was an "excellent" and "generous" result, and the "best deal for the Class" possible. *Id.* In effect, *Echard* counsel filed a merits brief attacking the putative class.

61. During this period, the conduct of Consolidated Counsel and *Echard* Counsel could not be more different. *Echard* Counsel sought to improperly induce Consolidated Counsel and *Echard* Counsel to not oppose what has since been shown to be a facially deficient settlement, and after having the *Echard* case stayed, *Echard* Counsel filed briefing attacking Consolidated Counsel's claims.

62. Consolidated Counsel refused the buyout offered by *Echard* Counsel, successfully intervened to have the $94 million *Echard* Settlement stayed, took critical depositions of Wells Fargo representatives, and successfully defended key claims in the operative complaint. Thus, as a result of the Consolidated Counsel's work, when the Parties renewed settlement negotiations, the table was set with nationwide statutory and common law claims that had survived the motion to dismiss, critical deposition testimony from Wells

Fargo representatives, and documents produced through successful motions to compel. Keller Rohrback worked 1,446.9 hours during this period.

F. July 27, 2023 through November 7, 2023: Phillips Mediation

63. After the Court stayed the *Echard* case, the Consolidated Plaintiffs were able to resume negotiations with Wells Fargo. That mediation took place over the course of two full-day in-person sessions with the Hon. Layn Phillips (Ret.) of PADRE serving as a mediator in October of 2023. *Echard* Counsel were present. At the conclusion, Judge Phillips made a double-blind, bilateral mediator's recommendation to Wells Fargo and the Consolidated Plaintiffs that the litigation be settled for $185 million on behalf of a class of approximately 273,000,000 loans and 370,000 borrowers. Both Wells Fargo and the Consolidated Plaintiffs agreed, on November 7, 2023. Once both sides to the mediator's recommendation accepted, there was a binding agreement in principle between those two parties. After that mutual acceptance, *Echard* Counsel was informed of the existence of the mediator's proposal and that an agreement in principle had been reached. The Keller Rohrback team billed 702.8 hours during this period.

G. November 8, 2023 through February 9, 2024: *Echard* Counsel Refuse to Sign Term Sheet or Withdraw Motion for Preliminary Approval of $94 Million Settlement, Holding Up $185 Million Settlement

64. One would think that the fact of the new $185 million settlement would finally end the saga, conclusively showing the inadequacy of the *Echard* $94 million settlement it superseded. To the contrary, *Echard* Counsel refused to sign a term sheet memorializing that settlement. For months, the Parties were unable to take steps towards delivering relief to the class, because *Echard* Counsel refused to either sign a term sheet for the new settlement or withdraw their motion for preliminary approval of the $94 million *Echard* Settlement. Wells Fargo considered itself bound as a matter of contract not to take actions to frustrate the *Echard* Settlement Agreement unless and until either the Court outright denied the motion for preliminary approval, *Echard* Counsel withdrew the motion, or *Echard* Counsel agreed to sign the term sheet. *See Echard* Dkt. 195, 199.

65. Not only did *Echard* Counsel not withdraw his motion for preliminary approval, for more than three months *after Echard* Counsel learned of the new settlement amount, they did not withdraw their motion for reconsideration, in which they asked the Court to lift the stay and approve the $94 million settlement. For three months, a facially superior settlement languished, and *Echard* Counsel risked getting the very relief they sought – for the Court to reconsider its stay order and approve the *Echard* Settlement. Had that occurred, it would have been disastrous for the class. As a fiduciary to the putative class, *Echard* Counsel's conduct in delaying the execution of the $185 million settlement, while attacking the merits of Consolidated Counsel's case and representing that $94 million was the "best deal" possible for the class, was untenable.

66. In particular, this tactic was detrimental because Wells Fargo's motion to dismiss the Fourth Amended Complaint, upon which the new settlement had been based, was ripe for a decision in California. The Parties had filed serial motions for litigation stays, *see* Dkt. 201, 203, 205, to preserve the *status quo*. On January 19, 2024, Judge Donato issued a text order granting a three-week stay, and instructing the Parties that it would "be the final extension of the stay." *See* Dkt. 206. As the February 9, 2024 conclusion of the stay neared, *Echard* Counsel's truculence went from delaying relief to the class to imperiling that relief, as a ruling on the motion to dismiss could have upended the status quo upon which the $185 settlement was based.

67. On February 9, 2024, more than three months after the $185 million mediator's recommendation had been accepted, Wells Fargo and Consolidated Counsel filed Status Reports in this Court, informing the Court of their inability to finalize the term sheet, and their desire for a status conference. *See Echard* Dkt. 175, 176. As our filing made clear, we were prepared to seek preliminary approval of the $185 million settlement in California. Finally, *Echard* Counsel relented and signed the term sheet, approximately a half hour after Consolidated Counsel's filing. *See Echard* Dkt. 179. From November 8 to February 9,

Keller Rohrback spent 335.5 hours, work done to secure the $185 million settlement for the class, notwithstanding the obstructive conduct of *Echard* Counsel.

H. February 9, 2024 through October 10, 2024: Motions for Settlement Approval, Settlement Administration and Communications with Class Members

68. Consolidated Counsel's primary activities during this period involved contentious negotiations (requiring *ad hoc* mediation sessions with Judge Phillips) to reduce the settlement in principle to a written settlement agreement, preparing the motion for preliminary settlement approval and accompanying documents, preparing the motion for appointment of class counsel, soliciting bids for and selecting a settlement administrator, creating a notice plan in conjunction with the settlement administrator, and creating a plan of allocation.

69. As part of the Court's July 29, 2023, Preliminary Approval Order, the Court appointed Epiq to serve as settlement administrator and to provide notice to Class Members, process claims, and otherwise administer the Settlement. Epiq, in coordination with the Parties, subsequently began the process of providing notice to the Class.

70. Over the last several months, Consolidated Counsel has had regular contact with Epiq to ensure that the notice program ran smoothly and on schedule, and met the requirements of the Court's Preliminary Approval Order. Consolidated Counsel has also received dozens of communications from class members with inquiries about the settlement. This is in addition to the calls, emails, and other correspondence the Settlement Administrator has received directly. Keller Rohrback spent 1,062 hours in this period, and expects to spend substantial time working through the claim deadline, January 10, 2025, and beyond.

I. Throughout, Consolidated Counsel Litigated the Case Efficiently and Collaboratively

71. Consolidated Counsel made numerous decisions that enabled them to litigate this complex case with unusual efficiency. First, a core group of just seven partners and associates, including myself, led the litigation. As a result, each of these individuals developed institutional knowledge of the ins and outs of the complex proceedings and intimate

knowledge of relevant terms, technology, and evidence. This saved the time and effort of continuously needing to educate team members on aspects of this sometimes sprawling case with which they were not familiar.

72. Second, Consolidated Counsel ensured that these core individuals met frequently. These meetings increased efficiency by ensuring that this litigation was consistently pursued with shared goals. These meetings saved time by preventing tangential efforts before they started. Instead, Consolidated Counsel stayed focused on the steps required to keep the litigation effort moving forward in a unified direction.

73. Third, Consolidated Counsel made specific staffing decisions to further promote efficiency, including:

- Use of technology: Consolidated Counsel used predictive coding, based on their linear review of early document productions, that helped rank unreviewed documents based on their likely relevance. Then, the documents were batched out for review with those likeliest to be relevant collected in the earliest batches. In this way, "hot" documents were likely to be quickly surfaced, coded, and circulated to the litigating attorneys.

- Document analysis: Consolidated Counsel developed a comprehensive coding protocol that enabled the large number of staff attorneys and document review analysts required to review the documents in this case to do so based on a defined set of parameters. These protocols evolved over time, as Consolidated Counsel's understanding of the documents grew.

- Depositions: To increase the efficiency of preparing for and conducting depositions, the taking attorneys developed expertise in key subject-matter areas including Wells Fargo policies, guidelines, mortgage servicing practices, revenue and credit reporting practices.

74. Mutual respect, collaboration, and professionalism were the hallmarks of the Consolidated Counsel's collaboration. This has been the norm throughout my over thirty years of practicing law. In that time, I have never experienced conduct like *Echard* Counsel's, from either side of the "v." It has been exasperating for Consolidated Counsel and no doubt the Court as well. I regret that the interim Class Counsel were not able to provide a joint fee application to the Court.

III. NON-MONETARY BENEFITS OBTAINED FOR THE CLASS

A. More than Make-Whole Monetary Recovery

75. Under the proposed Settlement, Wells Fargo will pay $185 million into a non-reversionary fund for class benefits, notice and administration costs, attorneys' fees and expenses in the amount determined by the Court, and any service awards for the Settlement Class Representatives approved by the Court. As renowned economist Ted Stockton opined, that amount is more than sufficient to compensate for the delayed or prevented refinancing and credit impact damages suffered by the class, even accounting for a 25% attorneys' fees award, costs, and settlement administration. *See* Stockton Decl. Ex. D.

B. Practices Suspended or Improved During the Litigation

76. Before *Echard* Counsel had even filed a complaint, Consolidated Counsel had already secured key injunctive relief, barring Wells Fargo from placing any further borrowers into forbearances without an affirmative request from the borrower for that relief. *Forsburg* Dkt. 54. In addition, Consolidated Counsel successfully sought an order directing Wells Fargo to provide a corrective notice to hundreds of thousands of borrowers, disclosing that contrary to prior guidance, being placed in a forbearance could harm a FICO credit score. Dkt. 61.

77. Wells Fargo has suspended the practices at the heart of this litigation, including placing borrowers into forbearances without an express request, or based upon incomplete or misleading representations. The changes are critically important and a substantial benefit to borrowers whose loans are serviced by Wells Fargo. While many factors prompted Wells Fargo to make these changes, it is nonetheless the case that this litigation was ongoing during the time that many of the changes were implemented, while *Echard* had not even been filed.

IV. ANTICIPATED POST-APPROVAL WORK

78. Consolidated Counsel's obligation to serve the Class will not end when and if the Court finally approves the proposed Settlement. The Settlement must be administered,

implemented, defended, and enforced until its benefits have been delivered to all eligible Class Members.

79. Based on their previous experience in class actions, Consolidated Counsel anticipate expending approximately 1,000 additional hours on post-approval work. These hours are a deliberately conservative estimate of the time that Consolidated Counsel will spend furthering and protecting the Class's interests after final approval, should final approval be given.

80. Based on Consolidated Counsel's blended rate, $650, an additional 1,000 hours would add $650,000 to the lodestar. If included, the total lodestar would be $14,883,384.80, yielding a multiplier of less than 2.5.

81. Consolidated Counsel's post-approval work will include guiding Class Members through the settlement administration and allocation process, defending the Settlement against challenges to it, and working with the Settlement Administrator and Defendant to ensure the Settlement terms are carried out and to address any Class Members' concerns and communications.

82. The number of Class Members suggests that Consolidated Counsel will be required to spend a significant amount of time supervising the administration of the settlement, straightening out any unanticipated issues that may arise, and communicating with Class Members.

83. Consolidated Counsel's estimate of post-approval time reasonably assumes that if this Court approves the proposed Settlement and awards fees and expenses, its approval or award (or both) will be appealed. These appeals can require a great deal of work. That was the case, for example, when multiple objectors appealed the class certification, settlement approval, and fee award in *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC (N.D. Cal.), which my firm then successfully defended.

V. ADDITIONAL RATE INFORMATION

84. Keller Rohrback L.L.P. has more than 70 attorneys in eight cities, and its Complex Litigation practice group has spent more than 35 years fighting corporate abuse and pursuing litigation on behalf of consumers, whistleblowers, government entities, small businesses, institutional investors, and employees in many of the major class action cases litigated in the United States. The firm prides itself on serving the public interest by taking on cases that make a tangible difference in our communities. To date, Keller Rohrback has recovered over $94 billion for the individual, institutional and governmental plaintiffs the firm represents.

85. Keller Rohrback attorneys have, in recent years, been appointed to leadership roles in numerous high-profile cases, including the MDL litigation stemming from the Facebook/Cambridge Analytica scandal, *In re: Facebook, Inc., Consumer Privacy User Profile Litigation,* MDL No. 2843 (N.D. Cal.), in which I was appointed Co-Lead Counsel, and my co-counsel and I achieved a $725 million settlement—the largest recovery ever achieved in a data privacy class action, and the most Facebook has ever paid to resolve a private class action; *In re National Opiate Litigation,* MDL 2804, an important MDL seeking to hold opioid manufacturers and distributors accountable for devastating communities across the country; *In re Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation,* MDL 2913 (N.D. Cal.), another case with important public health implications relating to the marketing of Juul e-cigarette products; *Jabbari v. Wells Fargo,* No. 15-02159 (N.D. Cal.), the Wells Fargo unauthorized account consumer class action; *In re: EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices & Antitrust Litigation,* MDL No. 2785 (D. Kan.), the MDL concerning EpiPen price-gouging allegations; and *In re: T-Mobile Customer Data Security Breach Litigation,* MDL 3019 (W.D. Mo.), the MDL regarding T-Mobile's massive data breach.

86. Keller Rohrback's hourly rates are reviewed and adjusted annually. Based on our regular monitoring of prevailing market rates charged by attorneys of comparable skill, experience,

and qualifications in Seattle and other major metropolitan areas, we adjust our rates so that they are in line with those charged by counsel performing similar national class action work. Our rates are substantially lower than a number of firms, but consistent with many others.

87. Fee awards supported by Keller Rohrback's then-current hourly rates and corresponding lodestar have been approved in numerous class action settlements. Recent examples include *Grey Fox v. Plains All American Pipeline*, 2:16-cv-3157-PSG, Dkt. 386 at PageID 12295-96 (C.D. Cal. Sept. 17, 2024); *In re: Facebook, Inc., Consumer Privacy User Profile Litigation*, MDL No. 2843 (N.D. Cal. Oct. 10, 2023); *In Re: Volkswagen Clean Diesel Marketing, Sales Practices, and Prod. Liability Litig.* No. 15-md-02672 (N.D. Cal), No. 15-md-02672-CRB, Dkt. 8088 (N.D. Cal. Nov. 9, 2022); *Rollins v. Dignity Health*, No. 13-cv-01450-JST, Dkt. 115 (N.D. Cal. July 15, 2022); *In re: EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation*, MDL No. 2785, Dkt. 2622 (D. Kan. July 11, 2022); *Southern Cal. Gas Leak Cases*, Coord. Proc. No. 4861 (Cal. Super. Ct. Apr. 29, 2022); *Fox et al. v. Iowa Health System*, Case No. 3:18-cv-00327, Dkt. 115 (W.D. Wis. Mar. 4, 2021); and *In re Chrysler-Dodge-Jeep "EcoDiesel" Marketing, Sales, Practices, and Products Liability Litig.*, MDL No. 2777, Dkt. 561 (N.D. Cal. May 3, 2019).

88. Keller Rohrback leanly staffed this litigation, delegating substantial work to associates. More than half of the 5,862.7 Keller Rohrback attorney hours working in this matter were attributable to an associate, Zachary Gussin (3,460.8). Myself (1,161.8), Gretchen Freeman Cappio (725.6), and Matthew Preusch (272.9), partners at Keller Rohrback, together with Mr. Gussin, were responsible for 96% of the attorney time in this matter at Keller Rohrback. This led to efficiency, as a core team developed case-specific knowledge and insights.

VI. KELLER ROHRBACK'S EXPENSES

89. Consolidated Counsel also respectfully requests $628,240.19 in litigation expenses incurred to date in connection with the prosecution of this case. Counsel incurred these expenses with full knowledge that they might never be reimbursed, and that any potentiality of reimbursement was unlikely to occur for many years.

90. Below is a summary of these expenses, for Keller Rohrback, identified by the category of expense and the amount incurred in each category.

Category	Total
Airfare	17,816.50
Court Fees	6,172.87
Client Outreach	12,500
Printing and Copying	6,990.75
Research and Database Access Fees	115,619.28
Hotels	18,937.32
Meals	3,947.05
Parking and Ground Transportation	3,232.99
Deposition Costs	23,697.33
Expert Fees	52,688.50
Mediation Services	66,472.34
TOTAL	**$307,925.93**

91. The expenses are based on information maintained contemporarily in the ordinary course by Keller Rohrback and supported by invoices or other appropriate documentation. The Keller Rohrback team has reviewed these expenses, believe them to be an accurate record of the expenses incurred in this matter and have concluded that they are fair, reasonable and necessary for the efficient and effective prosecution of this litigation.

92. Of the expenses set forth above, the vast majority, approximately 80%, consist of the following five expenses:

- The largest amount, $66,472.34, was expended for services provided by Mr. Meyer and Judge Phillips, the mediators. This expense is reflected in the "Mediation" category;
- The second largest amount, $59,201 was expended on Relativity database licenses and services related to the hosting of hundreds of thousands of documents obtained and analyzed in this case. This expense is reflected in the "Research and Database Access Fees" category;
- The third largest amount, $52,688.50 was expended on consultants who provided expert advice to Consolidated Counsel on damages, data analysis and other key aspects of establishing support for Plaintiffs' claims. This expense is reflected in "Expert Fees" category;
- The fourth largest amount, $46,014.72 was expended on Westlaw online legal research and licenses. This expense is reflected in the "Research and Database Access Fees" category;
- The fifth largest amount, $23,697.33 was expended deposition services provided by Veritext, LLC. This expense is reflected in the "Deposition Costs" category.

VII. LOCAL COUNSEL'S WORK ON THE CASE

93. Local Counsel Robert J. Wagoner, of Dittmer, Wagoner & Steele, LLC, has graciously and effectively assisted the Consolidated Plaintiffs in this litigation. He has assisted with reviewing and editing filings, providing analysis, and has also stayed current in the litigation for years. His lodestar is described below.

Firm	Hours	Rate	Lodestar
Dittmer, Wagoner & Steel, LLC	40.3	$350.00	$14,105

VIII. OTHER EXHIBITS

94. Attached hereto as **Exhibit A** is a true and correct copy of Keller Rohrback L.L.P.'s firm resume and attorney biographies.

95. Attached hereto as **Exhibit B** is a true and correct copy of the Declaration of Matthew Preusch, originally submitted in Support of Consolidated Counsel's Renewed Motion to Intervene, dated October 3, 2022.

96. Attached hereto as **Exhibit C** is a true and correct copy of the Declaration of Professor Zachary Clopton, originally submitted in support of Consolidated Counsel's Motion for Appointment as Class Counsel, dated April 12, 2024.

97. Attached hereto as **Exhibit D** is a true and correct copy of the Declaration of Theodore Stockton, originally submitted in support of Consolidated Counsel's Motion for Appointment as Class Counsel, dated April 17, 2024.

98. Attached hereto as **Exhibit E** is a true and correct copy of the May 22, 2024 Transcript of Motion Hearing Proceedings before this Court.

99. Attached hereto as **Exhibit F** is a true and correct copy of the Amended Settlement Agreement.

100. Attached hereto as **Exhibit G** is a true and correct copy of the list of each biller whose time is counted as part of Keller Rohrback's hours and lodestar in this case, along with the biller's experience level and billing rate.

101. Attached hereto as **Exhibit H** is a Declaration from Pamela Delpapa, a Class Representative.

102. Attached hereto as **Exhibit I** is a Declaration from Renrick Robinson, a Class Representative.

103. Attached hereto as **Exhibit J** is a Declaration from Vivian Robinson, a Class Representative.

I declare under penalty of perjury that the foregoing is true and correct and to the best of my knowledge.

DATED this 28th day of October, 2024.

s/ Derek W. Loeser
Derek W. Loeser

EXHIBIT A

KELLER ROHRBACK

LAW OFFICES ◆ L.L.P.

COMPLEX LITIGATION

ABOUT KELLER ROHRBACK

Devoted to Justice

"[Keller Rohrback] has performed an important public service in this action and has done so efficiently and with integrity . . . [Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions."
In re WorldCom, Inc. ERISA Litig., No. 02-4816, 2004 WL 2338151, at *10 (S.D.N.Y. Oct. 18, 2004) (Cote, J.)

Keller Rohrback's lawyers excel by being prepared and persuasive. It's a simple formula that combines our strengths: outstanding writing and courtroom skill, together with unparalleled passion and integrity. We have recovered billions of dollars for our clients and have served as lead counsel in many prominent cases, including numerous financial crisis cases against Wall Street banks and mortgage originators. Our lawyers are recognized as leaders in their fields who have dedicated their careers to combating corporate fraud and misconduct. We have the talent as well as the financial resources to litigate against Fortune 500 companies—and do so every day.





Who We Are

Keller Rohrback's Complex Litigation Group has a national reputation as the go-to plaintiffs' firm for large-scale, complex individual and class action cases. We represent public and private investors, businesses, governments and individuals in a wide range of actions, including securities fraud, fiduciary breach, antitrust, insurance coverage, whistleblower, environmental, and product liability cases. Our approach is straightforward—we represent clients who have been harmed by conduct that is wrong, and we litigate with passion and integrity to obtain the best results possible. Every case is different, but we win for the same reason: we are persuasive. When you hire us, you hire smart, creative lawyers who are skilled in court and in negotiations.

Founded in 1919, Keller Rohrback's over 60 attorneys and more than 100 staff members are based in eight offices across the country in Seattle, Denver, Missoula, New York, Oakland, Phoenix, Portland, and Santa Barbara. Over the past century, our firm has built a distinguished reputation by providing top-notch representation. We offer exceptional service and a comprehensive understanding of federal and state law nationwide. We also are well known for our abilities to collaborate with co-counsel and to work together to achieve outstanding results—essential skills in large-scale cases in which several firms represent the plaintiffs. We pride ourselves on our reputation for working smartly with opposing counsel, and we are comfortable and experienced in coordinating high-stakes cases with simultaneous state and federal government investigations. Keller Rohrback attorneys earn the respect of our colleagues and our opponents through our deft handling of the array of complex issues and obstacles our clients face.

ABOUT KELLER ROHRBACK

What We Do

Keller Rohrback's Complex Litigation Group represents plaintiffs in large-scale cases involving corporate wrongdoing. We litigate against companies that pollute, commit fraud, fix prices and take advantage of consumers, employees, and investors. We are passionate advocates for justice. In addition, the Complex Litigation Group regularly calls on attorneys in the firm's other practice areas for expertise in areas such as bankruptcy, constitutional law, corporate transactions, financial institutions, insurance coverage and intellectual property. Our group's access to these in-house resources distinguishes Keller Rohrback from other plaintiffs' class action firms and contributes to the firm's success. We also have a history of working with legal counsel from other countries to vigorously pursue legal remedies on behalf of clients around the globe.

We have won verdicts in state and federal courts throughout the nation and have obtained judgments and settlements on behalf of clients exceeding $94.9 billion. Courts around the country have praised our work, and we are regularly appointed lead counsel in nationally prominent class action cases. Our work has had far-reaching impacts for our clients in a variety of settings and industries, creating a better, more accountable society.

Whom We Serve

We represent individuals, institutions, and government agencies. The common denominators of our clients is a desire to see justice done—and to be represented by attorneys who practice law with integrity, honesty, and devotion to serving our clients' interests.



"Despite substantial obstacles to recovery, Keller Rohrback L.L.P. was willing to undertake the significant risks presented by this case . . . Class Counsel achieved real and substantial benefits for members of the Class. [Their] extensive prior experience in complex class action securities litigation . . . enabled the Class to analyze and achieve this excellent result." Order at 2, *Getty v. Harmon* (*SunAmerica Sec. Litig.*), No. 98-178 (W.D. Wash. Sept. 20, 1999) (Dwyer, J.)

ANTITRUST AND TRADE REGULATION

ATTORNEYS

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Alison Chase
Felicia Craick
Matt Gerend
Cari Campen Laufenberg
Derek Loeser
Ryan McDevitt
Daniel Mensher

Keller Rohrback's antitrust and trade regulation practice represents Plaintiffs in state and federal courts to ensure that consumers get the benefits of free and fair competition in the marketplace. Keller Rohrback has successfully litigated cases on behalf of both consumers and businesses who have been harmed by illegal anti-competitive conduct, such as price fixing, price discrimination, misleading and deceptive marketing practices, and the monopolization and attempted monopolization of markets.

Keller Rohrback has served as lead counsel, on MDL executive committees, and in other prominent roles in large price-fixing and price discrimination cases. In 2022, Keller Rohrback was honored by the American Antitrust Institute for its work on the *In re EpiPen Marketing, Sales Practices, and Antitrust Litigation*, receiving an award in the category of Outstanding Antitrust Ligation Achievement in Private Law Practice.

REPRESENTATIVE CASES

In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig., MDL No. 2785 (D. Kan.)

Keller Rohrback serves as Plaintiffs' Co-Lead Counsel in this litigation regarding the marketing, pricing, and sale of EpiPen auto-injector devices in the United States. Plaintiffs alleged that defendants Mylan and Pfizer engaged in unfair and illegal activities that stifled competitors, allowing defendants to maintain their dominant market positions and increase the prices of EpiPen products by over 500%. These practices forced consumers to pay inflated and unnecessary costs for EpiPens—a device on which many lives depend. The Court certified two classes of consumers and payors against Defendants Mylan and Pfizer. Through separate settlements with the Mylan and Pfizer defendants, Class Counsel achieved settlements totaling $609 million for the benefit of the classes.

Nurse Wage Litigation: Fleischman v. Albany Med. Ctr., No. 06-765 (N.D.N.Y.); *Cason-Merenda v. Detroit Med. Ctr.*, No. 06-15601 (E.D. Mich.)

Keller Rohrback was Co-Lead Counsel in these long-running antitrust actions which recovered $105 million in underpaid wages resulting from an alleged conspiracy among hospitals to set the compensation of their nurse employees in Albany, New York, and Detroit, Michigan.

Ferko v. National Ass'n for Stock Car Auto Racing, Inc., No. 02-50 (E.D. Tex.)

Keller Rohrback was Counsel for Plaintiff, a shareholder in Texas Motor Speedway (TMS), in a lawsuit that charged NASCAR with breach of contract, unlawful monopolization, and conspiring with International Speedway Corporation (ISC) to restrain trade in violation of the antitrust laws. The settlement agreement allowed TMS to purchase North Carolina Speedway from ISC and required NASCAR to sanction a Nextel Cup Series race at TMS in the future, relief that was valued at $100.4 million.

"The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does again." Mem. at 12, *In re Linerboard Antitrust Litig.* (E.D. Pa. June 2, 2004) (DuBois, J.).

REPRESENTATIVE CASES continued

In re Vitamins Antitrust Litig., MDL No. 1285 (D.D.C.)

Keller Rohrback played a significant role in litigating this MDL case, one of the largest and most successful antitrust cases in history. Chief Judge Thomas Hogan certified two classes of businesses who directly purchased bulk vitamins and were overcharged as a result of a ten-year global price-fixing and market-allocation conspiracy. Recoveries for the class through settlement and verdict totaled over $1 billion.

In re Liquid Aluminum Sulfate Antitrust Litig., MDL No. 2687 (D.N.J.)

In 2016, Keller Rohrback filed numerous class action complaints in federal courts on behalf of several municipalities in Washington, California, and Arizona that purchase and use liquid aluminum sulfate ("Alum") to treat and clean their waste water. The complaints contained claims against the major manufacturers of Alum who allegedly engaged in a conspiracy to artificially inflate the price of this essential chemical used in municipal water treatment. As a result of these antitrust violations, municipalities–and their taxpayers–had overpaid millions of dollars to the co-conspirators for the Alum they purchased during the long life of this conspiracy. In March 2020, the Court authorized the transfer of settlement funds to pay claims of the Settlement Class Members.

In re Online DVD Rental Antitrust Litig., MDL No. 2029 (N.D. Cal.)

Keller Rohrback represented purchasers of online DVD rental services accusing Walmart and Netflix of engaging in a market allocation scheme. The class achieved settlements of over $30 million.

Transamerican Refining Corp. v. Dravo Corp., No. 88-789 (S.D. Tex.)

Keller Rohrback served as Co-Lead Counsel in this class action filed on behalf of all cost-plus purchasers of specialty steel pipe. Fabricators and suppliers of that pipe were sued on allegations of a nationwide price fixing conspiracy. The class of electric generating plant and oil refinery owners, achieved a settlement of over $49 million.

Johnson v. Arizona Hosp. & Healthcare Ass'n, No. 07-1292 (D. Ariz.)

Keller Rohrback represented agency nurses who worked at various Arizona hospitals seeking to recover the underpayment of wages resulting from a conspiracy to suppress the cost of agency nurses. The class achieved settlements of more than $26 million.

Daisy Mountain Fire Dist. v. Microsoft Corp., MDL No. 1332 (D. Md.)

Keller Rohrback obtained a settlement in of over $4 million on behalf of a class of Arizona governmental entities that indirectly purchased operating systems and software from Microsoft for overcharges resulting from Microsoft's monopolistic practices. The settlement returned millions of dollars to local government entities at a time of severe budget crisis in the state.

Molecular Diagnostics Labs. v. Hoffmann-La Roche Inc., No. 04-1649 (D.D.C.)

Keller Rohrback served on the Executive Committee of this class action lawsuit on behalf of direct purchasers of thermus aquaticus DNA polymerase (Taq), an essential input to technologies used to study DNA. The lawsuit alleged that various Hoffman-La Roche entities, in concert with the Perkins Elmer Corp., fraudulently procured a patent for Taq with the intent of illegally monopolizing the Taq market. The court approved a $33 million settlement in 2008.

In re Delta Dental Antitrust Litig., No. 19-6734 (N.D. Ill.)

Ryan McDevitt serves on several of the plaintiffs' committees in the sprawling multistate Delta Dental antitrust litigation on behalf of dentists nationwide, in which the numerous state Delta insurers are alleged to have coordinated efforts not to compete and to abuse their monopsony power in the market for dental insurance throughout the United States.

APPELLATE PRACTICE

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Matt Gerend
Ben Gould
Ron Kilgard
Cari Campen Laufenberg
Jeffrey Lewis
Derek Loeser
Matthew Preusch
Erin Riley

Appeals require specialized skills and experience, and Keller Rohrback has a seasoned appellate team that includes award-winning brief writers and outstanding oral advocates. Our appellate experience is particularly important in large cases, including complex class actions. Keller Rohrback has the experience and talent to handle any issue that arises involving interlocutory appeals and will work to ensure that any judgment or settlement is affirmed on appeal.

REPRESENTATIVE CASES

ERISA Indus. Comm. v. City of Seattle, 840 F. App'x 248 (9th Cir. 2021)

Keller Rohrback and the Seattle City Attorney persuaded the Ninth Circuit to affirm the dismissal of an industry group's ERISA preemption lawsuit, which sought to invalidate a City ordinance mandating the payment of additional compensation to enable hotel employees to better afford health care. On November 21, 2022, the U.S. Supreme Court denied a petition for certiorari, thereby ending efforts to invalidate the City ordinance.

Smith v. OSF Healthcare Sys., 933 F.3d 859 (7th Cir. 2019)

Keller Rohrback successfully obtained reversal of summary judgment in litigation to protect the pension benefits of hospital employees. The Seventh Circuit held that the trial court abused its discretion by granting a summary judgment motion filed long before the close of discovery when plaintiffs were diligently pursuing relevant discovery and had filed a well-supported motion under Federal Rule of Civil Procedure 56(d).

Campidoglio, LLC v. Wells Fargo & Co., 870 F. 3d 963 (9th Cir. 2017)

This is a proposed class action arising out of Wells Fargo's alleged miscalculation of the interest rates charged to Borrowers. The Ninth Circuit reversed the dismissal finding that the Home Owners' Loan Act does not preempt the Borrowers' interest rate calculation breach of contract claim, which arises under Washington law.

Hall v. Elected Officials Retirement Plan, 241 Ariz. 33, 383 P.3d 1107 (2016)

Keller Rohrback successfully represented a class of all sitting Arizona general jurisdiction judges in a challenge to the legislature's reduction of their retirement benefits as in violation of the Arizona constitution

Kaplan v. Saint Peter's Healthcare Sys., 810 F.3d 175, 177 (3d Cir. 2015); *Stapleton v. Advocate Health Care Network,* 817 F.3d 517, 523 (7th Cir. 2016); *Rollins v. Dignity Health,* 830 F.3d 900, 906 (9th Cir. 2016); *rev'd,* 137 S. Ct. 1652 (2017)

Keller Rohrback obtained unanimous decisions from panels of the Third, Seventh, and Ninth Circuits that religiously affiliated health care systems were not exempted from ERISA, the federal pension law, by virtue of a particular provision of the relevant statute. Keller Rohrback also defended the appellate decisions in the U.S. Supreme Court, which disagreed with the Circuits on the statutory interpretation issue presented and remanded for further litigation, which Keller Rohrback also handled, on other sources for a possible statutory exemption.

APPELLATE PRACTICE

REPRESENTATIVE CASES continued

Clarke v. Baptist Memorial Healthcare Corp., 641 F. App'x 520 (6th Cir. 2016)

Keller Rohrback overturned the district court's denial of intervention, thus allowing our clients to challenge an earlier denial of class certification.

Alcantara v. Bakery & Confectionary Union & Indus. Int'l Pension Fund Pension Plan, 751 F.3d 71 (2d Cir. 2014)

Keller Rohrback successfully defended the trial court's decision and judgment that the Defendants had unlawfully reduced pension benefits.

Gates v. UnitedHealth Grp. Inc., 561 F. App'x 73 (2d Cir. 2014)

Keller Rohrback persuaded the Second Circuit to reverse the district court's dismissal of our client's claims for medical coverage.

Comerica Bank v. Mahmoodi, 224 Ariz. 289 (App. 2010)

Keller Rohrback successfully reversed a multi-million dollar judgement entered on summary judgment for a plaintiff. The opinion is a major statement in Arizona on the principles of summary judgment practice.

Braden v. WalMart Stores, Inc., 588 F.3d 585 (8th Cir. 2009)

Keller Rohrback represented a class of Walmart employees who alleged that Walmart's 401(k) plan charged them excessive fees. Keller Rohrback convinced the Eighth Circuit to reverse the trial court and reinstate the employees' claims.

James v. PacifiCorp, No. A179017 (Oregon Court of Appeals, Jan. 25, 2023)

Keller Rohrback successfully defended in the Oregon Court of Appeals a trial court's order certifying a liability issues class of fire survivors, the first class certification order of its kind in a major utility-caused fire case.

AUTOMOTIVE LITIGATION

ATTORNEYS

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Alison Chase
Felicia Craick
Adele Daniel
Kylie Fisher
Zack Gussin
Derek Loeser
Ryan McDevitt

Keller Rohrback is renowned for its success in representing consumers in high-stakes, complex litigation involving automotive defects and misrepresentations. Courts regularly appoint our nationally recognized attorneys to plaintiffs' leadership teams for automotive class actions, including numerous actions consolidated in multidistrict litigation. These cases reflect our firm's ongoing commitment to ensuring the safety of drivers, passengers, their vehicles, and the environment.

REPRESENTATIVE CASES

In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.,MDL No. 2672 (N.D. Cal.)

Keller Rohrback filed the first multi-Plaintiff complaint against Volkswagen on September 20, 2015, two days after the defeat device scheme came to light. Keller Rohrback represented consumers nationwide who alleged they were damaged by Volkswagen's fraudulent use of an emissions "defeat device" in over 500,000 vehicles in the United States. Keller Rohrback Managing Partner Lynn Sarko served on the Plaintiffs' Steering Committee for this national litigation. Lynn Sarko and partner Gretchen Freeman Cappio served on the negotiating team for the $15 billion class action settlement for 2.0-liter vehicles, the largest auto-related consumer class action in U.S history. Keller Rohrback played a similar role in reaching and implementing similar settlements with Volkswagen and Bosch regarding approximately 100,000 3-liter vehicles.

In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Pracs., & Prods. Liab. Litig., MDL No. 2777 (N.D. Cal.)

From the outset, Keller Rohrback played a major role in this multidistrict litigation, representing consumers nationwide who alleged that Fiat Chrysler used an emissions defeat device in over 100,000 Ram 1500 and Jeep Grand Cherokee diesel trucks and SUVs. Keller Rohrback Managing Partner Lynn Sarko was appointed by the Court to the Plaintiffs' Steering Committee leading this case, and Keller Rohrback attorneys took an active role in discovery and served on the negotiating

In re ZF-TRW Airbag Control Units Prods. Liab. Litig., MDL No. 2905 (C.D. Cal.)

Gretchen Freeman Cappio is a member of the Plaintiffs' Steering Committee ("PSC"). In her work on the PSC, Gretchen has directed briefing efforts on cutting edge legal issues and steers plaintiffs' global strategy. Plaintiffs' allegations against auto parts supplier ZF-TRW and automakers Fiat Chrysler Automobiles/Stellantis, Kia, Hyundai, Toyota, Honda, and Mitsubishi relate to defective airbag control units in 12.3 million vehicles that may cause airbags to fail to inflate in the event of a crash.

AUTOMOTIVE LITIGATION

REPRESENTATIVE CASES continued

In Re: Kia Hyundai Vehicle Theft Marketing, Sales Practices, and Products Liability Litigation, MDL 3052 (C.D. Cal.)

Keller Rohrback L.L.P. represents multiple Governmental Entities nationwide that are experiencing a surge of stolen vehicles. Defendants Hyundai Motor America ("Hyundai") and Kia America, Inc. ("Kia") deviated from industry norms and failed to install effective vehicle locking technology in the majority of their vehicles manufactured for sale in the United States between 2011 and 2021, making them highly susceptible to theft. Gretchen Freeman Cappio, a Keller Rohrback partner, has been appointed by the Court as Co-Chair of Executive Committee for the Multi-District Litigation (MDL) as well as Chair of the Governmental Entities Committee. Additionally, Keller Rohrback partner Ryan McDevitt was named to both the Discovery Committee and Expert Committee for the MDL. The Governmental Entities Track of the litigation is currently at the Motion to Dismiss stage before Judge James V. Selna of the United States District Court for the Central District of California.

Speerly v. General Motors, LLC, No. 19-11044 (E.D. Mich.)

Gretchen Freeman Cappio was appointed to the Plaintiffs' Steering Committee in the General Motors ("GM") transmission litigation and expects to play a major role in the case. In this putative class action, Plaintiffs allege that transmission defects in GM, Chevrolet, and Cadillac vehicles sold as early as 2014 can cause unsafe conditions that GM failed to disclose or repair despite longstanding knowledge and numerous attempts.

In re Hyundai and Kia Engine Litig. II, No. 18-02223 (C.D. Cal.)

Gretchen Freeman Cappio was appointed as settlement counsel by the court in consolidated litigation against automakers Hyundai and Kia and their American subsidiaries. The litigation arises out of Hyundai's and Kia's failure to disclose or timely remedy several serious design and manufacturing defects that can cause engines to suddenly stall or burst into flames while driving. Judge Staton granted Final Approval of the Settlement on April 26, 2024.

Stringer v. Nissan North Am. Inc., No. 21-99 (M.D. Tenn.)

Ryan McDevitt served on the court-appointed Executive Committee that achieved a settlement valued at over $300 million for consumers in litigation concerning defective transmissions in Nissan and Infiniti vehicles, Stringer v. Nissan North Am., Inc., No. 21-99 (M.D. Tenn.)

In re Chevrolet Bolt EV Battery Litig., No. 20-13256 (E.D. Mich.)

Judge Berg appointed Keller Rohrback Co-Lead Counsel in the consolidated Chevrolet Bolt defective battery litigation. Plaintiffs allege that General Motors failed to disclose dangerous battery defects that led to an increased risk of catastrophic fires and diminished battery function. The litigation is on-going.

BANKRUPTCY-RELATED LITIGATION

ATTORNEYS

Laurie Ashton
Gary A. Gotto
Christopher Graver

Keller Rohrback attorneys have deep and broad experience litigating in the bankruptcy courts on behalf of Plaintiffs whose claims were interrupted by bankruptcy petitions, as well as creditors, debtors, and creditor committees. Our experience includes representing claimants and class claimants in numerous large-scale bankruptcies - such as the pending Purdue Pharma bankruptcy in New York, which forms a part of our larger representations in the nationwide opioid litigation. Keller Rohrback's representations have involved virtually all areas of sophisticated bankruptcy practice, including: (i) negotiating acceptable terms of a plan of reorganization with the debtor, creditors' committee, and other bankruptcy constituencies; (ii) pursuing relief from the automatic stay to litigate claims in district court; (iii) seeking and opposing orders to withdraw the reference to the bankruptcy court; (iv) certifying a claimant class in bankruptcy; (v) asserting rights to officer, director, or fiduciary insurance policies between conflicting bankruptcy claimants; (vi) evaluating and negotiating proposals for debtor financing, cash collateral orders, estate sale orders and other bankruptcy administrative matters; and (vii) defending against subordination claims.

Keller Rohrback's bankruptcy attorneys also have extensive experience in a wide variety of matters involving corporate restructuring and commercial bankruptcies. Our bankruptcy clients have ranged from tort claimants to operating entities to institutional lenders. Examples include representation of the official committee of victims of clergy sexual abuse in the Chapter 11 reorganization of a Catholic diocese, the debtors in a reorganization of fifty commercial real properties across the nation; and a national services company in the acquisition of a competitor's assets in a bankruptcy court-approved sale in the Northern District of California.

In addition to the representative cases listed below, Keller Rohrback has achieved similar results in numerous other bankruptcy proceedings involving corporations such as Global Crossing Ltd., Mirant Corp., Delphi Corp., and Fremont General Corp.

REPRESENTATIVE CASES

In re Enron Corp., No. 01-16034 (Bankr. Ct. S.D.N.Y.)

Keller Rohrback obtained stay relief to pursue litigation in the Southern District of Texas and defended against a motion to subordinate claims. Keller Rohrback achieved a settlement for the class that included the allowance of a $265 million claim in the Enron bankruptcy.

In re WorldCom, Inc. Sec. Litig., Nos. 02-3288, 02-8981 (S.D.N.Y.)

Keller Rohrback defended against a motion to subordinate claims and successfully negotiated a simultaneous resolution of claims in the bankruptcy and district courts against third parties in the total amount of $48 million.

In re Nortel Networks Inc., No. 09-10138 (Bankr. Ct. D. Del.)

Keller Rohrback represented class claimants in simultaneous insolvency proceedings in Canada under the Companies' Creditors Arrangement Act and bankruptcy court in the District of Delaware. Keller Rohrback obtained stay relief to pursue litigation in the Middle District of Tennessee and ultimately settled class claims in Tennessee for over $21 million.

In re Washington Mut., Inc., No. 08-12229 (Bankr. Ct. D. Del.)

Keller Rohrback sought stay relief to pursue litigation in the Western District of Washington and pursued claims in bankruptcy court in Delaware, resulting in a simultaneous resolution of claims in the bankruptcy and district courts for $20 million.

CONSUMER PROTECTION CLASS ACTIONS KR

ATTORNEYS

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Alison Chase
Felicia Craick
Adele Daniel
William Dreher
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Dean N. Kawamoto
Katherine Klein
David Ko
Cari Campen Laufenberg
Andrew Lindsay
Derek Loeser
Eric Lombardo
Patrick Marriott
Ryan McDevitt
Daniel Mensher
Nathan Nanfelt
Matthew Preusch
Mark D. Samson
Chris Springer
Elizabeth Tarbell
Havila C. Unrein
Jen Wagner
Michael Woerner



For decades, consumers have trusted Keller Rohrback attorneys to protect them from harmful and unfair practices. Our firm is a leader in representing consumers in class action and complex litigation in diverse areas, including vehicles, children's products, food contamination, drugs, mortgage modifications, identity theft, and data breaches. Keller Rohrback currently represents a wide range of consumers, such as vehicle owners and lessees, parents, environmentalists, fishermen, employees, professors, doctors, and nurses.

Through decades of hard work, ingenuity, and creativity, Keller Rohrback has achieved meaningful results. These results impact not only our clients, but future consumers too. For example, homeowners now benefit from improved loan-modification practices at one of the country's biggest banks as a result of our advocacy.

Keller Rohrback attorneys are frequently featured speakers and presenters at prestigious legal education seminars on class actions, consumer protection, and data privacy.

REPRESENTATIVE CASES

In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig., MDL No. 2785 (D. Kan.)

Keller Rohrback serves as Plaintiffs' Co-Lead Counsel in this litigation regarding the marketing, pricing, and sale of EpiPen auto-injector devices in the United States. Plaintiffs alleged that defendants Mylan and Pfizer engaged in unfair and illegal activities that stifled competitors, allowing defendants to maintain their dominant market positions and increase the prices of EpiPen products by over 500%. These practices forced consumers to pay inflated and unnecessary costs for EpiPens—a device on which many lives depend. The Court certified two classes of consumers and payors against Defendants Mylan and Pfizer. Through separate settlements with the Mylan and Pfizer defendants, Class Counsel achieved settlements totaling $609 million for the benefit of the classes.

Jabbari v. Wells Fargo & Co., No. 15-2159 (N.D. Cal.)

Keller Rohrback filed a class action lawsuit against Wells Fargo alleging the bank victimized its customers by opening checking, savings and credit card accounts, and lines of credit without customers' authorization. Keller Rohrback negotiated a $142 million settlement on behalf of consumers, which required Wells Fargo to refund fees charged to unauthorized accounts, compensate consumers for increased borrowing costs due to credit damage, and provide other substantial compensation.

REPRESENTATIVE CASES continued

In re JPMorgan Chase Mort. Modification Litig., MDL No. 2290 (D. Mass.)

Keller Rohrback served as Co-Lead Counsel in this MDL, representing homeowners who attempted to obtain mortgage loan modifications from JPMorgan Chase and related entities. Plaintiffs alleged breach of contract and violations of consumer protection laws when Defendants failed to timely evaluate or approve mortgage modification applications of homeowners who had completed identified prerequisites. Keller Rohrback achieved a settlement for the class valued at over $500 million.

In re Mattel, Inc., Toy Lead Paint Prods. Liab. Litig., MDL No. 1897 (C.D. Cal.)

Keller Rohrback served as Chair of the Executive Committee in this nationwide MDL against Mattel and Fisher-Price on behalf of purchasers of toys recalled because they were manufactured using lead paint and/or dangerous magnets. On behalf of Plaintiffs, Keller Rohrback achieved a settlement valued at approximately $50 million.

Fox v. Iowa Health Sys., No. 18-327 (W.D. Wis.)

Plaintiffs filed this complaint against Iowa Health System (UnityPoint Health) on behalf of individuals in Wisconsin, Iowa, and Illinois whose protected health information was compromised as a result of data breaches that occurred on at least two separate occasions between November 2017 and March 2018. On July 25, 2019, the Court granted in part and denied in part Defendant's motion to dismiss. The parties have since reached a settlement, providing for credit monitoring and insurance services, reimbursement for out-of-pocket costs, and payment for time incurred as a result of the data breaches. The Court granted final approval of the settlement on March 4, 2021.

Ormond v. Anthem, Inc., No. 05-1908 (S.D. Ind.)

Anthem Insurance converted from a mutual company to a stock company on November 2, 2001. More than 700,000 former members of the mutual company sued Anthem, alleging that the cash compensation they received as a result of the demutualization was inadequate. After class certification and shortly before the start of trial, Keller Rohrback and co-counsel settled the action for $90 million.

In re Arizona Theranos, Inc. Litig., No. 16-2138 (D. Ariz.)

In 2014, Theranos began pitching a revolutionary technology that it said could perform hundreds of health tests with a single pinprick of blood—and with fast, automated, and inexpensive results. Theranos teamed up with Walgreens to market the product and offer it in Walgreens stores. However, the vaunted technology did not work. Thousands of test results were invalidated or called into question. Theranos founder Elizabeth Holmes and COO Sunny Balwani have since been criminally convicted. The fraud received widespread media attention, including a popular book and documentary. The class here consists of an estimated 175,000 consumers in Arizona and California who were subject to the unreliable testing technology.

After nearly seven years of litigation, Keller Rohrback and co-lead counsel secured a $44 million settlement with defendants in this matter to resolve class claims arising from the Theranos blood testing scandal. The final approval order, signed by U.S. District Judge David G. Campbell on February 6, 2024, establishes a nonreversionary $44 million common fund to provide consumers approximately double their out-of-pocket damages, and an additional $1,000 (approximate) for members of the subclass who participated in Walgreens tiny blood draws.

REPRESENTATIVE CASES continued

Corona v. Sony Pictures Ent., Inc., No. 14-9600 (C.D. Cal.)

Keller Rohrback served as interim Co-Lead Counsel and Liaison Counsel in this case against Sony Pictures Entertainment, Inc. on behalf of former and current Sony employees affected by the company's highly publicized data breach. Plaintiffs alleged that Sony failed to secure and protect its computer systems, servers, and databases, resulting in the release of the named Plaintiffs and other class members' personal information. Keller Rohrback obtained a significant settlement for the class in October 2015, which was approved in April 2016.

Carlin v. DairyAmerica Inc., No. 09-00430 (E.D. Cal.)

In 2009, Plaintiffs brought suit alleging claims under federal and California state law. The class action complaint alleged that Defendants, DairyAmerica, Inc. and California Dairies, Inc., negligently and incorrectly reported dairy product prices to the National Agricultural Statistic Service, a division of the United States Department of Agriculture. As a result of this misreporting, prices for various grades of milk products were set lower than they should have been, inflating DairyAmerica's profits and depriving dairy farmers of tens of millions of dollars in income. On May 9, 2019, U.S. District Court Judge Anthony W. Ishii granted final approval to a $40 million settlement.

Iacovelli v. SBTickets.com, LLC, No. 15-1459 (Ariz. Super. Ct., Maricopa Cnty.)

Keller Rohrback filed a class action in Arizona state court on behalf of individuals who paid for, but did not receive, tickets to the 2014 Super Bowl (Super Bowl XLIX) from the ticket broker SBTickets. Despite purchasing tickets and receiving numerous representations that their tickets were guaranteed, SBTickets customers were told just days before the game, and in some instances, only hours before kickoff, that their ticket orders would not be fulfilled. The case was settled on favorable terms for the class notwithstanding the Defendant's insolvency and bankruptcy proceedings.

Telephone Consumer Protection Act (TCPA) Cases (Wash. Super. Ct., King Cnty.)

Keller Rohrback prosecuted numerous class actions concerning the sending of unsolicited facsimiles in violation of the Telephone Consumer Protection Act and the Washington Consumer Protection Act, resulting in the issuance of eleven permanent injunctions and the recovery of over $56 million on behalf of injured Plaintiffs.

In re Bisphenol-A (BPA) Polycarbonate Plastic Prods. Liab. Litig., MDL No. 1967 (W.D. Mo.)

Keller Rohrback served on the Plaintiffs' Steering Committee in this MDL on behalf of purchasers of plastic baby bottles and "sippy" cups which contained the chemical bisphenol-A (BPA). The action was favorably settled.

MultiCare Health System, Inc., No.18-2-08055-5 (Pierce Cnty. Wash. Super. Ct.)

Keller Rohrback and co-counsel represent individuals in Washington against MultiCare Good Samaritan Hospital ("MultiCare") in a lawsuit that alleges MultiCare negligently hired and inadequately supervised an emergency department nurse. The trial court certified two classes: the Weberg Treatment Class; and the General Treatment Class. MultiCare subsequently filed a Motion for Summary Judgment seeking the dismissal of all claims of the General Treatment Class, which the trial court granted. The trial court then denied Plaintiffs' Motion for Reconsideration. Plaintiffs appealed the trial court's decision, however the Washington Court of Appeals affirmed the dismissal. Plaintiffs petitioned the Washington Supreme Court to review the Court of Appeals' decision, and the Supreme Court granted the petition. After briefing and oral argument, the Supreme Court issued a favorable opinion on January 18, 2024 that reversed the dismissal of the General Treatment Class's claims.

REPRESENTATIVE CASES continued

Brotherson v. Professional Basketball Club, L.L.C., No. 07-1787 (W.D. Wash.)

Keller Rohrback represented Seattle SuperSonics season ticket holders who renewed their 2007–2008 season ticket packages before the team was relocated to Oklahoma City. After Plaintiffs prevailed on class certification and defeated summary judgment, the parties negotiated a significant settlement that returned substantial sums to the class.

In re Apple Inc. Device Performance Litig., MDL No. 2827 (N.D. Cal.)

Keller Rohrback served as Co-Chair of the Executive Committee for Offensive Discovery and also as the ESI Coordinator in this consolidated action concerning IOS software installed on certain Apple iPhone devices. The Plaintiffs asserted claims that this software diminished the performance of those devices. Numerous cases were consolidated before Judge Edward J. Davila in the Northern District of California in April 2018. After several years of vigorous litigation, the parties reached a settlement of up to $500 million in February 2020. The Court held a final approval hearing on December 4, 2020 and approved the settlement on March 3, 2023. Although the settlement was subsequently appealed, all appeals were dismissed as of September 2023.

Mundle v. Doxo, Inc. et al., No. 23-893 (W.D. Wash.)

Keller Rohrback L.L.P. represents individuals in the United States who provided credit card, debit card, bank account, or other financial account information to Doxo, Inc. ("Doxo") and were subsequently charged for Doxo products and/or services, including, but not limited to, Doxo's bill pay service and its monthly subscription plan "DoxoPLUS," for the benefit of doxo without the persons' prior informed authorization or consent.

Plaintiffs and the proposed class allege that Defendants engaged in unfair and deceptive acts and practices and have received financial benefits from Defendants practices of charging unwanted fees and unwanted subscription plans for Doxo's products and services.

In re Oral Phenylephrine Marketing and Sales Practices Litig. (E.D.N.Y.)

Keller Rohrback has filed class action complaints on behalf of plaintiffs in multiple states alleging deceptive marketing practices by companies selling cold products containing phenylephrine ("PE"). On September 11 and 12, 2023, a U.S. Food & Drug Administration ("FDA") advisory panel concluded that over the counter (OTC) oral phenylephrine is ineffective as a nasal decongestant. Plaintiffs allege Defendants knew and/or had reason to know that their products were no more effective than placebo. These deceptive practices caused unknowing customers to spend millions of dollars on products that did not provide relief from their symptoms.

A Conditional Transfer Order was issued on December 7, 2023, ordering the transfer of these actions to the United States District Court of the Eastern District of New York for consolidated pretrial proceedings before United States District Court Judge Brian M. Cogan. On September 23, 2024, oral argument was held on Defendants' Motion to Dismiss Plaintiffs' Bellwether Complaint. Limited informal discovery negotiations between the parties has begun and formal discovery will commence once the Court has ruled on Defendants' Motion to Dismiss. On April 3, 2024, the Court appointed Keller Rohrback partner Cari Laufenberg as a member of the Plaintiffs' Steering Committee.

DATA PRIVACY LITIGATION

ATTORNEYS

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Derek Loeser
Ryan McDevitt
Chris Springer
Michael Woerner

Keller Rohrback is a pioneer in representing consumers and employees who have had their personal information breached. Our Data Privacy Litigation team has an established reputation of successful data breach litigation in federal and appellate courts.

Our success in this area includes the groundbreaking case, *Krottner v. Starbucks Corp.* Nos. 09-35823, 09-35824 (W.D. Wash.), where the Ninth Circuit recognized that Plaintiffs-Appellants' injury caused by a stolen laptop containing their personal information sufficiently satisfied the Article III standing requirement. This decision established an important legal precedent that formed a building block for privacy litigation under federal law.

Keller Rohrback's Data Privacy Litigation team has made headlines in various publications with their work featured in *Variety*, the *Los Angeles Times*, *The Wall Street Journal*, Law.com, CNN.com, Bloomberg.com, NPR.org, CNBC.com, Nasdaq.com, Reuters.com and *The Guardian*. We have also been featured on broadcasts such as CNN and NPR's Morning Edition.

REPRESENTATIVE CASES

In re Facebook, Inc. Consumer Priv. User Profile Litig., MDL No. 2843 (N.D. Cal.)

Keller Rohrback partner Derek Loeser serves as co-lead counsel in this high profile litigation related to the 2018 news that the data mining firm Cambridge Analytica had harvested information from up to 87 million Facebook users. Plaintiffs allege that Facebook granted numerous third parties access to their Facebook content and information without their consent, and that Facebook failed to adequately monitor the third parties' access to, and use of, that information.

Facebook's motion to dismiss was denied, and after several years of hard-fought litigation, in which Plaintiffs obtained extensive discovery regarding Facebook's data sharing practices, including millions of pages of discovery and over 45 depositions, the parties reached a $725 million settlement – the largest ever privacy class action settlement in the United States. The Court held the final approval hearing on September 7, 2023 and granted final approval of the settlement on October 10, 2023.

Corona v. Sony Pictures Ent., Inc., No. 14-9600 (C.D. Cal.)

Keller Rohrback served as Interim Co-Lead Counsel and Liaison Counsel in this case against Sony Pictures Entertainment, Inc. on behalf of former and current Sony employees affected by the company's highly publicized data breach. Plaintiffs alleged that Sony failed to secure and protect its computer systems, servers, and databases, resulting in the release of the named Plaintiffs and other class members' personal information. Keller Rohrback obtained a significant settlement for the class in October 2015, which was approved in April 2016.

REPRESENTATIVE CASES continued

Fox v. Iowa Health Sys., No. 18-327 (W.D. Wis.)

Plaintiffs filed this complaint against Iowa Health System (UnityPoint Health) on behalf of individuals in Wisconsin, Iowa, and Illinois whose protected health information was compromised as a result of data breaches that occurred on at least two separate occasions between November 2017 and March 2018. On July 25, 2019, the Court granted in part and denied in part Defendant's motion to dismiss. The parties have since reached a settlement, providing for credit monitoring and insurance services, reimbursement for out-of-pocket costs, and payment for time incurred as a result of the data breaches. The Court granted final approval of the settlement on March 4, 2021.

In re Experian Data Breach Litig., No. 15-1592 (C.D. Cal.)

In October 2015, Experian announced a nationwide data breach affecting an estimated 15 million consumers. Keller Rohrback was appointed to serve on the Plaintiffs' Steering Committee. After three years of litigation, a settlement was reached valued at more than $150 million, providing credit monitoring and insurance services, reimbursement for out-of-pocket costs, and payment for time incurred as a result of the data breach. The Court granted final approval of the settlement in May 2019.

Krottner v. Starbucks Corp., 628 F.3d 1139 (9th Cir. 2010)

In 2008, Keller Rohrback filed a class action on behalf of approximately 97,000 Starbucks employees whose unencrypted private information was contained on a stolen Starbucks laptop. Plaintiffs' claims included negligence and breach of contract for failing to protect employees' personally identifiable information. The district court granted Starbucks's motion to dismiss, but Keller Rohrback successfully appealed the decision as to standing, resulting in the Ninth Circuit establishing a new legal precedent that the theft of PII constituted injury under Article III.

In re T-Mobile Customer Data Sec. Breach Litig., MDL No. 3019 (W.D. Mo.)

Keller Rohrback filed class action complaints on behalf of the approximately 76.6 million T-Mobile customers whose data was exposed in the August 2021 Data Breach, alleging that T-Mobile failed to protect data of customers, as well as consumers who applied for credit with T-Mobile, leading to the exposure of information including their Social Security numbers, names, and dates of birth. Cases concerning the breach were consolidated for pretrial proceedings by the JPML in December 2021. In February 2022, Keller Rohrback, Stueve Siegel Hanson LLP, and Hausfeld LLP were appointed Co-Lead Interim Class Counsel. The parties reached a settlement, including a $350 million settlement fund and a $150 million spending commitment to improve T-Mobile's data security and address vulnerabilities that resulted in the Data Breach, in July 2022. The Court held a final fairness hearing on January 20, 2023 and granted final approval of the settlement on June 29, 2023.

In re 21st Century Oncology Customer Data Sec. Breach Litig., MDL No. 2737 (M.D. Fla.)

In 2016, Keller Rohrback filed three proposed class action complaints against the Florida-based healthcare provider 21st Century Oncology concerning an October 2015 data breach impacting 2.2 million class members. All cases concerning the breach were consolidated in October 2016 for coordinated pretrial proceedings. On November 18, 2016, Keller Rohrback and Robinson Calcagnie were appointed Interim Co-Lead Counsel. On March 11, 2019, the Court entered its order denying the Defendants' motion to dismiss the amended consolidated complaint. In June 2020, the parties reached a settlement in principle, valued at more than $16 million, providing for credit monitoring and insurance services, reimbursement for out-of-pocket costs, and payment for time incurred as a result of the data breach. The Court granted final approval of the settlement on June 25, 2021.

EMPLOYEE BENEFITS

ATTORNEYS

Lynn Lincoln Sarko
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Alison Gaffney
Laura Gerber
Matthew Gerend
Gary Gotto
Benjamin Gould
Christopher Graver
Garrett Heilman
Dean N. Kawamoto
Ron Kilgard
David Ko
Cari Campen Laufenberg
Jeffrey Lewis
Derek Loeser
Erin Riley
Havila C. Unrein
Michael Woerner

Keller Rohrback is the preeminent firm for Employee Retirement Income Security Act of 1974 (ERISA) and other employee benefit class action and complex litigation. Our firm is a pioneer of ERISA class action litigation, with over a billion dollars of pension and health benefits recovered for our clients. Keller Rohrback has played a major role in developing the law and establishing that ERISA's protections apply to all investments in company-sponsored retirement plans, as well as to benefits in health and welfare plans. Keller Rohrback's attorneys are also well versed in ERISA preemption matters and have a long history of supporting city and state efforts to fill gaps in providing health and retirement benefits to their constituents.

Keller Rohrback is routinely appointed lead or co-lead counsel in major employee benefit class actions. Our work in this complex and rapidly developing area has been praised by our clients, our co-counsel, and federal courts. Managing a complex, large-scale employee benefit case requires knowledge of employee benefit, securities, accounting, corporate, bankruptcy, and class action law. Keller Rohrback has excelled in these cases by developing a deep understanding of ERISA and by drawing on our expertise in numerous related practice areas.

Keller Rohrback has a very deep bench in ERISA matters. Lawyers at Keller Rohrback have testified before Congress, served as editors of numerous employee benefit books and manuals, and written scholarly ERISA articles, amicus briefs, and comments to regulatory agencies overseeing ERISA plans. We are frequently featured speakers and presenters at prestigious legal education seminars on employee benefit class actions and ERISA. We have also served as fiduciaries and mediators.

We are involved in all aspects of ERISA litigation, from administrative reviews to district court trials to circuit court appeals to handling cases and filing amicus briefs in the U.S. Supreme Court. We are proud of our history, but we don't rest on our laurels, we listen carefully to employees' and retirees' stories and craft cases that enforce ERISA's longstanding duties—which are the highest known to the law.

REPRESENTATIVE CASES

In re IKON Off. Sols., Inc. Sec. Litig., MDL No. 1318 (E.D. Pa.)

The wave of 401(k) company stock cases began with *Whetman v. IKON Office Solutions, Inc*. No. 98-89 (D. Utah). In a first-of-its-kind complaint, we alleged that company stock was an imprudent investment for IKON's 401(k) plan, that the fiduciaries of the plan failed to provide complete and accurate information about company stock to the participants, and that they failed to address their conflicts of interest. This case resulted in ground-breaking opinions in the ERISA 401(k) area of law on motions to dismiss, class certification, approval of securities settlements with a carve-out for ERISA claims, and approval of ERISA settlements providing a total recovery to the Plans of $111 million. Judge Marvin Katz granted final approval of the settlement in 2002.

REPRESENTATIVE CASES continued

In re Enron Corp. Sec., Derivative ERISA Litig., MDL No. 1446 (S.D. Tex.)

Keller Rohrback served as Co-Lead Counsel in this class action. After groundbreaking motions to dismiss decisions and several years of discovery, Keller Rohrback negotiated four separate settlements with different groups of Defendants, resulting in recoveries of over $264 million. Judge Melinda Harmon approved the fifth and final settlement on February 23, 2007.

Reinhart v. Lucent Techs. Inc., No. 01-3491 (D.N.J.)

Keller Rohrback served as Co-Lead Counsel in this class action brought on behalf of participants and beneficiaries of the Lucent defined contribution plans who invested in Lucent stock. A settlement providing injunctive relief and the payment of $69 million to the plan was approved by Judge Joel Pisano on December 12, 2003.

> "[Keller Rohrback] has performed an important public service in this action and has done so efficiently and with integrity. . . . [Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions . . .[Keller Rohrback] should be appropriately rewarded as an incentive for the further protection of employees and their pension plans not only in this litigation but in all ERISA actions." *In re WorldCom, Inc. ERISA Litig.*, No. 02-4816, 2004 WL 2338151, *10 (S.D.N.Y. Oct. 18, 2004) (Cote, J.).

In re WorldCom, Inc. ERISA Litig., No. 02-4816 (S.D.N.Y.)

Keller Rohrback served as Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of the WorldCom 401(k) Salary Savings Plan who invested in WorldCom stock. Settlements providing for injunctive relief and payments of over $48 million to the plan were approved by Judge Denise Cote on October 26, 2004 and November 21, 2005.

In re AIG ERISA Litig., No. 04-9387 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of the AIG 401(k) retirement plans who invested in AIG stock. A settlement providing for injunctive relief and the payment of $25 million to the plans was approved by Judge Kevin T. Duffy on October 8, 2008.

Alvidres v. Countrywide Fin. Corp., No. 07-5810 (C.D. Cal.)

Keller Rohrback served as Lead Counsel in this class action filed on behalf of participants and beneficiaries of the Countrywide 401(k) plan who invested in Countrywide stock. A settlement providing for injunctive relief and the payment of $55 million to the plan was approved by Judge John F. Walter on November 16, 2009.

In re Global Crossing Sec. & ERISA Litig., No. 02-7453 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of the GX defined contribution plans who invested in GX stock. A settlement providing injunctive relief and a payment of $79 million to the plan was approved by Judge Gerard E. Lynch on November 24, 2004.

EMPLOYEE BENEFITS

REPRESENTATIVE CASES continued

In re Merrill Lynch & Co., Inc. Sec., Derivative & ERISA Litig., No. 07-10268 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action filed in the Southern District of New York on behalf of participants and beneficiaries of Merrill Lynch's defined contribution plans who invested in Merrill Lynch stock. A settlement providing injunctive relief and a payment of $75 million to the plans was approved by Judge Jed S. Rakoff on August 4, 2009.

In re Washington Mut. Inc., Sec., Derivative & ERISA Litigation, No. 07-1874 (W.D. Wash.)

Keller Rohrback served as Co-Lead Counsel in this ERISA breach of fiduciary duty class action filed on behalf of participants and beneficiaries in the company's retirement plans who invested in Washington Mutual stock. On January 7, 2011, Judge Marsha J. Pechman granted final approval of the $49 million settlement in the ERISA action.

Hodges v. Bon Secours Health Sys., Inc., No. 16-1079 (D. Md.)

Keller Rohrback served as co-counsel in this lawsuit alleging that Bon Secours Health System's seven defined benefit pension plans were improperly claiming an exemption from ERISA as "church plan(s)." In 2017, the Court granted final approval of a settlement providing for equitable relief, plus payment of over $98 million to the Plans.

In re Bakery & Confectionery Union & Indus. Int'l Pension Fund Pension Plan, No. 11-1471 (S.D.N.Y.)

Keller Rohrback and co-counsel filed this action alleging that an amendment to the Bakery & Confectionery Union & Industrial Pension Fund Pension Plan violated ERISA's anti-cutback provisions. Plaintiffs prevailed at both the district court and appellate levels, and Defendants implemented adjustments to reinstate the benefits due to eligible employees.

Palmason v. Weyerhaeuser Co., No. 11-695 (W.D. Wash.)

Keller Rohrback and co-counsel filed this action alleging that Weyerhaeuser and other fiduciaries caused its pension plan to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans' master trust to become underfunded. A settlement was reached for injunctive relief on behalf of the Plans' participants and beneficiaries.

In re State Street Bank & Tr. Co. ERISA Litig., No. 07-8488 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this ERISA breach of fiduciary duty class action filed in the Southern District of New York brought on behalf of participants and beneficiaries in the company's retirement plans. A settlement providing a payment of $89.75 million was approved by Judge Richard J. Holwell on February 19, 2010.

In re Regions Morgan Keegan ERISA Litig., No. 08-2192 (W.D. Tenn.)

Keller Rohrback served as Co-Lead Class Counsel in this ERISA breach of fiduciary duty class action on behalf of participants and beneficiaries in the company's retirement plans as well as customer plans for which Regions served as a fiduciary. A settlement providing injunctive relief and a payment of $22.7 million was approved by Judge Samuel H. Mays, Jr.

Gates v. United Healthcare Ins. Co., No. 11-3487 (S.D.N.Y.)

Keller Rohrback served as counsel in this lawsuit that alleged Defendants violated ERISA through use of an "estimating policy" which caused Medicare eligible participants and beneficiaries to be paid lower benefits than required by the plan in which they participate for services provided by out-of-network providers. Following an initial dismissal, Keller Rohrback successfully appealed to the Second Circuit Court of Appeals, and the district court then agreed with Plaintiff.

REPRESENTATIVE CASES continued

Madoff Direct & Feeder Fund Litigation: Hartman v. Ivy Asset Mgt. L.L.C., No. 09-8278 (S.D.N.Y.)

Keller Rohrback successfully litigated this direct action on behalf of the trustees of seventeen employee benefit plans damaged by the Madoff Ponzi scheme. The action alleged that Ivy Asset Management and J.P. Jeanneret Associates, Inc. breached their fiduciary duties under ERISA by causing the plans to be invested directly or indirectly in Madoff funds. Keller Rohrback obtained a settlement of over $219 million in this case and related actions, including claims brought by the United States Secretary of Labor and the New York Attorney General.

Griffith v. Providence Health & Servs., No. 14-1720 (W.D. Wash.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that the Providence Health & Services Cash Balance Retirement Plan was improperly claiming an exemption from ERISA as a "church plan." In 2017, the Court granted final approval of a class settlement of $350 million to the Plan and a guarantee that the Plan's trust will have sufficient assets to pay benefits as they come due; and additional administrative protections and other equitable relief for Plan participants.

Hunter v. Berkshire Hathaway, Inc., No. 14-663 (N.D. Tex.)

Keller Rohrback was class counsel in a case under ERISA against Berkshire Hathaway Inc. Plaintiffs alleged that, when Berkshire Hathaway acquired a subsidiary ("Acme") in 2000, Berkshire Hathaway made promises in a merger agreement that amended Acme's pension and 401(k) plans, and that Berkshire Hathaway violated ERISA and those promises when it allegedly caused Acme to freeze accrual of pension benefits and decrease the employer's matching contribution to the 401(k) plan. On May 26, 2020, the Court granted final approval of the parties' Class Action Settlement Agreement, providing the classes an estimated $10 million in value and resolving Plaintiffs' ERISA claims with no admission of liability by Berkshire Hathaway.

Lann v. Trinity Health Corp., No. 14-2237 (D. Md.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Trinity Health Corporation and Catholic Health East were improperly claiming an exemption from ERISA as "church plan." In 2017, the Court granted final approval of a settlement providing for equitable relief, plus payment of over $76 million to the Plan.

Spires v. Schools, No. 16-616 (D.S.C.)

Keller Rohrback and co-counsel represented participants and beneficiaries in the Piggly Wiggly Employee Stock Ownership Plan ("ESOP"). The complaint alleged that Defendants breached their fiduciary duties by doing nothing as the value of the Piggly Wiggly stock plummeted by nearly 90%. A settlement providing a payment of between $7.675 million and $8.65 million was approved by Judge Richard M. Gergel.

Braden v. Wal-Mart Stores, Inc., No. 08-3109 (W.D. Mo.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of Wal-Mart's 401(k) plan who invested in retail class mutual funds that charged excessive fees to participants and paid hidden fees to the plan's trustee and recordkeeper, Merrill Lynch. The complaint alleged that the revenue sharing and other fees were excessive in light of the size of the plan, and that these fees were not properly disclosed. Our attorneys secured the *first appellate victory* in a fee case of this kind when they obtained an order from the Eighth Circuit reversing dismissal and articulating the pleading standard for process-based breaches of ERISA, see *Braden v. Wal-Mart Stores Inc..*, 588 F.3d 585 (8th Cir. 2009). A settlement that included $13.5 million along with injunctive relief was approved by Judge Gary A. Fenner.

EMPLOYEE BENEFITS

REPRESENTATIVE CASES continued

Beach v. JPMorgan Chase Bank, No. 17-563 (S.D.N.Y.)

Plaintiffs alleged that JPMorgan Chase Bank ("Chase") breached its fiduciary duties to the participants and beneficiaries of the JPMorgan Chase 401(k) Savings Plan ("Plan") in violation of ERISA by, among other things, failing to prudently and loyally manage the Plan's assets by selecting and retaining unduly expensive Core Funds and Target Date Funds as investment options in the Plan and by engaging in prohibited transactions as a result of conflicts of interest. On October 7, 2020, Judge Jesse M. Furman granted final approval of the $9 million settlement of the action.

ERISA Indus. Comm. v. City of Seattle, No. 18-1188 (W.D. Wash.)

Keller Rohrback was co-counsel (along with the City Attorney) in defending a Seattle ordinance that mandates that large hotels pay their employees additional compensation to allow them to better afford health care. A nationwide employer association brought suit claiming that the ordinance is preempted by ERISA. The United States District Court granted the City's motion to dismiss and the district court's decision was upheld on appeal. On November 21, 2022, the U.S. Supreme Court denied a petition for certiorari, thereby ending efforts to invalidate the City ordinance.

Rollins v. Dignity Health, No. 13-1450 (N.D. Cal.)

Keller Rohrback served as co-counsel in this lawsuit alleging that the Dignity Health Pension Plan was improperly claiming an exemption from ERISA as a "church plan." In 2022, the Court granted final approval of a class settlement in excess of $100 million to the Plan, additional minimum funding amounts paid into the Plan trust over several years, non-monetary changes, and certain equitable protections for Plan participants that are comparable to some of ERISA's key protections.

"The Court finds that . . . Keller Rohrback[] is experienced and qualified counsel who is generally able to conduct the litigation as lead counsel on behalf of the putative class. Keller Rohrback has significant experience in ERISA litigation, serving as co-lead counsel in the Enron ERISA litigation, the Lucent ERISA litigation, and the Providian ERISA litigation, and experience in complex class action litigation in other areas of law" Order at 4, *In re Williams Cos. ERISA Litig.*, No. 02-153 (N.D. Okla. Oct. 28, 2002) (Holmes, J.).

Hoffman v. United Airlines, Inc., 21-06395 (N.D. Ill.)

Keller Rohrback and co-counsel represent former United employees in this class action lawsuit that alleges United Airlines ("United") violated ERISA or Illinois state law with respect to promised severance benefits. Plaintiffs seek payment of benefits and all other relief and damages due them under ERISA on behalf of themselves and other similarly situated former employees of United. In the alternative, Plaintiffs assert claims on behalf of themselves and the class under state law for breach of contract and seek specific performance and all other available relief in law and equity.

ENVIRONMENTAL LITIGATION

ATTORNEYS

Lynn Lincoln Sarko
Laurie Ashton
Rachel Bowanko
Gretchen Freeman Cappio
Alison Chase
Adele Daniel
William Dreher
Juli Farris
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Laura Gerber
Gary Gotto
Ron Kilgard
Katherine Klein
Derek Loeser
Kate McCallum
Daniel Mensher
Yoona Park
Matthew Preusch
Chris Springer
Natida Sribhibhadh
Elizabeth Tarbell
Jen Wagner
Michael Woerner

Attorneys in Keller Rohrback's Complex Litigation Group have successfully represented individuals, class members, municipalities, and nonprofit organizations in complex and critical environmental litigation. In cases involving oil spills, mishandled hazardous waste, contaminated consumer products, and industrial pollution, Keller Rohrback works to protect human health and the environment. The firm combines its unparalleled experience in consumer protection and its deep knowledge of environmental law, making Keller Rohrback a worldwide leader in litigation to safeguard our environment and the people and animals that rely on it.

REPRESENTATIVE CASES

PCB Litigation Against Monsanto Company on Behalf of State and Local Governments

Keller Rohrback has been retained by numerous state and local governments to pursue claims against Monsanto for the long-lasting and devastating impacts that Monsanto's polychlorinated biphenyls ("PCBs") have inflicted on fish, wildlife, ecosystems, and communities. Monsanto was the sole manufacturer of PCBs in the United States, selling over 1.4 billion pounds of these highly persistent and toxic chemicals. Although the manufacture of PCBs has been banned since the late 1970s, PCBs continue to contaminate land, water, and nearly all living things. By pursuing these cases against the Monsanto defendants, Keller Rohrback is working to hold Monsanto responsible for the environmental contamination and degradation it has inflicted upon communities across the United States for generations.

Oregon v. Monsanto Co., No. 18-540 (Or. Cir. Ct., Multnomah Cnty.)

Oregon appointed Keller Rohrback to represent the State in this landmark case seeking to hold Monsanto responsible for the harm its Polychlorinated Biphenyls ("PCBs") have caused to Oregon's environment, including its waters and wildlife. Keller Rohrback, together with co-counsel Stoll Berne, filed the complaint in 2018. On December 15, 2022, Monsanto agreed to pay $698 million to the State of Oregon to resolve the State's claims.

Delaware v. Monsanto Co., No. N21C-09-179 MMJ CCLD (Del. Super. Ct., New Castle Cnty.)

Keller Rohrback filed the State of Delaware's Complaint on September 22, 2021, in the Superior Court of the State of Delaware. Defendants filed their Motion to Dismiss on December 17, 2021, and upon conclusion of briefing and oral argument, the court granted Defendants' Motion. The State appealed the Superior Court's decision to the Delaware Supreme Court, which has now reversed the Superior Court and ruled in favor of the State of Delaware on the issues of public nuisance and trespass to lands directly owned by the State. In its opinion, the Delaware Supreme Court ruled that the "crux of the issue" was that the Monsanto defendants, as a manufacturer of PCBs, can be held liable after their PCBs were sold to third parties whose activities released the PCBs into the environment. By order dated July 10, 2023, the case has now been remanded back to the Delaware Superior Court for further proceedings.

OTHER REPRESENTATIVE CASES

Maryland v. Monsanto Co., No. 24C21005251 (Md. Cir. Ct., Baltimore City)

Keller Rohrback filed a complaint on behalf of The State of Maryland against Monsanto in November 2021. In May 2022, the Court denied Monsanto's Motion to Dismiss and the case is in discovery.

City of Seattle v. Monsanto Co., No. 16-107 (W.D. Wash.)

Keller Rohrback represents the City of Seattle in its public nuisance case against Monsanto, whose PCBs contaminate the Lower Duwamish Waterway. On July 25, 2024, Monsanto agreed to settle the City's claims for $160 million, resolving the case two months before trial was set to commence before the Hon. Judge Jones. This unprecedented settlement amount is the most Monsanto has ever paid to a U.S. city.

Andrews v. Plains All Am. Pipeline L.P., No. 15-4113 (C.D. Cal.)

Keller Rohrback serves as Co-Lead Counsel representing fishers, property owners and others affected by the May 2015 spill from Plains All American's Line 901 pipeline in Santa Barbara County. The oil spill contaminated pristine beaches, closed critical fishing grounds, and damaged natural resources throughout the region. Keller Rohrback sought compensation for victims of the spill for their present and future damages and to hold Plains accountable for the harm it caused to the fishers and property owners. In May 2022 a $230 million settlement was reached, awarding $184 million to the Fisher Class and $46 million to the Property Class.

Resendez v. Precision Castparts Corp., No. 16-16164 (Or. Cir. Ct. Multnomah Cnty.)

Keller Rohrback represented a class of homeowners and residents in Multnomah and Clackamas County who sought relief from Precision Castparts Corp. for the company's heavy metal particulate air pollution that clouded their neighborhood and unreasonably interfered with their real property rights. Plaintiffs prevailed on the defendants' motions to dismiss and for summary judgment. In May 2022, the Court granted Final Approval of a Class Action Settlement, which included a $12.5 million settlement fund for cash payments to class members, and millions of additional dollars in enhanced pollution controls at the Precision Castparts facilities in Southeast Portland.

Meeker v. Bullseye Glass Co., No. 16-7002 (Or. Cir. Ct., Multnomah Cnty.)

Keller Rohrback successfully negotiated a classwide settlement with Bullseye Glass Co. for contaminating a residential neighborhood in Portland, Oregon, by emitting hazardous levels of arsenic, cadmium, chromium, and other toxic materials from its glass-making facility for years. Despite using thousands of pounds a year of dangerous heavy metals, Bullseye Glass had used no pollution control technology for more than four decades. Using innovative air and soil monitoring, Keller Rohrback helped this neighborhood to protect itself and hold Bullseye Glass accountable for the harm it caused. The final settlement approved by the Court included a two-year air monitoring program, ongoing use of pollution control devices by the defendant, and significant monetary payments to class members, including reimbursement for air emissions-related expenses.

OTHER REPRESENTATIVE CASES continued

In re Chrysler-Dodge-Jeep EcoDiesel Mktg, Sales Pracs., & Prods. Liab. Litig., MDL No. 2777 (N.D. Cal.)

From the outset, Keller Rohrback played a major role in this multidistrict litigation, representing consumers nationwide who alleged that Fiat Chrysler used an emissions defeat device in over 100,000 Ram 1500 and Jeep Grand Cherokee diesel trucks and SUVs. Keller Rohrback Managing Partner Lynn Sarko was appointed by the Court to the Plaintiffs' Steering Committee leading this case, and Keller Rohrback attorneys took an active role in discovery and served on the negotiating team that achieved and implemented a settlement worth over $307 million. The settlement, involving both Fiat Chrysler and supplier Bosch, provided owners and lessees of the affected vehicles with substantial cash payments in addition to government-approved emissions repairs and valuable extended warranty protection.

In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., and Prods. Liab. Litig., No. 3:15-md-02672 (N.D. Cal.)

Keller Rohrback filed the first multi-Plaintiff complaint against Volkswagen on September 20, 2015, two days after the defeat device scheme came to light. Keller Rohrback represented consumers nationwide who alleged they were damaged by Volkswagen's fraudulent use of an emissions "defeat device" in over 500,000 vehicles in the United States. Keller Rohrback Managing Partner Lynn Sarko served on the Plaintiffs' Steering Committee for this national litigation. Lynn Sarko and partner Gretchen Freeman Cappio served on the negotiating team for the $15 billion class action settlement for 2.0-liter vehicles, the largest auto-related consumer class action in U.S. history. Keller Rohrback played a similar role in reaching and implementing similar settlements with Volkswagen and Bosch regarding approximately 100,000 3-liter vehicles.

In re Exxon Valdez, No. 89-95 (D. Alaska)

Keller Rohrback was trial counsel representing fishermen, landowners, and businesses located in Prince William Sound in their action against Exxon to recover damages caused by the Exxon Valdez oil spill. A federal jury awarded a $5 billion judgment in favor of Keller Rohrback clients. At the time, it was the largest punitive damages verdict in U.S. history. Additional claims against the Alyeska Pipeline Service Company were settled for $98 million. More than 25 years after the tragic spill, the Exxon Valdez spill is still considered one of the most devastating human-caused environmental disasters. In addition, Keller Rohrback Managing Partner Lynn Sarko was appointed to serve as the Administrator of the Exxon and Alyeska Qualified Settlement Funds.

Wishtoyo Found. v. Magic Mountain LLC, No. 12-5600 (C.D. Cal.)

Keller Rohrback worked with a team of environmental lawyers on behalf of Los Angeles-based clients who successfully negotiated a groundbreaking settlement with Six Flags Magic Mountain to address its stormwater pollution discharged to the Santa Clara River. The settlement significantly reduced the amount of heavy metals and other pollutants entering the Santa Clara from the amusement park by requiring the facility to install state-of-the-art technology, develop and implement a comprehensive site management plan, and fully comply with the Clean Water Act. Additional monetary payments made by Six Flags as a result of the case are being used to perform critical habitat restoration and mitigation projects along the Santa Clara River.

OTHER REPRESENTATIVE CASES continued

Mapleton Groundwater Litig. (*Ruff v. Ensign-Bickford Indus.*), No. 99-120B (D. Utah)

Keller Rohrback attorneys successfully litigated a series of groundwater contamination suits against multiple international Defendants accused of releasing hazardous chemicals into the watershed over six decades. The suits were brought on behalf of individuals and their families against Defendants who owned a former explosives plant in Mapleton, Utah. The Plaintiffs alleged that improper waste disposal caused contaminants to seep into the groundwater and that the chemicals caused property damage and non-Hodgkin's lymphoma cancers affecting numerous residents. The matter involved complex scientific issues related to hydrogeology, chemical migration pathways, aquifer dynamics, clean-up methods, and contaminant degradation. The litigation resolved prior to trial after lengthy evidentiary hearings at which Plaintiffs received favorable Daubert rulings.

James v. PacifiCorp et al., No. 20CV33885 (Or. Cir. Ct., Multnomah Cnty.)

Keller Rohrback filed a class action lawsuit against PacifiCorp and Pacific Power for the catastrophic damage to homes, businesses, schools, and entire communities caused by the power companies' negligence and downed power lines during the devastating fires that ignited in Oregon during Labor Day weekend of 2020. In an historic verdict on June 12, 2023 a jury in Portland held PacifiCorp directly responsible for damages the class suffered from four fires: the Santiam Canyon Fire, the Echo Mountain Complex Fire, the South Obenchain Fire, and the 242 Fire. Juries have also determined that PacifiCorp must compensate named Plaintiffs for the harms they suffered to their property and possessions, as well as awards of between $3-$8.5 million dollars each to compensate those Plaintiffs for the non-economic harms they suffered. The determination of damage awards for all members of the class is ongoing.

Marshall Fire Litigation, No. 2022CV30195 (Boulder Cnty. Dist. Ct.)

The Marshall Fire is the most destructive wildfire the State of Colorado has ever seen. More than 1,000 homes and commercial buildings were damaged or destroyed, and approximately 6,000 acres of land were burned, in this tragic but preventable disaster that happened in December 2021. On August 25, 2023, Keller Rohrback filed its first complaint (Hughes, et al. vs. Xcel Energy, Inc., et al.) against Xcel Energy and subsequently filed five additional complaints. In total, those six complaints include over 535 plaintiffs. All cases were consolidated in front of Judge Zenisek. Keller Rohrback serves as Liaison Counsel and on the Plaintiffs' Steering Committee for the individual plaintiffs.

Southern California Gas Leak Cases, No. JCCP 4861 (Cal. Super. Ct., Los Angeles Cnty.)

This action concerns one of the worst human-caused environmental disasters in this nation's history. These consolidated cases stem from the massive blowout at a natural gas storage well at the Aliso Canyon Natural Gas Storage Facility beginning in 2015. The blowout raged out of control for over 100 days, spewing huge volumes of natural gas, its constituents, and other toxic chemicals into the surrounding community. When the blowout was finally contained, it had released a volume of methane gas that caused a 25% increase in all of California's greenhouse gas emissions in 2015. Over 22,000 residents living within a 5-mile radius of the blowout were forced from their homes when their properties and schools were contaminated with a soup of toxic chemicals and known carcinogens. In April 2022, the Court granted final approval of a class action settlement to resolve the property-related claims of these residents pending before the Superior Court of California, County of Los Angeles. Keller Rohrback served on the Plaintiffs' Steering Committee for the Class Action Track for this action.

GOVERNMENTS AND MUNICIPALITIES

ATTORNEYS

Lynn Lincoln Sarko
Laurie Ashton
Gretchen Freeman Cappio
Alison Chase
Felicia Craick
Juli Farris
Kylie Fisher
Alison Gaffney
Laura Gerber
Matthew Gerend
Garrett Heilman
Dean N. Kawamoto
David Ko
Cari C. Laufenberg
Jeffrey Lewis
Derek Loeser
Daniel Mensher
Yoona Park
Matthew Preusch
Erin Riley
Adam Rosenberg
Michael Woerner

Keller Rohrback has successfully represented government entities in a wide range of complex litigation. Whether fighting environmental contamination, combating antitrust activities, or recovering hundreds of millions of dollars from misleading investments, Keller Rohrback knows how to work effectively and collaboratively with and for government clients. Our unparalleled experience in consumer protection, antitrust and other areas of law—plus our hands-on, cooperative approach to litigation—have made our firm an effective partner for governments, sovereign nations and government-sponsored entities.

REPRESENTATIVE CASES

In re JUUL Labs, Inc., Mktg., Sales Pracs., and Prods. Liab. Litig., MDL No. 2913 (N.D. Cal.)

Keller Rohrback serves as Co-Lead Counsel in the JUUL MDL, in which it represents county governments, a sovereign tribe, and school districts bringing public nuisance claims against JUUL and Altria for creating the youth vaping crisis. Keller Rohrback also represents, along with co-counsel, the State of Alaska in similar claims against JUUL and Altria that are pending in Alaska state court. The government and school district plaintiffs allege that the JUUL and Altria defendants knowingly targeted youth in their marketing of addictive e-cigarettes, resulting in skyrocketing rates of youth vaping and nicotine addiction and the undoing of years of public health progress in combatting youth use of tobacco products. In December 2022, Keller Rohrback, along with its co-lead counsel in the JUUL MDL announced a settlement with JUUL on the eve of trial. The case against Altria proceeded to trial in April 2023. After Plaintiffs rested their case, a $235 million settlement in principle was reached with Altria and was announced on May 10, 2023. The scope of the MDL settlements are enormous, creating a program to resolve over 8,500 personal injury cases, a nationwide class action, and over 1,500 county, city and school district cases. The government entity settlements will provide resources to school districts, cities, and counties to abate youth nicotine addiction in their communities.

In re Nat'l. Prescription Opiate Litig., MDL No. 2804 (N.D. Ohio)

Keller Rohrback represents multiple government entities in the sprawling *In re National Prescription Opiate Litigation*, MDL pertaining to the well-publicized opioid epidemic that has ravaged the United States. Keller Rohrback has been responsible for the work of multiple critical experts, and has managed the litigation against key defendants, including Mallinckrodt, the manufacturer with the largest opioid market share. Keller Rohrback also helped manage discovery and played a key role in the work up of the claims against Walmart, one of three pharmacy defendants in the jury trial presided over by Honorable Dan Aaron Polster of the Northern District of Ohio on November 23, 2022. The jury found CVS Health, Walgreens, and Walmart, contributed to a "public nuisance" through the sale of prescription narcotics and were legally liable for contributing to the opioid epidemic in two Ohio counties. Some defendants in this litigation have settled, allowing billions of dollars in settlement funds to flow to municipalities across the country. Litigation against the remaining defendants is ongoing. Keller Rohrback also has been instrumental in the leadership and development of several statewide Memoranda of Understanding (MOU) that govern how MDL related settlement funds will be distributed.

REPRESENTATIVE CASES continued

In re Liquid Aluminum Sulfate Antitrust Litig., MDL No. 2687 (D.N.J.)

In 2016, Keller Rohrback filed numerous class action complaints in federal courts on behalf of several municipalities in Washington, California, and Arizona that purchase and use liquid aluminum sulfate ("Alum") to treat and clean their waste water. The complaints contained claims against the major manufacturers of Alum who allegedly engaged in a conspiracy to artificially inflate the price of this essential chemical used in municipal water treatment. As a result of these antitrust violations, municipalities – and their taxpayers – had overpaid millions of dollars to the co-conspirators for the Alum they purchased during the long life of this conspiracy. In March 2020, the Court authorized the transfer of settlement funds to pay claims of the Settlement Class Members.

In Re: Kia Hyundai Vehicle Theft Marketing, Sales Practices, and Products Liability Litigation, MDL 3052 (C.D. Cal.)

Keller Rohrback L.L.P. represents multiple Governmental Entities nationwide that are experiencing a surge of stolen vehicles. Defendants Hyundai Motor America ("Hyundai") and Kia America, Inc. ("Kia") deviated from industry norms and failed to install effective vehicle locking technology in the majority of their vehicles manufactured for sale in the United States between 2011 and 2021, making them highly susceptible to theft. Gretchen Freeman Cappio, a Keller Rohrback partner, has been appointed by the Court as Co-Chair of Executive Committee for the Multi-District Litigation (MDL) as well as Chair of the Governmental Entities Committee. Additionally, Keller Rohrback partner Ryan McDevitt was named to both the Discovery Committee and Expert Committee for the MDL. The Governmental Entities Track of the litigation is currently at the Motion to Dismiss stage before Judge James V. Selna of the United States District Court for the Central District of California.

Republic of the Marshall Islands v. United States, No. 14-1885 (N.D. Cal.)

Keller Rohrback represented the Republic of the Marshall Islands (RMI) in an action for breach of the Treaty on the Non-Proliferation of Nuclear Weapons. We also represented the RMI in cases at the International Court of Justice against the United Kingdom, India, and Pakistan, for breach of treaty and violations of customary international law. For this ground-breaking work, Keller Rohrback and the RMI's former Foreign Minister, Tony deBrum, were nominated for the 2016 Nobel Peace Prize.

Daisy Mountain Fire Dist. v. Microsoft Corp., MDL No. 1332 (D. Md.)

Keller Rohrback obtained a settlement in excess of $4 million on behalf of a class of Arizona governmental entities that indirectly purchased operating systems and software from Microsoft at inflated rates because of Microsoft's monopolistic practices. The settlement returned millions of dollars to local government entities at a time of severe budget crisis in the state.

Federal Home Loan Bank Litigation

Keller Rohrback has represented several Federal Home Loan Banks ("FHLBs") in mortgage-backed securities litigation across the country against dozens of issuers, underwriters, and sponsors of these complex instruments. Representing these government-sponsored enterprises simultaneously in multiple state and federal courts has required us to approach coordinated, complex litigation by mastering the law of various jurisdictions and pressing similar claims, albeit under different governing law, in multiple fora at the same time. The FHLB complaints named more than 120 defendants and involved over 200 securities with a collective original face value of over $13 billion. The relief sought by the FHLBs includes rescission and damages under state blue sky laws and the federal securities laws. We have recovered hundreds of millions of dollars on behalf of our clients to date.

REPRESENTATIVE CASES continued

Navajo Nation v. Urban Outfitters, Inc., No. 12-197 (D. N.M.)

Keller Rohrback represented the Navajo Nation against Urban Outfitters and its Anthropologie and Free People subsidiaries, alleging that these retailers infringed the Nation's trademarks by marketing inauthentic jewelry, handbags, and clothing using the NAVAJO mark. A settlement resolved the Nation's claims, and the parties agreed to enter a supply agreement that requires Urban Outfitters to purchase authentic goods from tribal artisans.

Social Media Litigation

Keller Rohrback has filed complaints on behalf of The City of New York, as well as on behalf of school districts in Washington, Arizona, California, Oregon, and Wisconsin. Plaintiffs that allege that social media companies have substantially contributed to the mental health crisis America's youth are facing. The school districts Plaintiffs allege that social media companies contributed to this crisis by, among other things, intentionally designing, marketing, and operating their exploitive social media platforms to target and hook youth users, despite research confirming the severe and wide-ranging effects of excessive and problematic social media use on youth mental health.

ERISA Indus. Comm. v. City of Seattle, No. 18-1188 (W.D. Wash.)

Keller Rohrback is co-counsel (along with the City Attorney) in defending a Seattle ordinance that mandates that large hotels pay specified amounts of money for employee health care. A nationwide employer association brought suit claiming that the ordinance is preempted by ERISA. The U.S. District Court granted the City's motion to dismiss. The district court's decision was recently upheld on appeal, and the Supreme Court recently denied a petition for certiorari of that decision.

King County v. Lexington Ins. Co., No. 15-2-3541-0 (Wash. Super. Ct. King Cnty.)

Keller Rohrback represented King County, Washington, in a multi-million-dollar insurance coverage and bad faith lawsuit arising from a disaster at the County's Brightwater Wastewater Treatment Facility. Our litigation returned millions of dollars to the taxpayers and allowed the County to upgrade its treatment facility to prevent future malfunctions.

Village of Rockton v. Sonoco Prods. Co., No. 14-50228 (N.D. Ill.)

Keller Rohrback represented the Village of Rockton in its efforts to make Sonoco Products Company, a paper and plastics manufacturing company, clean up the toxic mess it left when it abandoned its facility in the heart of the Village. Although the Illinois Environmental Protection Agency concluded that the levels of contamination at the site far exceeded state and federal laws and were threatening to spread to other sites in town and pollute the river, Sonoco refused to take any action. That changed, however, when Keller Rohrback began working on the case.

Using the experience and skills of the attorneys at Keller Rohrback, the Village took matters into its own hands and commenced legal action against Sonoco to protect the health and well-being of its dynamic community. As a result of Keller Rohrback's intervention, Sonoco has cleaned up the site and left the Village of Rockton a now safer and better place. Our firm is committed to making communities like Rockton clean and healthy places to live and visit.

GOVERNMENTS AND MUNICIPALITIES

REPRESENTATIVE CASES continued

Oregon v. Monsanto Co., No. 18-540 (Multnomah Cnty. Cir. Ct., Oregon)

Oregon appointed Keller Rohrback to represent the State in this landmark case seeking to hold Monsanto responsible for the harm its Polychlorinated Biphenyls ("PCBs") have caused to Oregon's environment, including its waters and wildlife. Keller Rohrback, together with co-counsel Stoll Berne, filed the complaint in 2018. On December 15, 2022, Monsanto agreed to pay $698 million to the State of Oregon to resolve the State's claims.

Delaware v. Monsanto Co., No. N21C-09-179 MMJ CCLD (New Castle Cnty. Superior Ct., DE)

Keller Rohrback filed the State of Delaware's Complaint on September 22, 2021, in the Superior Court of the State of Delaware. Defendants filed their Motion to Dismiss on December 17, 2021, and upon conclusion of briefing and oral argument, the court granted Defendants' Motion. The State appealed the Superior Court's decision to the Delaware Supreme Court, which has now reversed the Superior Court and ruled in favor of the State of Delaware on the issues of public nuisance and trespass to lands directly owned by the State. In its opinion, the Delaware Supreme Court ruled that the "crux of the issue" was that the Monsanto defendants, as a manufacturer of PCBs, can be held liable after their PCBs were sold to third parties whose activities released the PCBs into the environment. By order dated July 10, 2023, the case has now been remanded back to the Delaware Superior Court for further proceedings.

Maryland v. Monsanto Co., No. 24C21005251 (Baltimore City Cir. Ct., MD)

Keller Rohrback filed a complaint on behalf of The State of Maryland against Monsanto in November 2021. In May 2022, the Court denied Monsanto's Motion to Dismiss and the case is in discovery.

City of Seattle v. Monsanto Co., 16-107 (W.D. Wash.)

Keller Rohrback represents the City of Seattle in its public nuisance case against Monsanto, whose PCBs contaminate the Lower Duwamish Waterway. On July 25, 2024, Monsanto agreed to settle the City's claims for $160 million, resolving the case two months before trial was set to commence before the Hon. Judge Jones. This unprecedented settlement amount is the most Monsanto has ever paid to a U.S. city.

INSURANCE COVERAGE

ATTORNEYS

Lynn Lincoln Sarko
Gretchen Freeman Cappio
Alison Chase
Benjamin Gould
Irene Hecht
Nathan Nanfelt

Keller Rohrback's insurance coverage lawyers have represented policyholders and insurers in state and federal courts for over 50 years. We have been at the forefront of policy interpretation and litigation to ensure that policyholders get the full benefit of the insurance coverage they purchased. Our litigation experience in this area includes coverage questions, breach of contract, insurance bad faith, negligent claims handling, violations of the Insurance Fair Conduct Act, and breach of the duty to defend. Our team has unmatched experience representing policyholders in cases involving business interruption coverage, dependent property coverage, home and property insurance, life and health insurance, professional insurance, and general and surplus insurance.

REPRESENTATIVE CASES

Merriman v. Am. Guarantee & Liab. Ins. Co., 198 Wn. App. 594, 396 P.3d 351, *rev. denied*, 189 Wn.2d 1038, 413 P.3d 565 (2017)

Keller Rohrback successfully litigated this action in the Washington Court of Appeals, establishing a policyholder's right to bring claims against insurance claim service providers. *Merriman* has been cited by other courts more than twenty times, including by the Washington Supreme Court, the Washington Court of Appeals, the Iowa Supreme Court, and the Ninth Circuit. The decision has been cited more than 60 times in litigation reporters and in secondary sources, including Couch on Insurance, American Law Reports, and *Corpus Juris Secundum*.

Glendale & 27th Invs., LLC v. Delos Ins. Co., 610 F. App'x 661 (9th Cir. 2015)

After Keller Rohrback's jury trial landed a punitive damages award against the insurer with a ratio of "roughly 3.5," *id.* at 663, the firm successfully defended an appeal seeking to overturn the punitive jury award as unconstitutional. The Ninth Circuit affirmed the jury's award of punitive damages, finding that plaintiff had presented evidence at trial, among other things, that the insurer "made intentional and material misrepresentations in the administration of [plaintiff's] claim." *id.* at 662.

Utica Mut. Ins. Co. v. Lifequotes of Am., Inc., No. 06-0228 (E.D. Wash.)

Keller Rohrback was awarded a series of significant class action judgments against defendant Lifequotes of America, Inc. in King County Superior Court in 2007. Facing an insolvent defendant, the class then purchased the claims and rights of defendant Lifequotes against its insurance company, Utica Mutual Insurance Company. Keller Rohrback continued to represent the class, who stepped into the shoes of the former defendant, on the new claims, and litigated against Utica Mutual in federal court in the Eastern District of Washington. The class pursued counterclaims against Utica Mutual for coverage, bad faith, and violations of the Washington Consumer Protection Act. Keller Rohrback's hard-fought and successful litigation against insurer Utica Mutual resulted in a $44 million recovery for the class.

INSURANCE COVERAGE

REPRESENTATIVE CASES continued

The Charter Oak Fire Ins. Co., v. 21st Century Oncology Invs., LLC, No. 17-582-MSS-AEP (M.D. Fla.)

Keller Rohrback represents plaintiffs and a proposed class in a data breach action against healthcare provider 21st Century Oncology. Insurers sued the insured as well as the data breach plaintiffs for a declaration that there was no duty to defend and indemnify. After 21st Century declared bankruptcy, the data breach plaintiffs reached an agreement for relief from the automatic stay and an assignment of rights to a number of 21st Century's insurance policies. Keller Rohrback's clients then asserted counterclaims against the insurer, briefed cross motions for summary judgment involving unsettled law, and recently reached an agreement to settle.

Group Health Coop. v. Coon, 193 Wn.2d 841, 447 P.3d 139 (2019)

Keller Rohrback successfully represented the policyholder before the Washington Supreme Court, and prevailed in reaffirming the made-whole doctrine in favor of policyholders in insurance subrogation claims.

INTERNATIONAL LAW

KR

ATTORNEYS

Lynn Lincoln Sarko
Laurie Ashton
Alison Chase
Juli Farris
Gary A. Gotto

Keller Rohrback has experience in international forums. Keller Rohrback clients included sovereign nations, state and local governments, sovereign Native American tribes, and quasi-governmental agencies where international agreements or other tort or statutory claims are at issue.

Keller Rohrback has been honored to represent sovereigns in litigation and arbitration matters involving governmental and business entities. The firm's attorneys have argued cases in the International Court of Justice and pursued a breach of treaty claim on behalf of a sovereign nation. Keller Rohrback is also investigating environmental contamination claims on behalf of a sovereign nation.

Keller Rohrback attorneys have also represented clients in international arbitration proceedings, including International Centre for Dispute Resolution and International Chamber of Commerce arbitrations, as well as ad hoc arbitrations conducted under the United Nations Commission on International Trade Law Arbitration Rules. Domestically, these international arbitrations have given rise to related litigation in U.S. courts, including confirmation and enforcement proceedings under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In addition, Keller Rohrback attorneys have represented private clients with international interests in civil litigation in U.S. courts, including state and federal courts in California, New York, Illinois, and Texas. Keller Rohrback attorneys have litigated trademark claims on foreign-registered trademarks in several western European countries and have also succeeded in obtaining rulings to conduct depositions and other discovery in Russia for litigation matters pending in the U.S. federal courts. The firm has also represented claimants in insolvency proceedings in Canada, proceeding under the Companies' Creditors Arrangement Act.



Keller Rohrback is a member firm of several international organizations: the Global Justice Network, a consortium of international counsel working together and across borders for the benefit of victims; the International Financial Litigation Network of attorneys, who handle cross-border litigation in the finance arena; and the Sovereign Wealth Fund Institute, a global organization of asset managers and service providers.

REPRESENTATIVE CASES

Republic of the Marshall Islands v. United States, No. 14-1885 (N.D. Cal.)

Keller Rohrback represented the Republic of the Marshall Islands (RMI) in an action for breach of the Treaty on the Non-Proliferation of Nuclear Weapons and also represented the RMI in cases at the International Court of Justice against the United Kingdom, India, and Pakistan, for breach of treaty and violations of customary international law. For this ground-breaking work, Keller Rohrback was nominated by the International Peace Bureau for the 2016 Nobel Peace Prize as part of the international legal team, together with the RMI's former Foreign Minister, Tony deBrum.

SECURITIES AND FINANCIAL FRAUD

ATTORNEYS

Lynn Lincoln Sarko
Alison Chase
Juli Farris
Laura Gerber
Matthew Gerend
Gary A. Gotto
Benjamin Gould
Dean N. Kawamoto
Ron Kilgard
David Ko
Eric Laliberte
Derek Loeser
Ryan McDevitt
Erin Riley
Havila C. Unrein
Jen Wagner
Michael Woerner

Keller Rohrback enjoys a national reputation for excellence in prosecuting securities and financial fraud matters. We represent a variety of investors ranging from classes of individuals to large institutions. Many of our cases reflect recent financial scandals: we are pursuing claims against a group of international banks for rigging LIBOR; we represent investors in connection with their purchases of billions of dollars of mortgage-backed securities; and we pursued claims on behalf of employee benefit plans in connection with the Madoff Ponzi scheme. While our experience is diverse, our approach is simple and straightforward: we master the factual and legal bases for our claims with a focus on providing clear and concise explanations of the financial fraud and why our clients are entitled to recover.

REPRESENTATIVE CASES

Federal Home Loan Bank Litigation

Keller Rohrback has played a prominent role in large securities fraud and other investment cases litigated across the country involving mortgage-backed securities. Keller Rohrback has been retained by several Federal Home Loan Banks (FHLBs) to pursue securities and common law claims against dozens of issuers, underwriters, and sponsors of mortgage-backed securities. The FHLB complaints named more than 120 defendants and involved over 200 securities with a collective original face value of $13 billion. The relief sought by the FHLBs includes rescission and damages under state blue sky laws and the federal securities laws. We have recovered hundreds of millions of dollars on behalf of our clients to date.

In re the Bank of N.Y. Mellon (as Trustee), No. 651786/11 (N.Y. Sup. Ct.)

Keller Rohrback was a member of the three-firm steering committee addressing significant mortgage repurchase issues that impacted institutional investors. Keller Rohrback represented certificate holders who intervened in a proposed $8.5 billion settlement initiated by Bank of New York Mellon, as Trustee of 530 Countrywide mortgage-backed securities trusts. Our firm played a lead role in discovery and the eight-week bench trial in New York contesting the fairness of the settlement. The objection we pursued and tried was the only objection the trial court sustained.

In re LIBOR-Based Fin. Instruments Antitrust Litig., No. 11-2262 (S.D.N.Y.)

Keller Rohrback represents institutional funds pursuing antitrust claims based on the manipulation of the London Interbank Offered Rate (LIBOR) by the international panel of banks entrusted to set that rate. Multiple government investigations have revealed that certain panel banks manipulated LIBOR to mislead the markets and investors about the state of their financial health. The case is in discovery.

Diebold v. Northern Tr. Invs., N.A., No. 09-1934 (N.D. Ill.)

Keller Rohrback was Class Counsel in this class action litigation against Northern Trust alleging that Northern Trust imprudently structured and managed its securities lending program by improperly investing cash collateral in long term debt, residential mortgage-backed securities, structured investment vehicles ("SIVs"), and other risky and illiquid assets. On August 7, 2015, Judge Susan E. Cox approved the allocation plan for a $36 million settlement.

REPRESENTATIVE CASES continued

Louisiana Firefighters' Ret. Sys. v. Northern Tr. Invs., N.A., No. 09-7203 (N.D. Ill.)

Keller Rohrback was Co-Lead Counsel in this securities lending litigation, a class action brought on behalf of four public retirement systems alleging that Northern Trust breached its fiduciary and contractual duties to investors when it imprudently structured and managed its securities lending program by improperly investing cash collateral in long-term debt, residential mortgage-backed securities, SIVs, and other risky and illiquid assets, rather than conservative, liquid investments. Plaintiffs allege that Northern Trust's imprudent management of the collateral pools caused Plaintiffs and other investors to suffer hundreds of millions of dollars in losses. On May 6, 2011, the Honorable Robert W. Gettleman denied in significant part Defendants' motion to dismiss. Plaintiffs also successfully defeated Defendants' third party complaint. The Court thereafter approved a partial settlement of $24 million in cash, plus interest earned thereon, which represents settlement of the indirect lending claims of settlement class members.

In re Bank of N.Y. Mellon Corp. Forex Transactions Litig., No. 12-2335 (S.D.N.Y.)

Keller Rohrback served as Lead ERISA Counsel in this class action against the Bank of New York Mellon ("BNY Mellon") arising from its undisclosed charges for Standing Instruction Foreign Currency ("SI FX") transactions. Plaintiffs allege that between January 12, 1999 and January 17, 2012, BNY Mellon breached its fiduciary duties by failing to prudently and loyally manage the Plan's foreign currency transactions in the best interests of the participants, failing to disclose fully the details of the relevant SI FX transactions it was undertaking on behalf of the Plans, and engaging in prohibited transactions. In March 2015, a global resolution of the private and governmental enforcement actions was announced in which $504 million will be paid back to BNY Mellon customers—$335 million of which is directly attributable to funds received in the class litigation.

Madoff Direct & Feeder Fund Litigation: Hartman v. Ivy Asset Mgmt. LLC, No. 09-8278 (S.D.N.Y.)

Keller Rohrback successfully litigated this direct action on behalf of the trustees of seventeen employee benefit plans damaged by the Madoff Ponzi scheme. The action alleged that Ivy Asset Management and J.P. Jeanneret Associates, Inc. breached their fiduciary duties under ERISA by causing the plans to be invested directly or indirectly in Madoff funds. Keller Rohrback obtained a settlement of over $219 million in this case and related actions, including claims brought by the United States Secretary of Labor and the New York Attorney General.

In re IKON Off. Sols., Inc. Sec. Litig., MDL No. 1318 (E.D. Pa.)

Keller Rohrback served as Co-Lead Counsel representing the City of Philadelphia and eight other lead Plaintiffs in this certified class action alleging securities fraud. Class counsel achieved the highest securities fraud settlement at that time in the Eastern District of Pennsylvania by settling with Defendant IKON Office Solutions, Inc. for $111 million. The settlement was listed as one of the "largest settlements in class-action securities-fraud lawsuits since Congress reformed securities litigation in 1995" by *USA Today.*

In re Apple Comput., Inc. Derivative Litig., No. 06-4128 (N.D. Cal.)

Keller Rohrback served on the Management Committee in this federal derivative shareholder action against nominal Defendant Apple Computer, Inc. and current and former directors and officers of Apple. Plaintiffs pursued breach of fiduciary duty, unjust enrichment, and gross mismanagement claims arising from backdated stock options granted between 1993 and 2001, which diverted millions of dollars of corporate assets to Apple executives. We achieved a settlement that awarded $14 million—one of the largest cash recoveries in a stock backdating case—and that required Apple to adopt a series of unique and industry-leading corporate enhancements.

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LYNN LINCOLN SARKO

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PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Actions
- Constitutional Law
- Commodities & Futures Contracts
- Consumer Protection
- Data Privacy Litigation
- Employment Law
- Environmental Litigation
- Employee Benefits & Retirement Security
- Financial Products & Services
- Government & Municipalities
- Institutional Investors
- Intellectual Property
- International Law
- Mass Personal Injury
- Securities & Financial Fraud
- Whistleblower

Managing Partner Lynn Sarko uses thoughtful innovation to solve complex issues. Having led Keller Rohrback L.L.P.'s Complex Litigation Group since its inception over 30 years ago, Lynn's work has led to new developments in case law and significant, impactful settlements for his clients.

A dynamic leader with a tenacious dedication to justice, Lynn has been selected by courts across the nation to serve in key leadership roles in a wide variety of cutting-edge cases. Namely, he was appointed Co-Lead counsel for *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litigation,* MDL No. 2785 (D. Kan.), the nationwide class action against pharmaceutical company Mylan and others for anticompetitive and unfair business practices in its sale and marketing of the EpiPen Auto-Injector device. He was also selected to serve in a leadership position on behalf of governmental entities and other plaintiffs in the vast litigation regarding the nationwide prescription opioid epidemic, *In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio). The National Law Journal referred to this leadership team as a "'Who's Who' in mass torts."

Some of Lynn's other remarkable successes include consumer protection cases aimed at holding automotive companies accountable for wrongdoing. One such case was *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.), for which Lynn was appointed to the Plaintiffs' Steering Committee—a group referred to as a "class action dream team." The case settled for over $17 billion. Lynn was also appointed to the Plaintiffs' Steering Committee for *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2777 (N.D. Cal.), which settled for $307.5 million, including required emissions modifications for 100,000 eligible vehicles. In addition to consumer protection cases, Lynn has also served in leadership positions for cases involving financial fraud and breaches of fiduciary duty. He was selected to lead teams of attorneys representing plaintiffs in the litigations against Enron, Worldcom, and Madoff—three of the biggest financial frauds of our time.

Lynn is widely renowned within the legal community and beyond for his diplomacy and fearless devotion to justice. He was a member of the legal team nominated for the 2016 Nobel Peace Prize for seeking enforcement of the Nuclear Non-Proliferation Treaty on behalf of the Republic of the Marshall Islands. He was also honored to receive the Trial Lawyers for Public Justice Trial Lawyer of the Year Award for his work on the Exxon Valdez Oil Spill trial team, and he was one of four Washington lawyers recognized as one of the 500 "Leading Lawyers in America" by Lawdragon. He is also AV-rated by Martindale-Hubbell and has been consecutively named to the Washington Super Lawyers list for 21 years.

Lynn holds a BBA and an MBA in accounting and finance from the University of Wisconsin, where he also served as an accounting instructor. He graduated with his J.D. from the University of Wisconsin Law school, where he was Editor-in-Chief of the Wisconsin Law Review and received the faculty award given to the

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most outstanding member of the graduating class.

Prior to joining Keller Rohrback, Lynn was an Assistant United States Attorney for the District of Columbia, Criminal Division, an associate at the Washington D.C office of Arnold & Porter, and law clerk to the Honorable Jerome Farris, United States Court of Appeals for the Ninth Circuit, in Seattle.

EDUCATION

University of Wisconsin

B.B.A., 1977

University of Wisconsin

M.B.A., 1978, *Beta Alpha Psi*

University of Wisconsin

J.D., 1981, *Order of the Coif*; Editor-in-Chief, *Wisconsin Law Review;* Salmon Dalberg Award (outstanding graduate)

BAR & COURT ADMISSIONS

1981, Wisconsin

1981, U.S. Court of Appeals for the Ninth Circuit

1983, District of Columbia Court of Appeals

1984, District of Columbia

1984, U.S. District Court for the District of Columbia

1984, United States Supreme Court

1984, U.S. Court of Appeals for the Seventh Circuit

1984, U.S. Court of Appeals for the Fourth Circuit

1984, U.S. Court of Appeals for the Tenth Circuit

1984, U.S. Tax Court

1986, Washington

1986, U.S. District Court for the Western District of Washington

1988, U.S. District Court for the Eastern District of Wisconsin

1989, U.S. District Court for the Eastern District of Washington

1996, U.S. District Court for the Western District of Wisconsin

1997, U.S. District Court for the District of Colorado

2001, U.S. Court of Appeals for the Third Circuit

2002, U.S. District Court for the Eastern District of Michigan

2003, U.S. Court of Appeals for the Fifth Circuit

2003, U.S. Court of Appeals for the Eleventh Circuit

2004, U.S. District Court for the Northern District of Illinois

2008, U.S. Court of Appeals for the Eighth Circuit

2009, U.S. Court of Appeals for the Sixth Circuit

2010, U.S. District Court for North Dakota

2013, U.S. Court of Appeals for the Second Circuit

2016, U.S. District Court for the Central District of Illinois

2016, U.S. District Court for the Southern District of Illinois

2018, U.S. Court of Appeals for the First Circuit

2019, Arizona

2024, U.S. Court of Appeals for the Fourth Circuit

HONORS & AWARDS

The Best Lawyers in America®, Seattle, Washington, 2025 (Recognized since 2024)

- Litigation - Antitrust
- Litigation - ERISA
- Mass Tort Litigation / Class Actions – Plaintiffs

Ranked in Chambers and Partners USA Guide, 2024 - ERISA Litigation: Mainly Plaintiffs

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023-2024

Law360 Titans of The Plaintiffs Bar honoree, 2023

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American Antitrust Institute - Antitrust Enforcement Award Honoree, in the category of "Outstanding Antitrust Litigation Achievement in Private Law Practice" for work in *In re EpiPen Marketing, Sales Practices, and Antitrust Litigation*, 2022

Selected to Super Lawyers list in *Super Lawyers - Washington*, 1999-2024

National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington

Lawdragon, 500 Leading Lawyers in America, 2018 2022-2024

Fellow of the American Bar Foundation

Avvo Top Tax Lawyer, Washington CEO Magazine

Trial Lawyer of the Year, Trial Lawyers for Public Justice Salmon Dalberg Award

Fellow of the American Bar Foundation

SELECTED PUBLICATIONS & PRESENTATIONS

Presenter, *Statewide Opioid Litigation Update*, Colorado County Attorneys Association Virtual Summer Conference (June 11, 2021).

Stock Drop and Roll: Key Supreme Court Rulings and New Standards in ERISA "Stock Drop" Cases, Thomson/West Webinar, (July 24, 2014).

14th Annual Pension Law, Governance and Solvency Conference (2013).

Canadian Institute's 14th Annual Advanced Forum on Pension Law, Governance and Solvency (2013).

ERISA Litigation & Regulatory Compliance Congress (2013).

American Conference Institute's 6th National Forum on ERISA Litigation (2013).

25th Annual ERISA Litigation Conference (2012).

American Conference Institute's 5th National Forum on ERISA Litigation (2012).

PROFESSIONAL & CIVIC INVOLVEMENT

American Bar Association, *Member*

Bar Association of The District of Columbia, *Member*

Federal Bar Association, *Member*

King County Bar Association, *Member*

State Bar of Wisconsin, *Member*

Trial Lawyers for Public Justice, *Member*

Washington State Bar Association, *Member*

Washington State Trial Lawyers Association, *Member*

American Association for Justice, *Member*

The Association of Trial Lawyers of America, *Member*

American Academy of Trial Counsel, *Fellow*

Editorial Board, *Washington State Securities Law Deskbook*

American Bar Foundation, *Fellow*

Human Rights Watch Committee

Washington Athletic Club, *Member*

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LAURIE ASHTON

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PRACTICE EMPHASIS

- Business Reorganizations
- Class Action & Consumer Litigation
- Constitutional Law
- Employee Benefits and Retirement Security
- Fiduciary Breach
- International Law

EDUCATION

University of California, San Diego

B.A., 1987, Economics

Arizona State University College of Law

J.D., 1990, Order of the Coif; *Member*, *Arizona State Law Journal*, 1988-1990; Note and Comment Editor, *Arizona State Law Journal*, 1989-1990; Student Instructor, Legal Research and Writing, 1989-1990.

Laurie Ashton is Of Counsel to Keller Rohrback. Prior to becoming Of Counsel, she was a partner in the Arizona affiliate of Keller Rohrback. Early in her career, as an Adjunct Professor, she taught semester courses in Lawyering Theory and Practice and Advanced Business Reorganizations. She also served as a law clerk for the Honorable Charles G. Case, U.S. Bankruptcy Court, for the District of Arizona for two years.

An important part of Laurie's international work involves the domestic and international legal implications of treaty obligations and breaches. She is a member of the international legal team that represented the Marshall Islands at the International Court of Justice in The Hague. For its work, the team was nominated by the International Peace Bureau for the 2016 Nobel Peace Prize, along with the former Foreign Minister, Tony deBrum. Laurie was also part of the team representing parties impacted by the Trump administration's Muslim travel ban and policies related to it. That work included claims arising out of the United States' failure to reunite refugee families as legally required.

In complex litigation, Laurie was the lead attorney for Keller Rohrback in a series of successful groundwater contamination suits brought in 1996 against multiple international defendants concerning chemical releases spanning over 60 years. She was also the lead attorney for Keller Rohrback in an ERISA class action suit on behalf of over 21,000 employees who lost a material percentage of their retirement assets at the hands of corporate fiduciaries—a case that was, at its time, amongst the largest of its kind. Laurie has led or been a member of the team leading numerous high-profile business reorganizations, including a case in which the Court confirmed a reorganization plan over the objection of the international life insurance company's feasibility expert, based on Laurie's cross examination.

Laurie served on the Ethics Committee of the State Bar of Arizona for six years. She was the coauthor of a textbook on limited liability companies and partnerships, published by West, and she is AV Preeminent rated by Martindale.

Laurie is frequently interviewed and has been cited by Reuters, Newsweek, Fox News, Huffington Post, Slate Magazine, Radio New Zealand, Radio Australia, and others. She currently serves as a Director of the Santa Babara City College Foundation, a member of the Human Rights Watch Council in Santa Barbara, and as an Advisor of the Global Justice Center in New York, which advances human rights pursuant to various international laws, including the Geneva and Genocide Conventions, as well as customary international law.

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BAR & COURT ADMISSIONS

1990, Arizona

1999, Colorado

2007, Washington, D.C.

2013, Eastern District of Michigan

2014, U.S. Court of Appeals for the Sixth Circuit

2015, U.S. Court of Appeals for the Ninth Circuit

2016, U.S. Court of Appeals for the Tenth Circuit

2016, U.S. Supreme Court

International Court of Justice

PROFESSIONAL & CIVIC INVOLVEMENT

Court Appointed Special Advocate, King County, 2007-2009.

State Bar of Arizona, *Member.*

Colorado Bar Association, *Member.*

Washington, D.C. Bar Association, *Member.*

Committee on the Rules of Professional Conduct ("Ethics Committee"), State Bar of Arizona, *Member,* 1997-2003.

Global Justice Center, New York, *Advisor.*

Human Rights Watch Committee, Santa Barbara, *Member.*

Santa Barbara City College Foundation, *Director.*

Adjunct Professor of Law, *Lawyering Theory & Practice,* Arizona State University, 1997.

Adjunct Professor of Law, *Advanced Chapter 11*, Arizona State University, 1996.

PUBLICATIONS & PRESENTATIONS

Speaker, *Approaches for Advancing the Rule of Law and Morality as Concerns Nuclear Weapons*, New York State Bar Ass'n Seminar (2022), transcribed and published in Fordham International Law Journal, Vol. 45 at 173 (2022).

Speaker, *"Legal Obligations for Nuclear Disarmament,"* Humanity House, The Hague, (March 2016).

Speaker, *Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,* United Nations (2015)

Panel, *Marshall Islands Nuclear Zero Lawsuits,* United Nations (2015)

Co-Author, *Arizona Legal Forms: Limited Liability Companies and Partnerships* (1996-2004).

Guest Lecturer, Stanford Law School, 2003.

Guest Lecturer, Harvard Law School, 1997, 1999, 2001-2002.

Speaker, *Forward Into Light, The Barbarization of the Sky,* Bertha Von-Suttner Master Class, The Peace Palace, The Hague,

Author of Case Note, *Arizona Mortgage and Deed of Trust Anti-Deficiency Statutes: The Underlying Obligation on a Note Secured By Residential Real Property After Baker v. Gardner*, 21 Ariz. St. L.J. 465, 470 (1989).

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PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Appeals

EDUCATION

Metropolitan State University of Denver,
B.A., Journalism, magna cum laude, 2017

Golden Gate University School of Law,
J.D., magna cum laude, 2020

Norjmoo Battulga is energized and inspired by the law as a creative learning exercise each and every day that she practices.

Norjmoo arrived in the United States at the age of five and grew up with her parents and sister in Denver, Colorado. Serving as interpreters for their parents, the sisters realized that despite their proficiency in the new language, there was still a lot to learn about the systems, regulations and rules that "we didn't have the privilege of knowing about." For Norjmoo, this led to interest in a profession that would help her grasp the nuances of government, business, and the legal system. She decided early on that the law was one of the few fields where continuous learning and novelty is one of its distinguishing features.

She earned a B.A. in Journalism at Metropolitan State University of Denver, and earned her J.D. from Golden Gate University School of Law, magna cum laude in 2020. She served as an intern for the ACLU's Immigrant's Rights Project, as a judicial extern for the Ninth Circuit Court of Appeals Office of the Staff Attorneys, and as a judicial extern for the Honorable Brad Seligman of the Alameda County Superior Court.

Following law school, Norjmoo spent a year working for the LGBT Asylum Project, as part of the inaugural cohort of Legal Services Funders Network's fellows in the San Francisco Bay Area. In that role, she assisted clients applying for asylum and Deferred Action for Childhood Arrivals (DACA) status. She moved on from that post to clerk for a pair of judges in the Oregon Court of Appeals, the Hon. James C. Egan and the Hon. Roger J. DeHoog. The appellate experience she acquired in those chambers aligned with her fundamental attraction to research and writing.

Away from work, Norjmoo takes full advantage of all the Pacific Northwest has to offer, whether camping, hiking, paddle-boarding, climbing, or romping with her two dogs. She looks forward to crafting a positive work-life balance as her future unfolds at Keller Rohrback.

BAR & COURT ADMISSIONS

2021, California

2024, Oregon

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



RACHEL BOWANKO

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

rbowanko@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Environmental Litigation

EDUCATION

University of Vermont
B.S, *summa cum laude*, 2019, Environmental Studies

Stanford Law School
J.D., 2022

Rachel Bowanko is a 2022 graduate of Stanford Law School, who graduated with pro bono distinction.

Rachel rejoined Keller Rohrback in the Seattle office after serving as a Summer Associate with the firm in 2020 and 2021 and completing a federal clerkship with Judge Marilyn L. Huff at the U.S. District Court for the Southern District of California. Her exposure to and experience with complex cases requiring creative solutions has laid an outstanding foundation for her further associate work in the firm's nationally-recognized Complex Litigation Group.

Rachel was drawn to the firm because of its success in groundbreaking cases such as In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, which produced financial remedies coupled with lasting and effective solutions for large-scale issues relating to environmental protection, renewable energy, and consumer health and safety among others. As a summer associate she participated in the In re JUUL Labs, Inc. Marketing., Sales Practices, & Products Liability Litigation, brought in the wake of the youth vaping epidemic.

Rachel is a firm believer in the ability of complex litigation to ensure corporate accountability and create lasting positive ripple effects. Excited to have returned to the firm, Rachel currently focuses on complex multidistrict litigation, including representing government entities in the Insulin Overpricing litigation and the PFAS litigation.

While at Stanford, Rachel served as Co-President of the Stanford Law Association, a Board Member for the Plaintiffs' Lawyers Association, and as the Senior Development Editor of the Stanford Law Review. She was also a member of Stanford's Environmental Law Clinic.

In Rachel's free time, she enjoys hiking, traveling, baking scones, and spending time with her dogs.

BAR & COURT ADMISSIONS

2022, California

2023, U.S. District Court for the Central District of California

2023, Washington

2023, Western District of Washington

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



GRETCHEN FREEMAN CAPPIO

CONTACT INFO

1201 Third Avenue, Suite 3400
Seattle, WA 98101
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gcappio@kellerrohrback.com

PRACTICE EMPHASIS

- Consumer Protection
- Data Privacy Litigation
- Employee Benefits & Retirement Security
- Employment Law
- Environmental Litigation
- Governments & Municipalities
- Financial Products & Services
- Mass Personal Injury
- Whistleblower

EDUCATION

Dartmouth College

B.A., *magna cum laude*, 1995, Religion, Environmental Studies Certificate, Phi Beta Kappa

University of Washington School of Law

J.D., 1999, Executive Comments Editor, Pacific Rim Law & Policy Journal, 1998-1999

Gretchen Freeman Cappio is a partner at Keller Rohrback L.L.P., a nationally renowned law firm known for its skillful, effective advocacy.

Gretchen's law practice emphasizes complex, cutting-edge litigation. She has played key roles in many well-known cases, including in the multibillion-dollar Volkswagen "Clean Diesel" litigation and in groundbreaking litigation holding Wells Fargo accountable for its unauthorized account scheme. Gretchen's advocacy also extends to high-profile public health cases, and she serves as the primary client contact for major governmental clients, including in the massive Opioid multidistrict litigation. In that case, she has helped negotiate numerous agreements between states and local governments to allocate settlement funds that are dedicated to addressing the devastating impacts of the opioid epidemic. She has also successfully advocated for the fairer pricing of drugs and devices, including in the EpiPens Marketing litigation, for which she and her team have been honored by the American Antitrust Institute, winning an Outstanding Antitrust Litigation Achievement in Private Practice Award in 2022.

In addition, judges have appointed Gretchen to leadership positions in a number of high-profile cases that are currently pending. She helps lead litigation about the safety and reliability of vehicles in the ZF-TRW Airbag, GM Transmission, and Chevy Bolt litigations, and she advocates for the security of data in the Blackbaud Data Breach litigation.

Gretchen's leadership and devotion to justice drive her legal work and personal time. Her colleagues at Keller Rohrback L.L.P. recognized these skills by electing her to the firm's Executive Committee. Gretchen is a founding board member of the Mother Attorneys Mentoring Association (MAMA), an organization supporting mothers in the legal profession, now with nine chapters across the United States. She is also the proud mother of two daughters, both of whom inspire her to seek justice everyday.

BAR & COURT ADMISSIONS

1999, Washington
2000, U.S. District Court for the Western District of Washington
2008, U.S. Court of Appeals for the Eighth Circuit
2009, U.S. Court of Appeals for the Ninth Circuit
2009, U.S. Supreme Court
2011, U.S. District Court for the Eastern District of Washington
2011, U.S. Court of Appeals for the Sixth Circuit
2015, U.S. District Court for the Eastern District of Michigan
2018, U.S. District Court for the District of Colorado
2020, Michigan
2020, U.S. Court of Appeals for the Tenth Circuit
2024, Arizona

KELLER ROHRBACK
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PROFESSIONAL & CIVIC INVOLVEMENT

Institute for Complex Litigation and Mass Claims at Emory University School of Law:

Emerging Leaders Board of Advisors, *Inaugural Member*

Class Action Roundtable, *Reporter*

Global Justice Center, *Board Member.*

The Global Justice Center works worldwide and domestically with women's rights advocates, grassroots groups, and policymakers to prevent and respond to gender-based violence.

The William L. Dwyer American Inn of Court, *Member.*

King County Bar Association, *Member.*

Washington State Bar Association, *Member.*

American Bar Association, *Member.*

Washington Women Lawyers, *Member.*

Washington State Trial Lawyers Association, *Member.*

American Association for Justice, *Member.*

The National Trial Lawyers, *Member.*

Mother Attorney Mentoring Association (MAMAS), *Member*; *Founding Board Member*, 2006-2008.

HONORS & AWARDS

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023-2024

Listed as Lawdragon 500 Leading Lawyers in America 2022-2024

American Antitrust Institute - Antitrust Enforcement Award Honoree, in the category of "Outstanding Antitrust Litigation Achievement in Private Law Practice" for work in *In re EpiPen Marketing, Sales Practices, and Antitrust Litigation*, 2022

Selected to Rising Stars list in *Super Lawyers - Washington*, 2002, 2009-2012

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2020-2024

AV®, Peer Review Top-Rated by Martindale-Hubbell

PUBLICATIONS & PRESENTATIONS

Guest Lecturer, *Latest Developments in Nuance Law,* Harvard Law School, (November 1, 2023)

Guest Lecturer, *Litigating MDLs,* Stanford Law School (March 2, 2023)

Emory Institute for Complex Litigation Conference on MDL Rules and Innovation, Miami (March 9-10, 2022).

Guest Lecturer, *MDL Mass Tort and Class Action Cases,* Seattle University School of Law (March 8, 2022).

Author, *Mental Health on College Campuses Amid Covid*, Letter to the Editor in The New York Times (January 4, 2022)

Guest Lecturer, *Complex Litigation, MDL Experience, and Bellwether Trials*, Seattle University School of Law (September 23, 2021).

Presenter, *Statewide Opioid Litigation Update*, Colorado County Attorneys Association Virtual Summer Conference, (June 11, 2021).

Guest Lecturer, *MDL Mechanics Q&A*, Seattle University School of Law (March 8, 2021).

Guest Lecturer, *From Takeoff to Landing: Litigating MDLs*, Stanford Law School (February 23, 2021).

Law Seminars International Presents: The 16th Annual Conference On Litigating Class Actions (November 12-13, 2020).

- Presenter, Trials in Class Actions and Post-Trial Motions
- Panelist, Settlement Strategies

Guest Lecturer, *From Takeoff to Landing: Litigating the MDL*, Stanford Law School, (February 14, 2020).

Colorado Municipal League: Annual Seminar on Municipal Law (September 27-28, 2019).

Law Seminars International Presents: The 15th Annual Conference on Litigating Class Actions (May 9-10, 2019).

- Presenter, Settlement Strategies

Guest Lecturer at Stanford Law School, Multidistrict Litigation (February 22, 2019).

Presenter, *Discovery and Ethical "Rules of the Road" for Working with Expert Witnesses,* ABA Section of Litigation, (July 19, 2018).

Presenter, Bristol Myers Squibb Panel, UC-Irvine, UC-Berkeley, & Emory University Schools of Law First Joint Coordination Conference at Berkeley (June 5, 2018).

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PUBLICATIONS & PRESENTATIONS (CONT.)

Law Seminars International Presents: The 14th Annual Conference On Litigating Class Actions (May 10-11, 2018).

- Presenter, Consumer Protection and the Opioid Crisis
- Presenter, Corporate Fraud Against Consumers
- Presenter, Settlement Strategies for Class Actions and Multidistrict Litigation.

Presenter, *Causation and Science,* HarrisMartin's Plaintiff Opioid MDL Conference (January 8, 2018).

Presenter, *Opioid, Equifax & Talcum Powder, Equifax Data Breach: What Happened? Who Was Impacted? What Are the Damages?*, HarrisMartin MDL Conference, (November 29, 2017).

Presenter *Effectively Persuading Your Judge*, NCLC Consumer Class Action Symposium, National Consumer Law Center (November 18, 2017).

Presenter, *22nd Annual Consumer Financial Services Institute*, Practising Law Institute (2017).

Panelist, *Settlement Strategies for Class Actions and Multidistrict Litigation*, Law Seminars International – 13th Annual Conference on Litigating (April 28, 2017).

Panelist, EmoryLaw NextGen Conference and EmoryLaw Fed. Judicial Ctr. and JPML Program (December 14-16, 2016).

Panelist, *Settlements in Mass Tort and Class Action Litigation,* HarrisMartin's MDL Conference (July 27, 2016).

Panelist, *Dissecting the U.S. Supreme Court Decision in Spokeo Inc. v. Robins*, American Association for Justice webinar (May 26, 2016).

Panelist, *VW Diesel Emissions Litigation: A Case Study of the Interplay Between Government Regulatory Activity and Consumer Fraud Class Actions,* Law Seminars International, (May 6, 2016).

Presenter, *Data Security & Privacy Issues*, PLI Consumer Financial Services Institute 2016 *(*May 12, 2016).

Panelist, *Class Action and Data Breach Litigation*, HarrisMartin Pharmaceutical and Environmental Mass Tort Litigation (March 30, 2016).

Panelist, *Current State of the Law on Ascertainability and Standing,* Bridgeport Consumer Class Action Litigation Conference (January 8, 2016).

Panelist, *Volkswagen and Pharmaceutical Update: RICO and Additional Defendants,* HarrisMartin MDL Conference (December 2, 2015).

Panelist, *Diesel Emissions Scandal*, Bridgeport Volkswagen Class Action & MDL Seminar (November 23, 2015).

Panelist, *RICO and Additional Defendants,* HarrisMartin Volkswagen Diesel Emissions Litigation Conference (October 27, 2015).

Panelist, *Data Breaches: Cases at the Intersection of Class Actions and Internet Technology*, Law Seminars International, The Eleventh Annual Comprehensive Conference on Class Actions, (June 4, 2015).

Panelist, *Solutions in Seattle: A View From the Trenches: What's Working and What's Not Working with Mediators*, ABA Section of Dispute Resolution Meeting 17th Annual Spring Conference (April 16, 2015).

Presenter, C*oming of Age: The Differences between Employee and Consumer Cases*, HarrisMartin Data Breach Litigation Conference (March 25, 2015).

Presenter, *Managing Complex Litigation 2014: Class Actions; Mass Torts & MDL*, Practising Law Institute (October 21, 2014).

Presenter, *Recent Settlement Trends in Class Actions and Multidistrict Litigation: A Detailed Look at the Process for Settling and Administering Settlements* ,Class Action Conference (June 13, 2014).

Presenter, *Target Data Security Breach Litigation: Recent Development, Issues in Data Breach Litigation*, Harris Martin's MDL Conference (March 26, 2014).

Presenter, *Class Actions and Other Aggregate Litigation Seminar: Post-Certification Motion Issues in Class Actions*, Law Seminars International (May 14, 2013).

Panelist, Chartis Security & Privacy Seminar (October 20, 2011).

Presenter, *Toxic Torts: Toxins In Everyday Products*, 20th Annual American Bar Association Tort Trial and Insurance Practice Section Spring CLE Meeting (April 1, 2011).

Author, *Erosion of Indigenous Right to Negotiate in Australia*, 7 Pac. Rim L. & Pol'y J. 405 (1998).

KELLER ROHRBACK
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ALISON CHASE

CONTACT INFO

801 Garden Street, Suite 301
Santa Barbara, CA 93101
(805) 456-1496
achase@kellerrohrback.com

PRACTICE EMPHASIS

- Class Actions
- Commercial Litigation
- Environmental Litigation
- International Law
- Securities

EDUCATION

Emory University

B.A., *magna cum laude*, 2000, Political Science and Philosophy, Phi Beta Kappa

Yale Law School

J.D., 2003; Editor, *Yale Law Journal*, Articles Editor, Yale Journal of International Law

Alison is a partner in Keller Rohrback's nationally-recognized Complex Litigation Group and a member of the firm's Executive Committee. Alison's Alison is deeply committed to civility, teamwork, and working cooperatively with opposing counsel, having clerked for Judge J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit and Judge Valerie Baker Fairbank of the United States District Court for the Central District of California. Alison's antitrust work has been recognized by the American Antitrust Institute and she has been named as a leading plaintiffs-side advocate for financial industry litigation. Alison was also a member of the legal team nominated for the 2016 Nobel Peace Prize for representing the Republic of the Marshall Islands before the International Court of Justice. As a single mom, her proudest role, Alison cares deeply about protecting consumers, families, and equal opportunity.

Antitrust Litigation: Alison represented health plan payors and consumers affected by EpiPen price gouging, for which she and the team were honored by the American Antitrust Institute with an Outstanding Antitrust Litigation Achievement in Private Practice Award in 2022 (*In re EpiPen (Epinephrine Injection, USP*) *Mktg., Sales Practices & Antitrust Litig.*, MDL 2785, D. Kan.). Alison currently represents insurers, payors, and consumers in other high-stakes pharmaceutical industry litigation relating to the pricing of prescription drugs, including actions arising from alleged pay-for-delay agreements, product hop schemes, and other anticompetitive conduct in the markets for multiple sclerosis therapies and wakefulness treatments.

Consumer and Environmental Protection: Alison has a substantial background in complex consumer class actions and environmental class work. Alison was appointed settlement class counsel in litigation arising from the largest natural gas leak in U.S. history (*In re Southern California Gas Leak Cases*. JCCP 4861). Alison also represented property owners, businesses, and other victims of the 2015 Santa Barbara Oil Spill in seeking redress for their injuries. Currently, Alison serves as liaison counsel representing wildfire victims. In the area of consumer protection, Alison has represented consumers in class actions relating to novel FinTech, consumer health ventures, and a host of other consumer class actions resulting in favorable settlements for the firm's clients. Alison also currently serves on the Plaintiffs' Steering Committee in multidistrict litigation relating to the safety of children's car booster seats.

Financial Industries: Alison also has a deep background in financial industry litigation, including representation of several Federal Home Loan Banks in mortgage-backed securities litigation that resulted in the recovery of hundreds of millions of dollars for the firm's clients. Alison has also represented consumers and financial institutions in other litigation, including class actions relating to mortgage servicing practices and structured settlement annuities.

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CLERKSHIPS

The Honorable J. Clifford Wallace, U.S. Court of Appeals for the Ninth Circuit

The Honorable Valerie Baker Fairbank, U.S. District Court for the Central District of California

BAR & COURT ADMISSIONS

2003, California

2004, United States District Court for the Eastern District of California

2007, United States District Court for the Central District of California

2010, Ninth Circuit Court of Appeals

2011, Arizona

2014, United States District Court for the Northern District of California

2016, United States District Court for the Southern District of California

PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of California, *Member*

State Bar of Arizona, *Member*

Santa Barbara Lawyers Association, *Member*

Santa Barbara Women's Lawyers Association, *Member*

California Women's Lawyers Association, *Member*

HONORS & AWARDS

American Antitrust Institute - Antitrust Enforcement Award Honoree, in the category of "Outstanding Antitrust Litigation Achievement in Private Law Practice" for work in *In re EpiPen Marketing, Sales Practices, and Antitrust Litigation*, 2022

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023-2024

Finalist, Morris Tyler Moot Court

Recipient, Gherini Prize for Outstanding Paper in International Law

PUBLICATIONS & PRESENTATIONS

Author, *The Politics of Lending and Reform: The International Monetary Fund and the Nation of Egypt*, Stanford Journal of International Law, Vol. 93 (2006).

Author, *Legal Mechanisms of the International Community and the United States Concerning the State Sponsorship of Terrorism*, Virginia Journal of International Law, Vol. 41 (2004).

Author, *Book Review: The Invention of Peace*, Yale Journal of International Law, Vol. 27 (2002)

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



FELICIA CRAICK

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

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fcraick@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Governments and Municipalities

EDUCATION

Northeastern University

B.S, *summa cum laude*, Criminal Justice

Harvard Law School
J.D., *cum laude*

Felicia delves deep into the issues at hand to get concrete results for her clients.

As an attorney in Keller Rohrback's nationally recognized Complex Litigation Group, Felicia is able to combine her interest in people with her drive to hold bad actors responsible for wrongdoing.

Drawn to cases that matter to people's lives, Felicia focuses on complex and multidistrict litigation. In California's Judicial Council Coordination Proceedings ("JCCP") re Social Media Cases, she represents school districts in litigation against the social media companies for their contributions to the youth mental health crisis. In the fight against the youth vaping epidemic, Felicia played a major role representing government entities in the *In re JUUL Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation*, including participating in the San Francisco Unified School district trial against Altria Group, Inc. (the parent company of Philip Morris USA). In 2022, global settlements were reached with JUUL. In 2023, after the plaintiff rested its case, Altria agreed to a $235 million settlement.

Felicia has also represented consumers in cases where the business practices of drug manufacturers, pharmacy benefit managers, and other entities have driven up the costs of pharmaceuticals to the detriment of consumers, such as in the *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation*, which successfully reached a $345 million settlement with Pfizer in 2021 and a $264 million settlement with Mylan in 2022. As a result of the work in the In re EpiPen case, she and her team were honored by the American Antitrust Institute, winning an Outstanding Antitrust Litigation Achievement in Private Practice Award in 2022.

Prior to joining Keller Rohrback as an attorney, Felicia received her J.D., cum laude, from Harvard Law School, where she served as an Executive Article Editor of the Harvard Law & Policy Review. Felicia gained practical legal experience as a clinical student attorney, representing low-income survivors of domestic violence in family court and prosecuting criminal cases in state court, and as a summer associate at Keller Rohrback. Driven by the work of complex litigation and the firm's justice-oriented community, Felicia returned to Keller Rohrback at the conclusion of her clerkship with Washington State Supreme Court Chief Justice Mary Fairhurst.

Outside of work, Felicia enjoys hiking, watching soccer and gymnastics, and reading fantasy novels.

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BAR & COURT ADMISSIONS

2019, Washington

2019, Western District of Washington

2022, U.S. Court of Appeals for the Ninth Circuit

2023, Supreme Court of the United States

PROFESSIONAL & CIVIC INVOLVEMENT

Washington Women Lawyers, *Member*

Washington State Bar Litigation Section, *Member*

Washington State Bar Criminal Law Section, *Member*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2021-2024

Recognized by Puget Sound business Journal as a "Next Gen in Law" recipient, September 2023

American Antitrust Institute - Antitrust Enforcement Award Honoree, in the category of "Outstanding Antitrust Litigation Achievement in Private Law Practice" for work in *In re EpiPen Marketing, Sales Practices, and Antitrust Litigation*, 2022

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



ADELE DANIEL

CONTACT INFO

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adaniel@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Data Privacy Litigation

EDUCATION

Carleton College

B.A, *magna cum laude*, 2014, History

University of Michigan Law School

J.D., Order of the Coif, *magna cum laude*, 2017

BAR & COURT ADMISSIONS

2018, Washington

Adele believes the civil justice system can level the playing field between consumers and corporations.

As an attorney in our nationally recognized Complex Litigation Group, Adele has participated in significant victories and settlements in class actions and multidistrict litigations. She has made key contributions to several automotive-defect class actions; a class action against Facebook for user privacy violations; the City of Seattle's lawsuit against Monsanto for environmental contamination; and a class action against an insurance company over annuity factoring, among other cases. Her pro bono practice focuses on amici briefing for Washington nonprofits.

Before joining KR in 2019, Adele graduated magna cum laude from University of Michigan Law School, where she served as an Articles Editor for the Michigan Law Review. Adele clerked for Chief Judge Michael Mosman at the U.S. District Court for the District of Oregon and Judge Ronald Gould at the U.S. Court of Appeals for the Ninth Circuit.

In her spare time, Adele heads to Washington's mountains for camping and whitewater kayaking.

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2022-2024

Recognized by Puget Sound business Journal as a "Next Gen in Law" recipient, October 2023

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



WILLIAM DREHER

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

wdreher@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Environmental Litigation
- Wildfire Litigation

EDUCATION

Georgetown School of Foreign Service
B.S.F.S., *magna cum laude*, 2009
Phi Beta Kappa, Alpha Sigma Nu

Harvard Law School
J.D., *summa cum laude*, 2013
Fay Diploma, 2013; Sears Prizes, 2010-2012; Notes Editor, Harvard Law Review; Technical Editor, Harvard Environmental Law Review

Will Dreher seeks to shield communities from the harm wrought by corporate wrongdoing.

Will Dreher is an experienced trial attorney and former federal prosecutor. A partner in Keller Rohrback's nationally recognized Complex Litigation Group, Will focuses his practice on environmental, public nuisance, and consumer complex litigation.

Prior to joining the firm, Will spent over five years prosecuting criminal cases on behalf of the United States as an Assistant U.S. Attorney in the Western District of Washington. In that role, Will prosecuted local violent crime, environmental crime, and civil rights cases; he also served on a detail to the U.S. Attorney's Office for the District of Columbia, prosecuting cases arising out of the January 6, 2021 riot at the U.S. Capitol building.

Before moving to Seattle, Will litigated clean energy, environmental, and commercial matters at Jenner & Block LLP. He clerked for Judge Brett Kavanaugh at the U.S. Court of Appeals D.C. Circuit and then for the Justice Elena Kagan at the U.S. Supreme Court.

BAR & COURT ADMISSIONS

2013, Maryland [inactive]

2014, U.S. Court of Appeals for the District of Columbia Circuit

2016, District of Columbia

2016, U.S. Court of Appeals for the Ninth Circuit

2017, U.S. Court of Appeals for the Seventh Circuit

2017, U.S. Court of Appeals for the Second Circuit

2018, U.S. District Court for the District of Columbia

2018, U.S. Court of Appeals for the First Circuit

2024, Washington

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



JULI FARRIS

CONTACT INFO

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(805) 456-1496

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Seattle, WA 98101
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jfarris@kellerrohrback.com

PRACTICE EMPHASIS

- Antitrust and Trade Regulation
- Class Actions
- Consumer Protection
- Data Breach
- Employee Benefits & Retirement Security
- Environmental Litigation
- Fiduciary Breach
- Governments and Municipalities
- International Law
- Securities
- Whistleblower

Juli Farris' clients count on her commitment to excellence to meet their legal needs. Juli has been a member of Keller Rohrback's nationally-recognized Complex Litigation Group for more than 30 years, and has played a key role in many of the firm's most significant and groundbreaking class action lawsuits. She currently serves as co-lead counsel representing fishers, property owners and other victims of the 2015 oil spill resulting from the rupture of the Plains' All American Pipeline near Santa Barbara, and as co-lead counsel representing consumers in litigation against Rodan & Fields, each of which resulted in landmark settlements. She is actively involved in the firm's representation of victims of the Blackbaud data breach, which impacted millions of non-profit donors and hospital patients and victims of the recent T-Mobile data breach. She is also part of the team pursuing claims to hold drug manufacturers accountable for the current opioid health crisis, representing cities and counties in California in that multi-district litigation and related intrastate negotiations, and represents patients affected by outsized pricing of Insulin and other essential drugs.

In addition to her work on environmental torts, consumer protection and whistleblower litigation, Juli has represented both plaintiffs and defendants in state and federal litigation involving banking and securities regulation, antitrust, ERISA fraud and other areas, including key roles in antitrust litigation against the airlines industry and carpet manufacturers, ERISA company stock cases against WorldCom and Enron among others, and securities litigation against Ikon, Phillip Morris and other entities.

After graduation from Stanford Law School, Juli served as a judicial law clerk for Judge E. Grady Jolly of the U.S. Court of Appeals, Fifth Circuit, and practiced law at Sidley Austin in Washington D.C., on litigation and appeals covering a wide array of subject matters.

EDUCATION

Stanford University
B.A., 1982, English
Stanford Law School
J.D., 1987, Notes Editor, *Stanford Law Review*

BAR & COURT ADMISSIONS

1988, Washington

1989, California

1990, District of Columbia

1995, Western District of Washington

1997, U.S. Court of Appeals for the Ninth Circuit

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1999, Central District of California

2000, Northern District of California

2001, Eastern District of California

2003, Southern District of California

2003, U.S. Court of Appeals for the Fifth Circuit

2003, U.S. Court of Appeals for the Eleventh Circuit

2022, Eastern District of Michigan

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Loren Miller Bar Association, *Member*

American Bar Association, *Member*

California State Bar Association, *Member*

Washington State Bar Association, *Member*

Washington State Association for Justice, *Member*

Santa Barbara County Bar Association, *Member*

Santa Barbara Women Lawyers, *Member*

American Bar Foundation, *Member*

The National Association of Public Pension Attorneys, *Member*

Legal Foundation of Washington, *Vice President*

Seattle Rep Theater Board of Trustees, *Vice President*

Seattle Art Museum Board of Trustees, *Member*

Black Trustee Alliance for Art Museums, *Member*

Treehouse, *Board Member Emeritus, Past Board Chair*

Susan G. Komen, Puget Sound Affiliate, *Former Board Member*

PUBLICATIONS & PRESENTATIONS

Editorial Board, *Washington State Securities Law Deskbook* (2012)

Co-author with Andrew D. Freeman, *Grassroots Impact Litigation: Mass Filing of Small Claims*, 26 U.S.F.L. Rev. 261 (1992).

HONORS & AWARDS

Best Lawyers in America®, Litigation -Securities, Seattle, Washington, 2024

Selected to Super Lawyers list in *Super Lawyers - Washington,* 2015-2024

Selected to Super Lawyers Top 50 Women list in *Super Lawyers – Washington*, 2020

Recipient of Promise of One Award from the Puget Sound Affiliate of Susan G. Komen for the Cure, 2013

Selected to Rising Stars list in *Super Lawyers - Washington*, 2000-2001

REPRESENTATIVE MATTERS

Andrews v. Plains All Am. Pipeline, L.P., No. 2:15-cv-04113 (C.D. Cal.)

In re Blackbaud, Inc., Customer Data Sec. Breach Litig., MDL No. 2972 (D.S.C.)

In re T-Mobile Customer Data Sec. Breach Litig., MDL No. 3019 (W.D. Mo.)

In re Nat'l Prescription Opiate Litig., MDL No. 2804 (N.D. Ohio)

Barbara Lewis, et al., v. Rodan & Fields, LLC, No. 4:18-cv-02248-PJH, (N.D. Cal.)

In re Insulin Pricing Litigation, No. 17-00699 (D. N.J.)

In re IKON Office Sols., Inc., 277 F.3d 658 (3rd Cir. 2002)

In re WorldCom, Inc. ERISA Litig., 354 F. Supp. 2d 423 (S.D.N.Y. 2005)

Hansen v. Ticket Track, Inc., 213 F.R.D. 412 (W.D. Wash. 2003)

In re Scientific-Atlanta, Inc. Sec. Litig., 239 F. Supp. 2d 1351 (N.D. Ga. 2002)

In re Domestic Air Transp. Antitrust Litig., 137 F.R.D. 677 (N.D. Ga. 1991)

In re Potash Antitrust Litig., 954 F. Supp. 1334 (D. Minn. 1997)

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



ERIC FIERRO

CONTACT INFO

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PRACTICE EMPHASIS

- Class Actions
- Commercial Litigation
- Consumer Protection
- eDiscovery
- Financial Products and Services
- Intellectual Property
- Mass Personal Injury
- Securities
- Whistleblower

EDUCATION

Arizona State University

B.S., 2002, Justice Studies

New England School of Law

J.D., 2006, Senior Editor, *New England Journal of International and Comparative Law*

Eric Fierro bridges the gap between technology and the law. Eric practices in Keller Rohrback's nationally recognized Complex Litigation Group and oversees the firm's legal technology group, providing electronic discovery and litigation support to colleagues and clients on a wide array of cases. Whether he is helping to preserve significant amounts of data for institutional clients or walking an individual through the data collection process to increase accuracy and maximize privacy, Eric works closely with clients to understand their needs and provide solutions.

Eric has over 15 years of experience with legal technology. While attending law school in the evening, Eric worked full-time for the U.S. Attorney's Office for the District of Massachusetts where he provided technical support for all criminal and civil units, including the healthcare fraud, securities fraud, and other white collar crime units. Eric also worked as a summer law clerk for the computer crime and intellectual property unit at the U.S. Attorney's Office. Before joining Keller Rohrback, he was a managing consultant for Huron Consulting Group, providing consultative services for complex electronic discovery and document review matters.

When not at work, Eric enjoys spending time with his family, golfing, and rebuilding off-road vehicles in his garage.

BAR & COURT ADMISSIONS

2009, Arizona

2009, U.S. District Court for the District of Arizona

PROFESSIONAL & CIVIC INVOLVEMENT

Arizona State Bar Association, *Member*

PUBLICATIONS & PRESENTATIONS

Presenter, *Everyday Devices and the Internet of Things: Working with ESI in the Forest of Smart Device*, ASU-Arkfeld eDiscovery and Digital Evidence Conference (2019).

Presenter, *Plaintiff Offensive Review Workflows and Tips*, 2018 Complex Litigation E-Discovery Forum, (September 2018).

Presenter, *Best Practice for Plaintiff Document Collection*, 2017 Complex Litigation E-Discovery Forum (September 2017).

Presenter, *Negotiating a State of the Art ESI Protocol*, 2016 Complex Litigation E-Discovery Forum, (September 23, 2016).

Panelist, *The 2015 Federal Rule Amendments: Has Anything Really Changed?,* IPro Innovations for The Sedona Conference (April 2016).

Speaker, *Cloud Computing: In Your Practice and in Litigation*, Arizona Paralegal Association (2009).

Speaker, E-Discovery Problem Solving for Paralegals, National Business Institute (2008).

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



KYLIE FISHER

CONTACT INFO

1201 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 623-1900
kfisher@kellerrohrback.com

PRACTICE EMPHASIS

- Class Actions
- Commercial Litigation
- Governments & Municipalities

EDUCATION

University of Washington
B.A., 2017, Law, Societies, & Justice
Minor in Philosophy, *cum laude*

University of Washington School of Law
J.D., 2020, high honors, Order of the Coif

Kylie's passion for law is fueled by helping to give a voice to the underrepresented and bringing power back to those who have been neglected by society.

She brings a quality of persistence to Keller Rohrback's nationally recognized Complex Litigation Group, delivering the advocacy and passion needed to create lasting change for a wide set of individuals.

Initially discovering her interest in law as a high school student, Kylie developed a passion for finding workable solutions to complex problems within the legal realm. Viewing the practice of law as one big puzzle with moving parts and power imbalances, she has embraced the challenge of trying to bring more justice and equity to the world by doing her part to solve this puzzle.

In 2020, Kylie graduated from University of Washington School of Law with high honors and was awarded the Dean's Medal. Kylie also received the CLEA Outstanding Clinical Student Award for her asylum work with the Children and Youth Advocacy Clinic. During law school, Kylie served as an Articles Editor and published a Student Comment for the University of Washington Law Review.

Before joining Keller Rohrback, Kylie clerked for Judge Rosanna M. Peterson at the United States District Court for the Eastern District of Washington and for Justice Debra L. Stephens at the Washington State Supreme Court, expanding her research and legal writing capabilities in a professional environment.

In her free time, Kylie enjoys puzzles of all kinds, pub trivia, intramural soccer, and playing fetch with her labradoodle, Junie B. Bones.

BAR & COURT ADMISSIONS

2020, Washington

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2024

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



ALISON GAFFNEY

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

agaffney@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action & Consumer Litigation
- Opioid Litigation
- Governments & Municipalities
- Mass Personal Injury/Tort
- Environmental Litigation

EDUCATION

Swarthmore College

B.A., 2002, Linguistics and Languages (Spanish & Mandarin Chinese); McCabe Scholar

University of California, San Diego

M.A., 2007, Latin American Studies

University of Washington School of Law

J.D., 2012

Alison Gaffney is a fighter. Once she takes on a client—as a partner in Keller Rohrback's nationally recognized Complex Litigation Group or as a cooperating attorney with the ACLU—she commits to doing everything she can to fight for justice for her client.

That tenacity was evident in her pursuit to reunite Somali refugee Joseph Doe with his family after their separation was prolonged because of the Muslim Travel Ban. Alison is a member of the team that sued the Trump Administration on behalf of Doe and other individuals and organizations harmed by the travel ban in *Doe, et al. v. Donald Trump, et al.* (W.D. Washington). Three weeks after the court granted Doe's motion for a preliminary injunction, Alison had the honor of seeing Doe reunited with his wife and three sons in Seattle.

Alison is passionate about using litigation to combat complex world problems. In the National Prescription Opiate Multi-District Litigation, Alison represents over 70 city, county, and tribal governments in their fight to hold prescription opioid manufacturers and distributors accountable for the devastating effects these drugs have had on their communities. She has played a key role within Keller Rohrback's Opioid Litigation team, and in the national MDL she has been involved in drafting the master complaints, dispositive briefing, discovery, and preparing and defending medical experts. In addition, Alison represents school districts and counties in litigation against JUUL Labs, Inc. and other e-cigarette manufacturers for targeting youth with their marketing and product design and addicting a new generation to nicotine.

Both before and during law school, Alison's passion for justice and human rights drew her to immigration law and policy. She completed a master's degree focused on international migration, and as a law student, she interned with the Seattle Immigration Court and the Northwest Immigrant Rights Project (NWIRP) in Tacoma, where she gave "Know Your Rights" presentations at the Northwest Detention Center. She represented clients in deportation proceedings through NWIRP as well as the law school's Immigration Law Clinic, and she continues to volunteer as a pro bono attorney for NWIRP.

When she is not fighting for her clients, Alison is busy keeping up with her two sons, scrambling and climbing with The Mountaineers, and generally enjoying the beauty of the Pacific Northwest.

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BAR & COURT ADMISSIONS

2012, Washington

2013, U.S. District Court for the Western District of Washington

2013, U.S. Court of Appeals for the Second Circuit

2014, U.S. Court of Appeals for the Ninth Circuit

2015, U.S. District Court for the Eastern District of Washington

2016, U.S. District Court for the Central District of Illinois

2017, U.S. District Court for the Eastern District of Wisconsin

2018, U.S. District Court for the District of Colorado

2020, U.S. Court of Appeals for the District of Columbia

PROFESSIONAL & CIVIC INVOLVEMENT

ACLU Cooperating Attorney

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Mother Attorneys Mentoring Association of Seattle (MAMAS), *Member*

Northwest Immigrant Rights Project, *Pro Bono Attorney*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2020-2022

LANGUAGES

Spanish

KELLER ROHRBACK
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LAURA R. GERBER

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

lgerber@kellerrohrback.com

PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Class Action & Consumer Litigation
- Consumer Protection
- Employee Benefits & Retirement Security
- Environmental Litigation
- Fiduciary Breach
- Financial Products & Services
- Governments & Municipalities
- Institutional Investors
- Whistleblower

Laura R. Gerber is a strong advocate for her clients. From her early years in a whistleblower protection organization, to her current practice litigating against some of America's largest corporations, Laura has built her career as a trusted advocate for plaintiffs. Laura represents her clients with skill, tact and diplomacy. As a result, Laura's clients trust her to listen carefully, keep them informed, provide excellent legal advice, and to diligently pursue their interests in litigation against powerful defendants.

For over fifteen years, Laura has practiced in Keller Rohrback's Complex Litigation Group where she has developed a diverse practice with a focus on holding corporations and other institutions accountable. Laura is experienced in litigating consumer protection, RICO, antitrust, ERISA, environmental, excessive fee, breach of contract and breach of fiduciary duty, qui tam, and Ponzi scheme matters.

Laura's strategic persistence in complex cases has led to impressive results with her clients receiving substantial recoveries. Laura played a key role in managing litigation enhancing the security of pension plan benefits for healthcare workers at religiously affiliated healthcare systems, resulting in settlements exceeding $800 million.

In addition to her J.D., Laura has a Masters in Public Administration.

EDUCATION

Goshen College

B.A., 1994, History, Economics

University of Washington School of Law

J.D., 2003

Evans School of Public Affairs, University of Washington

M.P.A., 2003

PUBLICATIONS & PRESENTATIONS

Speaker, *New Trends in Church Plan Litigation,* American Conference Institute's 8th National Forum on ERISA Litigation (October 2014).

Co-author with R. Giovarelli, *Land Reform and Land Markets in Eastern Europe*, Food and Agriculture Organization of the United Nations (2005).

Co-author with David Weissbrodt, Penny Parker, Muria Kruger, Joe W. (Chip) Pitts III, *A Review of the Fifty-Fourth Session of the Sub-Commission on the Promotion and Protection of Human Rights*, 21 NETH Q. HUM. RTS. 291 (2003)

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.

BAR & COURT ADMISSIONS

2004, Washington

2006, U.S. District Court for the Eastern District of Washington

2006, U.S. District Court for the Western District of Washington

2006, U.S. Court of Appeals for the Ninth Circuit Court

2010, U.S. District Court for the Northern District of Illinois

2013, U.S. District Court for the District of Colorado

2014, U.S. Court of Appeals for the Sixth Circuit Court

2015, U.S. Court of Appeals for the Tenth Circuit Court

2016, U.S. District Court for the Southern District of Illinois

2016, U.S. District Court for the Eastern District of Missouri

2016, U.S. District Court for the Northern District of Ohio

2016, U.S. District Court for the Western District of Oklahoma

2016, U.S. District Court for the Central District of Illinois

2016, U.S. District Court for the Northern District of Indiana

2017, Supreme Court of the United States

2019, U.S. Court of Appeals for the Seventh Circuit Court

2019, U.S. Court of Appeals for the Eighth Circuit Court

PROFESSIONAL & CIVIC INVOLVEMENT

Campaign for Equal Justice, *Board Member*, 2018-present

Hanford Challenge, *Board of Directors*, 2018-present

Washington Appleseed, *Board of Directors*, 2012-2019

King County Bar Association, *Member*

Washington State Bar Association, *Member*

Federal Bar Association, *Member*

American Bar Association, *Member*

American Bar Foundation, *Fellow*

American Association for Justice, *Member*

Mother Attorney Mentoring Association (MAMA), *Member*

HONORS & AWARDS

Best Lawyers in America®, Employee Benefits (ERISA) Law - Seattle, Washington, 2025 (Recognized since 2024)

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2020-2024

Selected to Rising Stars list in *Super Lawyers - Washington*, 2009, 2014

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MATTHEW GEREND

CONTACT INFO

1201 Third Avenue, Suite 3400

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(206) 623-1900

mgerend@kellerrohrback.com

PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Action & Consumer Litigation
- ERISA & Employee Benefits

EDUCATION

University of Wisconsin

B.A., with distinction, 2005, Political Science, Phi Beta Kappa

Georgetown University Law Center

J.D., *cum laude*, 2010; Executive Articles Editor, *Georgetown Journal on Poverty Law and Policy*

Matthew Gerend practices in the firm's nationally recognized Complex Litigation Group, representing employees, benefit plans, and consumers in litigation to enforce antitrust laws and the Employee Retirement Income Security Act ("ERISA").

Matt has represented plaintiffs in federal courts across the country to redress harms stemming from breaches of fiduciary duties, investment fraud, anticompetitive conduct, and other misconduct that harms employees, benefit plans, and consumers.

Matt has also represented health plan members and health plans in litigation to hold pharmacy benefit managers and drug manufactures accountable for unfair, deceptive, and anticompetitive practices that artificially drive up the prices for critical medications, such as the EpiPen and the MS drug Copaxone.

Matt became interested in the laws protecting retirement and health benefits as a clerk with AARP Foundation Litigation, where he helped draft a number of amicus curiae briefs filed in the U.S. Supreme Court and U.S. Courts of Appeals regarding the proper interpretation and implementation of ERISA. During law school, Matt also worked as an intern with the Community Development Project at the Lawyers' Committee for Civil Rights Under Law.

Matt believes that lawyers have a unique ability to effect social change, an ethic that has guided his work representing individuals and benefit plans against those engaged in divisive and fraudulent practices.

BAR & COURT ADMISSIONS

2010, Washington

2011, U.S. District Court for the Western District of Washington

2012, U.S. Court of Appeals for the Third Circuit

2013, U.S. District Court for the Eastern District of Michigan

2014, U.S. Court of Appeals for the Sixth Circuit

2014, U.S. Court of Appeals for the Ninth Circuit

2015, U.S. Court of Appeals for the Seventh Circuit

2015, U.S. District Court for the District of Colorado

2016, U.S. Court of Appeals for the Fourth Circuit

2016, U.S. Court of Appeals for the Tenth Circuit

2016, Supreme Court of the United States

2018, U.S. Court of Appeals for the Second Circuit

2018, U.S. District Court for the Eastern District of Wisconsin

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PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers – Washington,* 2014-2022

National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington

PUBLICATIONS & PRESENTATIONS

Contributing Author, *Zanglein et. al., ERISA Litigation* (Bloomberg BNA) (2015-2016).

Co-author with Deborah M. Austin, *The Scope and Potential of Section 3 as Currently Implemented*, 19 J. Affordable Housing & Commun. Dev. L. 89 (2009).

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GARY GOTTO

CONTACT INFO

3101 N Central Avenue, Ste. 1400

Phoenix, AZ 85012-2600

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ggotto@kellerrohrback.com

PRACTICE EMPHASIS

- Class Actions
- Commercial Litigation
- Debtor-Creditor
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Institutional Investors
- Real Estate Securities

EDUCATION

University of Pennsylvania

B.A., *cum laude*, 1976

Arizona State University of College of Law

J.D., *summa cum laude,* 1982, Order of the Coif

Gary Gotto's diverse experience helps him meet his clients' diverse needs. Gary is a member of Keller Rohrback's nationally-recognized Complex Litigation Group. He has a broad range of practice experience and interests, including all aspects of corporate and real estate transactional work, securities issuance and compliance, Chapter 11 bankruptcy and workout matters, and general commercial and ERISA litigation. Gary speaks and teaches regularly on a number of topics, including an annual real estate bankruptcy case study presented at the Harvard Law School. He has practiced in Phoenix since 1982.

BAR & COURT ADMISSIONS

1982, Arizona

1982, U.S. District Court for the District of Arizona

2005, U.S. Court of Appeals for the Second Circuit

PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of Arizona, *Member;* Subcommittee on Revising the Limited Partnership Act, Business Law Section, *Chair* 1991

Arizona State University College of Law, *Adjunct Professor Law* 1989

PUBLICATIONS & PRESENTATIONS

Guest Lecturer, *Chapter 11 Reorganizations*, Stanford Law School (2003).

Co-author, Arizona Legal Forms: *Limited Liability Companies and Partnerships* (1996-2002).

Guest Lecturer, *Chapter 11 Reorganizations*, Harvard Law School (1996-1997, 1999, 2001, 2002).

Co-author, *Limited Liability Companies and Partnerships* (1996-1997).

Speaker, *Negotiating and Drafting Acquisition Agreements in Arizona*, National Business Institutes (1997).

Speaker, *Choice of Business Entity in Arizona*, National Business Institutes (1996).

Speaker, *Limited Liability Companies*, National Business Institutes (1994).

Speaker, N*on-Corporate Business Forms*, Professional Education Systems, Inc. (1994).

Speaker, State Bar of Arizona, Limited Liability Companies (1994).

Speaker, *Arizona Limited Liability Company Legislation*, National Business Institutes (1993).

HONORS & AWARDS

The Best Lawyers in America®, Litigation - ERISA, Phoenix, Arizona, 2025 (Recognized since 2001)

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



BENJAMIN GOULD

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

bgould@kellerrohrback.com

PRACTICE EMPHASIS

- Appeals
- Class Actions
- Constitutional Law
- Data Privacy Litigation
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Institutional Investors

EDUCATION

Yale University

B.A., *summa cum laude,* 2002, English, Phi Beta Kappa

Yale Law School

J.D., 2006, Editor, *Yale Law Journal,* Editor-in-Chief, *Yale Journal of Law and the Humanities*

Benjamin Gould makes the law work for his clients. Ben, a Seattle native, practices in Keller Rohrback's nationally recognized Complex Litigation Group. His ability to clearly and efficiently communicate factual and legal issues to his clients and courts allows him to adeptly serve the interest of clients who have been harmed by others' misconduct.

Ben has extensive experience in appellate litigation and has active appeals pending in state and federal courts throughout the nation. He has secured successful results for his clients before the U.S. Courts of Appeals for the Second, Eighth, and Ninth Circuits and numerous state appellate courts. Ben also maintains an active practice outside the appellate arena. He has represented clients in cases involving pensions, securities, and consumer-protection law, among other subjects.

Before joining the firm, Ben worked as a Legal Fellow of the ACLU Drug Law Reform Project, litigating cases related to drug policy and civil rights. He also served as a clerk to two federal appellate judges: the Honorable Betty Binns Fletcher of the U.S. Court of Appeals for the Ninth Circuit and the Honorable Diana E. Murphy of the U.S. Court of Appeals for the Eighth Circuit.

BAR & COURT ADMISSIONS

2007, California

2010, District of Columbia

2010, U.S. Court of Appeals for the Ninth Circuit

2011, Washington

2011, U.S. District Court for the Western District of Washington

2012, U.S. District Court for the Eastern District of Washington

2012, U.S. Court of Appeals for the Third Circuit

2013, U.S. Court of Appeals for the Second Circuit

2013, U.S. Court of Appeals for the Sixth Circuit

2013, U.S. Court of Appeals for the Eighth Circuit

2013, U.S. Court of Appeals for the Eleventh Circuit

2014, U.S. Court of Appeals for the First Circuit

2015, U.S. Supreme Court

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PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*; Appellate Law Section

Washington State Bar Association, *Member*

Washington State Association for Justice, *Member*

HONORS & AWARDS

The Best Lawyers in America®, Appellate Practice, Seattle, Washington, 2025 (Recognized since 2024)

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2020-2024

Selected to Rising Stars lists in *Super Lawyers - Washington*, 2013-2019

PUBLICATIONS & PRESENTATIONS

Author, *Alphabet Soup: Exploring Washington's Unique "ABC Rule" on Attorney Fees From Collateral Litigation*, Washington State Bar News (Feb. 9, 2023).

Author, *On the Lawfulness of Awards to Class Representatives*, Cardozo Law Review de novo (2023).

Author, *An Update on COVID-19 Coverage Litigation in Washington*, Washington State Association for Justice: Trial News (Nov. 2022)

Author, *Washington's Flawed ABC Rule*, 58 Willamette L. Rev. 251 (2022).

Author, *Inoculation Altercation: What Critics Misunderstand About the Washington Supreme Court Vaccination Order*, Washington State Bar News (Oct. 21, 2021).

Author, *Subject-Matter Jurisdiction in the Washington Supreme Court: Unsettling the Settled*," NWSidebar (November 2020).

Author, *Vaccine Law: An Overview of Current Law and a Look at the Future*," NWLawyer (November 2019).

Author, *Radical Jurisprudence*, 93 Wash. L. Rev. Online 49 (2018).

Speaker, *Rule 23(f) and Class Action Appeals*, American Bar Association 19th Annual National Institute on Class Actions, New Orleans, LA (2015).

Author, *A Review of Antonin Scalia and Bryan A. Garner*, Reading Law (2012), in Trial News (March 2014).

Co-author with Derek W. Loeser, Erin M. Riley, *2010 ERISA Employer Stock Cases: The Good, the Bad, and the In Between-Plaintiffs' Perspective*, Pensions & Benefits Daily, Bureau of National Affairs, Inc. (Jan. 28, 2011).

Co-author with Derek W. Loeser, *Point/Counterpoint: Is Rule 23(b)(1) Still Applicable to ERISA Class Actions?*, ERISA Compliance and Enforcement Library of the Bureau of National Affairs, Inc. (May 1, 2009).

Co-author witDerek W. Loeser, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty, Pension & Benefits Reporter*, Bureau of national Affairs, Inc. (Sept. 1, 2009).

KELLER ROHRBACK
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CHRISTOPHER GRAVER

CONTACT INFO

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(602) 248-0088

cgraver@kellerrohrback.com

PRACTICE EMPHASIS

- Complex Litigation
- Debtor-Creditor
- Employee Benefits and Retirement Security

EDUCATION

St. John's College

B.A., 1976

University of New Mexico

J.D., *magna cum laude,* 1990
Order of the Coif

Chris is a member of Keller Rohrback's Complex Litigation and Bankruptcy Groups. He has represented debtors, creditors, Court-appointed committees, and asset purchasers in Chapter 11 reorganization proceedings and workouts. In recent years he has also focused on representing plaintiffs in ERISA class actions. Chris has wide-ranging experience in complex commercial matters, from corporate restructuring to breach of fiduciary duty, commercial real estate, contracts, patent infringement, and environmental insurance coverage.

Together with colleagues, Chris has represented clients as diverse as pension plan participants in class actions challenging their employers' asserted exemption from ERISA, the committee of victims of clergy sexual abuse in the Chapter 11 reorganization of a Catholic diocese, an American Indian business corporation in a commercial dispute, and a developer restructuring a portfolio of real property interests nationwide.

A graduate of the Great Books liberal arts program at St. John's College in Santa Fe, Chris earned his law degree from the University of New Mexico Law School magna cum laude in 1990. While his practice is centered in the Southwest, Chris represents clients in federal courts coast to coast.

BAR & COURT ADMISSIONS

1990, Arizona

1990, United States District Court for the District of Arizona

2004, United States Court of Appeals for the Ninth Circuit

2015, United States Court of Appeals for the Fifth Circuit

2015, United States Court of Appeals for the Tenth Circuit

2017, United States Supreme Court

PROFESSIONAL & CIVIC INVOLVEMENT

Arizona State Bar Association, *Member*

Maricopa County Bar Association, *Member*

PUBLICATIONS & PRESENTATIONS

Speaker, *New Bankruptcy Code: Changing the Way Creditors are Treated,* Maricopa County Bar Association presentation, (2006).

Co-author, *Confirming the Catholics: The Diocese of Tucson Experience*, Norton Bankruptcy Law Advisor (2005).

Co-author, *Representing the Tort Claimants' Committee in the Chapter 11 Case Filed by the Roman Catholic Diocese of Tucson*, prepared for the National Conference of Bankruptcy Judges (2005).

Author, *Decoding the Code*, AzBusiness Magazine (2005).

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



ZACK GUSSIN

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

zgussin@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Governments and Municipalities

EDUCATION

University of Washington

B.A., 2010, English: Creative Writing

University of Washington Law School

J.D., high honors, 2017; University of Washington Law Review, Moot Court Honor Board, Children and Youth Advocacy Clinic

Zack develops solutions that effect change. As an attorney in Keller Rohrback's Complex Litigation Group, Zack is able to combine his passion for social justice with his love of intellectual challenges.

A lifelong Washingtonian with a family of social workers and teachers, Zack is no stranger to fighting for equity. Drawn to KR's longstanding commitment to obtaining justice on behalf of our communities and the intricacy of the firm's litigation work, Zack first joined the firm as a summer associate in 2016, and eventually joined full-time as an associate attorney in 2020.

Zack graduated from University of Washington School of Law in 2017 with High Honors. During law school, he served on the University of Washington Law Review, the Moot Court Honor Board, and at the Children and Youth Advocacy Clinic. He also participated in the Willem C. Vis International Commercial Arbitration Moot competition and received four CALI Excellence for the Future Awards—an award given to the highest scoring student in each law school class. After graduating with his J.D., Zack served as a Judicial Law Clerk for the United States District Court for the Eastern District of Washington.

Outside of work, Zack enjoys reading poetry and spending time with his family and rescue dog, Aspen.

BAR & COURT ADMISSIONS

2018, Washington

HONORS & AWARDS

Best Lawyers: Ones to Watch® in America, Seattle, Washington:

- Litigation - Banking and Finance, Litigation, 2024
- Environmental - Seattle, Washington, 2024

Recognized by Puget Sound business Journal as a "Next Gen in Law" recipient, February 2023

Selected to Rising Stars list in *Super Lawyers - Washington*, 2023-2024

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



IRENE M. HECHT

CONTACT INFO

1201 Third Avenue, Suite 3400

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(206) 623-1900

ihecht@kellerrohrback.com

PRACTICE EMPHASIS

• Insurance Litigation

EDUCATION

University of Washington

B.A., *magna cum laude*, 1977, Speech Communication

University of Washington School of Law

J.D., with honors, 1980

Irene Hecht is an experienced trial lawyer whose practice emphasizes insurance law, particularly in coverage and bad faith litigation. She also has an active appellate practice and has represented insurance companies in trial courts, the Court of Appeals, and before the Washington State Supreme Court. Ms. Hecht has over 38 years of experience in coverage analysis and representation, including both commercial and personal lines, umbrella and excess coverage, and first- and third-party coverage. She has dealt with a wide variety of coverage issues including: advertising injury, personal injury, construction defect, automobile, underinsured motorist, personal injury protection, homeowner's, products-completed operations, E&O, and D&O. Ms. Hecht also actively advises and defends insurers in bad faith litigation, with respect to both first- and third-party matters.

BAR & COURT ADMISSIONS

1980, Washington

1980, U.S. District Court for the Western District of Washington

1990, U.S. District Court for the Eastern District of Washington

1998, U.S. Court of Appeals for the Ninth Circuit

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member; Tort and Insurance sections*

Washington Defense Trial Lawyers Association, *Member*

Northwest Insurance Coverage Association, *Member*

International Association of Defense Counsel, *Member*

HONORS & AWARDS

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2001, 2003, 2007, 2010-2024.

PUBLICATIONS & PRESENTATIONS

Speaker, *Bifurcation in UIM Cases*, Washington Defense Trial Lawyers Annual Insurance Law Update (2017).

Speaker, *Update on the Duty to Defend and the Duty to Explore Settlement*, Washington Defense Trial Lawyers Annual Insurance Law Update (2015).

Presentation, *An Overview of Bad Faith Law In Washington* (2014).

Presentation, *USAA v. Speed: Road Rage—No Coverage or Duty to Defend*, Northwest Insurance Coverage Association (2014).

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.

PUBLICATIONS & PRESENTATIONS (CONT)

Speaker, Washington Defense Trial Lawyers Annual Insurance Law Update, Hot Topics in UIM Coverage, 2012.

Speaker, *Hot Topics in UIM Coverage*, Washington Defense Trial Lawyers Annual Insurance Law Update (2012).

Speaker, *Duty to Settle*, Washington Defense Trial Lawyers Annual Insurance Law Update (2011).

Editor, *Washington Motor Vehicle Accident Insurance Deskbook: 2009 Supplement, Chapter 3: Exclusions to Liability Coverage*, Washington Bar Association (2009).

National Business Institute, Inc., *Challenges In Washington Insurance Coverage Litigation--Analyzing Insurance Contract Provisions & Bad Faith Litigation,* 2003.

National Business Institute, Inc., *Challenges In Washington Insurance Coverage Litigation--Analyzing Insurance Contract Provisions & Bad Faith Litigation* (2003).

Speaker, *Multiple Claims, Inadequate Limits: What is an Insurer to Do?* Northwest Insurance Coverage Association (2002).

Speaker, *Multiple Claims, Inadequate Limits: What is an Insurer to Do?* Northwest Insurance Coverage Association (2002).

Editor, *Washington Motor Vehicle Accident Insurance Deskbook: 2d ed., Chapter 3: Liability Insurance: Exclusions*, Washington State Bar Association (2001).

Washington State Bar Association – Editor, Washington Motor Vehicle Accident Insurance Deskbook, 2d ed., Chapter 3: Liability Insurance: Exclusions, 2001.

National Business Institute, Inc., *Insurance Law: Third-Party Coverage in Washington--Automobile Insurance & Rules of Professional Conduct and Conflicts of Interest* (1998).

National Business Institute*, Inc., Insurance Law: Third-Party Coverage in Washington - Automobile Coverage* (1996).

Speaker, *The Liability Insurance Policy - The Duties to Defend, Pay and Settle, Reservations of Rights Situations*, King County Bar Association (1996).

Speaker, *The Liability Insurance Policy - The Duties to Defend, Pay and Settle, Reservations of Rights Situations*, King County Bar Association (1996).

Speaker, *Special Issues in Defending an Insured*, Seattle King County Bar Association (1993).

Speaker, *Special Issues in Defending an Insured*, Seattle King County Bar Association (1993).

Speaker, *Annual Nuts and Bolts of Insurance Coverage, Part II - Special Issues in Defending an Insured*, Seattle King County Bar Association (1992).

Speaker, *How to Read an Insurance Policy*, Seattle-King County Bar Association (1990).

KELLER ROHRBACK
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GARRETT HEILMAN

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

gheilman@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action & Consumer Litigation
- Employee Benefits and Retirement Security

EDUCATION

University of Washington School of Law

J.D., 2013

University of Puget Sound

B.A., 2009

Garrett Heilman is a proud member of Keller Rohrback L.L.P.'s nationally recognized Complex Litigation Group, where he focuses on cutting-edge cases that hold corporations and other institutions accountable for wrongdoings.

Garrett's interest in corporate accountability began as a law student at the University of Washington School of Law, where he contributed to publications and reports regarding corporate responsibility and human rights and developed training programs for Fortune 500 companies to educate employees on conducting business ethically.

Prior to joining Keller Rohrback, Garrett practiced at a boutique litigation firm and clerked for the Honorable Mary K. Dimke in the U.S. District Court for the Eastern District of Washington and the Honorable George B. Fearing at the Washington State Court of Appeals.

When time permits, Garrett enjoys providing pro bono counsel at the King County Neighborhood Legal Clinic and working to vindicate and/or protect people's First Amendment rights.

BAR & COURT ADMISSIONS

2014, Washington

2015, Illinois

2016, U.S. Court of Appeals for the Ninth Circuit

2016, U.S. District Court for the Western District of Washington

2017, U.S. Court of Appeals for the Third Circuit

2019, U.S. District Court for the Eastern District of Washington

2019, U.S. District Court for the Eastern District of Wisconsin

PROFESSIONAL & CIVIC INVOLVEMENT

Legal Foundation of Washington – Associates Campaign Committee, *Member*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

ARTICLES & PRESENTATIONS

Chapter Editor, *Employment Benefits Law – 2019 Cumulative Supplement,* Bloomberg BNA, (2019-2020).

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2020-2024

KELLER ROHRBACK
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DEAN KAWAMOTO

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

dkawamoto@kellerrohrback.com

PRACTICE EMPHASIS

- Class Actions
- Environmental Litigation
- Financial Products & Services
- Institutional Investors
- Mortgage Put-Back Litigation
- Securities

EDUCATION

University of California at Berkeley

B.A., History and Biology, *High Distinction,* 1998

Yale Law School

J.D., 2003

University of Cambridge (UK)

LL.M., International Law, *First Class Honors,* 2007

Dean Kawamoto understands complex cases. Many of Dean's cases involve complicated financial transactions, sophisticated institutional and government clients, large-scale discovery, extensive expert analysis, and massive damages. Dean's litigation experience is broad, and includes litigation involving public health, systemic corporate fraud, financial services and securities transactions, consumer protection, product liability, environmental remediation, and professional liability.

As a partner in the firm's Complex Litigation Group, Dean has played an important role in many of Keller Rohrback's largest cases. In the Opiate MDL, Dean has played a lead role in developing the case against Mallinckrodt and has also worked closely with the experts in the case. Dean was part of the Keller Rohrback team that successfully sued Volkswagen, Audi, and Porsche for engaging in a massive fraud to cheat emission standards by using "defeat devices." Dean is currently part of the litigation team representing several of the Federal Home Loan Banks in litigation against dozens of issuers, underwriters, and sponsors of private label mortgage-backed securities worth $13 billion. He was also part of the trial team that successfully objected on behalf of the firm's clients to the $8.5 billion settlement between Bank of New York Mellon and Bank of America over Countrywide's massive mortgage liabilities, the only objection that was sustained by the trial court. Most recently, Dean was appointed by the Honorable Judge William Orrick as co-lead counsel for *In re JUUL Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation*, the multidistrict litigation against JUUL Labs, Inc. and other defendants for actions relating to the vaping epidemic among minors.

Dean also has an extensive background in environmental law. He has performed climate change research in the Arctic Tundra. He has worked for the United States Senate Committee on Environment and Public Works, where he was in charge of issues relating to water pollution and the Clean Water Act. During law school, he was a research assistant and teaching assistant to Professor Daniel Esty, the former Commissioner of the Connecticut Department of Energy and Environmental Protection. Dean also served as an adjunct instructor in environmental law and policy for the University of Southern California.

Dean served as a clerk for the Honorable Wm. Matthew Byrne, U.S. District Judge for the Central District of California and was previously a Professional Staff Member on the U.S. Senate Committee on Environment and Public Works and a Legislative Aide to Senator Lincoln D. Chafee of Rhode Island.

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BAR & COURT ADMISSIONS

2004, California

2004, U.S. District Court for the Central District of California

2009, District of Columbia

2011, Washington

2015, U.S. District Court for the Northern District of California

2015, U.S. District Court for the Eastern District of California

2015, U.S. District Court for the Western District of Washington

PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

State Bar of California, *Member*

District of Columbia Bar, *Member*

American Bar Association, *Member*

HONORS & AWARDS

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2023-2024

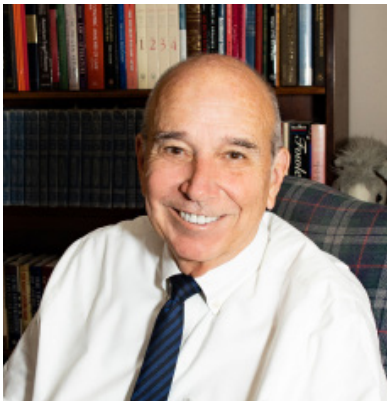
Selected to Rising Stars list in *Super Lawyers – Washington*, 2014-2015

Recipient of the Clifford Chance C.J. Hamson Prize for thesis on class actions

John Gardner Public Service Fellow

Recipient of the Departmental Citation for Integrative Biology (awarded to the top graduate in the major)

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LAW OFFICES ◆ L.L.P.



RON KILGARD

CONTACT INFO

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New York, NY 10036

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Phoenix, AZ 85012

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rkilgard@kellerrohrback.com

PRACTICE EMPHASIS

- Appeals
- Antitrust & Trade Regulation
- Class Action
- Constitutional Law
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services

EDUCATION

Harvard College B.A., 1973, History

Harvard Divinity School M.T.S., 1975, Old Testament

Arizona State University College of Law J.D., 1979, Editor-in Chief, *Arizona State Law Journal*, Armstrong Award (outstanding graduate)

Ron Kilgard is a 45-year civil litigation lawyer. Over a long career, he has handled all manner of civil cases, from routine automobile accidents and two-party contract disputes of no interest to anyone but the parties, to multi-million-dollar class actions covered in The New York Times and The Wall Street Journal. For the last 20 years, Ron has mostly litigated pension plan class actions. Ron helped Keller Rohrback pioneer company stock ERISA litigation in the late 1990s and early 2000s; he was part of the team that obtained settlements of over $265 million in the Enron 401(k) litigation. In 2017, after six years of litigation, Ron prevailed in an action challenging as unconstitutional the cutbacks to the pensions of Arizona state court judges. That same year, Ron began representing pro bono, and is still representing, a client fleeing gang-related violence in El Salvador. More recently is he part of the firm's team in the national opioid litigation.

Ron clerked for the Hon. Mary M. Schroeder, U. S. Court of Appeals for the Ninth Circuit, in 1979-80. He was one of the lawyers who formed the Phoenix office of Keller Rohrback L.L.P. in November 2002. In 2023 he moved to New York, where he continues to practice for the firm.

HONORS & AWARDS

The Best Lawyers in America®, Phoenix, Arizona, 2025 (Recognized since 2013):

- Employee Benefits (ERISA) Law
- Litigation - ERISA
- Litigation - Labor and Employment

Florence Immigrant & Refugee Rights Project, 2018 Pro Bono Attorney of the Year (adult cases)

PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of Arizona, *Member*

District of Columbia Bar, *Member*

New York State Bar Association, *Member*

National Immigrant Justice Center, *Pro Bono Counsel*

Florence Immigrant & Refugee Rights Project, *Pro Bono Counsel*

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BAR & COURT ADMISSIONS

1979, Arizona Supreme Court

1979, U.S. District Court for the District of Arizona

1982, U.S. Court of Appeals for the Ninth Circuit

1995, U.S. Supreme Court

2005, U.S. Court of Appeals for the Second Circuit

2005, U.S. Court of Appeals for the Fifth Circuit

2007, U.S. District Court for the Eastern District of Michigan

2009, District of Columbia Court of Appeals

2010, U.S. Court of Appeals for the Fourth Circuit

2010, U.S. District Court for the District of North Dakota

2011, New York Supreme Court, Appellate Division

2012, U.S. District Court for the Southern District of New York

2013, U.S. District Court for the District of Colorado

2013, U.S. Court of Appeals for the Eighth Circuit

2014, U.S. Court of Appeals for the Sixth Circuit

2014, U.S. Court of Appeals for the Third Circuit

2015, U.S. Court of Appeals for the Seventh Circuit

2015, U.S. Court of Appeals for the Tenth Circuit

2016, U.S. District Court for the Southern District of Illinois

2016, U.S. District Court for the Western District of Oklahoma

2016, U.S. District Court for the Eastern District of Missouri

2016, U.S. District Court of the Central District of Illinois

2016, U.S. District Court of the Northern District of Indiana

2017, Executive Office for Immigration Review

2019, U.S. District Court for the Northern District of New York

PUBLICATIONS & PRESENTATIONS

Speaker, *New Developments in Church Plan Litigation,* American Conference Institute, (2015-2017).

Speaker, *Fiduciary Implications of Company Stock Lawsuits,* National Center for Employee Ownership, (2012 and 2013).

Speaker, West LegalWorks ERISA Litigation Conference, (2007).

Speaker, *Company Stock Litigation*, Chicago Bar Association (2006).

Speaker, *After Enron*, ABA Seminar, (2006).

KELLER ROHRBACK
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KATHERINE KLEIN

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kklein@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action and Consumer Litigation
- Consumer and Data Privacy Protection
- Environmental Litigation

EDUCATION

Boston College
B.A., Communication, 2015

University of Central Florida
M.S., Conservation Biology, 2017

University of Denver Sturm College of Law
J.D., 2021
Natural Resources and Environmental Law Certificate

Katherine Klein is an environmental advocate who believes in the power of complex litigation to answer the challenges posed by corporate abusers and speculators.

Her background in conservation biology has informed her vigorous dedication to wildlife and wilderness preservation, and upholding responsible societal stewardship of the nation's natural resources.

Katherine works in Keller Rohrback's complex litigation group from its newest office location in Denver, Colorado, and she brings a keen focus on environmental and conservation issues to the Denver office. After completing degrees at Boston College and the University of Central Florida for a BA in Communication and MS in Conservation Biology respectively, Katherine attained her JD at the University of Denver Sturm College of Law in 2021.

While pursuing her law degree, she worked as a law clerk for national nonprofits The Wilderness Society and Defenders of Wildlife. She also clerked for the Environmental Defense Center in Santa Barbara, California, and she has been published repeatedly in the University of Denver's Water Law Review. She is a member of both the Colorado Bar Association and the Colorado Women's Bar Association. Since being awarded her JD, Katherine served as a law clerk for the Honorable Stephanie L. Scoville in the 2nd Judicial District for the State of Colorado, and also for the Honorable John Daniel Dailey in the Colorado Court of Appeals.

Katherine's previous legal experience has prepared her to add to Keller Rohrback's unparalleled reputation for consumer protection and its deep knowledge of environmental law, in an area of the country rich in scenic beauty, natural resources, and land-use controversies.

The Southern California native balances her legal career with road trips to America's National Parks and Wildlife Refuges, reading high fantasy novels, and enjoying the outdoor company of her rescue dogs Basil and Willow. She might also be found practicing pilates, kickboxing, or sipping well-steeped cups of the finest tea.

BAR & COURT ADMISSIONS

2021, Colorado

PROFESSIONAL & CIVIC INVOLVEMENT

Colorado Bar Association, *Member*
Colorado Women's Bar Association, *Member*
Colorado Bar Association Environmental Section, *Member*
Colorado Bar Association Litigation Section, *Member*

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DAVID KO

CONTACT INFO

1201 Third Avenue, Suite 3400

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dko@kellerrohrback.com

PRACTICE EMPHASIS

- Class Actions
- Consumer Protection
- Data Privacy Litigation
- Employee Benefits and Retirement Security
- Financial Products and Services
- Governments & Municipalities
- Institutional Investors
- Securities

David is a partner in the firm's nationally recognized Complex Litigation Group where he litigates cases on behalf of plaintiffs in federal and state courts across the country in a wide variety of cases involving corporate wrongdoing. He has helped his clients—including government entities, retirement plans, institutional investors, and consumers—obtain multimillion-dollar recoveries against some of the largest corporations in the country. He has significant trial experience, having tried month-long trials in both federal and state court.

David is currently at the center of the firm's largest and most high-profile cases. He represents government entities all over the country in *In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio)—seeking to hold manufacturers, distributors, and dispensers responsible for creating and fueling the opioid epidemic—which has resulted in over $50 billion in settlements to date. He is also one of the lead attorneys in *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, MDL 2843 (N.D. Cal.), a class action on behalf of all Facebook U.S. users alleging Facebook discloses user information and data without consent that recently resolved for $725 million, the largest settlement to date of a U.S. privacy class action and the most Facebook has ever paid to resolve private litigation. David also helped lead the firm's efforts in *In re: JUUL Labs, Inc. Marketing, Sales Practices, & Products Liability Litigation*, MDL 2913 (N.D. Cal.), which resulted in nearly $2 billion in settlements from JUUL and Altria for their role in the youth vaping epidemic.

Prior to joining the firm, David clerked for the Honorable Ricardo S. Martinez, U.S. District Judge in the Western District of Washington. He is past President of the Korean American Bar Association of Washington, and a Fellow of the Washington Leadership Institute. While born in Seoul and extremely proud of his Korean heritage, David has spent most of his life in the Seattle area, where he currently lives with his wife and two young daughters and is an avid supporter of all Seattle sports teams.

EDUCATION

University of Washington

B.A., 2002, History and Political Science

Seattle University School of Law

J.D., *cum laude,* 2006; National Order of Barristers

University of Washington School of Law

LL.M., 2007 Taxation

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BAR & COURT ADMISSIONS

2006, Washington

2010, U.S. District Court for the Western District of Washington

2010, U.S. District Court for North Dakota

2011, U.S. Court of Appeals for the Ninth Circuit

2016, U.S. District Court for the Eastern District of Michigan

2018, U.S. Court of Appeals for the Second Circuit

2018, U.S. District Court for the Eastern District of Washington

2019, U.S. District Court for Colorado

PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Asian American Bar Association, *Member*

National Center for Employee Ownership, *Member*

Korean American Bar Association of Washington, *Advisory Board Member*

PUBLICATIONS & PRESENTATIONS

Speaker, *From Conflict to Cost-Savings: How Mediation Can Make eDiscovery More Efficient* (July 2024).

Speaker, *Opioid Litigation,* Washington Association of Prosecuting Attorneys Summer Training Program, Chelan, WA (June 2023).

Speaker, *Opioid Litigation Settlement Updates,* Washington County Administration Association Annual Conference (April 2023).

Speaker, *Opioid Litigation,*Washington Association of Prosecuting Attorneys Spring Training Program, Tacoma, WA (April 2023)

Speaker, *Opioid Abuse and Litigation: Legal and Policy Responses,* Human Right to Health: Pathways and Responses, Seattle, WA (November 2019).

Speaker, *Opioid Litigation on Behalf of Local Governments,* Washington State Society of Healthcare Attorneys Annual Conference, Seattle, WA, (April 2018).

Speaker, *National Costs of Opioid Crisis* Mass, Torts Made Perfect, Las Vegas, NV (April 2018).

Speaker, *Fundamentals of the Repurchase Obligation,* National Center for Employee Ownership Annual Conference, Denver, CO (March 2017).

Speaker, *Legal Ethics: Top Attorney-Client Mistakes,* National Business Institute, Seattle, WA (December 2016).

Speaker, *Title Law: Ethics,* National Business Institute, Seattle, WA (April 2016).

HONORS & AWARDS

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023-2024

Selected to Super Lawyers list in *Super Lawyers – Washington*, 2022-2024

Selected to Rising Stars list in *Super Lawyers - Washington,* 2019-2020

National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington, 2020-present

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BENJAMIN J. LANTZ

CONTACT INFO

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(206) 623-1900
blantz@kellerrohrback.com

PRACTICE EMPHASIS

- Banking
- Business & Finance
- Catastrophic Property Loss
- Commercial Litigation
- Employment Law
- Insurance Litigation
- Medical & Dental
- Personal Injury Wrongful Death
- Real Estate Litigation

EDUCATION

New England School of Law

J.D., *cum laude*, 1995

Boston College

B.A., 1992

Ben Lantz's practice focuses on plaintiff's personal injury cases including motor vehicle accidents, premises liability, product liability, wrongful death, and catastrophic property loss.

He brings a unique skill set to his plaintiff's personal injury practice. For over 25 years, Ben defended these claims for insurance companies, car manufactures, and government entities. Using this experience, Ben has developed deep insight into how insurance companies and defense counsel think, defend, and ultimately value cases. Armed with this knowledge, he understands what cases are worth pretrial and when it is necessary to let a jury determine the value of a client's claim.

Mr. Lantz began his career as a civil and criminal prosecutor with the Snohomish County Prosecutor's Office, where he obtained extensive trial experience. Since joining Keller Rohrback L.L.P. in 1998, Ben has successfully represented financial institutions and corporations in complex commercial litigation matters. He also has successfully defended automotive product liability cases on behalf of Ford Motor Company, Honda Motor Co., Ltd., New Holland North America, Inc. and Toyota Motor Corporation.

BAR & COURT ADMISSIONS

1995, Washington

1997, U.S. District Court for the Western District of Washington

1999, U.S. District Court for the Eastern District of Washington

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2006-2008

KELLER ROHRBACK
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CARI CAMPEN LAUFENBERG

CONTACT INFO

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PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Actions
- Consumer Protection
- Data Privacy Litigation
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services

EDUCATION

University of California, San Diego

B.A., 1993, Art History

University of Washington

M.A., 1998, Public Administration

University of Washington School of Law

J.D., 2003

As a partner in Keller Rohrback's nationally recognized Complex Litigation Group, Cari Laufenberg maintains a national practice representing consumers, employees, and institutions in complex class actions involving corporate fraud, data privacy, breach of fiduciary duty, and the Employee Retirement Income Security Act (ERISA).

Since joining Keller Rohrback in 2003, she has played a key role in obtaining multi-million-dollar recoveries for consumers, employees, and shareholders in many of the firm's largest and most complex cases, including cases involving Meta Platforms, Inc., T-Mobile, Anthem Inc., Sony Pictures Entertainment Inc., Marsh McLennan Companies, Goodyear Tire & Rubber Co., HealthSouth Corporation and The Williams Cos.

While having excelled in the realms of corporate fraud, fiduciary duty, and ERISA, Cari has also developed an excellent reputation litigating data privacy cases by securing meaningful relief for her clients and class members. She has been instrumental in the foundation and growth of the firm's data privacy practice group. In that effort, she has served as Co-Lead Counsel in a number of high-profile data breach cases for which she and the KR team have achieved outstanding results: *In re T-Mobile Customer Data Security Breach Litigation*, MDL No. 3019 (W.D. Mo.) (obtaining the second largest data breach settlement to date); *In re 21st Century Oncology Customer Data Security Breach Litigation*, MDL No. 2737 (M.D. Fla.) (securing a meaningful settlement despite the company declaring bankruptcy), and as Class Counsel in *Fox v. Iowa Health System* (W.D. Wis.) (securing a favorable settlement for approximately 1.4 million victims of the UnityPoint Health data breach).

She also currently serves as Co-Lead Counsel in several other multidistrict data breach cases including *In re 23andMe, Inc. Customer Data Security Breach Litigation*, MDL No. 3098 in the Northern District of California—a case concerning the exposure of highly sensitive personal and genetic information for 6.9 million customers and *In re T-Mobile 2022 Customer Data Security Breach Litigation*, MDL 3037, in the Western District of Missouri—a case involving a November 2022 data breach impacting 37 million customers of U.S. wireless carrier T-Mobile.

Cari has served in leadership positions in other prominent consumer class-action cases as well, including as Interim Lead Class Counsel in *In re EpiPen ERISA Litigation* (D. Minn.) and her appointment to the Plaintiffs' Steering Committee in *In re Oral Phenylephrine Marketing and Sales Practice Litigation*, MDL No. 3089 (E.D.N.Y.).

She also played a fundamental role in the *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, MDL No. 2843 (N.D. Cal.), in which, together with co-lead counsel, KR achieved a $725 million settlement—the largest recovery ever achieved in a private data privacy class action and the most Meta has ever paid to resolve a private class action.

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Over the past almost 20 years, Cari's background in nonprofit management and public administration has served her clients well. She is adept at organizing large complex cases, working collaboratively with other counsel, and developing a cogent strategy which achieves short-term goals and long-term successes. Before joining Keller Rohrback in 2003, Cari served as a judicial extern for the Honorable Barbara Jacobs Rothstein of the U.S. District Court for the Western District of Washington. She is a frequent speaker at national conferences on class actions, identity theft and privacy, and other complex litigation topics.

BAR & COURT ADMISSIONS

2003, Washington

2004, U.S. District Court for the Western District of Washington

2006, U.S. District Court for the Eastern District of Michigan

2006, U.S. Court of Appeals for the Eleventh Circuit

2011, U.S. Court of Appeals for the Seventh Circuit

2011, U.S. Court of Appeals for the Ninth Circuit

2013, U.S. Court of Appeals for the Eighth Circuit

HONORS & AWARDS

The Best Lawyers in America®, Litigation – ERISA, Seattle, Washington, 2025 (Recognized since 2022)

Lawdragon 500 Leading Plaintiff Financial Lawyers, 2023-2024

The National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington

Selected to Super Lawyers list in *Super Lawyers – Washington*, 2022-2024

Selected to Rising Stars list in *Super Lawyers – Washington*, 2008-2009, 2011

AV, Peer Review Top-Rated by Martindale-Hubbell

PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

King County Washington Women Lawyers, *Member*; Member of the Board of Directors (2003-2005)

Washington Women Lawyers, *Member*

The William L. Dwyer American Inn of Court, *Founding Student Member* (2002-2003)

Federal Bar Association, *Member*

American Association for Justice, *Member*

Washington State Association for Justice, *Member*

Northwest Immigrant Rights Project, *Volunteer Attorney*

National Association for Public Pension Attorneys, *Member*

KELLER ROHRBACK
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PUBLICATIONS & PRESENTATIONS

Panelist, *Third-Party Filers and Candor to the Court*, Complex Litigation Ethics Conference (October 2024).

Presenter, *Navigating Court Scrutiny: Best Practices for Selecting and Working with Class Settlement Administrators*, CPT Group Webinar (June 2024).

Presenter, *eDiscovery Issues in Data Privacy Class Actions*, Epiq's Mass & Class, Fort Lauderdale, FL (March 2024).

Presenter, *Capital One Data Breach Litigation*, HarrisMartin's MDL Conference, Beverly Hills, CA, September (2019).

Presenter, *Consumer Recovery of Damages for Security Breaches or Misuse of Consumer Information*, Law Seminars International Artificial Intelligence & Privacy Conference, Seattle, WA (August 2019).

Presenter, *Data Breach & Privacy Class Action Litigation*, Law Seminars International Class Action Litigation Conference, Seattle, WA (May 2019).

Presenter, *Facebook Breach – Is Anyone's Data Safe*, HarrisMartin MDL Conference, Chicago, IL (May 2018).

Presenter, *Class Action Lawsuits and Settlements: Uncovering the Things You Need to Know*, The Knowledge Group Online CLE, (November 2018).

Presenter, *Intel: The OEM Cases*, HarrisMartin MDL Conference, Miami, FL (March 2018).

Presenter, *Legal Claims: Equifax and Other Data Breach Cases*, HarrisMartin's Equifax Data Breach Litigation Conference, Atlanta, GA, (November 2017).

Co-author with Tana Lin, and Lisa A. Nowlin, Brief for American College of Obstetricians and Gynecologists as Amicus Curiae in Support of Respondent, *Coffey v. Public Hosp. Dist. No. 1, Skagit Cnty. Wash. d/b/a Skagit Regional Health, et al.,* No. 75769-5) (Wash. Ct. App. Apr. 5, 2017).

Panelist, *Recent Settlements & Litigation Trends*, HB Litigation Conferences, Data Breach Litigation and Investigation Forum 2017, San Francisco, CA, (January 2017).

Presenter, *Don't Be Spokeo'd: What You Need to Know in Litigating Data Breach Cases*, American Bar Association, Business Law Section Annual Meeting, Boston, MA (September 2016).

Panelist, *The Client's Perspective: ADR Users Share Insights Regarding What Mediators Do To Make the Process Succeed or Fail*, American Bar Association, 18th Annual Section of Dispute Resolution Spring Conference, New York, NY (April 2016).

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



JEFFREY LEWIS

CONTACT INFO

180 Grand Avenue, Suite 1380

Oakland, CA 94612

(510) 463-3900

jlewis@kellerrohrback.com

PRACTICE EMPHASIS

- Appeals
- Employee Benefits and Retirement Security
- Complex Litigation
- Employment Litigation
- Private Judge, Mediator, Special Master

EDUCATION

Yale University

B.A., 1970

University of California at Berkeley School of Law

Order of the Coif – J.D., 1975

Jeffrey Lewis has specialized in ERISA and employee benefits law since 1975. He currently serves as a representative of the general public on the ERISA Advisory Council to the Secretary of Labor. He has successfully litigated individual, group, and class action claims on behalf of hundreds of thousands of employees, retirees, and the disabled. He was a founding partner of Lewis, Feinberg, Lee & Jackson, one of the first firms in the nation to specialize in ERISA litigation on behalf of plaintiffs. Among his major successes was serving as one of appointed counsel for employees of WorldCom, Inc. in a class action which resulted in a settlement that paid more than $47 million to participants in WorldCom's 401(k) plan. He recently recovered over $40 million for retirees after a lengthy trial in which he served as lead counsel. Mr. Lewis serves as a mediator for the U.S. District Court, the Northern District of California, and in private practice, and has served as an arbitrator and expert witness in ERISA cases. He has also advised employee groups and benefit plan fiduciaries, is a fiduciary of two large employee benefit plans, and has served as an independent fiduciary of employee benefit plans.

In addition to his litigation and advisory activities throughout the U.S., Mr. Lewis has testified before Congressional committees regarding pension issues and served as one of the Co-Chairs of the Senior Board of Editors of the Employee Benefits Law treatise. He has also taught employee benefits law at the University of California at Berkeley School of Law, as well as pension law courses at several other law schools.

BAR & COURT ADMISSIONS

1975, California

1976, U.S. District Court for the Northern District of California

1981, U.S. Court of Appeals for the Ninth Circuit

1985, U.S. District Court for the Eastern District of California

1991, U.S. District Court for the Southern District of California

1993, U.S. District Court for the Central District of California

1995, Supreme Court of the United States

1999, U.S. Court of Appeals for the Tenth Circuit

2001, U.S. Court of Appeals for the 2nd Circuit

2001, U.S. Court of Appeals for the Third Circuit

2004, U.S. Court of Appeals for the Fourth Circuit

2005, U.S. Court of Appeals for the Fifth Circuit

2007, U.S. Court of Appeals for the Seventh Circuit

2015, U.S. District Court for the District of Colorado

2018, U.S. Court of Appeals for the Second Circuit

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.

PUBLICATIONS & PRESENTATIONS

Panelist, ABA Section of Labor and Employment Law Employees Benefits Committee 2024 Midwinter meeting, San Diego, California, 2024 (ERISA Advisory Council)

Panelist, ABA Section of Labor and Employment Law Employee Benefits Committee 2023 Midwinter meeting, New Orleans, Louisiana, 2023 (Are You Ready for a DOL Cybersecurity Audit or to Defend Against Hacks?).

Co-Chair of the Board of Senior Editors of Lewis, et al., *Employee Benefits Law* (3d and 4th eds. Bloomberg BNA)

Board of Senior Editors, *Employee Benefits Law* (2d ed. BNA)

Former editor of the Discrimination Claims Under ERISA chapter of Employee Rights Litigation: Pleading and Practice (Matthew Bender, 1991)

Frequent speaker on ERISA topics such as preemption, fiduciary duty, and benefit claims at seminars sponsored by the American Bar Association, the Bureau of National Affairs, the National Employment Lawyers Association

(NELA), and other organizations.

PROFESSIONAL & CIVIC INVOLVEMENT

ERISA Advisory Council to U.S. Secretary of Labor, *Member*

College of Employee Benefits Counsel, *Charter Fellow*, former *Member of Board of Governors*

American Bar Association, *Member*, Labor & Employment Section, former *Plaintiff Co-Chair of the Employee Benefits Committee*

AC Transit Retirement Board, *Chair, Board of Trustees*

Goodyear Retiree Health Care Trust, *Member of the Plan Committee*

HONORS & AWARDS

Ranked in Chambers and Partners USA Guide, 2023 and 2024 - ERISA Litigation: Mainly Plaintiffs

Selected to Super Lawyers List, *Super Lawyers - Northern California*, 2005-2024

Selected to Top 100 Lawyers List in *Super Lawyers - Northern California*, 2010-2016

Top Attorney for ERISA Plaintiffs in the San Francisco Bar Area, *The Recorder*

Forty Top Benefits Attorneys, *The National Law Journal*, 1998

REPRESENTATIVE MATTERS

Tatum v. R.J. Reynolds Tobacco Co., 392 F.3d 636 (4th Cir. 2004).

Dobson v. Hartford Financial Services Group, Inc., 389 F. 3d 386 (2d Cir. 2004).

Canseco v. Construction Laborers Pension Trust, 93 F.3d 600 (9th Cir. 1996).

Sonoma County Ass'n of Retired Employees v. Sonoma County, 708 F.3d 1109 (9th Cir. 2013).

Trotter v. Perdue Farms, Inc., 168 F. Supp. 2d 277 (D. Del. 2001).

Vivien v. Worldcom, Inc., 2002 WL 31640557 (N.D. Cal. July 26, 2002).

Mertens v. Kaiser Steel Retirement Plan, 829 F. Supp. 1158 (N.D. Cal. 1992).

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ANDREW LINDSAY

CONTACT INFO

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Seattle, WA 98101

(206) 623-1900

alindsay@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action and Consumer Litigation

EDUCATION

Vassar College
B.A., 2013, International Studies

Seattle University School of Law
J.D., magna cum laude, 2022

EDUCATION

Brazilian Portuguese

Spanish

Andrew believes that by joining together through complex litigation, people can effectively hold corporations responsible for their wrongdoing.

Andrew's interest in the law mounted progressively following his undergraduate studies at Vassar College and several years applying his advanced language skills in various settings, including teaching English in Brazil on a Fulbright fellowship. These experiences led to a San Francisco immigration law office working as a bilingual legal assistant. Andrew's time there convinced him of the necessity of providing service to people facing problems they cannot resolve on their own, prompting him to attend law school.

Andrew received his J.D., *magna cum laude*, from Seattle University School of Law. During law school, he served as a Lead Article Editor for the Seattle University Law Review and received two CALI Excellence for the Future Awards for earning the top grade in Legal Writing and Privacy Law courses. Andrew also externed for Judge Ken Schubert at King County Superior Court and Judge Rebecca Glasgow at Division II of the Washington State Court of Appeals. Prior to joining the firm, Andrew clerked for Judge John H. Chun at the United States District Court for the Western District of Washington. While working for these judges, he was exposed to a spectrum of civil cases and took note of complex litigation as a necessary procedural tool to help injured plaintiffs go up against behemoth corporations.

Andrew foresees long-term practice in the complex litigation realm. He is confident that his writing skills, his work ethic, and his willingness to work productively with others will serve him well and broaden his expertise. Andrew looks forward to the accumulation of experience he knows he will find at Keller Rohrback.

Outside of work, Andrew enjoys running, riding his bicycle, stand-up paddleboarding, exploring Seattle restaurants, and traveling.

BAR & COURT ADMISSIONS

2022, Washington

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DEREK LOESER

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PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Action & Consumer Litigation
- Data Privacy Litigation
- Employee Benefits & Retirement Security
- Employment Law
- Environmental Litigation
- Financial Products & Services
- Governments and Municipalities
- Institutional Investors
- Mortgage Put-Back Litigation
- Securities Fraud
- Whistleblower

Derek is a senior partner in Keller Rohrback's nationally recognized Complex Litigation Group and a member of the firm's Executive Committee.

Derek's passion for holding large corporations accountable for wrongdoing has helped recover billions of dollars for consumers, retirees, governments and institutions. He has served in leadership roles in major complex cases across the country.

Currently, Derek is co-lead counsel in *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, the MDL litigation against Facebook stemming from the Facebook Cambridge Analytica scandal. In the case, after years of hard-fought litigation, he and the team achieved an historic $725 million settlement, the largest amount paid to date to resolve a privacy-based class action.

In addition to his class action work, Derek helps manage the Keller Rohrback team representing state and local government entities in a number of matters involving significant public health crises. For example, Derek leads the Keller Rohrback team litigating government cases against opioid manufacturers and distributors in *The National Prescription Opioid Litigation*. In the Opioid MDL, Derek serves on the Expert and Law & Briefing Committees and lead the litigation against a major opioid manufacturer. He also represents school districts and counties in litigation against the e-cigarette company, JUUL, for targeting and addicting youth, and in litigation against social media companies for causing a youth mental health epidemic. These cases are quintessential examples of the type of litigation Derek and the Keller Rohrback team fervently pursue: corporate fraud and malfeasance causing serious harm to the public.

Derek's other notable cases include the Wells Fargo unauthorized account consumer class action for which Derek served as lead counsel. In the Wells Fargo case, Derek and the Keller Rohrback team achieved a $142 million settlement requiring the bank to refund all improper fees and provide first-of-its kind credit damage reimbursement, among other relief, to Wells Fargo customers; multi-billion dollar mortgage-backed securities cases on behalf of the Federal Home Loan Banks of Chicago, Indianapolis and Boston; ERISA class cases on behalf of employees whose retirement savings were decimated by corporate fraud and abuse on the part of Enron, WorldCom, Countrywide, and Washington Mutual, among others. He has also litigated fraud, RICO, and antitrust cases against drug manufacturers, pharmacy benefit managers, and insurance companies for conspiring to drive up the cost of life-saving medications such as insulin.

Many of Derek's cases have required coordinating with state and federal agencies involved in litigation that parallels cases pursued by Keller Rohrback, including state attorneys general, the Department of Justice, and the Department of Labor. In addition, Derek has extensive experience negotiating

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complex, multi-party settlements, and coordinating with the many parties and counsel necessary to accomplish this. He is frequently asked to speak at national conferences about class actions, public health litigation, ERISA, and other complex litigation topics.

In 2024, Derek was recognized by Law360 as a "Titan of the Plaintiffs Bar."

Before joining Keller Rohrback, Derek served as a law clerk for the Honorable Michael R. Hogan, U.S. District Court for the District of Oregon. He was also a trial attorney in the Employment Litigation Section of the Civil Rights Division of the U.S. Department of Justice in Washington, D.C. where he prosecuted discrimination cases on behalf of the United States.

EDUCATION

Middlebury College

B.A., *summa cum laude*, 1989, American Literature (highest department honors), Stolley-Ryan American Literature Prize, Phi Beta Kappa

University of Washington School of Law

J.D., *with honors*, 1994

BAR & COURT ADMISSIONS

1994, Washington

1998, U.S. District Court for the Western District of Washington

1998, U.S. District Court for the Eastern District of Washington

1998, U.S. Court of Appeals for the Ninth Circuit

2002, U.S. District Court for the Eastern District of Michigan

2004, U.S. District Court for the Northern District of Illinois

2006, U.S. Court of Appeals for the Eleventh Circuit

2009, U.S. Court of Appeals for the Eighth Circuit

2010, United States Supreme Court

2010, U.S. Court of Appeals for the Fourth Circuit

2012, U.S. Court of Appeals for the Third Circuit

2013, U.S. Court of Appeals for the Second Circuit

2014, U.S. Court of Appeals for the First Circuit

2017, New York

HONORS & AWARDS

The Best Lawyers in America®, Litigation - ERISA, Seattle, Washington, 2025 (Recognized since 2024)

Law360 Titans of The Plaintiffs Bar honoree, 2024

Forbes inaugural list of America's Top 200 Lawyers, recipient, 2024

Lawdragon, 500 Leading Plaintiff Financial Lawyers, 2023-2024

Listed as Lawdragon 500 Leading Lawyers in America 2018, 2022-2024

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2007-2012, 2014-2024

AV®, Peer Review Top-Rated by Martindale-Hubbell

Recipient of the 2010 Burton Award for Legal Achievement for the article, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty, Pension & Benefits Reporter*, Bureau of National Affairs, Inc. (Sept. 1, 2009)

Selected to Rising Stars list in Super Lawyers - Washington, 2005-2007

U.S. Department of Justice Award for Public Service, 1996

U.S. Department of Justice Achievement Award, 1996

U.S. Department of Justice Honors Program Hire, 1994

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PROFESSIONAL & CIVIC INVOLVEMENT

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, Member; *Employment Benefits Committee Member*

National Employment Lawyers Association, *Member*

American Civil Liberties Union of Washington, *Cooperating counsel*

PUBLICATIONS & PRESENTATIONS

Panelist, Law Seminars International - Health Care Class Actions: The Role of Class Actions as a Path to Recovery of Damages Related to the Opioid Crisis - *Class certification issues for human health impacts vs. financial impacts on government entities* (November, 2020).

Panelist, HarrisMartin's MDL Conference: JUUL and Capital One Data Breach Litigation – *JUUL, E-Cigarettes & Vaping Litigation – An Overview of JUUL Legal Landscape: Case Filings, Judicial Rulings and MDL Submissions*, Beverly Hills, CA, (September, 2019).

Panelist, HarrisMartin's MDL Conference: Opioid, Equifax & Talcum Powder – *Opioid Litigation Landscape: Venues, Jurisdictional Hurdles, Defenses and Cause of Action*, St. Louis, MO (November, 2017).

Panelist, HarrisMartin's National Opioid Litigation Conference - *Current Landscape of Opioid Litigation*, Chicago, IL (October, 2017).

Speaker, *Trends in Auto Defect Litigation*, Seattle, WA, May, 2017.

Panelist, Law Seminars International - VW Diesel Emissions Litigation: A Case Study of the Interplay Between Government Regulatory Activity and Consumer Fraud Class Actions (May, 2016).

Speaker, *Class Action & Data Breach Litigation*, Santa Barbara, CA (March, 2016).

Speaker, *Fiduciary Challenges in a Low Return Environment*, Seattle, WA (December, 2014).

Speaker, *Post-Certification Motion Practice in Class Actions*, Seattle, WA (June, 2014).

Speaker, *Investment Litigation: Fees & Investments in Defined Contribution Plans*, ERISA Litigation, Washington, D.C. (2012).

Speaker, *Post-Certification: Motion Issues in Class Actions*, Litigating Class Actions, Seattle, WA (2012).

Derek W. Loeser, Erin M. Riley & Benjamin B. Gould, 2010 *ERISA Employer Stock Cases: The Good, the Bad, and the In Between-Plaintiffs' Perspective*, Pension & Benefits Daily, Bureau of National Affairs, Inc. (January 28, 2011).

Derek W. Loeser & Erin M. Riley, *The Case Against the Presumption of Prudence*, Pension & Benefits Daily, Bureau of National Affairs, Inc. (September 10, 2010).

Speaker, ABA Mid-Winter Meeting, San Antonio, TX (2010).

Speaker, 22nd Annual ERISA Litigation Conference - New York, NY (November 2009).

Speaker, 22nd Annual ERISA Litigation Conference - Las Vegas, NV (October 2009).

Derek W. Loeser & Benjamin B. Gould, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty*, Pension & Benefits Reporter, Bureau of National Affairs, Inc. (September 1, 2009).

Panelist, HarrisMartin's National Opioid Litigation Conference - *Current Landscape of Opioid Litigation*, Chicago, IL (October 2017).

Speaker, *Trends in Auto Defect Litigation*, Seattle, WA (May, 2017).

Panelist, Law Seminars International - *VW Diesel Emissions Litigation: A Case Study of the Interplay Between Government Regulatory Activity and Consumer Fraud Class Actions* (May, 2016).

Speaker, *Class Action & Data Breach Litigation*, Santa Barbara, CA (March, 2016).

Speaker, *Fiduciary Challenges in a Low Return Environment*, Seattle, WA (December, 2014).

Speaker, *Post-Certification Motion Practice in Class Actions*, Seattle, WA (June, 2014).

Speaker, *Investment Litigation: Fees & Investments in Defined Contribution Plans*, ERISA Litigation, Washington, D.C. (2012).

Speaker, *Post-Certification: Motion Issues in Class Actions*, Litigating Class Actions, Seattle, WA (2012).

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Derek W. Loeser, Erin M. Riley & Benjamin B. Gould, 2010 *ERISA Employer Stock Cases: The Good, the Bad, and the In Between-Plaintiffs' Perspective*, Pension & Benefits Daily, Bureau of National Affairs, Inc. (January, 28, 2011).

Derek W. Loeser & Erin M. Riley, *The Case Against the Presumption of Prudence*, Pension & Benefits Daily, Bureau of National Affairs, Inc. (September 10, 2010).

Speaker, ABA Mid-Winter Meeting, San Antonio, TX (2010).

Speaker, 22nd Annual ERISA Litigation Conference - New York, NY (November 2009).

Speaker, 22nd Annual ERISA Litigation Conference - Las Vegas, NV (October 2009).

Co-author with Benjamin B. Gould, *The Continuing Applicability of Rule 23(b)(1) to ERISA Actions for Breach of Fiduciary Duty*, Pension & Benefits Reporter, Bureau of National Affairs, Inc. (September 1, 2009).

Co-Author with Benjamin B. Gould, *Point/Counterpoint: Is Rule 23(b)(1) Still Applicable to ERISA Class Actions?*, ERISA Compliance and Enforcement Library of the Bureau of National Affairs, Inc. (May 1, 2009).

Author, *The Legal, Ethical, and Practical Implications of Noncompetition Clauses: What Physicians Should Know Before They Sign*, J.L. Med. & Ethics, Vol. 31:2 (2003).

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ERIC LOMBARDO

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PRACTICE EMPHASIS

- Class Action and Consumer Litigation

EDUCATION

Whitman College
B.A, *cum laude*, 2014,
Philosophy

University of Washington School of Law
J.D., 2020

Eric Lombardo sees complex litigation as a challenging but powerful tool for change.

Eric's analytical relationship with the law was informed by his undergraduate studies in philosophy and politics at Whitman College. His postgrad work at the ACLU of Washington exposed him to ambitious, boundary-pushing efforts to expand what harms can be addressed in the legal realm, and led to his JD with honors at the University of Washington School of Law. There, he spent his summers at the UW Tribal Public Defense Clinic and the Washington State Attorney General's office and volunteered with the Washington Innocence Project Clinic. He also served as the Chief Articles Editor on the Washington International Law Journal and was a member of the school's New York Bar Moot Court Team.

After earning his law degree, Eric clerked for Judge Douglass A. North in the King County Superior Court and for Chief Judge Lori K. Smith in the Washington Court of Appeals, Division 1. His experience with larger civil actions in those environments—particularly those dealing with corporate abuses of power—focused him on the question of how to further the public good through complex litigation.

Eric counts being deliberate and conscientious among his greatest personal and professional strengths, and he looks forward to applying them as he gathers experience in KR's Complex Litigation Group. In his free time, Eric enjoys backpacking, hiking, snowshoeing, running, and light mountaineering. He is an avid reader and has been playing the cello since he was in elementary school—his favorite solo piece is Bach's 5th cello suite.

BAR & COURT ADMISSIONS

2020, Washington

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PATRICK MARRIOTT

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

pmarriott@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action & Consumer Litigation

EDUCATION

Fordham University
B.A., Philosophy, 2014

Lewis & Clark Law School
J.D., 2022, cum laude, Pro Bono Honors Award

For Patrick, listening is the key to understanding how to effectively represent his clients.

Patrick received his J.D. from Lewis & Clark Law School, graduating cum laude in 2022. He was a member of the Lewis & Clark Environmental Law Review, studied civil procedure and complex litigation with noted law professor and class action expert Robert H. Klonoff, and served as a Judicial Extern for the Hon. Diarmuid F. O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit. After law school, Patrick worked closely with Professor Klonoff on a variety of high-profile class actions and multidistrict litigation cases and was an Associate at Social Media Victims Law Center.

Patrick first became interested in law as a student at Grant High School in Portland, Oregon, where he participated in the "We the People" program sponsored by the Center for Civic Education. The attorneys who volunteered with that program shared their passion for history and civics, fueling Patrick's interest in becoming an attorney. Patrick earned a degree in philosophy at Fordham University, worked at a large New York auction house as a logistics coordinator, and was one of the first employees at a tech startup.

Patrick enjoys playing music and chess, tending to his vegetable plot at a community garden, and taking trips with his wife and their two dogs.

BAR & COURT ADMISSIONS

2022, Oregon

2013, U.S. Court of Appeals for the Ninth Circuit

PROFESSIONAL & CIVIC INVOLVEMENT

Oregon Civics Learning Project, *Volunteer Coach*

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KATE MCCALLUM

CONTACT INFO

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kmccallum@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action & Consumer Litigation
- Environmental Litigation
- Government & Municipalities

EDUCATION

University of Sydney (Sydney, Australia)
Combined B.A. and L.L.B., Honors , 2016

The College of Law (Sydney, Australia)
Graduate Diploma of Legal Practice, 2017

Lewis & Clark Law School
L.L.M. in Environmental Law, Natural Resources Law, and Energy Law, with Honors, 2022; Cornelius Honors Society

Kate is passionate about protecting people and the environment through legal action. The interconnection between human rights and the environment has fueled her passion for the law and brought her to the United States to expand her education and practice, leading her to join Keller Rohrback's nationally recognized Complex Litigation Group where she can represent both individuals and governments confronted with environmental problems.

Kate is originally from Australia and is dual-qualified as an attorney in both Australia and the United States, gaining admission to the Washington Bar in 2022. Throughout her career in both jurisdictions, she has focused on environmental law. After law school, Kate worked as a legal intern with Earth Rights International in Thailand, before returning to Australia to clerk for a Judge of the Federal Court of Australia. As a judicial clerk, she worked on several complex cases, including assisting with a six-month trial of a medical product class action. Kate then worked as a government attorney at the NSW Crown Solicitor's Office representing various government agencies in environmental regulation, environmental prosecutions, and Aboriginal land rights.

Kate relocated to the United States in early 2021 to pursue a Master of Laws in Environmental, Natural Resources, and Energy Law at Lewis & Clark Law School in Portland, Oregon. While pursuing her masters, she was a clinic student with the Global Law Alliance for Animals and the Environment and the Earthrise Law Center, working on environmental public interest cases. Before becoming a full-time attorney at Keller Rohrback in May 2022, Kate spent a few months clerking for the firm.

Kate recognizes the importance of the environment as a social justice issue and is thrilled to bring her efficiency and expertise to Keller Rohrback where she can make a difference firsthand helping to protect our people, communities, and environment.

In her free time, Kate enjoys hiking, cross-country skiing, scuba diving, snorkeling, and enjoying the outdoors anyway she can.

BAR & COURT ADMISSIONS

2017, Supreme Court of New South Wales (Australia)

2018, High Court of Australia

2022, Washington

2022, U.S. District Court for the Western District of Washington

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PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Federal Bar Association, Western District of Washington, *Member*

King County Bar Association Neighborhood Legal Clinics, *Volunteer Attorney*

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2024

ARTICLES & PRESENTATIONS

Co-author with Lisa Benjamin, *Implementation and Enforcement Mechanisms in Energy Law*, in HANDBOOK OF ENERGY LAW IN THE LOW-CARBON TRANSITION 99 (Giuseppe Bellantuono et al. eds., De Gruyter (2023)

Author of book review, *The Big Switch: Australia's Electric Future*, by Saul Griffith], 47(3) Alt. L.J. 239 (2022).

Author, *Changing Landscapes: Enforcing Environmental Laws in China Through Public Interest Litigation*, 20 Asia Pac. J. Envtl. L. 57-93 (2017).

Author, *The War on Solar and Wind: Australian Renewable Energy Policy* (comment), 34(1) Envtl. Plan. L. J. 69-76 (2017).

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RYAN MCDEVITT

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PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Class Action & Consumer Litigation
- Consumer & Data Privacy Protection
- Financial Products & Services
- Intellectual Property
- Securities

EDUCATION

Claremont McKenna College

B.A., 2007, Government and Leadership Sequence, Departmental Honors in Government

Columbia Law School

J.D., 2010, Harlan Fiske Stone Honors Scholar

Ryan protects consumers, competitors, investors, and innovators. As a partner in Keller Rohrback's nationally recognized Complex Litigation Group, he focuses on ensuring fairness in the marketplace.

In recent years Ryan has played a significant role in achieving and administering landmark settlements on behalf of drivers of Volkswagen, Audi, Porsche, Ram, and Jeep vehicles in the Volkswagen "Clean Diesel" and Fiat Chrysler "EcoDiesel" multidistrict litigations. Ryan currently serves on the court-appointed Executive Committee in litigation concerning defective transmissions in Nissan and Infiniti vehicles, and is a key member of the Keller Rohrback team appointed co-lead counsel in litigation concerning a serious safety defect in Chevrolet Bolt EV batteries. He also works alongside partner Gretchen Freeman Cappio in her capacity as a member of the Plaintiffs' Steering Committees in significant matters involving allegedly defective airbag control units in 12.3 million vehicles from six major automakers and allegedly defective transmissions in numerous Chevrolet, Cadillac, and GMC vehicles, and as Settlement Counsel in a case concerning alleged engine defects in numerous Hyundai and Kia models. Ryan was also recently featured by Law360 as one of their "Rising Stars" for 2023.

In addition to these and numerous other automotive fraud and defect cases involving major automakers and auto parts suppliers, Ryan has litigated consumer protection and antitrust claims, financial and securities fraud, intellectual property infringement, and federal labor law violations in federal and state courts nationwide. For example, he has represented the Federal Home Loan Banks of Boston, Chicago, and Indianapolis in litigation against dozens of issuers, underwriters, and sponsors of private label mortgage-backed securities worth $13 billion; classes of mortgage borrowers treated unfairly by mortgage servicers and banks; and the Navajo Nation in protecting its rights to the NAVAJO trademark.

Before joining the firm, Ryan served as a law clerk in the Antitrust Division of the Washington State Attorney General, where he worked on multistate investigations of international price-fixing conspiracies. In law school, he was a research assistant to June Besek, chair of the American Bar Association's Copyright Task Force.

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BAR & COURT ADMISSIONS

2010, Washington

2011, U.S. District Court for the Western District of Washington

2012, U.S. Court of Appeals for the Ninth Circuit

2019, US District Court for the Eastern District of Michigan

2019, US District Court for the Eastern District of Washington

2020, Michigan

2021, US Court of Appeals for the Seventh Circuit

PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*

King County Bar Association, *Member*

American Bar Association, *Member*

Seattle Academy of Arts & Sciences, past *Alumni Board President, Trustee Ex Officio, and Strategic Planning Committee Member.*

ARTICLES & PRESENTATIONS

Quoted, Mike Curley, *Buyers Gaining Ground in "Right To Repair" Fight*, Law360 (April 8, 2022)

Quoted, Emily Field, *Product Liability Group Of The Year: Keller Rohrback*, Law360 (February 16, 2022)

Panelist, HarrisMartin's MDL Conference: *HIV Drugs, Valsartan, 3M Earplugs and Litigation in a Post-Fosamax World Agenda - Automotive MDLs - Preview of Tomorrow's Arguments*, Portland, OR, (July 24, 2019).

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2020-2024

Selected as a 2023 Rising Star by Law360

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



MATT MELAMED

CONTACT INFO

180 Grand Avenue, Suite 1380
Oakland, CA 94612

(510) 463-3900

mmelamed@kellerrohrback.com

PRACTICE EMPHASIS

- Class Acion & Consumer Litigation

EDUCATION

Wesleyan Univerity
B.A., 1996

University of California College of the Law, San Francisco (formerly UC Hastings)
J.D., *magna cum laude*, 2008
Order of the Coif; Articles Editor, *Hastings Law Journal; Tony Patiño Fellow*

Matt Melamed is a partner in Keller Rohrback's Oakland office, where he is a member of the firm's nationally-recognized Complex Litigation Group.

He has ably represented plaintiffs, municipalities, and states in nearly every aspect of litigation for 15 years.

Matt joined Keller Rohrback after co-counseling with attorneys at the firm to represent plaintiffs in several complex, multidistrict cases. In recent years, Matt focused on representing plaintiffs in the In re Facebook, Inc. Consumer Privacy Litigation MDL, which consolidated numerous cases that arose from the Cambridge Analytica scandal. The case settled for $725 million, the largest settlement to date of a U.S. privacy class action and the most Facebook has ever paid to resolve private litigation. Before that, Matt represented cities, counties, and states in nationwide litigation concerning the prescription opioid crisis. Among other roles in those cases, he represented the City and County of San Francisco, whose case was remanded as an MDL bellwether from In re National Opiate Litigation.

Matt's extensive litigation experience also includes representing investors in numerous securities fraud cases, among them Villella v. Chemical & Mining Company of Chile, Inc., In re St. Jude Medical, Inc. Securities Litigation, In re LeapFrog Enterprise, Inc. Securities Litigation, and Jones v. Pfizer Inc., each of which resulted in significant plaintiff recoveries. All told, his teams have recovered more than $1 billion for investors, consumers, and municipalities.

Matt received his B.A. from Wesleyan University in 1996 and graduated magna cum laude from the University of California College of the Law, San Francisco in 2008. After law school, he served as a law clerk for the Honorable Joseph A. Greenway, Jr. on both the United States District Court for the District of New Jersey and the United States Court of Appeals for the Third Circuit. He was also the Kazan-Wallace Attorney at Public Justice PC.

Matt has authored published articles on multiparty discovery in the National Opiate Litigation MDL, special solicitude for state standing to bring suit, arbitration agreements in adhesive contracts, and First Amendment protections for hate speech considered through the lens of European law.

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.

BAR & COURT ADMISSIONS

2008, California, 2008

2009, U.S. Court of Appeals for the 3rd Circuit

2010, U.S. Court of Appeals for the 10th Circuit

2010, U.S. District Court for the Northern District of California

2012, U.S. District Court for the Central District of California

ARTICLES & PRESENTATIONS

Co-author with Paul J. Geller, Aeilsh M. Baig, Thomas E. Egler, *Planning for Aggressive Mutiparty Discovery in a Fast-Moving, Complex MDL: AN Example from the Opioids Litigation*, 89 UMKC L. Rev. 897 (2021)

Author, *A Theoretical Justification for Special Solicitude: States and the Administrative State*, 8 Cardozo Pub. L. Pol'y & Ethics J. 577 (2010)

Author, *Timeliness and the Non-Existence of Arbitration Agreements*, 12 J. Consumer & Com. L. 78 (2009)

Author, *Towards an Explicit Balancing Inquiry? R.A.V. and Black Through the Lens of Foreign Freedom of Expression Jurisprudence*, 59 Hastings L.J. 407 (2007)

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Northern California*, 2015-2018

PROFESSIONAL & CIVIC INVOLVEMENT

Federal Bar Association, *Member*

Bar Association of San Francisco, *Member*

Public Justice, *Member*

Oakland Roots and Soul Sports Club, *Community Owner*

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DANIEL MENSHER

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1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

dmensher@kellerrohrback.com

PRACTICE EMPHASIS

- Consumer Protection
- Environmental Litigation
- Financial Products and Services
- Government and Municipalities
- Mass Personal Injury

EDUCATION

Wesleyan University

B.A., 1998, History

University of Wisconsin

M.S., 2002, Geography

Lewis & Clark Law School

J.D., *cum laude*, 2007, Environmental Law Certificate; Cornelius Honors Society; Articles Editor, *Environmental Law Review*

Daniel Mensher translates thorough preparation into courtroom success. Dan practices in Keller Rohrback's nationally-recognized Complex Litigation Group with a focus on environmental cases and representing government entities in important litigation. He collaborates with his colleagues and clients to identify problems and craft creative, long-lasting solutions.

Dan has litigated important environmental and consumer cases across the country in federal and state court. He presently represents the States of Oregon, Delaware, and Maryland, as well as the City of Seattle in their cases against Monsanto seeking to hold the corporate giant responsible for natural resource damages related to its sale and marketing of PCBs. He is also part of the Keller Rohrback team representing more than 70 counties, cities, and tribes in the fight to hold drug manufacturers and other entities accountable for the opioid crisis.

Before joining the firm, Dan was an environmental law professor at Lewis & Clark Law School in Portland, Oregon, where he also litigated cases involving toxic waste, water pollution, and natural resource management. He has sat on governmental advisory boards and helped to draft key environmental regulations in place today. Dan uses his passion and experience to protect our environment and the people and communities that rely on clean air, water, and products.

BAR & COURT ADMISSIONS

2007, Oregon

2008, U.S. Court of Appeals for the Ninth Circuit

2008, U.S. District Court for the District of Oregon

2010, U.S. Court of Appeals for the District of Columbia

2011, U.S. District Court for the District of Wisconsin

2014, U.S. District Court for the Eastern District of Washington

2014, Washington

PROFESSIONAL & CIVIC INVOLVEMENT

Oregon State Bar Association, *Member*

Washington State Bar Association, *Member*

Toxic Free Future, *Board Member*

Northwest Environmental Defense Center, *Board Member,* 2009-2014

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.

PUBLICATIONS & PRESENTATIONS

Speaker, *PFAS from the Litigation Perspective*, Law Seminars International, A Comprehensive Seminar on the 33rd Anniversary of the Model Toxics Control Act (December 7, 2023).

Panelist, *Toxic Torts and Class Actions*," Environmental Law and Policy Conference, University of Michigan, Michigan Law (September 30, 2022).

Panelist, *Accountability for Climate Change Harms in the Pacific Northwest: Scientific, Policy and Legal Perspectives*, Lewis & Clark Law School's Green Energy Institute, the Center for Climate Integrity, and Breach Collective (March 18, 2021).

Speaker, *Federalism and the Preemption of State Public Nuisance Actions*, Alliance of California Judges Symposium on the Economics of Consumer Protection (November 2019).

Speaker, Bridgeport Environmental Class Action Webinar, (March 2016).

Speaker, *Testing of the Air Quality and Expert Witnesses for the Cases,* Harris Martin Porter Ranch Gas Leak Litigation Conference, (January 19, 2016).

Authori, *With Friends Like These…: The Trouble With Auer Deference*, 43 Envtl. Law Rev. 4, 2013.

Speaker, *Addressing Issues in Water Quality Trading,* Oregon Water Law Conference, (November 7, 2013)

Speaker, *The Precautionary Principle in Environmental Law,* Northwest Environmental Conference and Tradeshow (December 11, 2013).

Speaker, *Clean Water Act Stormwater Regulation*, RainOps Conference, Spokane, WA, Longview, WA (2013).

Presenter, *Salmon Issues in Oregon and the Pacific Northwest,* Oregon State Bar Environmental and Natural Resources Committee annual Continuing Legal Education Program (2013).

Speaker, O*regon State Bar brown bag CLE debate with Oregon DOJ assistant attorney general about the Supreme Court case Decker v. NEDC* (2012).

Author, *Common Law On Ice: Using Federal Nuisance Law to Address Global Warming*, 37 Envtl. Law Rev. 2 (2007).

Co-author with Chris Rycewicz, *Growing State Authority Under the Clean Water Act*, 22 Nat. Resources & Env't 2, (2007).

KELLER ROHRBACK
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KEIL MUELLER

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PRACTICE EMPHASIS

- Class Action & Consumer Litigation
- Complex Litigation
- Environmental Litigation
- Governments & Municipalities
- Institutional Investors
- Securities

EDUCATION

New York University School of Law
J.D., *cum laude*, 2005

Williams College
B.A., Philosophy and Political Science, *magna cum laude*, 1999

Keil Mueller is a resolute and tireless advocate for his clients' interests.

With over 15 years of litigation experience, Keil has regularly represented government entities, investors, consumers, businesses and other Plaintiffs in a wide variety of complex legal matters and class actions. His practice focuses on issues related to securities and financial fraud, the environment, consumer class actions, and partner and shareholder disputes among others. Keil's thoughtful but tenacious pursuit of his clients' claims has contributed to significant courtroom victories and favorable settlements. He has successfully represented clients in matters of corporate malfeasance, taking on big companies such as AIG, Oppenheimer, FedEx Ground, JP Morgan Chase, and Bank of New York Mellon, just to name a few.

Currently, Keil is a key member of teams prosecuting claims on behalf of the State of Maryland, the State of Delaware, and the City of Seattle against multinational chemical manufacturer, Monsanto, and seeking to hold the corporate giant responsible for environmental contamination and other harms caused by Monsanto's sale and marketing of PCBs. Prior to joining Keller Rohrback, Keil also was a member of the team that represented the State of Oregon in similar claims against Monsanto, which Monsanto recently agreed to settle for $698 million, the largest environmental settlement in Oregon's history.

In addition to advocating for his clients, Keil serves as a board member of the Campaign for Equal Justice and of the Oregon Lawyer Chapter of the American Constitution Society.

BAR & COURT ADMISSIONS

2008, Oregon State Bar

2006, New York

2008, U.S. District Court, Oregon

2006, U.S. District Court, Southern New York

2006, U.S. District Court, Eastern New York

2015, U.S. Court of Appeals, Ninth Circuit

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PROFESSIONAL & CIVIC INVOLVEMENT

American Bar Association, *Member*

American Constitution Society, Oregon Lawyer Chapter, *Board Member*, 2016-present (Chair, 2017-2018)

Multnomah Bar Association, *Member*
- CLE Committee, 2012-2015 (Co-Chair 2014-2015)
- Court Liaison Committee, 2010-2013 (Chair 2012-2013)
- Young Lawyers Section, Membership Committee, 2010-2012

Oregon State Bar, *Member*

Oregon Trial Lawyers Association, *Member*
- Business Litigation Section, Chair, 2015-2018

Public Investors Advocate Bar Association (PIABA), *Member*

Campaign for Equal Justice, *board member*, 2016-present (*Secretary* 2022-present)
- Associates Committee, 2010-2016 (*Co-Chair* 2014-2016)

Community Cycling Center, *Board Member*, 2014-2020 (*Chair* 2017-2018)

HONORS & AWARDS

Benchmark Litigation, 2015-2025

Selected to Rising Stars list in *Super Lawyers - Oregon*, 2012-2016

Selected to Super Lawyers list in *Super Lawyers - Oregon*, 2020-2024

The Best Lawyers in America®, Portland, Oregon:
- Commercial Litigation, 2019-2024
- Litigation - Securities, 2021-2024
- Plaintiffs Mass Tort Litigation / Class Actions, 2022-2024

ARTICLES & PRESENTATIONS

"Little Green Men: Protest and Federal Repression in Portland," American Constitution Society Oregon, Portland, Oregon (August 2020), presenter

Oregon Civil Pleading and Litigation, "Answers, Affirmative Defenses, Counterclaims, and Replies," 2020 Edition

Trial Lawyers, "You Say Yes. I Say No. Ethical Issues in Multi-Plaintiff Settlements," 2015

Oregon Statutory Time Limitations, "Chapter 10: Business Litigation," 2013 & 2017 Revisions

Oregon Civil Pleading and Practice, "Chapter 43: Attorney

Fees, Cost Bills, and ORCP 17 Sanctions," 2012 Revision

Oregon State Bar Litigation Journal, "Avoiding Removal and Dismissal Under the Securities Litigation Uniform Standards Act of 1998," 2010

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PROFESSIONAL & CIVIC INVOLVEMENT

American Bar Association, *member*

American Constitution Society, Oregon Lawyer Chapter, board member, 2016-present (Chair, 2017-2018)

Multnomah Bar Association, member
- CLE Committee, 2012-2015 (Co-Chair 2014-2015)
- Court Liaison Committee, 2010-2013 (Chair 2012-2013)
- Young Lawyers Section, Membership Committee, 2010-2012

Oregon State Bar, *member*

Oregon Trial Lawyers Association, *member*
- Business Litigation Section, Chair, 2015-2018

Public Investors Advocate Bar Association (PIABA), *member*

Campaign for Equal Justice, *board member*, 2016-present (Secretary 2022-present)
- Associates Committee, 2010-2016 (Co-Chair 2014-2016)

Community Cycling Center, *board member*, 2014-2020 (Chair 2017-2018)

HONORS & AWARDS

Benchmark Litigation, 2015-2023

Selected to Rising Stars and Super Lawyers lists in Super Lawyers – Washington, 2012-2016 and 2020-2022

The Best Lawyers in America®, 2019-2023Publications & Presentations

ARTICLES & PRESENTATIONS

Presenter, *Little Green Men: Protest and Federal Repression in Portland*, American Constitution Society Oregon, Portland, Oregon (August 2020).

Author, Oregon Civil Pleading and Litigation, *Answers, Affirmative Defenses, Counterclaims, and Replies*, 2020 Edition.

Author, *You Say Yes. I Say No. Ethical Issues in Multi-Plaintiff Settlements,* Trial Lawyers (2015).

Editor, *Chapter 10: Business Litigation*, Oregon Statutory Time Limitations, 2013 & 2017 Revisions.

Editor, *Chapter 43: Attorney Fees, Cost Bills, and ORCP 17 Sanctions,* Oregon Civil Pleading and Practice, 2012 Revision

Author, *Avoiding Removal and Dismissal Under the Securities Litigation Uniform*, Standards Act of 1998 Oregon State Bar Litigation Journal (2010).

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NATHAN NANFELT

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PRACTICE EMPHASIS

- Class Action & Consumer Litigation
- Employment Litigation
- Insurance, Bad Faith & Policyholder Rights
- Personal Injury, Wrongful Death, Securities & Catastrophic Property Loss

EDUCATION

Seattle University School of Law

J.D. 2012

Wheaton College

B.A., *cum laude*, 2007

BAR & COURT ADMISSIONS

2012, Washington

Nathan Nanfelt has the heart of an advocate. He's committed to fighting for justice, fairness, and human rights. As an attorney in Keller Rohrback's Plaintiff's Tort Litigation Group, Nathan represents classes, individuals, and businesses harmed by others.

Nathan sharpened his litigation skills trying cases for the King County Prosecuting Attorney's Office. With his extensive trial and courtroom experience, Nathan knows when it's time to fight–but he also has the discernment to know when compromise benefits his clients.

A 2012 graduate of Seattle University School of Law, Nathan co-wrote constitutional and human rights educational materials for youth in Zambia, with a focus on gender-based violence and police brutality. Nathan's work was inspired by six months he spent in Zambia in college. A professor and mentor noticed Nathan's "advocate's heart" and encouraged him to pursue a career in law.

Prior to joining Keller Rohrback, Nathan served as a judicial law clerk in the U.S. District Court, Western District of Washington. He also served as a certified law clerk for the Los Angeles County District Attorney's Office's Victim Impact Program. Before that, he worked as a paralegal at a large firm in Chicago.

PROFESSIONAL & CIVIC INVOLVEMENT

Judge Charles V. Johnson Youth and Law Forum, *Board Member* (2018-Current)

William L. Dwyer Inn of Court, *Member* (current), *Board Member* (2018-2020)

Washington State Association for Justice, *Member*

Federal Bar Association, *Member*

King County Bar Association, *Member*

KCBA Young Lawyer Division, *Board Trustee* (2013-2016)

HONORS & AWARDS

Received three CALI awards and the Witkin Award for Academic Excellence in Dispute Resolution.

National Trial Lawyers: Top 40 Under 40

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2024

Selected to Rising Stars list in *Super Lawyers - Washington*, 2020-2023

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PRESENTATIONS & PUBLICATIONS

Co-presenter, *Gender Equity in the Legal Profession*, William Dwyer Inn of Court (2018).

Panelist, *Judicial Externships*, Seattle University School of Law (February 2017).

Speaker, *Life After the Bar Exam*, remarks on behalf of Young Lawyer Division at KCBA Swearing-in Ceremony (October 2013).

Co-author with Pamela Mumbi and Dr. Edward O'Brien, Street Law Zambia: Practical Education for Zambia's Youth, a 12-Lesson Teacher and Student Curriculum (March 2014).

The Cap on Attorney's Fees: A Primary Obstacle to Protecting Prisoners' Civil Rights, De Novo, Washington State Bar Association (February 2012).

Co-presenter, *Stay Classy, Young Lawyers: What Anchorman Ron Burgundy Can Teach You About Being a Better Lawyer*, CLE at KCBA (November 2012).

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SARAH R. OSBORN

CONTACT INFO

601 SW Second Avenue
Suite #1900
Portland OR 97204
(206) 623-1900
sosborn@kellerrohrback.com

PRACTICE EMPHASIS

- Catastrophic Property Loss
- Class Action & Consumer Litigation
- Consumer Litigation
- Consumer & Data Privacy Protection
- Employment Law
- Financial Products &Services
- Whistleblower

EDUCATION

University of North Texas
B.B.A. in Economics, 2016

University of Oregon School of Law
M.S. in Conflict and Dispute Resolution, 2021
J.D., Public Interest Law Concentration, 2021

Sarah R. Osborn is a sharp and compassionate advocate for the underdog who utilizes her strong work ethic and robust skillset to achieve successful results for her clients.

Sarah is an attorney working in Keller Rohrback's complex litigation and commercial litigation groups. She represents clients using a collaborative, thoughtful, and intuitive approach while maintaining a strong moral compass for social justice. Prior to joining Keller Rohrback, she focused on employment and civil rights litigation, including matters of discrimination, sexual harassment, whistleblower retaliation, and disability rights.

Since joining the firm Sarah served on the Oregon Wildfires trial team that secured historic jury verdicts for damages amounting to $220 million for 36 plaintiffs. Sarah has also successfully negotiated contract disputes and represented clients in arbitration and trial proceedings with Keller Rohrback's commercial litigation group.

Sarah was inspired to go to law school after working in the financial services industry, where she was exposed firsthand, to some of the most predatory industries to consumers. This exposure inspired Sarah to seek a career path dedicated to consumer justice.

During her time at the University of Oregon School of Law, Sarah received many community service awards for her work dedicated to civil rights. Additionally, Sarah actively pursued initiatives in social justice, clerking for organizations such as Disability Rights Oregon and Northwest Workers Justice Project. Sarah was also the only law student across the entire Pacific Region (made up of California, Oregon, and Washington law schools) selected for a Public Interest Award by Equal Justice Works in 2021 for her exemplary commitment to public interest law and pro bono work.

Sarah continues to be highly involved in the Oregon legal community focusing on advancing access to justice through organizations such as the Oregon Trial Lawyers Association (OTLA) and the LGBT Bar Association of Oregon (OGALLA).

When not fighting the good fight, you can find Sarah walking her two rescue chihuahuas, spending time outdoors, rock climbing, and solving sudoku puzzles.

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BAR & COURT ADMISSIONS

Oregon State Bar, 2021

U.S. District Court, Oregon, 2022

Ninth Circuit Court of Appeals, 2022

Washington State Bar, 2024

HONORS & AWARDS

Oregon Trial Lawyers Association (OTLA) Leadership Academy, 2024-2025

Selected to Rising Stars list in *Super Lawyers - Oregon*, 2024

Oregon State Bar: Oregon New Lawyers Division, Member Services Award, 2023

Equal Justice Works, Public Interest Award - Pacific Region, 2021

Pro Bono Honors, 2021

Hans Linde Fellowship, 2019.

PRESENTATIONS & PUBLICATIONS

Co-author, *Rights of Adults Who Are Protected Persons*, Oregon Elder Law Newsletter (July 2020).

Author, *Proactive and Reactive Resolution Mechanisms for Sexual Harassment: An Argument to Extend OSHA Protection*, University of Oregon Theses and Dissertations (December 2021).

Co-presenter, *James et al. v. PacifiCorp*: *Lessons from Phase I Trial*, Oregon Trial Lawyers Association Summer Convention (August 12, 2023).

PROFESSIONAL & CIVIC INVOLVEMENT

Oregon State Bar Free Legal Answers Committee (FLAC), *member*

Oregon New Lawyers Division, Executive Committee *Member-at-Large*

OGALLA, *Executive Committee Membership Secretary*

Oregon State Bar Consumer Law Section, *Executive Committee CLE Chair*

Portland State University Explore the Law Program, *Mentor*

Oregon Trial Lawyers Association, Member

National Association of Consumer Advocates, *Member*

Oregon Free Legal Answers, *Pro Bono Attorney*

Multnomah Bar Association, *Member*

Oregon State Bar, *Member*

American Bar Association, *Member*

KELLER ROHRBACK
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YOONA PARK

CONTACT INFO

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Portland OR 97204

(971) 253-4600

ypark@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action & Consumer Litigation
- Environmental Litigation
- Government & Municipalities

EDUCATION

Dartmouth College
A.B., Art History and English, 1999

Northwestern School of Law, Lewis & Clark College
J.D., *cum laude, 2007*

BAR & COURT ADMISSIONS

2007, Oregon State Bar

U.S. District Court, Oregon

Yoona Park strives to embody the spirit of "nunchi," a Korean concept that recognizes the importance of reading the moods, tone, and goals of individuals within a group, and adjusting one's actions to meet those group dynamics. Yoona is motivated by this interpersonal aspect of her collaborative efforts in the legal profession—including those with co-counsel, Keller Rohrback colleagues, and clients. Her leadership ability and passion for both teamwork and advocacy are valuable tools that Yoona uses to guide her teams in identifying difficult problems and finding effective and practical solutions for her clients.

Yoona's work in Keller Rohrback's complex litigation group is focused on environmental law, class actions, and the representation of government entities in litigation against corporate wrongdoers. With over 15 years of litigation experience and a background in public relations, Yoona believes passionately in the legal system's power to redress harm to vulnerable populations and communities and is strategic about navigating the unique nuances and considerations involved when representing government entities in public-facing litigation. She is well respected by her peers, as well as industry organizations, and has been honored by Oregon Super Lawyers, Benchmark Litigation, and Best Lawyers in America.

Prior to her time at Keller Rohrback, Yoona worked closely with other members of the firm as co-counsel representing the State of Oregon in its case against Monsanto seeking to hold the corporate giant responsible for natural resource damages related to the sale and marketing of PCBs. She also represents the State of Maryland, State of Delaware, and City of Seattle in PCB litigation against Monsanto. Yoona also represents 19 Oregon school districts in litigation against JUUL Labs, Inc. and other e-cigarette manufacturers for targeting youth with their marketing and product design and addicting a new generation to nicotine. At her prior firm, Yoona most recently represented plaintiffs in a class action against Airbnb seeking changes to that company's discriminatory booking policies, and individuals whose personal information was compromised by a data breach in a class action against the health insurer Premera.

Outside of work, Yoona enjoys cooking, skiing, knitting sweaters that people feel obligated to wear, and spending time with her litigator husband and two teenage sons.

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PROFESSIONAL & CIVIC INVOLVEMENT

Oregon State Bar

Federal Bar Association

Multnomah Bar Foundation, *Board Member*, 2021-present, *Treasurer/Secretary*, 2022-2023, *Vice President*, 2023-2024

Ninth Circuit, District of Oregon, *Lawyer Representative*, 2019-2022

Oregon Trial Lawyers Association, Legislative Committee, 2009-2011, Business Litigation Section, *Co-Chair*, 2009-2012

Boost Oregon, *Board Member*, 2015-2020

Oregon Ballet Theatre, *Board Member*, 2010-2011

Irvington Club, *Social Justice Committee Member*

St. Andrew Legal Clinic, Race for Justice, *Committee Member*, 2008

Classroom Law Project High School Mock Trial Competition, *Volunteer Coach*, 2008

PRESENTATIONS & PUBLICATIONS

A Conversation with Chief Justice Martha Walters, Oregon State Bar Litigation Institute, Skamania, Washington (February 2020)

Co-author, *Class Actions*, Oregon Civil Pleading and Litigation, 2020 Edition

HONORS & AWARDS

The Best Lawyers in America®, Portland, Oregon, 2025 (Recognized since 2017):

- Commercial Litigation
- Employment Law - Individuals
- Litigation - Environmental
- Litigation - Securities
- Mass Tort Litigation / Class Actions – Plaintiffs

Benchmark Litigation, Benchmark Litigation Star, 2023-2025

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MATTHEW PREUSCH

CONTACT INFO

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Santa Barbara, CA 93101

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mpreusch@kellerrohrback.com

PRACTICE EMPHASIS

- Consumer & Data Privacy Protection
- Environmental Litigation
- Governments and Municipalities

EDUCATION

Pomona College

B.A., 2000, Politics, Philosophy, and Economics

Lewis & Clark Law School

J.D., *magna cum laude*, 2013, Environmental & Natural Resources Law Certificate

Matthew Preusch is a partner at Keller Rohrback and practices in its nationally-recognized Complex Litigation Group. Matt focuses his work on cases that protect people and the environment. He has helped initiate landmark consumer litigation related to Volkswagen's "Clean Diesel" deceit and Wells Fargo's unauthorized account scheme. When studies of moss samples in trees in Portland, Oregon identified several pollution "hotspots" in that city, he and others at Keller Rohrback launched cases on behalf of residents that resulted in the largest environmental class action settlement in Oregon history. More recently, he served as co-lead counsel representing survivors of four utility-caused wildfires in Oregon. That case resulted in a historic, first-of-its-kind jury verdict finding a utility liable to a class for punitive damages. In addition, Matt serves as individual plaintiffs' Liaison Counsel for the Marshall Fire litigation in Colorado.

Before joining Keller Rohrback, Matthew served as an honors attorney in the Oregon Department of Justice's appellate and trial divisions. He was a judicial extern for the Hon. Michael W. Mosman in the District of Oregon during law school. Prior to his legal career, he spent 10 years as a journalist in the Pacific Northwest, covering regional and national news for The Oregonian, The New York Times and other publications.

BAR & COURT ADMISSIONS

2013, Oregon

2014, California

2014, U.S. District Court for the Central District of California

2014, U.S. District Court for the Eastern District of California

2014, U.S. District Court for the Northern District of California

2014, U.S. District Court for the Southern District of California

2014, U.S. Court of Appeals for the Ninth Circuit

2018, U.S. District Court for the District of Oregon

PROFESSIONAL & CIVIC INVOLVEMENT

Santa Barbara Bar Association, *Member*

Underscore Media Collaboration, *Board Member*

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PUBLICATIONS & PRESENTATIONS

Speaker, National Wildland Fire Conference (April 2024).

Panelist, *Current State of the Law on Ascertainability and Standing*, Bridgeport Consumer Class Action Litigation Conference (January 2017).

Speaker, Bridgeport Environmental Class Action Webinar, (March 2016).

Panelist, *Cutting-Edge Bet the Company Mega Class Action CLE,* Lewis and Clark Law School, Public Interest Law Project (February 2016).

Panelist, *Current State of the Law on Ascertainability and Standing*, Bridgeport Consumer Class Action Litigation Conference (January 2016).

Speaker, *Remedies*, Harris Martin Porter Ranch Gas Leak Litigation Conference (January 2016).

Don't Say, "No Comment": How To Ethically and Effectively Talk to Reporters, Santa Barbara County Bar Association (Sept. 16, 2015).

Oregon State Bar Environmental & Natural Resources Section Case Notes (July 2015).

Author, *Tim Weaver, Yakama Tribes' Salmon Champion, Says His Goodbyes*, The Oregonian (Jan. 1, 2010).

Author, *DEQ to Help Polluter Seek Federal Break on Mercury Emission*, The Oregonian (Aug. 19, 2009).

Author, *Amid Forests Ashes, a Debate Over Logging Profits is*

Burning On, The New York Times (April 15, 2004).

HONORS & AWARDS

Best Lawyers: Ones to Watch® in America, Plaintiffs Mass Tort Litigation / Class Action - Santa Barbara, California, 2024

National Trial Lawyers: Top 100, 2024

KELLER ROHRBACK
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JAMES REHWALDT

CONTACT INFO

601 SW Second Avenue, Suite 1900

Portland, OR 97204

(971) 253-4600

jrehwaldt@kellerrohrback.com

PRACTICE EMPHASIS

- Environmental Litigation
- Class Action and Consumer Litigation

EDUCATION

Lewis & Clark Law School

J.D., *cum laude*, 2022

St. Olaf College

B.A., *cum laude*, German, Philosophy, 2016

James Rehwaldt is a passionate advocate for environmental causes seeking to bring justice by holding wrongdoers accountable.

James grew up in a rural seaside town in Northern California surrounded by old-growth redwood trees, so it is easy to understand their lifelong dedication to environmental issues. When James entered the workforce after obtaining their B.A. from St. Olaf College, they canvassed and fundraised for grassroots environmental nonprofit organizations before transitioning to customer outreach for renewable energy and carbon-offset programs through utility companies. Seeking more effective tools to implement the environmental changes they wanted to see, James earned their JD at Lewis & Clark Law School in 2022.

Following law school James served as a law clerk, first for the Multnomah County Circuit Court, and then for the Oregon Supreme Court. Observing firsthand the increasing difficulties in some of the standard ways that environmental law is practiced, James set their sights on a more straight-forward approach – taking the fight to corporate wrongdoers themselves – an approach that is compatible with the kind of environmental work done at Keller Rohrback: holding accountable those responsible for these problems in the first place.

James uses hard work and creative critical thinking to engage with the law as a tool for positive change as they initiate their practice at Keller Rohrback's Portland office. Their work will include environmental matters, but James also sees unmet needs in consumer protection and health care that could benefit from the plaintiff-side public impact work being done by Keller Rohrback's highly accomplished complex litigation group, and they look forward to bringing cases in those areas too.

Away from work, James professes their love of the outdoors, including: downhill skiing (none of that cross-country nonsense), white-water kayaking, sailing, hiking, camping, and relaxing at hot springs. James also enjoys experimenting in the kitchen – exploring the culinary world in their free time – and plays D&D with a group of friends.

BAR & COURT ADMISSIONS

2022, Oregon

ARTICLES & PRESENTATIONS

"*Using Issue Certification Against a Defendant Class to Establish Causation in Climate Change Litigation*" Author, Environmental Law Reporter, April 2022.

"*Trojan Zebra: Unmasking Bostock's Potential to Undermine LGTBQ+ Protections*" Author, Lewis & Clark Law Review, Vol. 25.2, 2021.

KELLER ROHRBACK
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ERIN RILEY

CONTACT INFO

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Seattle, WA 98101

(206) 623-1900

eriley@kellerrohrback.com

PRACTICE EMPHASIS

- Appeals
- Class Actions
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products and Services
- Securities

EDUCATION

Gonzaga University

B.A., *cum laude,* 1992, French & History

University of Wisconsin Law School

J.D., *cum laude*, 2000, Wisconsin Law Review

Erin Riley knows that strong relationships are key in complex cases. As a partner in Keller Rohrback's Complex Litigation Group, Erin has allowed these collaborative and lasting relationships to inform her work for over 20 years.

Since 2001, Erin's practice has focused on representing employees and retirees in Employee Retirement Income Security Act ("ERISA") actions involving defined contribution, defined benefit, and health benefit plans.

Erin has worked on numerous ERISA-related articles and amicus briefs, and frequently speaks at employee benefits conferences. She has been actively involved with the *Employee Benefits Law* (Bloomberg-BNA) treatise since 2012 and currently serves as a lead editor of the Treatise. Erin is a fellow of the American College of Employee Benefits Counsel.

Erin earned her J.D. from the University of Wisconsin, where she was an editor of the Wisconsin Law Review. Prior to joining Keller Rohrback as an attorney in 2000, she worked with the firm as a summer associate in 1999.

BAR & COURT ADMISSIONS

2000, Wisconsin

2000, Washington

2001, U.S. District Court for the Western District of Washington

2010, U.S. Court of Appeals for the Fourth Circuit

2011, U.S. Court of Appeals for the Second Circuit

2011, U.S. Court of Appeals for the Ninth Circuit

2015, U.S. Court of Appeals for the Seventh Circuit

2016, Supreme Court of the United States

HONORS & AWARDS

The Best Lawyers in America®, Litigation - ERISA, Seattle, Washington, 2025 (Recognized since 2024)

Selected to Super Lawyers list in *Super Lawyers – Washington*, 2023-2024

Selected to Rising Stars list in *Super Lawyers – Washington,* 2009

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PROFESSIONAL & CIVIC INVOLVEMENT

American College of Employee Benefits Counsel, *Fellow*

Wisconsin State Bar Association, *Member*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

Civil Procedure Sub-Committee for the ABA Employee Benefits Committee, *Plaintiffs' Co-Chair, 2012–2016*

Employee Benefits Law (Bloomberg-BNA), *Chapter Editor*, 2012 – 2016

Employee Benefits Law (Bloomberg-BNA), *Senior Editor*, 2016 –2018

Employee Benefits Law (Bloomberg-BNA), *Co-Chair*, Board of Senior Editors, 2018–present

Washington State Supreme Court, Pro Bono Publico Honor Roll, 2014–present

PUBLICATIONS & PRESENTATIONS

Panelist, *2023 Employee Benefits Highlights*, ABA Section of Labor and Employment Law Employees Benefits Committee 2024 Midwinter Meeting, San Diego, California (2024).

Panel Moderator, *Did Hughes Move the Needle? 401(k) Fee Litigation Update*, ABA Section of Labor and Employment Law Employee Benefits Committee 2023 Midwinter meeting, New Orleans, Louisiana (2023).

Quoted, *Benefits Practice Group of the Year: Keller Rohrback*, Law360 (February 22, 2022).

Panelist, *Current Developments in Defined Contribution Investment Litigation*, ABA Live Webinar (March 23, 2022).

Panelist, *ERISA Class Actions: Plaintiff and Defense Perspectives*, Western Alliance Bank ERISA Webinar, (September 22, 2021).

Quoted, "Benefits Practice Group of the Year: Keller Rohrback," *Law360* (Dec. 7, 2020).

Panelist, *Defined Contribution Investment Litigation Update,* ABA Section of Labor and Employment Law, Employee Benefits Committee – Mid-Winter Meeting, Rancho Mirage, California (2020).

Brief for Law Professors as Amici Curiae in Support of the Petitioners, *Thole v. U.S. Bank*, No. 17-1712 (U.S. 2019).

Speaker, Western Pension & Benefits Council – Spring Seminar, Seattle, WA, 2019 (Litigation Update: Two Perspectives).

Panelist, ABA Section of Labor and Employment Law, Employee Benefits Committee – Mid-Winter Meeting, Nashville, Tennessee, 2019 (Arbitration: What's Different About ERISA?)

Panelist, ABA Section of Labor and Employment Law, Employee Benefits Committee – Mid-Winter Meeting, Austin, TX, 2017 (How to Get the Class Action Settlement Your Client Needs).

Quoted in Jacklyn Wille, "Ninth Circuit Adopts Pro-Worker Pension Framework," *Pension & Benefits Daily*, Bloomberg BNA (Apr. 22, 2016) (www.bna.com).

"Amgen Inc. v. Harris: What is the Status of ERISA Company Stock Cases Post-*Amgen*," ABA Employee Benefits Committee Newsletter, Spring, 2016.

Speaker, ACI ERISA Litigation, Chicago, IL, 2016 (Supreme Court Roundup).

Panelist, ABA Section of Labor and Employment Law, Employee Benefits Committee – Mid-Winter Meeting, Las Vegas, NV, 2016 (mock mediation).

Quoted in Andrea L. Ben-Yosef, "Class Action Suits on Plan Fees Steam Ahead," *Pension & Benefits Blog*, Bloomberg BNA (Feb. 10, 2016) (www.bna.com).

Br. of Amicus Curiae of Pension Rights Center in Supp. of Petition, *Pundt v. Verizon Communications*, No. 15-785 (U.S. 2016).

Br. of Amicus Curiae AARP and National Employment Lawyers Association in Supp. of Pls.-Appellees, *Whitley v. BP, P.L.C.*, No. 15-20282 (5th Cir. Oct. 28, 2015).

Br. of The Pension Rights Center as Amicus Curiae in Supp. of Resp't, *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S. Sept. 4, 2015).

Lynn L. Sarko, Erin M. Riley, and Gretchen S. Obrist, Brief for Law Professors as Amici Curiae in Support of the Petitioners, *Tibble, et al. v. Edison International, et al*., No. 13-550 (U.S. 2014).

Quoted in Jacklyn Wille, "High Court to Address Statute of Limitations for Suits Challenging Retirement Plan Fees," *Pension & Benefits Daily*, Bloomberg BNA (Oct. 3, 2014) (www.bna.com).

Speaker, *What's New in Fiduciary Litigation?*,Western Pension & Benefits Council – 2014 Spring Seminar, Seattle, WA (2014).

Co-contributor with Gretchen S. Obrist, *Attorneys Reflect on 40 Years of ERISA's Biggest Court Rulings*, Pension & Benefits Daily, Bloomberg BNA, discussing CIGNA Corp. v. Amara, 131 S.Ct. 1866, 50 EBC 2569 (U.S. 2011) (95 PBD, 5/17/11; 38 BPR 990, 5/24/11) (http://www.bna.com)

Co-author with Gretchen S. Obrist, *The Impact of Fifth Third Bancorp v. Dudenhoeffer: Finally, a Court Gets it Right!* Pension & Benefits Daily, Bloomberg BNA (154 PBD, 8/11/2014) (http://www.bna.com).

Co-author with Lynn L. Sarko, *Brief for Law Professors as Amici Curiae in Support of the Respondents*, *Fifth Third Bancorp v. Dudenhoeffer*, No. 12-751 (U.S. March 5, 2014).

Erin M. Riley Explores the Pro-Plaintiff Aspects of the Citigroup Ruling, ERISA Litigation Tracker: Litigator Q&A, Bloomberg BNA (Dec. 1, 2011). Reproduced with permission from ERISA Litigation Tracker Litigator Q & A (Dec. 5, 2011). Copyright 2011 by The Bureau of National Affairs, Inc. (800-372-1033)

Co-author with Sarah H. Kimberly, *Court Declines to Limit Damages in Neil v. Zell*, ABA Employee Benefits Committee Newsletter (Spring, 2011).

Co-author with Derek W. Loeser and Benjamin Gould, *2010 ERISA Employer Stock Cases: The Good, the Bad, and the In-Between Plaintiffs' Perspective*, Bureau of National Affairs, Inc. (Jan. 28, 2011).

Co-author with Derek W. Loeser, *The Case Against the Presumption of Prudence*, Bureau of National Affairs, Inc. (Sept. 10, 2010).

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



ADAM ROSENBERG

CONTACT INFO

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Seattle, Washington 98101

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arosenberg@kellerrohrback.com

PRACTICE EMPHASIS

- Appeals
- Class Actions & Consumer Litigation
- Insurance Bad Faith & Policyholder Rights
- Personal Injury & Wrongful Death

EDUCATION

Washington State University
B.A. Business Administration, 2004

Seattle Univeristy School of Law
J.D., 2007, *summa cum laude*

Whether a government agency or a frightened individual hoping to never again be involved with the legal system, Adam Rosenberg can be depended on to aggressively take on his client's cause.

Adam represents both plaintiffs and defendants in a wide array of civil matters. His practice centers on litigation of a complex nature, including catastrophic injury, insurance bad faith, civil rights, land use, water law, and business disputes among others. He's litigated high-stakes cases of national importance, as well as cases that were only important to the people involved.

Originally from Pennsylvania, Adam came to the Pacific Northwest for school, receiving a bachelor's degree in Business Administration from the University of Washington and his J.D. from Seattle University School of Law. Before joining Keller Rohrback, Adam worked for multiple, other prominent Seattle-area firms. He credits any practice success he's had to osmosis, having been privileged to work with (and against) some of the best trial lawyers in the country.

When not working, Adam enjoys spending time with his wife and two children, running, hiking and generally waging war against the natural aging process.

BAR & COURT ADMISSIONS

2007, Washington

2024, Arizona

HONORS & AWARDS

The Best Lawyers in America®, Commercial Litigation, Seattle, Washington, 2025

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



CHRIS RYDER

CONTACT INFO

1201 Third Avenue, Suite 3400

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PRACTICE EMPHASIS

- Class Actions
- Commercial Litigation
- Consumer & Data Privacy Protection

EDUCATION

Washington State University
B.A., Communication, 2017 *magna cum laude*

Gonzaga University School of Law
J.D., 2021, *magna cum laude*

Chris Ryder knows that effective communication is key to building a persuasive and coherent legal argument.

Long interested in politics and the idea of creating positive social change, Chris views the legal tools of class actions and mass torts as effective ways to proactively correct corporate wrongdoings and help a large number of people in ways that might otherwise be unfeasible. With a particular interest in the new frontier of digital and online issues, Chris is well suited to Keller Rohrback's consumer and data privacy protection practice and other complex litigation teams.

The seeds of a legal career were first planted for Chris in 2016 while working as an undergraduate communications intern for a non-profit in Washington D.C. and interacting with their robust legal department. From there, Chris attended and received his J.D. from Gonzaga University School of Law, graduating magna cum laude in 2021, where he acted as the Managing Editor of the Gonzaga Law Review. After graduating from law school, Chris clerked for the Honorable Justice Susan Owens of the Washington State Supreme Court.

In his personal life, Chris enjoys playing and watching chess, reading Kurt Vonnegut novels, exploring national parks with his wife, and playing saxophone.

BAR & COURT ADMISSIONS

2021, Washington

2023, Western District of Washington

2023, Second Circuit Court of Appeals

HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers - Washington*, 2024

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



MARK D. SAMSON

CONTACT INFO

3101 N Central Avenue, Ste. 1400

Phoenix, AZ 85012

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msamson@kellerrohrback.com

PRACTICE EMPHASIS

- Medical Malpractice Litigation
- Products Liability - Plaintiffs
- Personal Injury Litigation
- Commercial Litigation
- Complex Litigation

EDUCATION

Arizona State University

B.S., *summa cum laude*, 1976, Bio-Ag Sciences

Washington State University College of Veterinary Medicine

D.V.M., *summa cum laude*, 1980

Washington State University College of Veterinary Medicine

M.S., 1983, Veterinary Anatomy

Arizona State University College of Law

J.D., *summa cum laude*, 1986, Order of the Coif

As a licensed veterinarian, Mark has the medical knowledge that helps get his clients the results they deserve. Given that strong medical science background, Mark's practice focuses on tort law, including medical negligence, product liability, and other significant personal injury cases. He has nearly 35 years of experience litigating medical malpractice cases with victories including the landmark Edwards verdict, a transfusion-associated AIDS case that remains one of the largest personal injury verdicts in Arizona history. Mark was born in New York, but he moved to the Phoenix area in 1959 and grew up there. He practiced from 1986 to 1995 at Meyer, Hendricks, Victor, Osborn & Maledon, becoming a member in 1992. In 1995, Mark helped form Dalton Gotto Samson & Kilgard, P.L.C. ("DGSK") and was one of the members of DGSK who formed Keller Rohrback P.L.C. in 2002, and then Keller Rohrback L.L.P. in 2015.

BAR & COURT ADMISSIONS

1986, Arizona

1986, U.S. District Court for the District of Arizona

1986, U.S. Court of Appeals for the Ninth Circuit

1986, U.S. Supreme Court

2008, Washington, D.C.

HONORS & AWARDS

The Best Lawyers in America®, Phoenix, Arizona, 2025 (Recognized since 2022):

- Medical Malpractice Law - Plaintiffs
- Personal Injury Litigation - Plaintiffs
- Product Liability Litigation – Plaintiffs

Named to Super Lawyers list in *Super Lawyers - Southwest*, 2008-2021

PROFESSIONAL & CIVIC INVOLVEMENT

Maricopa County Bar Association, *Member*

Arizona State Bar Association, *Member*

American Association for Justice, *Member*

Arizona Association for Justice, *Sustaining Member*

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.

PUBLICATIONS & PRESENTATIONS

The Lawyer's Role in Meeting 21st Century Changes in Veterinary Medicine, American Veterinary Medical Law Association (2018).

Personal Injury Law in Arizona, Maricopa County Association of Paralegals (2018).

Health Law and Policy, Arizona State University College of Law (2016).

Health Law – Medical Malpractice in Today's World, Arizona Paralegal Association (2016).

From the Heart: Letting Go in Front of the Jury, Arizona Trial Lawyers Association (2015).

Medical Malpractice Seminar, Arizona Trial Lawyers Association (2013).

Trial Masters: A Look Inside the Value Options Case & Tools for Difficult Cases, Arizona Trial Lawyers Association (2011).

Comparing Veterinary and Legal Ethics, Arizona State Bar (2009).

Loss of a Chance in Med Mal Cases Arizona Trial Lawyers Association (2008).

Issues in FTCA Claims, Arizona Trial Lawyers Association (2008).

Co-Chair, *Trial Practice - Damages*, Arizona Trial Lawyers Association (2007).

Chairman, *Rapid Fire on Litigation Issues*, Arizona Trial Lawyers Association (October 2006).

Co-Chair, *Liens*, Arizona Trial Lawyers Association, (January 2006).

Author, *Negotiating 101*, Blackwell's 5-Minute Veterinary Practice Management Consult (2006).

Arizona Appellate Update, Maricopa County Bar Association (2005).

Liens Again, Maricopa County Bar Association (2004).

Chairman, *New Ethical Rules in Arizona*, Arizona State Bar (October 2003).

Speaker, *Application of legal principles to veterinary medicine,* Arizona Veterinary Medical Association (1999-2003).

Speaker, *Settlement conferences versus trial in medical malpractice cases*, Arizona Paralegal Association (2002).

Speaker, *Changes and issues in Arizona's ethical rules for attorneys,* Arizona Paralegal Association (2003).

P*unitive Damages after Campbell v. State Farm*, Maricopa County Bar Association (May 2003).

Co-Chair, *Anatomy of Pain,* Arizona Trial Lawyers Association (2002).

Speaker, *Use of medical literature in the courtroom*, Arizona Trial Lawyers Association Medical Malpractice Seminar (1996).

Speaker, *New legal theories in medical malpractice*, Arizona Trial Lawyers Association Medical Malpractice Seminar (1999).

Chair, *Seminar on Medical Malpractice in the Ages of Disclosure*. Maricopa County Bar Association.

Speaker, *Tort and Regulatory Issues Affecting Veterinarians*, National Meeting of American Veterinary Medical Law Association (1995).

Chair, *Seminar on Anatomy*, Maricopa County Bar Association (1994).

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CHRIS SPRINGER

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801 Garden Street, Suite 301

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PRACTICE EMPHASIS

- Appeals
- Class Action & Consumer Litigation
- Consumer Protection
- Data Privacy Litigation
- Employee Benefits & Retirement Security
- Environmental Litigation
- Financial Product & Services

EDUCATION

Dartmouth College

B.A., *cum laude*, 2000

U.C. Berkeley School of Law

J.D., 2008

Chris Springer is dedicated to helping people who have been harmed by the wrongful conduct of large corporations and other organizations.

He is a partner in Keller Rohrback's nationally recognized Complex Litigation Group and practices in the firm's Santa Barbara office. He is experienced in cases involving consumer protection, data privacy and cybersecurity, environmental protection, disability access, employment rights, and ERISA.

Chris is a graduate of Dartmouth College and U.C. Berkeley School of Law. Before joining Keller Rohrback, he worked in the field of software development and testing. His practice now focuses on data privacy and other consumer-protection litigation. Since joining Keller Rohrback, Chris has applied his legal knowledge and technical understanding to help develop and expand the firm's work in the growing field of data privacy and cybersecurity, helping to resolve cases that collectively have settled for more than $1 billion on behalf of hundreds of millions of class members, including hard-fought settlements in the *Sony Pictures*, *21st Century Oncology*, and *UnityPoint* data breach matters, as well as in *T-Mobile Customer Data Security Breach Litigation*, the second-largest data breach settlement in history, and in *Facebook Consumer Privacy User Profile Litigation*, the largest data privacy settlement in history. He is also actively involved in other ongoing data breach, data privacy, and other matters, including *23andMe Customer Data Security Breach Litigation*, *T-Mobile 2022 Customer Data Security Breach Litigation*, and *Consumer Vehicle Driving Data Tracking Litigation*.

BAR & COURT ADMISSIONS

2013, California

2017, U.S. District Court for the Central District of California

2017, U.S. District Court for the Northern District of California

PROFESSIONAL & CIVIC INVOLVEMENT

California State Bar Association, *Member*

Santa Barbara Bar Association, *Member*

American Bar Association, *Member*

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NATIDA SRIBHIBHADH

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

(206) 623-1900

natidas@kellerrohrback.com

PRACTICE EMPHASIS

- Class Action & Consumer Litigation
- Consumer Protection
- Governments and Municipalities
- Environmental Litigtation

EDUCATION

University of Washington

B.A., Journalism, 2008

University of San Diego School of Law

J.D., 2014; High honors in Mediation, Negotiation, and Education and Disability Clinic

Natida Sribhibhadh believes that the law is an unparalleled equalizing force when practiced with fierce determination and compassionate advocacy.

Natida is committed to obtaining large-scale justice for those who have been harmed by corporate wrongdoing. As an attorney in Keller Rohrback's nationally recognized Complex Litigation Group, she is an integral part of the firm's Wildfire Litigation team and currently represents survivors of four utility-caused wildfires in Oregon that resulted in a historic, first-of-its-kind jury verdict. She is litigating wildfire cases in Hawaii, Washington, Colorado and also represents Amazon Flex drivers in a fight to obtain wage benefits owed by Amazon Logistics, Inc. Natida is also a member of Keller Rohrback's Opioid Litigation team representing several governmental entities in their efforts to hold prescription opioid manufacturers and distributors accountable for the devastating effects these drugs have had on their communities. Natida's attraction to challenging cases coupled with her poise under pressure underlie the strong sense of collaboration she brings to her work.

Before joining KR, Natida practiced for several years at a prominent Seattle-based personal injury law firm. During her time in law school, she advocated for the rights and protections of foster youth aging out of the foster care system and represented parents and children in cases against local school districts as a legal intern at USD's Education and Disability Clinic. She also spent time as a legal intern for a barrister in Sydney, Australia, and as a judicial extern at San Diego Superior Court.

Outside of work, Natida enjoys snowboarding, hiking to fire lookouts, and spending time with her partner and their two dogs, Marcel and Noe.

BAR & COURT ADMISSIONS

2015, Washington

2021, U.S. District Court for the Western District of Washington

KELLER ROHRBACK
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PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar, *Member*, 2015 - Present

Washington State Association for Justice, *Eagle Member*, 2016 - Present

Asian Counseling and Referral Services (ACRS), *Board Member*, 2023-Present

Legal Foundation of Washington, State-wide co-chair for the Associates Campaign for Equal Justice (2023)

Asian Bar Association of Washington, Member

Filipino Lawyers of Washington, Member

Thai Bar Association, Member

HONORS & AWARDS

Recognized by Puget Sound business Journal as a "Next Gen in Law" recipient, September 2023

Selected to Rising Stars list in *Super Lawyers - Washington*, 2024

KELLER ROHRBACK
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ELIZABETH W. TARBELL

CONTACT INFO

1201 Third Avenue, Suite 3400

Seattle, WA 98101

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etarbell@kellerrohrback.com

PRACTICE EMPHASIS

- Class Actions
- Environmental Litigtation

EDUCATION

Bowdoin College
B.A., 2017, History and Environmental Studies

Harvard University
M.A, 2021, Regional Studies—East Asia

Stanford Law School
J.D., 2024

Elizabeth ("Liza") W. Tarbell enjoys grappling with large-scale, structural dilemmas and crafting creative solutions.

Liza joins Keller Rohrback's complex litigation group as a 2024 graduate of Stanford Law School with pro bono distinction. Given her interest in public health litigation, Liza looks forward to contributing to the group's efforts to leverage the law for the common good through innovative approaches like multidistrict litigation.

Prior to law school, Liza received a Master of Arts in Regional Studies—East Asia from Harvard University and a B.A. in History and Environmental Studies from Bowdoin College. In between, she worked as a James Reston Reporting Fellow at *The New York Times*, a Fulbright grantee conducting environmental oral history research in Kunming, China, and a grassroots environmental justice organizer in her hometown of New York. Injustices she reported, researched, and sought to collaboratively remediate in each of these roles seemingly all demanded legal solutions. It was through these experiences that Liza came to believe that there might be an alternative, more impactful way she could serve others. It was then that she decided to go to law school in the hopes of gaining the skill set to aid access to justice.

While at Stanford, Liza was Senior Articles Editor of the *Stanford Law Review*, Executive Editor of the *Stanford Journal of Civil Rights and Civil Liberties*, Co-President of the Disability and Mental Health Network at Stanford, and Treasurer of Stanford Law Students for Climate Action. Liza also participated in the Marion Rice Kirkwood Moot Court Competition and was a member of the Stanford Community Law Clinic.

In her free time, Liza enjoys running marathons, listening to podcasts, and baking sourdough bread.

BAR & COURT ADMISSIONS

2024, Washington

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HAVILA UNREIN

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PRACTICE EMPHASIS

- Class Actions
- Consumer Protection
- Employee Benefits and Retirement Security
- Environmental Contamination
- Fiduciary Breach
- Financial Products and Services
- Mass Personal Injury
- Securities
- Whistleblower

EDUCATION

Dartmouth College

B.A., *magna cum laude,* 2003, Russian Area Studies

University of Washington School of Law

J.D./LL.M. (Tax), *with honors*, 2008

Havila Unrein gives her clients a voice in the legal system. Havila practices in Keller Rohrback's nationally recognized Complex Litigation Group, where she is dedicated to helping clients who have been harmed by others engaged in fraud, cutting corners, and abuses of power.

Havila made significant contributions to *Hartman et al. v. Ivy Asset Management et al.,* a case involving fiduciary breach related to Madoff investments that resulted in a $219 million settlement with consolidated cases. She currently represents plaintiffs in multiple cases alleging violations of the Employee Retirement Income Security Act of 1974 ("ERISA") by healthcare institutions attempting to claim exempt "church plan" status under ERISA.

During law school, Havila provided tax and business advice to low-income entrepreneurs and high-tech start-ups as a student in the Entrepreneurial Law Clinic. She also served as an extern to the Honorable Stephanie Joannides of the Anchorage Superior Court. Prior to law school, Havila worked and studied abroad in Russia, Azerbaijan, and the Czech Republic.

BAR & COURT ADMISSIONS

2008, Washington

2009, U.S. District Court for the Western District of Washington

2012, Montana

2012, U.S. Court of Appeals for the Ninth Circuit

2012, U.S. District Court for the District of Montana

2013, California

2013, U.S. District Court for the District of Colorado

2013, U.S. District Court for the Central District of California

2013, U.S. District Court for the Eastern District of California

2013, U.S. District Court for the Northern District of California

2013, U.S. District Court for the Southern District of California

2014, U.S. Court of Appeals for the Sixth Circuit

PROFESSIONAL & CIVIC INVOLVEMENT

California State Bar Association, *Member*

Santa Barbara County Bar Association, *Member*

Washington State Bar Association, *Member*

King County Bar Association, *Member*

Montana State Bar Association, *Member*

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JEN WAGNER

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PRACTICE EMPHASIS

- Class Actions & Consumer Litigation
- Complex Litigation
- Employment Law
- Environmental Litigation
- Securities

EDUCATION

University of Michigan, Ann Arbor
B.A., with High Distinction, 1996

Northwestern School of Law at Lewis and Clark College
J.D., magna cum laude, graduating first in class, 2002

Jen advocates for her clients with intelligence and integrity, and is particularly adept at navigating the unique strategic and procedural challenges of complex legal matters and class action litigation.

Jen represents clients in a wide variety of areas, including environmental, consumer, securities, and employment disputes.

Jen is currently a member of the team prosecuting claims on behalf of the State of Maryland, the State of Delaware, and the City of Seattle against multinational chemical manufacturer, Monsanto, seeking to hold the company accountable for environmental contamination caused by Monsanto's sale and marketing of PCBs. Prior to joining Keller Rohrback, Jen worked closely with other members of the firm as co-counsel representing the State of Oregon in a similar case against Monsanto, which resulted in a $698 million settlement, the largest environmental settlement in Oregon's history. At her prior firm, Jen was also a member of the team representing investors in the Aequitas Ponzi scheme class action, which resulted in a $235 million settlement.

BAR & COURT ADMISSIONS

2002, Oregon State Bar

2002, U.S. District Court, Oregon

2014, U.S. Court of Appeals, Ninth Circuit

HONORS & AWARDS

The Best Lawyers in America®, Portland, Oregon, 2025 (Recognized since 2013):

- Commercial Litigation
- Litigation - Labor and Employment
- Litigation – Securities

Selected to Super Lawyers list in *Super Lawyers – Oregon*, 2010-2024

Benchmark Litigation, 2015-2025

Benchmark Litigation, Top 250 Women in Litigation, 2022

Ranked in Chambers and Partners USA Guide, 2021-2023 – Litigation: General Commercial

Portland Business Journal Women of Influence, 2021

PUBLICATIONS & PRESENTATIONS

"Class Actions," co-author, Oregon Civil Pleading and Litigation, 2020 Edition

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.

PROFESSIONAL & CIVIC INVOLVEMENT

Oregon State Bar - *Litigation Section Executive Committee*, 2014-2022

Multnomah Bar Foundation -

- *President*, 2020-2021
- *Vice President*, 2018-2019
- *Secretary*, 2017-2018
- *Board Member*, 2016

Multnomah Bar Association

- *Professional Development and Education Committee*, 2006-2007
- *Continuing Legal Education Committee*, 2009-2011
- *MBA Court Liaison Committee*, 2013-2015; *Chair*, 2015

Oregon Women Lawyers, *Member*, 2011-2013 Roberts-Deiz Awards Committee

American Bar Association, *Member*

Oregon Trial Lawyers Association, *Member*

American Bar Foundation, *Fellow*

KELLER ROHRBACK
LAW OFFICES ◆ L.L.P.



MICHAEL WOERNER

CONTACT INFO

1201 Third Avenue, Suite 3400

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mwoerner@kellerrohrback.com

PRACTICE EMPHASIS

- Class Actions
- Consumer Protection
- Data Privacy Litigation
- Employee Benefits and Retirement Security
- Environmental Litigation
- Mass Personal Injury
- Medical Negligence
- Securities

EDUCATION

University of Puget Sound

B.S., 1982

Notre Dame Law School

J.D., 1985

Mike Woerner works for the public good. A member of Keller Rohrback's nationally recognized Complex Litigation Group since 1985, Mike focuses on class action and mass personal injury cases. He is skilled at focusing the Courts' attention on key issues in litigation and at negotiating favorable settlements to bring relief to people who have experienced physical, emotional, and financial harm from environmental contamination, dangerous pharmaceutical drugs, and other negligent acts with far-reaching consequences.

Mike was a member of the litigation team that received the 1995 Trial Lawyer of the Year Award from Trial Lawyers for Public Justice for the In re Exxon Valdez litigation resulting from the devastation of thousands of miles of fishing ground around Prince William Sound, Kodiak Island, Chignik, and Cook Inlet after the infamous oil spill. He has more recently represented hundreds of clients in multiple states at risk of heart-valve damage or primary pulmonary hypertension from fen-phen diet drugs. Mike also has experience litigating and negotiating widespread medical negligence issues and misconduct by fiduciaries charged with investing retirement plan assets. With his focus on impact litigation, Mike strives to achieve full compensation for his clients as well as to compel institutional reform and change the conduct of powerful bad actors to prevent them from causing future harm.

Outside of work, Mike enjoys traveling with his family experiencing new places and cultures, as well as staying closer to home cheering on his kids' basketball and volleyball teams.

BAR & COURT ADMISSIONS

1985, Washington

PROFESSIONAL & CIVIC INVOLVEMENT

Issaquah Food and Clothing Bank, *Vice-Chair*

King County Bar Association, *Member*

Washington State Bar Association, *Member*

American Bar Association, *Member*

HONORS & AWARDS

The Best Lawyers in America®, Mass Tort Litigation / Class Actions – Plaintiffs, Seattle, Washington, 2025 (Recognized since 2024)

Selected to Rising Stars list in *Super Lawyers - Washington*, 2001

Selected to Super Lawyers list in *Super Lawyers - Washington*, 2018-2024.

Trial Lawyer of the Year – Trial Lawyers for Public Justice, 1995

KELLER ROHRBACK

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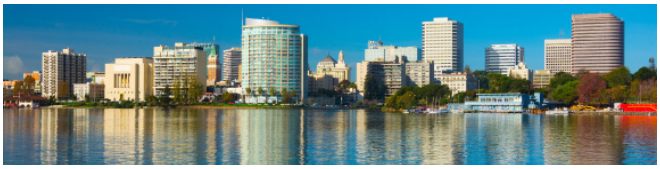










EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRIAN ECHARD, Plaintiff, v. WELLS FARGO BANK, N.A., Defendants.	§ § § § § § § § § §	No. 2:21-CV-05080-MHW-KAJ **DECLARATION OF MATTHEW J. PREUSCH IN SUPPORT OF RENEWED MOTION TO INTERVENE** Judge Michael H. Watson Magistrate Judge Kimberly A. Jolson

I, Matthew J. Preusch, hereby declare as follows:

1. I am over the age of eighteen years, of sound mind, and am competent to make this statement. I have personal knowledge of the matters stated below. If called as a witness, I could competently testify about the substance of this declaration under oath based upon my own personal knowledge.

2. I am a partner at Keller Rohrback L.L.P. and represent the Plaintiffs in *In re Wells Fargo Forbearance Litigation*, No. 3:20-cv-06009-JD (N.D. Cal.) ("The Consolidated Action"). I am a member in good standing with the State Bar of California and of Oregon.

3. Pursuant to an order from Judge Donato, on December 24, 2020 Keller Rohrback L.L.P. filed a First Amended Complaint consolidating two of the first-filed complaints in this controversy, *Green, et al v. Wells Fargo & Co., et al*, (N.D. Cal. 3:20-cv-05296-JD) (filed July 31, 2020) and *Delpapa, et. al v. Wells Fargo Bank, NA., et. al.* (N.D. Cal. 3:20-cv-6009-JD) (filed Aug. 26, 2020).

4. Attached as **Exhibit A** to this declaration is a comparison prepared by my office of some of the allegations from the *Delpapa* First Amended Complaint and the later *Echard* Complaint.

5. Not only did the *Echard* Complaint mirror the legal arguments and language from the *Delpapa* Complaint, it appears to have also copied a typo. In paragraph 109, and footnote 42 of that First Amended Complaint, a reference is made to a consumer complaint filed with the Consumer Financial Protection Bureau.

> 109. As one consumer told the Consumer Financial Protection Bureau, a Wells Fargo employee admitted "that the system is like a 'hair trigger'" automatically placing loans into forbearance, "even though I did nothing to start a forbearance."[42]

> [42] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898 (last visited December 23, 2020).

6. Due to a scrivener's error, footnote 42 cites to the incorrect consumer complaint. Consumer complaint # 3663700 contains the "hair trigger" reference, while the First Amended *Delpapa* Complaint cited consumer complaint 3658898 - a wholly different complaint. *See* Preusch Decl.

7. Attached as **Exhibit B** is a true and accurate copy of CFPB consumer complaint number 3663700. Attached as **Exhibit C** is a true and accurate copy of CFPB consumer complaint number 3658898.

8. The same exact error is found in the first *Echard* Complaint, with a nearly identical summary of the contents of the erroneously cited complaint. *See* Dkt. 1, at ¶ 53.

> 53. In particular, as one consumer told the CFPB, a Wells Fargo employee admitted "that the system is like a 'hair trigger'" automatically placing loans into forbearance "even though I did nothing to start a forbearance."[19]

> [19] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898 (last visited January 27, 2021).

9. Attached as **Exhibit D** is a true and accurate copy of correspondence between myself and Knoll Lowney, from November 5, 2021, in which Mr. Lowney expressed that he "strongly believe[d] that servicemembers and veterans have somewhat different claims and that if we proceed on our own we will be successful in achieving additional relief for them."

10. In my response, I stated "we would welcome you and your client bringing you client's case and any servicemember-specific claims your client may have as part of a consolidated proceeding in the Northern District of California, but we do not think the conditions you've requested for that are appropriate."

11. Attached as **Exhibit E** is a true and accurate copy of correspondence between myself and Knoll Lowney, from September 24, 2021. In that communication, Mr. Lowney states that his team was making a decision about whether to "create a united front" with the Intervenors or "begin their own negotiations with Wells Fargo." One week after that correspondence, on October 1, 2021, Echard and Wells Fargo jointly stipulated to transfer this action away from the related *Delpapa* action. Dkt. 53, 54.

12. Attached as **Exhibit F** is a true and accurate copy of the Third Amended Consolidated Complaint filed in *In re Wells Fargo Forbearance Litigation* on September 28, 2022.

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

DATED this 3rd day of October, 2022.

/s/ Matthew J. Preusch
Matthew J. Preusch

EXHIBIT A

***Delpapa* FAC, filed Dec. 24, 2020**	***Echard* Complaint, filed Jan. 28, 2021**
¶1 "In March 2020, following the worldwide outbreak of COVID-19, Congress passed the Coronavirus Aid, Relief and Economic Security ("CARES") Act to, among other things, provide relief to millions of American homeowners struggling to make their mortgage payments as a result of the economic difficulties caused by the pandemic."	¶8 "...As a result of the COVID-19 outbreak, Congress passed the Coronavirus Aid, Relief and Economic Security ("CARES") Act in March 2020, which among other things, provides relief to millions of Americans who are struggling to pay their mortgage payment as a result of the economic difficulties caused by the pandemic."
¶3 "The CARES Act makes clear that participation in a COVID-19 mortgage forbearance program is entirely voluntary; that is, a mortgagor must be informed of the various terms and conditions of the program and then affirmatively decide to enter the program."	¶9 "…The CARES Act makes clear that participating in a COVID-19 mortgage forbearance program is entirely voluntary; that is, a mortgagor must be informed of the various terms and conditions of the program and then affirmatively decide to enter the program."
¶4 "According to the Consumer Financial Protection Bureau ("CFPB"), before a bank servicing a loan can grant forbearance, it must receive a request for such relief and an attestation of a COVID-19-related financial hardship from the borrower….	¶11 "Per the Consumer Financial Protection Bureau ("CFPB"), before a bank servicing a loan can grant forbearance, it must receive a request for such relief and an attestation of a COVID-19-related financial hardship from the borrower…
¶6 "…many borrowers received no notice that Wells Fargo had placed their mortgages into forbearance. They only found out about Wells Fargo's actions—if they found out at all—when they attempted to apply for credit (including the refinancing of their mortgage) and were denied, saw the forbearance noted on a credit report, or tried, but were unable, to make a regularly scheduled mortgage payment with Wells Fargo."	¶14 "Many Wells Fargo mortgage customers who were placed into Wells Fargo's COVID-19 mortgage forbearance program received no notice that Wells Fargo had placed their mortgages into forbearance. Some borrowers only found out (if at all) when they attempted to apply for credit, including for refinancing of their mortgage, and were denied, then learning from the credit report that their mortgage loans were in forbearance. Others found out when they attempted, but were unable, to make regularly scheduled mortgage payments with Wells Fargo."
¶7 "And when Wells Fargo did send their customers a template notice informing them that Wells Fargo had placed their loans into forbearance, the notice was both insufficient and inaccurate."	¶15 "When Wells Fargo did send their customers a template notice informing them that Wells Fargo had placed their loans into forbearance, the notice was both insufficient and inaccurate."
¶12 "Congress's requirement of a volitional act on the part of mortgagor to opt into forbearance is intentional, because mortgage forbearance has serious consequences for homeowners, including	¶10 "Congress intentionally included a volitional act on the part of the mortgagor to opt into forbearance. This is because mortgage forbearance has serious consequences for homeowners, including an inability

***Delpapa* FAC, filed Dec. 24, 2020**	***Echard* Complaint, filed Jan. 28, 2021**
an inability to obtain additional credit and/or to refinance any existing loans."	to obtain additional credit and/or to finance any existing loans."
¶13 "As a result, those homeowners, including Plaintiffs, suffered damages, including, but not limited to, an inability to access credit, to refinance to lower interest rates (and with particular mortgage servicers instead of Wells Fargo), and in dealing with the difficult situation of removing their mortgages from a program they did not want."	¶19 "As a result of being placed into forbearance, these homeowners, including Plaintiff and the putative class, suffered damages including but not limited to an inability to access credit to finance to lower interest rates, which is especially egregious during this time in which mortgage interest refinance rates are historically low. They also must deal with the difficult situation of removing their mortgages from a program they did not want."
¶15 "Interest rates are at all-time lows and many homeowners are seeking to take advantage of these historically low rates by refinancing. If an account is placed into a forbearance program, those borrowers cannot typically refinance for many months, if not years, even after bringing the account current."	¶20 "Interest rates are at all-time lows, and many homeowners are seeking to take advantage of these historically low rates by refinancing. If an account is placed into forbearance, those borrowers cannot typically refinance for many months, if not years, even after bringing the account current."
¶23 "Wells Fargo, for its part, has not denied these allegations; through its spokesperson Tom Goyda, Wells Fargo states that "[i]n the spirit of providing assistance, [it] may have misinterpreted customers' intentions in a small number of cases."[6] ¶24 "Although Wells Fargo did not identify the complete number of borrowers who were unwillingly placed into forbearance program, it reported having received 1,600 complaints of unwanted forbearances."[7] [6]https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/ (last visited August 14, 2020). [7]https://www.nbcnews.com/business/personal-finance/1-600-customers-say-wells-fargo-paused-theirmortgage-payments-n1241620.	¶22 "Wells Fargo has not denied many of these core allegations, stating via its spokesperson Tom Goyda that "[i]n the spirit of providing assistance, we may have misinterpreted customers' intentions in a small number of cases."[4] Although Wells Fargo did not identify the complete number of borrowers who were unwillingly placed into its forbearance program, it reported having received 1,600 complaints of unwanted forbearances."[5] [4]https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/ (last visited January 27, 2021). [5]https://www.nbcnews.com/business/personal-finance/1-600-customers-say-wells-fargo-paused-their-mortgagepayments-n1241620 (last visited January 27, 2021).
¶53 "Second, and most relevant to this action, the CARES Act provided homeowners with GSE-backed loans experiencing financial hardships because of COVID-19 with the option	¶44 "Amongst other things, the CARES Act provided homeowners with Government Sponsored Enterprises ("GSE") loans experiencing financial hardships because of COVID-19 with the option to

***Delpapa* FAC, filed Dec. 24, 2020**	***Echard* Complaint, filed Jan. 28, 2021**
to request up to 180 days of forbearance on their mortgage. ¶54 Specifically, Section 4022(b) provides, in relevant part, that…	request up to 180 days of forbearance on their mortgage. Specifically, Section 4022(b) provides in relevant part that…
¶56 "These provisions make it abundantly clear that participation in a mortgagee's or servicer's mortgage COVID-19 forbearance program is voluntary and to be initiated only at the request of the mortgagor clients."	¶46 "The plain language of these provisions makes it abundantly clear that participation in a mortgagee's or servicer's mortgage COVID-19 forbearance program is voluntary and only to be initiated at the request of the mortgagor clients."
¶60 "For mortgagors to avail themselves of the COVID-19 mortgage forbearance option, they were instructed to contact their loan servicer to obtain information and, if appropriate, request forbearance.[12]" [12]*See* https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/requestforbearance-or-mortgage-relief/ (last visited August 14, 2020).	¶47 "For mortgagors to avail themselves of the COVID-19 mortgage forbearance option, they were instructed to contact their loan servicer to obtain information and, if appropriate, request forbearance.[16]" [16]https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/request-forbearance-ormortgage-relief/ (last visited January 27, 2021).
¶62 "Some of the terms are relatively straightforward in that lenders are not permitted to report forborne payments to the credit bureaus, which means that borrowers who request forbearance are not supposed to see any impact on their credit scores as a result of their participation in forbearance programs."	¶48 "The CARES Act also provides that lenders are not permitted to report forborne payments to the credit bureaus, which means that borrowers who request forbearance are not supposed to see any impact on their credit scores as a result of their participation in forbearance programs." *See* CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, PL 116- 136, March 27, 2020, 134 Stat. 281, § 4021.
¶100 "But, upon information and belief, Wells Fargo is compensated financially by the various federal agencies on whose behalf it services borrowers' loans when it files forbearance notices and when it completes loan retention workout options with borrowers whose loans have been placed into forbearance pursuant to the CARES Act."	¶57 "Wells Fargo is compensated financially by the various federal agencies on whose behalf its service borrowers' loans when it filed forbearance notices and when it completes loan retention workout options with borrowers whose loans have been placed into forbearance pursuant to the CARES Act."
¶109 "As one consumer told the Consumer Financial Protection Bureau, a Wells Fargo employee admitted "that the system is like a 'hair trigger'" automatically placing loans into	¶53 "In particular, as one consumer told the CFPB, a Wells Fargo employee admitted "that the system is like a 'hair trigger'" automatically placing loans into forbearance "even though I did nothing to start a forbearance."[19]

***Delpapa* FAC, filed Dec. 24, 2020**	***Echard* Complaint, filed Jan. 28, 2021**
forbearance, "even though I did nothing to start a forbearance."[42] [42]https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898 (last visited December 23, 2020).	[19]https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898 (last visited January 27, 2021).
¶123 "The actions taken by Defendants were in direct contravention of the CARES Act requirements that forbearances be provided in response to the request of the borrower, and with an attestation of hardship due to COVID-19. In many instances, the borrowers received no notice that they had been placed in forbearance at all, and in those instances in which the borrowers received some notice, it was woefully insufficient under the requirements of RESPA, 12 U.S.C. §§ 2601 et seq."	¶55 "The actions taken by Defendants were in direct contravention of the CARES Act requirements that forbearances be provided in response to the request of the borrower, and with an attestation of hardship due to COVID-19. In many instances, the borrowers received no notice that they had been placed into forbearance at all, and in those instances where borrowers received some notice, it was woefully inadequate under the requirements of RESPA, 12 U.S.C. §§ 2601 et seq."
¶224 "A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class members are likely in the millions of dollars, the individual damages incurred by each Class member are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases."	¶88 "A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class Members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class Members are likely in the millions of dollars, the individual damages incurred by each Class Member are too small to warrant the expense of individual suits. The likelihood of individual Class Members prosecuting their own separate claims is remote, and even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases."
¶311 "Plaintiffs and members of the Nationwide Class have conferred a benefit upon Wells Fargo which received benefits by placing Plaintiffs and the Nationwide Class into forbearance without their consent. By placing Plaintiffs' and members of the Nationwide Class' mortgages in forbearance, Wells Fargo continued to hold and service those mortgage loans, preventing Plaintiffs and the Class from refinancing with	¶166 "Plaintiff and the Class Members have conferred a benefit upon Wells Fargo which received benefits by placing Plaintiff and Class Member's loans into forbearance without their informed and legal consent. By placing Plaintiff's and Class member's mortgages in forbearance, Wells Fargo continued to hold and service those mortgage loans, preventing Plaintiff and Class members refinancing with another institution, and thus increasing the value of the mortgage

***Delpapa* FAC, filed Dec. 24, 2020**	***Echard* Complaint, filed Jan. 28, 2021**
another institution, and thus increasing the value of the mortgage servicing rights."	servicing rights."
¶316 "As a result, the Plaintiffs and Nationwide class members are entitled to restitution, disgorgement, or both, of the benefits Wells Fargo has unjustly retained, in an amount to be proven at trial."	¶167 "As a result, the Plaintiffs and Nationwide class members are entitled to restitution, disgorgement, or both, of the benefits Wells Fargo has unjustly retained, in an amount to be proven at trial."

EXHIBIT B

Consumer Financial Protection Bureau (cfpb.gov/)

Go to search home page
What do all these data points mean? (https://www.consumerfinance.gov/complaint/data-use/)

3663700

Date CFPB received the complaint
5/21/2020

Consumer's state
OR

Consumer's zip
97217

Submitted via
Web

Tags

Did consumer dispute the response?
N/A

Product
Mortgage
Sub-product: Conventional home mortgage

Issue
Applying for a mortgage or refinancing an existing mortgage

Consumer consent to publish narrative
Consent provided

Consumer complaint narrative
Wells Fargo put me into CARES act forbearance without my consent. I was unable to make a payment online like I usually do. I called and was on hold for an hour but finally was able to talk to a rep, named XXXX. I told them they put me into forbearance without my consent. He apologized and said that the system is like a " hair trigger '' even though I did nothing to start a forbearance, I've never missed a payment, have no reason to apply for forbearance and am able to make payments. The rep said he would reverse the forbearance but that it would take 2-3 days and took my payment over the phone. This took place on XX/XX/20. I have recently been looking into refinancing with rates so low. I get an email today from my new potential lender stating that my credit report, which they pulled XX/XX/20, showed that my current mortgage with Wells Fargo is in forbearance, labeled " payment deferred ''. This may affect my ability to refinance my home. Also, Wells Fargo is contacting me about refinancing. On the XXXX website and under the CARES act it states : As part of the recently enacted Coronavirus Aid, Relief and Economic Security (CARES) Act, mortgage accounts in forbearance as a result of COVID-19 can not be reported negatively to the credit bureaus by lenders. The wrongs are in apply forbearance to my mortgage without verbal OR written consent and the fact that

they reported this forbearance to the credit bureaus. And now on my account showing the payment I made on the phone for my XXXX payment is deemed " unapplied funds '' with the description on their website : We have received funds that are not sufficient to make a full payment on your loan. If we are automatically withdrawing your payments based on a recurring weekly, bi-weekly, or semi-monthly schedule, your funds remain unapplied until we have received an amount sufficient to make a full monthly payment for you. If you are on a repayment plan and have made an agreement to make payment amounts that are different from your regular monthly

payment, some funds may be unapplied. This is infuriating and could cost me ~ $ XXXX in interest savings and a decrease in previously exceptional credit of XXXX.

Company information

Date complaint sent to company
5/21/2020

Company name
WELLS FARGO & COMPANY

Timely response?
Yes

Company response to consumer
Closed with explanation

Company public response
Company has responded to the consumer and the CFPB and chooses not to provide a public response

EXHIBIT C

Consumer Financial Protection Bureau (cfpb.gov/)

Go to search home page
What do all these data points mean? (https://www.consumerfinance.gov/complaint/data-use/)

3658898

Date CFPB received the complaint
5/19/2020

Consumer's state
WA

Consumer's zip
98053

Submitted via
Web

Tags

Did consumer dispute the response?
N/A

Product
Mortgage
Sub-product: Conventional home mortgage

Issue
Trouble during payment process

Consumer consent to publish narrative
Consent provided

Consumer complaint narrative
Due to a job loss, I reached out to Wells Fargo and asked for information on their Covid-19 mortgage relief program. To clarify, I only asked for information on the program. The representative on the phone stated that an information packet would be mailed to me. About a week later, a letter arrived from Wells Fargo stating that they are " confirming short term payment relief for the account. '' This was not what I had requested. In addition, the letter states " We won't report this account to consumer reporting agencies. '' It has now come to light that Wells Fargo has put a forbearance on the mortgage, preventing any ability to refinance. I am current on my mortgage payments and did not want to be part of their relief program, but now I have a forbearance blemish on my mortgage.

Company information

Date complaint sent to company
5/19/2020

Company name
WELLS FARGO &

Timely response?
Yes

Company response to consumer
Closed with non-monetary relief

COMPANY

Company public response

Company has responded to the consumer and the CFPB and chooses not to provide a public response

EXHIBIT D

From: Matthew Preusch
Sent: Friday, November 5, 2021 8:23 PM
To: Knoll D. Lowney
Cc: Marc Zemel; Derek Loeser; Gretchen Freeman Cappio
Subject: RE: Wells Fargo
Attachments: Echard 0071 Motion Intervene 110521.pdf

Knoll,

I appreciate the time on the phone this afternoon. As we discussed, we would welcome you and your client bringing you client's case and any servicemember-specific claims your client may have as part of a consolidated proceeding in the Northern District of California, but we do not think the conditions you've requested for that are appropriate.

You probably saw this on ECF, but I am attaching as a courtesy the motion we filed tonight. Even though this motion is on file, we'd welcome the opportunity to continue discussing with you how to cooperatively achieve the best result for the class if you think it would be productive.

Take care,
Matt

From: Knoll D. Lowney <knoll@smithandlowney.com>
Sent: Friday, November 5, 2021 6:08 PM
To: Matthew Preusch <mpreusch@KellerRohrback.com>
Cc: Marc Zemel <marc@smithandlowney.com>
Subject: Wells Fargo

Matt,

I was a little caught off guard by our conversation, so I forgot to mention another item that we would require if we are to someday collaborate.

We would want to ensure that in any future negotiations, our firm can negotiate for additional and/or different relief for servicemembers and veterans and that the larger team will support us in that effort. Obviously we cannot know how those negotiations will play out, but we strongly believe that servicemembers and veterans have somewhat different claims and that if we proceed on our own we will be successful in achieving additional relief for them.

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www.smithandlowney.com

EXHIBIT E

From: Knoll D. Lowney <knoll@smithandlowney.com>
Sent: Friday, September 24, 2021 11:50 AM
To: Matthew Preusch; Derek Loeser; Bob Semnar; Jared Hartman; Ahren Tiller; Melissa Lambert Giles; Abelardo Limon; Thad Bartholow; Karen Kellett; Max Gardner; Abbas Kazerounian; Jason Ibey; Gretchen Freeman Cappio; Zachary Gussin
Cc: Alyssa Koepfgen; Claire Tonry; Marc Zemel; Meredith Crafton; Savannah Rose
Subject: Re: Echard v. Wells Fargo

Matt,

Thanks, but waiting doesn't work well for us because we have to make an immediate decision about whether to create a united front with you or to begin our own negotiations with Wells Fargo. If you don't want to team up now, that's fine, and in that case we would continue to conduct our litigation and negotiations to achieve the best result for our client and the class and look for future opportities to collaborate with your team.

Given our stated intent to work collaboratively, we were surprised that you filed a motion to relate our cases without the courtesy of a heads up, which is the type of tactic you expect from opposing counsel. In our mind, we're on the same side and should be acting that way.

I'm around all day (except 2-3) to discuss further.

Knoll Lowney
Lawyer
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From: Matthew Preusch <mpreusch@KellerRohrback.com>
Sent: Thursday, September 23, 2021 8:22 AM
To: Knoll D. Lowney <knoll@smithandlowney.com>; Derek Loeser <dloeser@KellerRohrback.com>; Bob Semnar <bob@sandiegoconsumerattorneys.com>; Jared Hartman <jared@sandiegoconsumerattorneys.com>; Ahren Tiller <ahren.tiller@blc-sd.com>; Melissa Lambert Giles <mgiles@gileslambert.com>; Abelardo Limon <alimon@limonlaw.com>; Thad Bartholow <thad@kblawtx.com>; Karen Kellett <kkellett@kblawtx.com>; Max Gardner <maxgardner@maxgardner.com>; Abbas Kazerounian <ak@kazlg.com>; Jason Ibey <jason@kazlg.com>; Gretchen Freeman Cappio <gcappio@KellerRohrback.com>; Zachary Gussin <ZGussin@KellerRohrback.com>
Cc: Alyssa Koepfgen <alyssa@smithandlowney.com>; Claire Tonry <claire@smithandlowney.com>; Marc Zemel <marc@smithandlowney.com>; Meredith Crafton <meredith@smithandlowney.com>; Savannah Rose <Savannah@smithandlowney.com>
Subject: RE: Echard v. Wells Fargo

Thanks for reaching out, Knoll.

Let's plan to check in after the court rules on our motion to relate the cases and Wells Fargo's motion to reconsider transfer of the Echard case.
Matt

From: Knoll D. Lowney <knoll@smithandlowney.com>
Sent: Tuesday, September 21, 2021 1:48 PM
To: Derek Loeser <dloeser@KellerRohrback.com>; Matthew Preusch <mpreusch@KellerRohrback.com>; Bob Semnar <bob@sandiegoconsumerattorneys.com>; Jared Hartman <jared@sandiegoconsumerattorneys.com>; Ahren Tiller <ahren.tiller@blc-sd.com>; Melissa Lambert Giles <mgiles@gileslambert.com>; Abelardo Limon <alimon@limonlaw.com>; Thad Bartholow <thad@kblawtx.com>; Karen Kellett <kkellett@kblawtx.com>; Max Gardner <maxgardner@maxgardner.com>; Abbas Kazerounian <ak@kazlg.com>; Jason Ibey <jason@kazlg.com>; Gretchen Freeman Cappio <gcappio@KellerRohrback.com>; Zachary Gussin <ZGussin@KellerRohrback.com>
Cc: Alyssa Koepfgen <alyssa@smithandlowney.com>; Claire Tonry <claire@smithandlowney.com>; Marc Zemel <marc@smithandlowney.com>; Meredith Crafton <meredith@smithandlowney.com>; Savannah Rose <Savannah@smithandlowney.com>
Subject: Re: Echard v. Wells Fargo

Looping in the other plaintiffs' lawyers here.

From: Knoll D. Lowney <knoll@smithandlowney.com>
Sent: Tuesday, September 21, 2021 7:16 AM
To: Derek Loeser <dloeser@kellerrohrback.com>; 'Matthew Preusch' <mpreusch@KellerRohrback.com>
Cc: Alyssa Koepfgen <alyssa@smithandlowney.com>; Claire Tonry <claire@smithandlowney.com>; Marc Zemel <marc@smithandlowney.com>
Subject: Re: Echard v. Wells Fargo

Derek and Matt,

We understand that your mediation was unsuccessful. Given this, and the transfer of our case (including a fully briefed dispositive motion) to your district, we want to again suggest that the consumers we represent would be better off if we were all working on the same team.

Wells Fargo's counsel is actively engaging us, so this seemed like a good time to reach out to you and the other Plaintiffs' counsel. Let us know if you would like to discuss teaming up. Otherwise, we'll bring in the partners we need and continue to forge our own path.

Knoll Lowney
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From: Knoll D. Lowney
Sent: Wednesday, May 5, 2021 12:23 PM

To: Derek Loeser <dloeser@kellerrohrback.com>; 'Matthew Preusch' <mpreusch@KellerRohrback.com>
Cc: Alyssa Koepfgen <alyssa@smithandlowney.com>
Subject: Echard v. Wells Fargo

Matt and Derek,

Not sure whether you are following our Wells Fargo case, but we wanted to let you know that we just filed our response to Wells Fargo's motion to dismiss as well as a first amended complaint. As we were briefing this response, it occurred to us that our case could be the first to have a decision on the merits and, if so, it could have a positive or negative impact on your team's settlement negotiations.

Is there any further information you can share about the timing of your negotiations? We will likely move to intervene in California, but we haven't made any decisions about timing or local counsel.

We're available if you would like to discuss further.

Knoll Lowney
Lawyer
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Seattle, WA 98112
Direct: (206) 860-2976
Main: (206) 860-2883
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EXHIBIT F

Gretchen Freeman Cappio (*Pro Hac Vice*)
Derek W. Loeser (*Pro Hac Vice*)
Zachary W. Gussin (*Pro Hac Vice*)
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
(206) 623-1900, Fax (206) 623-3384

Matthew J. Preusch (SBN 298144)
KELLER ROHRBACK L.L.P.
801 Garden Street, Suite 301
Santa Barbara, CA 93101
(805) 456-1496, Fax (805) 456-1497

[Additional Counsel on Signature Page]

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re: WELLS FARGO FORBEARANCE LITIGATION	No. 3:20-cv-06009-JD **THIRD AMENDED CONSOLIDATED CLASS ACTION COMPLAINT** **DEMAND FOR JURY TRIAL**

Plaintiffs LUIS and MARISOL CASTRO, PAMELA DELPAPA, JENNA DOCTOR, GERALD FORSBURG, SAMARA GREEN, PATRICK HEALY, BRETT JACOB, CHARLES JOHNSON, BARBARA PRADO, and RENRICK and VIVIAN ROBINSON (collectively "Plaintiffs"), individually and on behalf of a class of similarly situated persons, bring this class action lawsuit against Defendants Wells Fargo Bank, N.A. ("Wells Fargo Bank") and Wells Fargo & Co. ("WFC") (collectively, "Wells Fargo" or "Defendants"), and allege as follows:

I. INTRODUCTION

1. In March of 2020, Americans were suffering through one of the worst pandemics in our nation's history. Millions of Americans had lost their jobs, thousands had lost loved ones, and the impact of this terrible plague was extending over every sector of our domestic and professional lives. In response, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (codified as amended in sections of 2, 5, 12, 15, 20, 21, 29, 42, and 45 U.S.C.). That Act, among other things, gave American homeowners concerned about their ability to make mortgage payments as a result of the pandemic the right to forbearances for federally backed mortgages.

2. This relief provided a band-aid, not a cure, staunching what could otherwise have been a Great Recession-level foreclosure crisis. However, forbearance is not forgiveness, and it is not right for everyone. Loan forbearance plans are agreements allowing borrowers to reduce or suspend payments for a short period of time, providing extended time for borrowers to become current on their payments and repay the amounts owed. Forbearance plans do not forgive unpaid loan payments and have attendant financial consequences. Being in forbearance restricts a borrower's access to credit, can damage a borrower's credit score, can prevent a borrower from refinancing, and can disrupt collateral agreements – such as bankruptcy plans or repayment plans – which assume continued payment on the mortgage.

3. For that reason, the CARES Act and related regulatory guidance mandate that participation in a COVID-19 mortgage forbearance plan is entirely voluntary; that is, a borrower must be informed of the various terms and conditions of the program and then affirmatively decide to enter the program, and the borrower retains the right to shorten, terminate, or extend the forbearance term.

> CARES ACT § 4022: FORECLOSURE MORATORIUM AND CONSUMER RIGHT TO REQUEST FORBEARANCE
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> (b) FORBEARANCE.— (1)
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> IN GENERAL.—During the covered period, ***a borrower*** with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency ***may request forbearance*** on the Federally backed mortgage loan, regardless of delinquency status, by—
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> (A) ***submitting a request to the borrower's servicer***;
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> and
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> (B) affirming that the borrower is experiencing a financial hardship during the COVID–19 emergency.
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> (2) DURATION OF FORBEARANCE.—
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> ***Upon a request by a borrower*** for forbearance under paragraph (1), such forbearance shall be granted for up to 180 days, and ***shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened.***
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> (c) REQUIREMENTS FOR SERVICERS.—
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> (1) IN GENERAL.— ***Upon receiving a request for forbearance from a borrower under subsection (b), the servicer shall with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID–19 emergency*** and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance, provide the forbearance for up to 180 days, ***which***

> ***may be extended for an additional period of up to 180 days at the request of the borrower, provided that, the borrower's request for an extension is made during the covered period, and, at the borrower's request, either the initial or extended period of forbearance may be shortened.***[1]

4. As detailed herein, Wells Fargo—without receiving any request or financial hardship attestation—opted unwitting borrowers into its COVID-19 mortgage forbearance program. The bank's primary purpose in doing so was the same profit motive that led to Wells Fargo's well-documented history of violating its customers' trust. By placing borrowers into forbearance, and causing them to skip payments, Wells Fargo capitalized on an incredibly lucrative loophole.

5. The majority of borrowers that Wells Fargo placed into unwanted forbearance plans had loans that were securitized and pooled into mortgage-backed securities ("MBS") by one of two Government Sponsored Entities, ("GSEs"), the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation, ("Freddie Mac"), or the Government National Mortgage Association ("GNMA"). The resulting securities, agency MBS, trade on a secondary market.

6. Under normal circumstances, investors who purchase agency MBS (as opposed to private label securities) are insulated from the risk that the borrowers whose mortgages underlie the securities might fail to make payments because loan servicers are obligated to advance most principal and interest payments for federally backed loans to the GSEs and Ginnie Mae regardless of whether the loan is performing.

7. If a loan is non-performing for three consecutive months, the loan servicer acquires the option to voluntarily repurchase the loan from the securities pool at par value.[2] This provides loan

[1] Coronavirus Aid, Relief, and Economic Security Act, H. R. 748, 116th Cong. (2nd Sess. 2020), https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf (last visited Dec. 23, 2020) (emphasis added).

[2] Par value, also sometimes known as nominal or face value, is the amount at which a security can be redeemed, and its generally far less than market value.

servicers with some limit on their obligation to advance payments for non-performing loans and allows the loan servicers to pursue loan modification options to help delinquent and distressed borrowers become current.

8. The voluntary repurchase of loans at par value is a profit stream for loan servicers like Wells Fargo. Once the loan begins performing again, it can either be held for investment loan, re-securitized, or resold. Holding the loans for investment leads to profits based on the difference between the cost to service and the interest rate. Reselling or resecuritizing leads to a profit, as the resale price typically exceeds the par value that the loans are purchased for coupon. Under normal circumstances, this makes sense because it provides loan servicers a financial incentive to work with risky borrowers to recuperate loans that are more than 90 days delinquent.

9. But by placing federally backed borrowers into *unsolicited* forbearance plans, Wells Fargo acquired the option to repurchase the underlying loans even though many borrowers did not want or need forbearance and remained financially solvent. Essentially, by placing loans in forbearance, Wells Fargo created the fiction that the loans were underperforming, then repurchased the loans at an artificially low price. As detailed below, Wells Fargo exercised this option at a historic rate, voluntarily repurchasing tens of billions of dollars' worth of otherwise performing mortgages out of the trust pools, for billions of dollars less than the loans' market price. Ted Tozer, the former President of Ginnie Mae, has said that banks engaging in this conduct "are setting themselves up for a huge windfall," and that the scheme is "almost pure profit."[3]

10. In addition to exploiting this highly lucrative loophole, Wells Fargo benefitted by unilaterally opting unwitting homeowners into its forbearance program in several other ways. As

[3] Joe Light, *Banks Uncover Loophole to Buy Loans at below-market Prices*, BLOOMBERG (August 20, 2020, 3:00 AM PDT) https://www.bloomberg.com/news/articles/2020-08-20/banks-poised-for-mortgage-bond-windfall-that-may-burn-investors.

detailed below, Wells Fargo profited by protecting and increasing the value of the mortgage servicing rights associated with the proposed class members' mortgages; by capping its potential advancement liabilities for loans that were not voluntarily repurchased; by rendering the bank eligible for loan-workout incentive payments; and through spread earned on payments that class members made which were not timely credited to the borrower's mortgage. As Plaintiffs' experiences demonstrate, many borrowers received no notice that Wells Fargo had placed their mortgages into forbearance. They only found out about Wells Fargo's actions when they attempted to apply for credit (including the refinancing of their mortgage) and were denied, saw the forbearance noted on a credit report or tried, but were unable, to make a regularly scheduled mortgage payment with Wells Fargo.

11. In those instances when Wells Fargo did send borrowers a template notice informing them that Wells Fargo had placed their loans into forbearance, the notice was both insufficient and inaccurate, containing misleading assurances and inadequate warnings about the potential consequences of being in forbearance.

12. Some borrowers who initially wanted a forbearance later sought to end their forbearance plan upon learning more about the risks associated with forbearances. As Plaintiff Johnson's circumstances demonstrate, Wells Fargo not only failed to comply with the CARES Act's requirement that borrowers be allowed to end their forbearance at any time, but they unlawfully extended the period of forbearance after borrowers requested for their loans to be removed from the program.

13. Numerous media reports suggest that these practices are widespread.

14. Since the onset of COVID-19, approximately 6.3 million homeowners have participated in a mortgage forbearance program, either knowingly or unknowingly. Upon information and belief,

Wells Fargo accounted for over a million of those homeowners, many of whom never requested such forbearance.[4]

15. As a result, those homeowners, including Plaintiffs, suffered damages, including, but not limited to an inability to access credit, an inability to refinance to lower interest rates (and with mortgage servicers instead of Wells Fargo), an inability to secure additional lines of consumer credit or to access existing credit, an inability to remove private mortgage insurance, and time spent dealing with the difficult situation of removing their mortgages from a program they did not want.

16. Defendants' practice of involuntarily putting homeowners in the unwanted forbearance program without proper documentation prompted the following statement from Senator Sherrod Brown of Ohio, the ranking Democrat on the Banking Committee:

> Once again it seems that Wells Fargo's sloppy service and shoddy management are hurting consumers. Wells Fargo should immediately address each of these complaints and make changes to ensure that no borrower finds themselves worse off from actions that their servicer takes without their consent or notice.[5]

17. In addition to Senator Brown's public statement, Senators Elizabeth Warren of Massachusetts and Brian Schatz of Hawaii wrote a letter to the Chief Executive Officer of Wells Fargo seeking information regarding its now well-documented practice of putting mortgagors into forbearance programs without their consent.[6]

18. The Senators' July 29, 2020 letter stated that Wells Fargo "appears to be incapable of self-governance," and noted that reports of borrowers being placed in forbearance programs they did

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[4] *See, e.g.*, Gretchen Morgenson, *More Wells Fargo customers say the bank decided to pause their mortgage payments without asking*, NBC NEWS (July 22, 2020, 1:00 PM PDT), https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610.

[5] *Id.*

[6] Letter from Sens. Elizabeth Warren and Brian Schatz, United States Senate, to Charles W. Scharf, Chief Executive Officer and President (July 29, 2020), https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf.

not want "raise even more questions about the inability of Wells Fargo and its leadership team to comply with the law and the needs of its customers."

19. The letter proclaimed that "if these reports are true, they represent one more addition to a long list of inexcusable actions by Wells Fargo at customers' expense" because such conduct can affect borrowers' credit by suggesting that they are not making payments even when they are and can prevent them from refinancing their home loans to take advantage of lower interest rates.

20. Wells Fargo, for its part, has not denied these allegations. Through its spokesperson Tom Goyda, Wells Fargo stated that "[i]n the spirit of providing assistance, [it] may have misinterpreted customers' intentions in a small number of cases."[7]

21. Although Wells Fargo did not identify the complete number of borrowers who were unwillingly placed into the forbearance program, it reported having received 1,600 complaints of unwanted forbearances.[8] In a more recent filing with this Court, however, Wells Fargo reported receiving more than 33,853 complaints. *See* Dkt. 140, *2 n.1.

22. The true scope of the problem far exceeds that figure. Freddie Mac and Fannie Mae publish loan-level performance data containing details on the performance of loans underlying credit risk transfer securities. The data includes origination characteristics, monthly performance information on the underlying mortgage loans, and the company that services each loan. This data contains a large majority of mortgages guaranteed by Freddie Mac and Fannie Mae.

[7] Anna Hrushka, *Wells Fargo says it 'misinterpreted customers' intentions' in some forbearance cases*, BANKING DIVE (July 24, 2020), https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/.

[8] Gretchen Morgenson, *1600 customers say Wells Fargo paused their mortgage payments*, NBC NEWS, (Oct. 1, 2020, 3:00 AM PDT), https://www.nbcnews.com/business/personal-finance/1-600-customers-say-wells-fargo-paused-their-mortgage-payments-n1241620.

23. Comparing Wells Fargo's loans to their closest peers, Plaintiffs found the initial forbearance rate for GSE loans serviced by Wells Fargo was over 30 times greater than the industry average in April, 2010.

24. When only looking at loans that had always been current prior to the forbearance, the difference is even starker. The forbearance rate for Wells Fargo borrowers was 6%, compared to 0.14% for the industry. This means, that in the early days of the CARES Act, a *borrower whose loan had never previously been delinquent was more than 40 times more likely to be placed into forbearance if her loan was serviced by Wells Fargo.*

25. This disparity declined as Wells Fargo began to face scrutiny and unfavorable media coverage for its faulty forbearance program. Wells Fargo's forbearance rates reached approximately 2% in June of 2020, still twice the industry average, and approached industry forbearance rates by August 2020. On the whole, Wells Fargo's forbearance rates were twice as high as the rest of the industry over this time period, suggesting that hundreds of thousands of Wells Fargo's forbearances were the result of its faulty forbearance program.

26. In sum, Wells Fargo cynically converted the CARES Act from protection for borrowers to a profit driver for the bank, hurting the people Congress intended to help. And it did so at the worst possible time. Many customers, like Ms. Delpapa, the Castros, Ms. Doctor, and Mr. Jacob, sought to refinance at more favorable rates or secure additional lines of credit and were unable to do so because they had been placed in forbearance. Some, like Mr. Johnson, noticed decreases in their credit scores. Others, like Ms. Green and Mr. Johnson, attempted to make payments, unaware that they were in forbearance, only to have Wells Fargo unlawfully retain those payments without crediting them towards the outstanding mortgage or escrow account balances.

27. Plaintiffs allege as follows upon personal knowledge as to themselves and their own experiences and, as to all other matters, upon information and belief including due investigation conducted by their attorneys.

II. JURISDICTION AND VENUE

28. The Court has jurisdiction over the lawsuit because the suit arises under the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire fraud); the Truth in Lending Act, ("TILA"), 15 U.S.C. § 1601, as implemented through Regulation Z; the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 22601, as implemented through Regulation X; and the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681.

29. This Court also has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from one defendant, there are 100 or more Class members nationwide, and the aggregate amount in controversy exceeds $5,000,000 exclusive of interest and costs.

30. The Court also has subject matter jurisdiction over Plaintiffs' non-federal claims under 28 U.S.C. § 1367, because those claims form part of the same case or controversy as the federal claims.

31. This Court has general personal jurisdiction over Wells Fargo & Co. because it has its principal place of business in San Francisco, California.

32. This Court has general personal jurisdiction over Wells Fargo Bank, N.A., because its principal place of business is in San Francisco, California.

33. This Court also has general personal jurisdiction over Wells Fargo Bank, N.A., because its contacts with California are so constant and pervasive as to render it essentially at home in California.

34. This Court has specific personal jurisdiction over Wells Fargo Bank, N.A. because a substantial part of the actions or omissions giving rise to Plaintiffs' claims occurred in this District.

35. The exercise of specific personal jurisdiction over Wells Fargo Bank, N.A. is consistent with due process, as Wells Fargo Bank regularly conducts and/or solicits business in, engages in other persistent courses of conduct in, and derives substantial revenue from services provided to, persons in this District and in California.

36. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the Court has personal jurisdiction over Defendants and Defendants have sufficient contacts with this District, the situs of their principal places of business.

37. Venue is also proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at issue in this Complaint occurred in this District.

III. INTRADISTRICT ASSIGNMENT

38. This case is properly brought in the San Francisco Division of the Northern District of California. Under Local Rule 3-2(c), cases are to be filed in the Division "in which a substantial part of the events or omissions which give rise to the claim occurred."

39. Because WFC maintains its headquarters in San Francisco, and Wells Fargo Bank N.A.'s principal place of business is in San Francisco, under Local Rule 3-2(e), the proper venue for this case is the San Francisco Division of the Northern District of California.

IV. PARTIES

A. Representative Plaintiffs

40. Plaintiffs Luis and Marisol Castro ("Mr. and Mrs. Castro") are Texas citizens whose homestead property is located in Dallas, Texas. Mr. and Mrs. Castro's property is encumbered by a lien securing repayment of a federally related loan backed by the Federal National Mortgage Association ("Fannie Mae"), and is serviced by Wells Fargo.

41. Plaintiff Pamela Delpapa is a resident and citizen of Riverside County, California. Her property is encumbered by a loan backed by the Fair Housing Administration, and her loan was serviced by Wells Fargo until late in 2020.

42. Plaintiff Jenna Doctor ("Ms. Doctor") is a citizen of Florida whose homestead property is located in Castleberry, Florida. Ms. Doctor's homestead property is encumbered by a lien securing repayment of a federally related loan backed by the FHA and is serviced by Wells Fargo.

43. Plaintiff Samara Green is a resident and citizen of Rockdale County, Georgia, whose mortgage is serviced by Wells Fargo.

44. Plaintiff Patrick Healy is a resident and citizen of San Diego County, California, whose mortgage is serviced by Wells Fargo.

45. Plaintiff Brett Jacob is a resident and citizen of Nassau County, New York, whose mortgage is serviced by Wells Fargo.

46. Plaintiff Charles Johnson is a resident and citizen of Riverside County, California, whose mortgage is serviced by Wells Fargo.

47. Plaintiff Barbara Prado ("Ms. Prado") is a California citizen whose homestead property is located in Fremont, California. Ms. Prado's property is encumbered by liens securing repayment of two federally related loans backed by the FHA, which are both serviced by Wells Fargo.

48. Plaintiffs Renrick and Vivian Robinson are citizens and residents of Grand Prairie, Texas. Their property is encumbered by a Veterans Administration Loan, which loan was originated by, refinanced by, and is serviced by, Wells Fargo.

B. Defendants

49. Defendant Wells Fargo & Co. ("WFC") is a diversified financial services company headquartered in San Francisco, California that provides banking, insurance, investments, mortgage

banking, and consumer finance through banking stores, the internet, and other distribution channels to customers, businesses, and other institutions in all 50 states and in other countries.

50. WFC exercises specific and financial control over the operations of Defendant Wells Fargo Bank, dictates the policies, procedures, and practices of Wells Fargo Bank, exercises power and control over the specific activities upon which the claims herein are based, and is the ultimate recipient of the ill-gotten gains described herein.

51. Defendant Wells Fargo Bank, N.A. is a national banking association chartered under the laws of the United States. While it is nominally headquartered in Sioux Falls, South Dakota, Wells Fargo Bank N.A.'s principal place of business is in San Francisco, California. Wells Fargo Bank provides WFC personal and commercial banking services, is the successor by merger of Wells Fargo Home Mortgage, Inc., and is WFC's principal subsidiary.

V. FACTUAL ALLEGATIONS

A. The Federal Government Passed the CARES Act to Help with the Economic Harm Caused by the COVID-19 Pandemic, in Part by Empowering Borrowers to Opt into Forbearance Plans.

52. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a global pandemic.

53. On March 13, 2020, then-President Trump issued the Coronavirus Disease 2019 (COVID-19) Emergency Declaration, which declared that the COVID-19 pandemic was of "sufficient severity and magnitude to warrant an emergency declaration for all states, territories and the District of Columbia."

54. In addition to the human tragedy caused by the pandemic, the economic fallout was immediate and continues to be considerable.

55. On March 25, 2020, in response to the economic damage beginning to be felt by Americans throughout the country, the United States Senate passed the Coronavirus Aid, Relief and Economic Security ("CARES") Act.

56. The CARES Act was passed by the House of Representatives the following day and signed into law on March 27, 2020. *See generally* CARES Act, Public Law No. 116-136.

57. The CARES Act is the single-largest economic stimulus bill in the United States' history, allocating approximately $2.2 trillion of support to individuals and business affected by the COVID-19 pandemic.

1. The CARES Act Grants Borrowers the Privilege to Elect Mortgage Forbearance from Their Loan Servicers.

58. A substantial part of the coronavirus aid package was designed to assist American homeowners with Federally backed mortgages who were in economic distress as a result of the COVID-19 pandemic.

59. First, the CARES Act assisted American homeowners with government backed mortgages by prohibiting their lenders and mortgage servicers from beginning a judicial or non-judicial foreclosure or from finalizing a foreclosure judgment or sale through at least August 31, 2020.

60. Second, and most relevant to this action, the CARES Act provided homeowners with federally backed loans experiencing financial hardships because of COVID-19 with the option to request up to 180 days of forbearance on their mortgage.

61. Specifically, Section 4022(b) provides, in relevant part, that:

> (1) IN GENERAL.—During the covered period [beginning February 15, 2020 and ending on June 30, 2022], a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency ***may request*** forbearance on the Federally backed mortgage loan, regardless of delinquency status, by—
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> (A) submitting a request to the borrower's servicer and

> (B) affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency.
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> (2) DURATION OF FORBEARANCE.—***Upon a request by a borrower for forbearance*** under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days ***at the request of the borrower***, provided that, ***at the borrower's request***, either the initial or extended period of forbearance may be shortened.

See CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, PL 116-136, March 27, 2020, 134 Stat. 281, § 4022(b) (emphasis added).

62. Section 4022(c) provides, in relevant part, that:

> ***Upon receiving a request for forbearance from a borrower under subsection (b),*** the servicer shall ***with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID-19 emergency*** and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance, provided the forbearance up to 180 days, which may be extended for an additional period of up to 180 days ***at the request of the borrower***, provided that, ***the borrower's request for an extension*** is made during the covered period, and, ***at the borrower's request***, either the initial or extended period of forbearance may be shortened.

Id., § 4022(c) (emphasis added).

63. These provisions make it abundantly clear that participation in a COVID-19 forbearance program is voluntary and to be initiated and maintained only at the request of the mortgagor.

64. Congress intentionally limited CARES Act forbearances to only occur upon the request of a borrower, as can be shown through legislation considered but not enacted. At the same time that the CARES Act was being negotiated between the chambers, Congressman William Lacy Clay introduced a bill, H.R. 6340, which would have required servicers to grant automatic loan forbearance for delinquent borrowers, in addition to granting borrowers the right to receive a forbearance regardless of

delinquency. When the CARES Act was passed, Congressman Clay's approach was rejected, and the CARES Act was limited to providing forbearances only upon a borrower's request.

65. As explained by the CFPB, a forbearance is "when [] mortgage servicer[s] or lender[s] allow [mortgagors] to pause (suspend) or reduce [their] mortgage payments for a limited period of time while [they] build back [their] finances."[9]

66. Notably, while the CARES Act provides many homeowners with the right to have all mortgage payments completely paused for a period of time, forbearance doesn't mean [mortgagors'] payments are forgiven or erased. [Rather, mortgagors] are still required to repay any missed payments, which, in most cases, may be repaid over time."[10]

67. For mortgagors to avail themselves of the COVID-19 mortgage forbearance option, they were instructed to contact their loan servicer to obtain information and, if appropriate, request forbearance.[11]

2. Guidance Clarifies the CARES Act's Protections

68. While the CARES Act was passed quickly and with laudable intentions, there has been a tremendous amount of consumer confusion around many aspects of the Act, including the forbearance program.

[9] *Learn about forbearance*, CONSUMER FIN. PROT. BUREAU (Updated Oct. 21, 2021) https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/mortgage-relief/.

[10] *Id.*

[11] *See Request forbearance or mortgage relief*, CONSUMER FIN. PROT. BUREAU BUREAU (updated Mar. 25, 2021) https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/request-forbearance-or-mortgage-relief/.

a. The Initiation, Maintenance, and Extension of a Forbearance are Decisions Left to Borrowers.

69. The initial term of CARES Act mortgage forbearances was designed to be 180 days[12] and, after that term expires, lenders were instructed to work with borrowers to—upon request by the homeowners—extend the forbearance or establish a repayment plan.[13] But borrowers were always intended to have the ability to only accept a shorter forbearance period, to shorten the term of a previously-accepted forbearance, and to cancel a forbearance plan. While the text of the Act is clear on this subject, subsequent guidance has further emphasized that borrowers retain the privilege to shorten, end, or decline a forbearance.

70. Freddie Mac issued an April 8, 2020 Temporary Service Guidance Related to COVID-19, which stated that "the length of each forbearance plan term must be for an appropriate length, based on the Borrower's individual circumstances and nature of the hardship, and must be agreed upon with or requested by the Borrower."[14]

71. As the April 27, 2020 U.S. Department of Housing and Urban Development's Inspector General report explained, "[t]he borrower also has the option at any time to shorten the forbearance

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[12] Wells Fargo provided three-month forbearances, notwithstanding guidance requiring that the default length of forbearance in the event that a loan servicer and borrower could not agree on a length of forbearance is 180 days. Three consecutive missed payments is enough to render a loan eligible for voluntary repurchase, as alleged below, further evincing the bank's true motive in effectuating this program.

[13] *See* U.S. DEP'T OF VETERANS AFFAIRS, *Information for VA home loan borrowers during COVID-19*, (updated Aug. 5, 2022) https://benefits.va.gov/homeloans/cares-act-frequently-asked-questions.asp #FAQ6 (stating that "[f]orbearance is broken down into two pieces; an *initial* period and an *additional* period. To receivie the initial period, you may notify your mortgage company that you are experiencing financial hardship due to the COVID-19 pandemic. As mentioned above, the hardship can be direct or indirect. When you notify the mortgage company, you may request up to 180 days of forbearance. You don't have to use the entire forbearance period if you can resume payments sooner, but **the deadline to request COVID-19 forbearance is through the end of the nationally declared emergency.** If you need the additional period, you may notify your mortgage company that you are still experiencing hardship due to the COVID-19 pandemic and request up to 180 additional days of forbearance.").

[14] *Temporary Servicing Guidance Related to COVID-19*, FREDDIEMAC, (Apr. 8, 2020) https://guide.freddiemac.com/app/guide/bulletin/2020-10 (last visited Mar. 30, 2022).

period and resume payments." (emphasis added).[15] Likewise, Fannie Mae Lending Letter 2020-02 requires servicers to inform borrowers that they can shorten a forbearance plan's terms. *Lending Letter 2020-02*, FANNIE MAE (updated Dec. 9, 2020) https://singlefamily.fanniemae.com/media/22261/display.

72. Thus, not only the initiation, but the maintenance and extension of a CARES Act forbearance were privileges held by the borrowers, not the loan servicers.

b. Accepting a Forbearance Plan Is an Important Financial Decision Obliging Servicers to Provide Ample and Accurate Information.

73. Forbearance plans can help people experiencing temporary hardships due to COVID-19. But a survey by LendingTree found that 70% of homeowners who have gone into forbearance did not need the relief.[16]

74. Because forbearance does not forgive the missed payments and is an important financial decision, mortgage servicers are obligated to provide accurate notices to borrowers who are deciding whether a forbearance is right for them.

75. Servicers like Wells Fargo are required to make sure that borrowers like Plaintiffs are fully informed about the downsides to a forbearance and provided with an appropriate Evaluation Notice. As stated in the Fannie Mae, July 15 Lending Letter 2020-02:

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[15] Memorandum from Assistant Inspector Gen. Brian T. Pattison to Joseph M. Gormley, Deputy Assistant Sec'y, *Some Mortgage Servicers' Websites Offer Information about CARES Act Loan Forbearance That Is Incomplete, Inconsistent, Dated, and Unclear*, U.S. DEP'T OF (Apr. 27, 2020), https://www.hudoig.gov/sites/default/files/2020-04/Single%20Family%20Mortgage%20Forbearance%20Brief.pdf.

[16] Tendayi Kapfidze, *LendingTree Finds the Majority of Homeowners Approved for a Mortgage Forbearance May Not Have Needed One*, LENDING TREE, (May 18, 2020), https://www.lendingtree.com/home/mortgage/majority-of-homeowners-approved-for-mortgage-forbearance-may-not-have-needed-one-study/; *see also* Aly J. Yale, *70% Of Homeowners Seeking Mortgage Relief Don't Actually Need The Help*, FORBES, (May 19, 2020, 4:34 PM EDT), https://www.forbes.com/sites/alyyale/2020/05/19/70-of-homeowners-seeking-mortgage-relief-dont-actually-need-the-help/?sh=b52a98052a54.

> Servicers must inform the borrower that the payments which are the subject of a forbearance plan have only been delayed or reduced, not forgiven, and that once the forbearance plan is complete, one of the following must occur:
>
> (1) the mortgage loan must be brought current through a reinstatement,
>
> (2) the borrower is approved for another workout option,
>
> (3) the mortgage loan is paid in full, or
>
> (4) the servicer refers the mortgage loan to foreclosure in accordance with applicable law.
>
> The servicer must also inform the borrower that he or she may shorten a forbearance plan term at any time to reduce the amount of payments which are being delayed or reduced. As stated in the Servicing Guide D2-3.2-01, Forbearance Plan, the forbearance plan terms must be provided to the borrower using the appropriate Evaluation Notice, which must be revised in accordance with applicable law. In addition, the servicer must document in the individual mortgage loan file the borrower's request for forbearance and attestation as to a financial hardship caused by the COVID-19 emergency, and the terms of the initial and any extended forbearance, including the duration of the forbearance period.[17]

76. The template Evaluation Notice, provided in the Servicing Guide D2-3.2-01, contains the following warnings to borrowers contemplating forbearance:

> We will not pursue foreclosure during the forbearance plan term. However, the terms of your mortgage remain unchanged. By not making your mortgage payments during the plan's term you will become more delinquent and your credit score may be impacted. For more information refer to the **Additional Forbearance Plan Information and Legal Notices**.

and:

> **Additional Forbearance Plan Information and Legal Notices**
>
> **Credit Reporting**:
> - We will continue to report the delinquency status of your mortgage as well as your entry into a forbearance plan to credit reporting agencies in accordance with applicable law.
> - **CREDIT REPORTING AGENCIES MAY CONSIDER THE ENTRY INTO A FORBEARANCE PLAN AS AN INCREASED CREDIT RISK. HOWEVER, A FORECLOSURE WOULD HAVE A MORE NEGATIVE IMPACT TO YOUR CREDIT SCORE.**

[17] *Lender Letter (LL-2020-02)*, FANNIE MAE (updated Dec. 9, 2020), https://singlefamily.fanniemae.com/media/22261/display

77. Yet Wells Fargo's forbearances practices failed to ensure that borrowers understood their obligations and options at the end of the forbearance period, for instance misleadingly indicating that deferments would be available when that was not the case. Wells Fargo did not include an evaluation notice, with the applicable warnings. Borrowers were thus deprived of the information required to make an informed decision about whether a forbearance was right for them.

c. Deferment Is the Default Workout Option for Federally-Backed Loans.

78. Leaving aside the issue of whether mortgagors are even aware that they are in a mortgage forbearance program, the provision that has caused the most confusion is that participating mortgagors often do not know if they have to get their mortgage current at the conclusion of the forbearance period or how their lender and/or servicer will treat the deferred payments.

79. When a mortgage servicer like Wells Fargo places a loan in forbearance, it permits borrowers to suspend or reduce mortgage payments for a limited time. However, those payments are not forgiven. They are just delayed. The borrower must still repay the missed payments in the future. Some borrowers may be eligible for deferment, which adds the missed payments to the end of loan. Others, however, may be required to pay them more rapidly. Moreover, during forbearance, interest continues to accrue even though the principal is not being paid down.

80. Fannie Mae and Freddie Mac attempted to address the confusion about the post-CARES Act forbearance loss mitigation landscape when they introduced the "COVID-19 Payment Deferral" option with Lender Letter (LL-2020-07) and Bulletin 2020-15.[18]

81. The COVID-19 Payment Deferral brought Fannie Mae and Freddie Mac in line with the United States Department of Housing and Urban Development's ("HUD") COVID-19 National

[18] *Lender Letter (LL-2020-07)*, FANNIE MAE, https://singlefamily.fanniemae.com/media/22916/display (updated Nov. 18, 2020) and *Freddie Mac COVID-19 Payment Deferral Bulletin 2020-15*, FREDDIE MAC, (Issued May 13, 2020) https://guide.freddiemac.com/app/guide/bulletin/2020-15.

Emergency Standalone Partial Claim option, which provides borrowers with a junior mortgage (zero additional interest, no fees) not payable until the mortgage is paid off, comprised of the total amount of payments missed during a CARES Act forbearance period.[19]

82. Under a COVID-19 Payment Deferral described in LL-2020-07, all forborne payments (up to 12 months) are to be placed into a non-interest-bearing balance to be paid back at the end of the loan term. Thus, the forborne payments are not a source of increased interest accrual upon exiting forbearance. However, not all borrowers are eligible for a deferral.

83. Wells Fargo provided misleading communications to borrowers contemplating entering payment suspensions, indicating that they would receive a deferral or deferment even when the borrower was not eligible for a deferral.

3. Millions of Homeowners with Federally Backed Loans Are in a Forbearance Program.

84. As of June 30, 2020, 4.58 million homeowners were in COVID-19 related forbearance plans, representing 8.6% of all active mortgages.[20]

85. All told, roughly 6.2 million homeowners entered into COVID-19 forbearances.

86. Some 6.8% of all GSE-backed loans and 12.3% of all FHA/VA loans were in forbearance plans,[21] and approximately 11% of privately-held mortgages were in some type of forbearance or deferment program.

[19] *Mortgagee Letter 2020-06*, U.S. DEP'T OF (Apr. 1, 2020) https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf

[20] *See* Diana Olick, *Loans in coronavirus mortgage bailouts see largest weekly decline yet – but there are more red flags*, CNBC (Jul. 3, 2020, 7:43 AM EDT), https://www.cnbc.com/2020/07/03/loans-in-coronavirus-mortgage-bailouts-see-largest-weekly-decline-yet.html.

[21] *See* Black Knight Inc, *Forbearance Volumes Reverse Course For Largest Decline Yet*, (Jul. 3, 2020), https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-course-for-largest-decline-yet/.

87. Wells Fargo has stated publicly that it has deferred 2.5 million payments for consumer and small business customers since the start of the pandemic.[22]

B. Wells Fargo Seized Upon the CARES Act as an Opportunity for Profit.

88. Wells Fargo put borrowers into unwanted forbearances. Doing so put the bank "deeply in the money" while harming the borrowers. Tom Goyda, Wells Fargo's representative, admitted that the bank "misinterpreted" customer intent in many instances, placing loans into unwanted or unasked-for forbearances.[23] A more robust explanation for the bank's motives can be discerned from a statement that John Shrewsberry, Wells Fargo's Chief Financial Officer made in the bank's earnings call for the second quarter of 2020. Betsy Graseck, an analyst for Morgan Stanley, asked about American Banker's reporting on Wells Fargo's Ginnie Mae buyouts. Mr. Shrewsberry explained the option to repurchase loans placed into forbearances is "deeply in the money."[24]

89. This is not the first time that Wells Fargo has violated customers' trust in this manner. Implementing forbearance plans without customer approval is reminiscent of other troubling practices at Wells Fargo in recent years. Most notably, Wells Fargo opened an estimated 3.5 million debit or credit accounts without customer consent, as alleged in a class action complaint in this District and resolved by a $142 million settlement finally approved by the Hon. Vince Chhabria[25] and a $3 Billion settlement with the federal government. [26]

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[22] *See* Anna Hrushka, *Wells Fargo says it 'misinterpreted customers' intentions' in some forbearance cases,* BANKINGDIVE, (July 24, 2020), https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/.

[23] *Id.*

[24] *See https://www.fool.com/earnings/call-transcripts/2020/07/14/wells-fargo-wfc-q2-2020-earnings-call-transcript.aspx.*

[25] *See Jabbari, et al. v. Wells Fargo & Company and Wells Fargo Bank, N.A.* No. 3:15-cv-02159-VC.

[26] *See* Pete Williams, *Wells Fargo to pay $3 billion over fake account scandal,* NBC NEWS, (Feb 21, 2020, 1:06 PM PST), https://www.nbcnews.com/news/all/wells-fargo-pay-3-billion-over-fake-account-scandal-n1140541.

1. Wells Fargo Unilaterally Placed Homeowners into Forbearance Programs and Extended Homeowners' Forbearance Plans Without Their Consent.

90. As detailed above, accepting a forbearance is an important financial decision, one that a loan servicer cannot unilaterally make on behalf of a borrower. Before the passage of the CARES Act, for instance, there were substantial restrictions on a loan servicer's ability to grant a Freddie Mac borrower a forbearance, requiring negotiations of the forbearance terms with the borrower.[27] Even if a borrower needs the help or is fully informed of the consequences, lenders may not put a loan in forbearance without a customer requesting it. As the Consumer Financial Protection Bureau explains, "You must contact your loan servicer to request this forbearance." Banks may not institute it automatically. But that's exactly what Wells Fargo did.

91. Since the passage of the CARES Act in late March of 2020, millions of homeowners across the country have attempted to obtain information from their mortgage servicers and lenders as to the specifics of their COVID-19 forbearance program.[28]

92. As numerous media reports have detailed, Wells Fargo unilaterally put borrowers into their mortgage forbearance programs despite having no clear indication of borrowers' consent.[29] Thousands of homeowners were put into mortgage forbearance programs they did not request or had their forbearance period extended for an additional period of time without their consent, causing substantial problems for those homeowners.

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[27] *Requirements for a forbearance plan*, FREDDIE MAC, (DEC. 01, 2018) https://guide.freddiemac.com/app/guide/section/9203.13

[28] Anna Bahney, *Homeowners are getting mortgage relief they didn't want*, CNN, (May 20, 2020, 4:25 PM ET), https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html.

[29] Diana Olick, *Some homeowners are getting mortgage bailouts by mistake, and it's keeping them from refinancing*, CNBC (May 12, 2020, 11:15 AM EDT), https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html.

93. As experienced by Plaintiffs, and as attested to in consumer complaints from across the nation, Wells Fargo automatically placed borrowers in forbearance when they contacted the bank by phone or online to merely inquire about their options.

94. As one consumer told the Consumer Financial Protection Bureau, a Wells Fargo employee admitted "that the system is like a 'hair trigger'" automatically placing loans into forbearance, "even though I did nothing to start a forbearance."[30]

95. In an interview with Fortune Magazine, the CEO of Wells Fargo, Paul Scharf, explained, regarding the forbearance program, that "every institution makes mistakes."[31] The forbearance program was in fact a series of mistakes: placing borrowers into unrequested forbearance; making it extremely difficult for borrowers to make payments while in a forbearance; providing inaccurate and misleading information to borrowers considering forbearances; improperly and inaccurately reporting to credit reporting agencies that borrowers who never requested a forbearance were in such a plan; and improperly extending forbearances even when a borrower requested to end a forbearance.

96. These "mistakes" were widespread. The Consumer Financial Protection Bureau's database of consumer complaints lists numerous examples of similar complaints. This is a sample:

[30] *Consumer Complaint 3663700,* CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3663700 (last visited Sept. 27, 2022).

[31] Rey Mashayekhi, *Can anyone fix Wells Fargo?* FORTUNE (Feb. 3, 2021 3:30 AM PST), https://fortune.com/longform/fixing-wells-fargo-charles-scharf-ceo-regulatory-issues-privacy-fake-account-fraud-scandal-covid/.

"Due to a job loss, I reached out to Wells Fargo and asked for information on their Covid-19 mortgage relief program. To clarify, I only asked for information on the program. The representative on the phone stated that an information packet would be mailed to me. About a week later, a letter arrived from Wells Fargo stating that they are 'confirming short term payment relief for the account.' This was not what I had requested. In addition, the letter states 'We won't report this account to consumer reporting agencies.' It has now come to light that Wells Fargo has put a forbearance on the mortgage, preventing any ability to refinance." *Consumer Complaint 3658898*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898 (last visited Sept. 27, 2022).

"Wells Fargo put my account in forbearance when I didn't request it. After talking to multiple individuals on the phone I was told that if you click the 'more info' button on the site that you will be automatically enrolled without asking." *Consumer Complaint 3751149*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3751149 (last visited Sept. 27, 2022).

"Wells Fargo will NOT allow us to end our forbearance. We have spent over 7 hours trying to reach them to resolve this." *Consumer Complaint 3749254*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3749254 (last visited Sept. 27, 2022)

"[W]e started getting email about COVID-19 relief from Wells Fargo, regarding mortgage assistance. I sent them an email for more information. . . I tried to pay my house note on the WF app, as I have always done. The app advised me that I did not have an active account, that's when we called to make the payment. We were told that our loan was in forbearance and we could make a payment, but it would not post to the loan until after the forbearance period was over." *Consumer Complaint 37339887*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3739887 (last visited Sept. 27, 2022).

"I contacted my mortgage company WELLS FARGO to inquire about what types of services were available IF my renter's were unable to make their payment due to covid. It was for an inquiry purpose and I was told that I would receive a letter regarding any programs available. . . . I did in fact receive a letter and in that letter it stated my mortgage was placed in forbearance! I did not request any forbearance. Recently I was notified by a lender that it showed on my credit report and have been trying to have it removed since then." *Consumer Complaint 3661764*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3661764 (last visited Sept. 27, 2022).

> "Wells Fargo put me into CARES act forbearance without my consent. I was unable to make a payment online like I usually do. I called and was on hold for an hour but finally was able to talk to a rep, …. I told them they put me into forbearance without my consent. He apologized and said that the system is like a 'hair trigger' even though I did nothing to start a forbearance, I've never missed a payment, have no reason to apply for forbearance and am able to make payments." *Consumer Complaint 3663700*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3663700 (last visited Sept. 27, 2022).
>
> "Wells Fargo has placed or enrolled me in forbearance without my permission. This has negatively impacted me as [redacted] has placed my home equity mortgage application in denial status because of this." *Consumer Complaint 3669074*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3669074 (last visited Sept. 27, 2022).
>
> "I did not sign anything to agree to forbearance and subsequent calls to them I stressed that I'm paying my mortgage and don't want a forbearance. Instead they listed it on my credit without authorization. When I called them they said it was an error n they are working on it. They ruined my wife and my credit." *Consumer Complaint 3662758*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3662758 (last visited Sept. 27, 2022).
>
> "I called Wells Fargo, and asked what relief they could provide due to Covid-19. . . . I am very familiar with how a forbearance versus a deferment works. I was adamant if all they could offer me was a forbearance that I was not interested and I was assured by the Wells Fargo rep that they would just put the 3 payments at the back end of the loan and it was not a forbearance so I agreed. Yesterday . . . I received a notice from Wells Fargo asking If I need to extend my forbearance or discuss repayment options for the missed payments. I am livid!" *Consumer Complaint 3707815*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3707815 (last visited Sept. 27, 2022).

97. A media report details Wells Fargo's monitoring of the Chapter 13 bankruptcy dockets of its debtor clients and unilateral placement of them into its mortgage forbearance program.[32]

[32] Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him.*, NBC NEWS, (Jul. 16, 2020, 2:00 AM PDT), https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.

98. That article, entitled *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him*, details the plight of numerous borrowers in Chapter 13 bankruptcy who had been unwittingly enrolled in Wells Fargo's mortgage forbearance program:

> None of the borrowers in the lawsuit who were contacted by NBC News told the bank that they'd been affected by COVID-19, and ***none had requested the bank's assistance because of it. Nor had they requested loan modifications when Wells Fargo claimed they wanted forbearance.*** In addition, none of the borrowers or their attorneys say they were contacted by Wells Fargo.
>
> Asked about the discrepancies, Wells Fargo said that because it had seen references to COVID-19 in the borrowers' court filings, it provided forbearance.[33]

99. When reached for comment, Wells Fargo did not deny the practice of unilaterally enrolling unwitting persons to its mortgage forbearance program:

> In the early days of the pandemic, we provided immediate payment relief to customers in bankruptcy if a review of their court filings indicated they were impacted by COVID-19 or if they had a loan modification review in process.[34]

100. Wells Fargo's blunder is not an inconsequential administrative glitch. Rather, forbearances can have grave impacts on a borrower's credit history or access to credit.

101. As Sen. Elizabeth Warren (D-Mass.) and Sen. Brian Schatz (D-Hawaii) wrote in a July 29, 2020 letter to Wells Fargo CEO Charles Scharf, the bank was "putting consumers at risk of greater financial hardship amidst one of the worst economic downturns in our country's history." Letter from Sens. Elizabeth Warren and Brian Schatz, United States Senate, to Charles W. Scharf, Chief Executive Officer and President, July 29, 2020, https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf.

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[33] *Id.*
[34] *Id.*

102. In its first response to the Senators' letter, sent on August 12, 2020, Wells Fargo admitted putting borrowers into forbearance when they had only "made an inquiry or expressed hardship but had not explicitly requested a forbearance."[35] Wells Fargo identified that over 821,000 forbearances had been granted since March 9, 2020. In addition, Wells Fargo identified five scenarios in which it admitted its practice was to place borrowers into unrequested forbearances. *Id.*

103. First, Wells Fargo placed borrowers into forbearance for borrowers in active bankruptcy proceedings, without any borrower request. Second, Wells Fargo placed borrowers into forbearance when a customer contacted the bank via e-mail or telephone regarding a COVID-19 hardship, regardless of whether the borrower requested forbearance. Third, the bank automatically placed borrowers into forbearance when the borrower was in the process of seeking a loan modification. Fourth, the bank automatically placed borrowers into forbearance if the borrower had been denied a forbearance before the COVID-19 epidemic. Fifth, Wells Fargo placed mortgage and home equity accounts into forbearance when the borrower had another mortgage-linked account placed into forbearance.

104. In a second letter sent on September 4, 2020, Wells Fargo provided updates on the bank's attempt to contact borrowers. *Id.* Wells Fargo identified 904 accounts held by customers in active bankruptcy for whom forbearance was granted without a borrower request. *Id.* The bank attempted to contact each borrower, to confirm whether they wanted the forbearance assistance, and were able to contact 699 of the borrowers. *Id*. Of those 699 borrowers, 355 confirmed that they wanted forbearances, and 344 confirmed that they did not – almost exactly 50%. *Id.*

[35] https://www.warren.senate.gov/imo/media/doc/WF_2020.pdf.

2. Wells Fargo's Misleading and Inaccurate Representations Led to Hundreds of Thousands of Borrowers Being Placed in Forbearances they Did Not Knowingly Request

105. Borrowers in the so-called "business decision groups" were not the only ones placed into forbearances that they did not knowingly request. As detailed above, accepting a forbearance is an important financial decision. Federal loan servicers are thus generally required, under RESPA, to provide adequate disclosures for borrowers contemplating a forbearance. *See* 12 C.F.R. § 1024.38(b). However, as Plaintiffs' experiences demonstrate, borrowers were placed into unwanted forbearances in response to misleading prompts after Wells Fargo representatives and automated messages steered the borrowers into payment deferrals, or when they were requesting for more information about their options for mortgage assistance.

106. Wells Fargo has acknowledged that merely inquiring about forbearance options should not result in a borrower's unwitting entry into the program. Specifically, Tom Goyda, a Wells Fargo consumer lending spokesperson admitted that "[j]ust asking about a forbearance should not result in a forbearance being applied."[36] Paul Scharf, the CEO of Wells Fargo recently stated, regarding the involuntary forbearance program, that "every institution makes mistakes."[37] This "mistake" came at the expense of the borrowers that Congress intended to protect through the passage of the CARES Act, and generated potentially billions of dollars of profits for Wells Fargo.

107. Some borrowers were placed into forbearances based upon phone calls with Wells Fargo representatives. Others were placed into forbearances after utilizing automated systems established by Wells Fargo. For many borrowers, these forbearances were not the result of a valid request.

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[36] *See* Anna Bahney, *Homeowners are getting mortgage relief they didn't want*, CNN, https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html (Updated May 20, 2020, 4:25 PM ET).

[37] Rey Mashayekhi, *Can anyone fix Wells Fargo?*, FORTUNE, (Feb. 3, 2021, 3:30 AM PST), https://fortune.com/longform/fixing-wells-fargo-charles-scharf-ceo-regulatory-issues-privacy-fake-account-fraud-scandal-covid/.

a. Misleading Phone Calls

108. After the CARES Act was passed, the CFPB advised borrowers to contact their mortgage servicer to learn about potential relief, noting that the "decision to request a forbearance should be considered carefully."[38]

109. Hundreds of thousands of borrowers with mortgage loans serviced by Wells Fargo called the bank to inquire about available relief.

110. However, many borrowers who merely called to learn more information were placed into forbearances they never asked for. In some instances, as with the Robinsons, the borrower merely requested more information. The customer service representative offered to send a letter with additional information – without disclosing the fact that merely sending the letter would automatically place the borrower into a forbearance.

111. In addition, while discussing forbearances, Wells Fargo's customer service representatives did not consistently advise the borrower of the potential negative consequences of being placed into a forbearance.

112. For a period of time, the applicable script did not contain any disclosures of the negative consequences of a forbearance. While some disclosures were added, others – including disclosures of known damages to credit scores – were never included. Nor were disclosures ever provided regarding the known impact of being placed into a forbearance on a borrowers' eligibility to remove PMI.

113. What's more, Wells Fargo's customer services representatives did not consistently provide borrowers with disclosures about the limitations on refinancing or securing new credit that

[38] *Consumer Relief Guide – Your Rights to Mortgage Payment Forbearabce and Forclosure Protection Under the Federal CARES Act*, CONSUMER FIN. PROT. BUREAU, https://files.consumerfinance.gov/f/documents/cfpb_csbs_consumers-forbearance-guide_2020-05.pdf (last visited Sept. 27, 2022).

would result from being placed into a forbearance. Nor did they consistently provide borrowers with information about the negative consequences on borrowers' ability to access existing lines of credit.

114. Most egregiously, in the vast majority of instances the borrowers' intent to be placed into a forbearance was not confirmed and documented.

115. Thus, placing borrowers into a forbearance based on a phone conservation in which the borrower was misled regarding the negative consequences of being placed into a forbearance and without documented confirmation of the borrowers' intent to accept a forbearance is another instance of Wells Fargo placing borrowers into forbearances without a valid request.

b. Misleading Interactive Voice Response System

116. Wells Fargo implemented an interactive voice response (IVR) system in April of 2020, to address borrowers' questions concerning relief available to them in the early days of the pandemic.

117. The IVR system used a series of recorded messages to justify placing borrowers into forbearances. Rather than reach quality first person contact and confirming the borrowers' intent, Wells Fargo automatically placed borrowers into forbearances based upon their responses to the recorded messages.

118. However, these messages did not adequately apprise borrowers that the relief they were requesting was a forbearance, or of the negative consequences of being placed into a forbearance.

119. For a period of time, the IVR system only used the terms "payment assistance" or "suspension of payments," and not the term "forbearance."

120. Even after the IVR system included the term "forbearance," it misleadingly omitted critical information about what a forbearance was and its impact on a borrower.

121. When it was initially deployed, Wells Fargo's IVR system did not apprise borrowers that the forbearance would be reported to the credit reporting agencies, or the consequences of that reporting.

122. Wells Fargo was aware that being placed into a forbearance could impact a borrowers' credit score, it did not provide any warnings to that effect.

123. The bank knew that a borrowers' VantageScore credit score could experience a substantial decline as a result of being placed into a forbearance. However, despite knowing this fact, Wells Fargo did not disclose this to borrowers utilizing the IVR system.

124. Likewise, despite knowing that being placed into a forbearance could impact a borrowers' ability to refinance, the IVR system initially contained no information about the impact of accepting a "payment suspension" on a borrowers' ability to refinance.

125. When information related to refinancing was added to the IVR system, it remained misleading, in that it only referred to restrictions on refinancing with Wells Fargo, and not other lenders. Even the information communicated regarding Wells Fargo's own policies for refinancing after a forbearance was misleading and inaccurate.

126. Similarly, the IVR system initially contained no information about the impact that being placed in a forbearance would have on a borrowers' ability to secure additional lines of consumer credit, and when those advisements were added they were incomplete and misleading.

127. The IVR system initially contained no information about the impact that being placed in a forbearance would have on a borrowers' ability to access existing credit, such as a Wells Fargo Home Equity Line of Credit.

128. The IVR system likewise misleadingly communicated that borrowers would have the option to add unpaid amounts to the end of the loan, or to extend the term of the loan, even though those options would not be available for all borrowers.

c. Misleading Online Tool

129. In April of 2020, Wells Fargo implemented a tool for borrowers to request information about payment assistance online. When a borrower viewed their mortgage account on Wells Fargo's

website, a new banner was added that asked if borrowers needed payment assistance due to COVID-19, inviting them to request a payment suspension by clicking on a button.

130. The word "forbearance" was not used on the banner routing borrowers to the online tool, nor were any disclosures provided about the potential negative consequences associated with having a loan in a forbearance.

131. Nor, when originally implemented, did the online tool itself use the word "forbearance" or provide any disclosures to borrowers about the negative consequences associated with having a loan in a forbearance.

132. For a period of time, the online tool only used the terms "payment assistance," "payment suspension," or "suspension of payments." Even after the online tool included the term "forbearance," it misleadingly omitted critical information about what a forbearance was and its impact on a borrower.

133. When it was initially deployed, Wells Fargo's online tool did not apprise borrowers that the forbearance would be reported to the credit reporting agencies, or the consequences of that reporting.

134. Wells Fargo was aware that being placed into a forbearance could impact a borrowers' credit score, but it did not provide any warnings to that effect. The bank knew that a borrowers' VantageScore credit score could experience a substantial decline as a result of being placed into a forbearance. However, despite knowing this fact, Wells Fargo did not disclose this to borrowers utilizing the online tool.

135. Likewise, despite knowing that being placed into a forbearance could impact a borrowers' ability to refinance, the online tool initially contained no information about the impact of "payment suspension" on a borrowers' ability to refinance.

136. When information related to refinancing was added to the online tool, it remained misleading, in that it only referred to restrictions on refinancing with Wells Fargo and not other lenders.

Even the information communicated regarding Wells Fargo's own policies for refinancing after a forbearance was misleading and inaccurate.

137. Similarly, the online tool initially contained no information about the impact that being placed in a forbearance would have on a borrowers' ability to secure additional lines of consumer credit, and when those advisements were added they were incomplete and misleading.

138. Likewise, the online tool initially contained no information about the impact that being placed in a forbearance would have on a borrowers' ability to access existing credit, such as a Wells Fargo Home Equity Line of Credit.

139. As well, the online tool misleadingly communicated that borrowers would have the option to add unpaid amounts to the end of the loan, or to extend the term of the loan, even though those options would not be available for all borrowers.

140. Thus, neither utilization of the online tool nor the IVR system were valid requests for forbearances. Wells Fargo's placement of borrowers into forbearances based on these faulty systems was another instance of borrowers being placed into forbearances without a valid request.

141. While Wells Fargo's spokespeople have declined to say, in response to Senators Warren and Schatz' inquiry, whether the bank has benefited financially from placing borrowers into unrequested forbearances, upon information and belief, Wells Fargo stands to gain a tremendous windfall based on these practices.[39]

3. The Faulty Forbearance Program Led to Billions of Dollars in Profits for Wells Fargo.

142. Placing borrowers into forbearances was not without consequences for the borrowers. It frustrated borrowers' ability to refinance their mortgages during a time of historically low interest rates.

[39] Joe Light, *Banks Uncover Loophole to Buy Loans at below-market Prices*, BLOOMBERG (August 20, 2020, 3:00 AM PDT) https://www.bloomberg.com/news/articles/2020-08-20/banks-poised-for-mortgage-bond-windfall-that-may-burn-investors.

It rendered borrowers ineligible for removal of PMI. It reduced borrowers' access to existing lines of credit, and their ability to secure new lines of consumer credit. And it led to billions of dollars in profits for Wells Fargo.

a. While Wells Fargo's Misconduct Rendered Billions of Dollars in Loans Eligible for Highly Lucrative Voluntary Repurchase.

143. Wells Fargo performs multiple roles in America's housing finance system. This case is primarily concerned with Wells Fargo's role as a mortgage servicer, in which it receives a fee for acting as an intermediary between the loan holder and the borrower, performing the day-to-day administrative tasks associated with the lending side of a mortgage loan. The majority of first lien mortgages in America are federally backed, meaning that the loan has been securitized by Fannie Mae, Freddie Mac, or Ginnie Mae, government sponsored mortgage companies ("GSMC's"). Wells Fargo acts as loan servicer for billions of dollars' worth of such loans.

144. Both Fannie Mae and Freddie Mac are government-sponsored private corporations with congressional charters. They provide liquidity to the housing finance market by purchasing mortgages from lenders and guaranteeing the default risk linked to their issuances of mortgage-backed securities tied to those loans. Likewise, Ginnie Mae is a federal government agency that guarantees MBSs which are issued by program participants (like Wells Fargo) for loans linked to mortgages whose default risks are guaranteed by the FHA, VA, and USDA. Ginnie Mae guarantees MBS investors timely principal and interest payments for those investments.

145. Wells Fargo acts as loan servicer for loans that have been securitized by all three entities, and in exchange, is paid servicing fees. In this role, Wells Fargo forwards principal and/or interest payments to the GSMC's, or the investors, depending upon the remittance types of the underlying servicing contracts.

146. For the vast majority of Wells Fargo's GSMC servicing contracts, the obligation to advance monthly principal and/or interest payments for pooled loans exists even if the borrower does not pay the bank.

147. For Fannie Mae loans, a loan servicer has the option to voluntarily repurchase a mortgage loan from the MBS pool when the loan has four consecutive payments past due, cutting off the advancement risk.[40]

148. Likewise, for Freddie Mac Loans, a servicer may request to voluntarily repurchase the GSE's interest in a mortgage, a request that is generally granted for mortgages that are 90 or more days delinquent. *Servicing Guide, 3602.4 Repurchases requested by the Seller/Servicer*, FREDDIE MAC (Aug. 17, 2016), https://guide.freddiemac.com/app/guide/section/3602.4.

149. For Ginnie Mae loans, the loan servicer has the option to repurchase delinquent loans issued on or after January 1, 2003, so long as the borrower fails to make payment for three consecutive months.

150. After repurchasing, the servicer's obligation to advance principal and interest payments ends. In addition, the loan servicer has more flexibility to negotiate workout options with the borrowers to preserve the mortgage, or, if loss mitigation fails, foreclose.

151. Placing loans into forbearances led to the loans being eligible for exercising this option -called early pool buyout, or EPBO, because it led to missed payments.

[40] *Guide A1-3-01, Requirements for Voluntary Repurchase*, FANNIE MAE (Oct. 13, 2021), https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-A-Doing-Business-with-Fannie-Mae/Subpart-A1-Contractual-Obligations/Chapter-A1-3-Repurchases-Indemnifications-and-Make-Whole/A1-3-01-Requirements-for-Voluntary-Repurchase/1581707431/A1-3-01-Requirements-for-Voluntary-Repurchase-10-13-2021.htm

152. Being placed into a forbearance made a loan more likely to become delinquent for many reasons. First, it removes the obligation to pay, making it more likely that a borrower would miss payments they otherwise would have made.

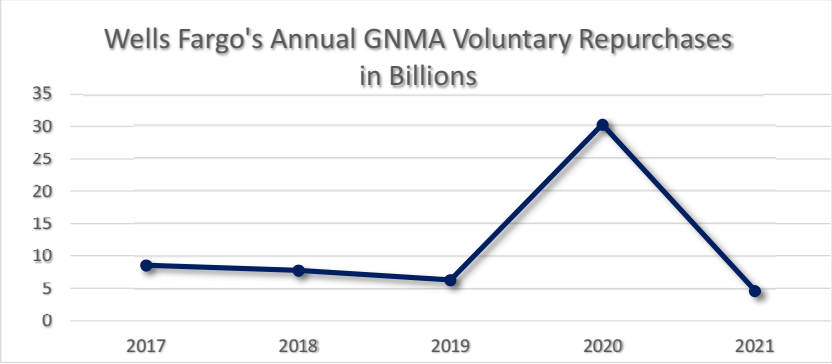
153. Second, it obstructed borrowers from making payments using their preferred and common method of payment. Borrowers that had established automatic payments, or ACH, had those automatic payments automatically terminated after being placed into forbearances. Coupled with misleading communications sent to borrowers indicating that if a forbearance was not right for them they could continue making payments as normal, many borrowers placed into unrequested forbearances were not aware that they had missed payments.

154. In addition, for a period of time, borrowers in forbearances were unable to make payments online or through Wells Fargo's mobile payment app. At the same time, there were widespread branch closures and limited local branch hours, due to the COVID-19 epidemic. And borrowers who attempted to make payments through the telephone experienced extraordinarily long wait times. Thus, placing a borrower into a forbearance often led to the loan becoming delinquent.

155. Many of these loans were, before Wells Fargo's misconduct, performing. They generally represent a low risk of falling into foreclosure, as Wells Fargo itself recognized in an earnings call. Michael Santomassimo, Wells Fargo's Senior Executive Vice President and Chief Financial Officer stated that for loans that had already exited their COVID-19 forbearance plans, "90% of the balance is current as of the end of the year."[41]

[41] https://www.fool.com/earnings/call-transcripts/2021/01/15/wells-fargo-wfc-q4-2020-earnings-call-transcript/

156. Once a voluntarily repurchased loan becomes reperforming, it can either be sold in the non-agency secondary mortgage market, held by the bank/servicer (who profits based on the spread between the servicing costs and the loan's interest), or resold into the GSMC pools. If resold in the GSMC pools, the resale price is generally substantially higher than par. For instance, the average trading price for a Ginnie Mae MBS with a 3.5% coupon was well above the coupon rate from January of 2020 to January of 2022, with an average trade value from January of 2021 to January of 2022 of 107. Thus, if a 3.5% loan is purchased at par and resold after it becomes reperforming, the loan servicer stands to make a 7% return.



157. On the other side of the voluntary purchase transaction are the MBS investors. When they purchase an MBS at 105 basis points, and part of that pool is bought out at par, the yield of the MBS decreases. In its disclosures to potential investors, the GSMC's disclose voluntary repurchase as a potential risk to investors. However, in typical years, prepayment rates are stable and tied to the normally occurring delinquencies in the housing market. For instance, on information and belief, in 2017, Wells Fargo voluntary purchased roughly $8.6 billion in loans out of GNMA pools. In 2018, that figure was $7.8 billion, and in 2019 it was $6.2 billion. That changed in 2020. Wells Fargo purchased $30.3 billion in loans out of GNMA pools in 2020, an unprecedented amount. In 2021, the repurchase rates returned to normal, $4.6 billion.

158. Wells Fargo's conduct did not go unnoticed. Industry reports began to circulate in July of 2020, as Wells Fargo's unprecedented buyout rate of 99% of eligible loans serviced by the bank was having a dramatic and outsized impact on the overall buyout rate (CBR) for Ginnie Mae backed securities.

159. Riskspan, a consulting firm in the residential mortgage, MBS trading, and structured finance space, published the following chart, detailing the buyout rate increase in July of 2020 and reporting that "this increase was driven almost entirely by Wells [Fargo], which accounted for 25% of the servicing in some pools."[42]



160. American Banker began reporting on Wells Fargo's conduct, with articles titled "Banks uncover loophole to buy home loans at below market prices," reporting that in July and August of 2020 alone, Wells Fargo bought $19 billion of loans out the Ginnie Mae reserves for $1.5 billion less than the loans' market price.[43] As former Ginnie Mae president Ted Tozer told Bloomberg News, Wells Fargo

[42] Don Brown, *Edge: Bank Buyouts in Ginnie Mae Pools*, RISKSPAN, (July 20, 2020), https://riskspan.com/bank-buyouts-in-ginnie-mae-pools/.

[43] *Banks uncover loophole to buy home loans at below-market prices,* AMERICAN BANKER (Aug. 20, 2020 8:53 AM EDT), https://www.americanbanker.com/articles/banks-uncover-loophole-to-buy-home-loans-at-below-market-prices.

and other banks exercising this voluntary repurchase option for loans placed into CARES Act forbearances are "setting themselves up for a huge windfall. It's almost pure profit."[44] While many banks exercised this option, Wells Fargo's repurchasing far exceeded its peers.

161. The FHFA, which regulates the GSE's, anticipated the potential that COVID forbearances could be abused by loan servicers, and issued guidance on March 21, 2020, informing servicers that loans forborne due to COVID-19 would not generally be available for voluntary repurchase, under a national disaster's exception.[45] In that same guidance, FHFA created a new limit on the servicer advance obligations, capping the advance obligations at four months. As discussed below, this created an additional incentive for Wells Fargo to place GSE loans into forbearance, but as a result of this policy, Fannie Mae and Freddie Mac loans did not experience as high of a spike in artificially inflated voluntary repurchases.

162. Ginnie Mae, however, took a different approach. On June 29, 2020, Ginnie Mae issued APM-20-07, a memorandum incorporating new terms into its policies for resecuritizing reperforming loans, [46] due to the recognition that mass early buyouts "could undermine the integrity of the MBS program." [47] Prior to APM-20-07, a loan that had been voluntarily repurchased out of a Ginnie Mae pool and brought back to performing status could be resold into the same pool type it was purchased out of.

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[44] Joe Light, *Banks uncover loophole to buy home loans at below-market prices*, BLOOMBERG (Aug. 20, 2020, 3:00 PDT), https://www.bloomberg.com/news/articles/2020-08-20/banks-poised-for-mortgage-bond-windfall-that-may-burn-investors.

[45] *FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit for Loans in Forbearance*, FED. HOUS. FIN. AGENCY, (Apr. 21, 2020), https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-Month-Advance-Obligation-Limit-for-Loans-in-Forbearance.aspx.

[46] *All Participant Memorandum APM 20-18: Extension to the Deadline for Submission of Resolution of Board of Directors and Certificate of Authorized Signatures (HUD-11702) Certification and Renewal of Other Master Agreements*, GINNIEMAE, (Dec. 16, 2020, 8:30 AM), https://www.ginniemae.gov/issuers/program_guidelines/Pages/mbsguideapmslibdisppage.aspx?ParamID=109.

[47] Seth B. Appleton, *Housing Analysis & Policy Spotlight*, GINNIE MAE (June 29, 2020), https://www.ginniemae.gov/newsroom/HAPS/Pages/Post.aspx?PostID=39.

Under the new guidance, reperforming loans will be eligible instead to be sold into new pool types created just for resecuritizing such loans. In addition, the loan must have been current for each of the six months immediately preceding resecuritization, essentially requiring servicers to hold repurchased loans for a longer period of time before profiting.

163. Wells Fargo's plan was to do exactly that – hold the reperforming loans until they could be sold or resecuritized. In its 2020 Q4 earnings call, Mike Santomassimo stated that the bank's mortgage balances would see "headwinds" in 2021, in part due to the "expected sale or resecuritization of loans previously purchased out of agency mortgage securitizations."[48]

164. Mr. Santomassimo was correct – the bank profited tremendously. Based on Wells Fargo's 2021 reporting, the bank profited by at least $789 million on the resecuritization of roughly $13 billion of the $30 billion in 2020 GNMA repurchases. If the remaining $17 billion in GNMA loans repurchased are resecuritized at the same profit rate, that would lead to $1.8 billion in profits from resecuritization alone.

165. Although the underlying regulations may be complicated, the scheme itself is simple and conducted in the open: Place otherwise solvent borrowers into unrequested forbearances, purchase their loans out of security pools at par (less than market value), hold the loans and profit once the loans exit forbearance (due to the delta between the interest payments on the loan and the cost of servicing), and once eligible for resecuritization, repool the loans for even greater profits.[49]

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[48] https://www.fool.com/earnings/call-transcripts/2021/01/15/wells-fargo-wfc-q4-2020-earnings-call-transcript/

[49] Wells Fargo is not the first bank to use GNMA's repurchasing in order to unjustly profit. In 2016, the SEC filed a civil enforcement action under the Securities Act and Exchange Act against First Mortgage Corporation, a privately-held GNMA mortgage issuer which delayed crediting borrower payments in order to render the mortgages eligible for voluntary repurchase. Complaint, *S.E.C. v. First Mortgage Corp., Inc. et al*, 2:16-cv-03772 (C.D. Cal., f May 31, 2016) ECF No. 1. The SEC alleged that FMC profited by $7.5 million on a mere 532 transactions, at a profit rate of 7.5%, and ultimately the United States District Court for the Central District of California entered a consent

166. To effectuate this scheme, WFC's loan servicing subsidiary, Wells Fargo Bank, artificially placed the loans into forbearance even when the borrower did not request such relief. But Wells Fargo Bank did not act alone in performing its part in this scheme – it had the assistance of Black Knight, Inc., a long-time vendor.

167. Black Knight Inc., a publicly-traded company, provides a platform for mortgage loan servicing and borrower communication application, referred to as MSP and LoanSphere. Wells Fargo's use of these platforms represents a substantial portion of Black Knight's business – in 2016, Black Knight reported to the SEC in relation to a merger that Wells Fargo was its "largest client," and "accounted for approximately 12% of our consolidated revenues" and 15% of the revenues from Black Knight's Technology and Data segment.[50]

168. Black Knight capitalized on the COVID-19 crisis by marketing its MSP platform, distributing a white paper advertising its products as assisting mortgage servicers in establishing forbearance, allowing mortgage servicers to automate the management of forbearance programs.[51] Black Knight gained increased revenue through this churn, assisting Wells Fargo with identifying loans to be placed into forbearance through its automated mortgage servicing program.

169. This enterprise formed of WFC, Wells Fargo Bank, and Black Knight, perpetuated this fraud through the use of wires and mails, and committed thousands of predicate violations by reporting the mortgages to be in faulty forbearances that the enterprise had imposed without the borrowers' knowledge or consent. Additional predicate violations include false reporting of the loans' status to

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judgment against FMC for $11,784,474.82. *Id.* at ECF No. 8, Final Judgement as to Defendant First Mortgage Corp., Inc.

[50] Black Knight Financial Services Letter to Shareholders, U.S. Sec. and Exch. Comm'n (Aug, 25, 2017), https://www.sec.gov/Archives/edgar/data/1704177/000104746917005400/a2233097z424b3.htm.

[51] Michelle Kersch and Mitch Cohen, *Black Knight Issues White Paper on Managing COVID-19 Challenges for Clients Using MSP Servicing System*, (Apr. 13, 2020), https://www.blackknightinc.com/black-knight-issues-white-paper-on-managing-covid-19-challenges-for-clients-using-msp-servicing-system/.

credit reporting agencies, using Black Knight's platform as modified specifically for COVID forbearance reporting, communications to borrowers related to the servicing of those loans, and communications with GNMA regarding the repurchase and resecuritization of loans that were only rendered delinquent by being placed into unrequested forbearances. Thus, the participants are liable under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c), as detailed *infra*.

b. Wells Fargo's Misconduct Capped Its Principal and Interest Advancement Obligations for Loans that Remain in GSE Pools.

170. Even for loans that are not voluntarily repurchased for profit, Wells Fargo is incentivized to place GSE loans into forbearance in order to minimize its exposure to servicing requirements obligating Wells Fargo to advance borrowers' delinquent principal and interest payments to the investors in GSE-sponsored trusts when the loan is not paying.

171. Ordinarily, as described above, Wells Fargo's advancement obligations continued for Fannie Mae loans regardless of whether Wells Fargo collected payment from the borrowers, unless and until Wells Fargo either foreclosed on the property or determined that the property's foreclosure value was insufficient to reimburse Wells Fargo for any further advances of monthly principal and interest after satisfying the remaining principal balance of the delinquent loan.

172. However, exclusively for loans in CARES Act forbearances, Fannie Mae and Freddie Mac have modified those advancement requirements.[52] Servicers of GSE loans, including Wells Fargo, are obliged to only make four monthly advances of principal and interest payments for delinquent loans that have been in a CARES Act forbearance.

[52] Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him*, NBC NEWS, (July 16, 2020, 2:00 AM PDT), https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.

173. Thus, the servicing rights associated with loans that have ever been in a CARES Act forbearance are increased in value, as they present a lower risk of loss due to the obligation to make advances while nonperforming for the life of the loan.

c. Wells Fargo's Misconduct Prevents Runoff for its Mortgage Servicing Rights by Reducing Refinancing Opportunities for Borrowers.

174. For much of the last two years, interest rates were at all-time lows, and many homeowners – such as the Castros, Ms. Delpapa, Mr. Doctor, and Mr. Jacob – sought to take advantage of these historically low rates by refinancing. If an account is placed into a forbearance program, those borrowers cannot typically refinance for many months, even after bringing the account current. As detailed more fully below, by retaining borrowers who might otherwise refinance their mortgages with other institutions, Wells Fargo protected their mortgaging servicing rights – accounts associated with the fees Wells Fargo earns for servicing mortgages.

175. Wells Fargo generates millions of dollars in revenue servicing mortgages. Mortgage servicing rights ("MSR") are the capitalized value of the right to receive future cash flows from the servicing of mortgage loans. In Wells Fargo's 2021 Annual Report, the bank reported MSR accounts with a fair value of over $6,000,000, recognizing that "MSRs may increase upon repurchase [of loans from GNMA loan securitization pools]."[53]

176. When borrowers refinance a mortgage with a different servicer, the associated mortgage servicing rights are terminated. Thus, when capitalizing the present value of MSRs, loan servicers adjust for the risk that borrowers will prepay or refinance. This risk of run-off decreases the present value of MSRs. In 2021, despite historically low interest rates and a red-hot real estate market, Wells Fargo's estimate of prepayment rates (one measure of "runoff") for their MSR portfolio *declined* by 11% compared to the prior year.

[53] https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2021-annual-report.pdf

177. As the Castros, Ms. Delpapa, and Mr. Jacob experienced, being placed in forbearance is a barrier to refinancing. Before May 19, 2020, a borrower was generally required to wait a year until they could refinance. As told by a Wells Fargo mortgage servicer client, it was virtually impossible to obtain any form of credit for up to a year after a forbearance program concluded:

> The note on his credit report saying the loan is in forbearance makes it impossible for him to refinance. Fannie Mae and Freddie Mac, which, along with the Federal Housing Administration and the Department of Veterans Affairs, fund or insure the vast majority of mortgages from lenders, do not allow borrowers with a loan in forbearance to either refinance or obtain a new loan until one year after the loan payments are up to date again.[54]

178. Even after the FHFA updated guidance relating to borrowers in forbearance,[55] a borrower with a Fannie Mae or Freddie Mac loan will typically have to wait three months after exiting forbearance in order to be able to refinance. Thus, by placing borrowers into unsolicited forbearance, Wells Fargo increased the value of the associated MSR accounts by reducing the risk of runoff through refinancing.

d. Wells Fargo's Misconduct Entitles the Bank to Workout Incentive Payments.

179. By placing borrowers into unrequested forbearances, Wells Fargo was manufacturing delinquencies which it could receive incentive payments for curing. Upon information and belief, for each loan placed into forbearance that Wells Fargo subsequently modifies in accordance with Fannie

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[54] *See* Diana Olick, *Some homeowners are getting mortgage bailouts by mistake, and it's keeping them from refinancing*, CNBC, (May 12, 2020, 11:15 AM EDT), https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html (stating that "It also puts barriers in front of homeowners who could really benefit now from refinancing and saving on their monthly payments. Servicers are swamped with those requests as well. Applications to refinance a home loan are currently up more than 200% from a year ago").

[55] *Lender Letter (LL-2021-03), Impact of COVID-19 on Originations*, FANNIE MAE, (Feb. 2, 2022), https://selling-guide.fanniemae.com/Content-Management-Labels/KB-Management/Guide-FM-com/2169430921/Lender-Letter-LL-2021-03-Impact-of-COVID-19-on-Originations-01-14-2021.htm.

Mae and Freddie Mac's matrix for loan retention workout options, Wells Fargo receives an incentive fee of up to $1,000.[56]

180. If the borrower enters into a repayment plan, under which the forborne payments are brought current over a period of up to 12 months, the loan servicer is eligible for a $500 incentive payment. Likewise, if the forborne payments are deferred to the back of the loan, the servicer is eligible for a $500 incentive payment. If the loan is modified, to permanently change the payment terms, the servicer is eligible for a $1,000 incentive payment. The below chart, from Freddie Mac Bulletin 2020-21,[57] details those incentives.

Incentive Type	Incentive Amount
Repayment Plan	$500 Effective for all repayment plans with a first payment due date under the repayment plan on or after July 1, 2020
Payment Deferral/COVID-19 Payment Deferral	$500 Effective immediately for all Payment Deferrals/COVID-19 Payment Deferrals (NOTE: Payment Deferral evaluations do not begin until on or after July 1, 2020)
Flex Modification®	$1,000 Effective for all Flex Modifications completed with a Trial Period Plan effective date on or after July 1, 2020

e. Wells Fargo's Misconduct Allowed the Bank to Profit from Spread from Servicing Repurchased Loans.

181. In Wells Fargo's 2021 Annual Report the bank reported that it had interest income associated with loans repurchased from Government National Mortgage Association (GNMA) loan securitization pools of $1.1 billion. In its earning call associated with the Q4 2021 report, Wells Fargo stated that it earned $318 million of interest income associated with EPBO loans in the fourth quarter alone. Meanwhile, Wells Fargo reported the annual cost to service at a mere $91 per loan. Thus, Wells Fargo has earned hundreds of millions of dollars servicing loans that it repurchased, with staggering

[56] *See Lender Letter (LL*-2020-09), FANNIE MAE, https://singlefamily.fanniemae.com/media/23091/display, (updated July 15, 2020).

[57] *Temporary Servicing Guidance Related to COVID-19 (Bulletin 2020-21*), FREDDIE MAC (June 10, 2020), https://guide.freddiemac.com/app/guide/bulletin/2020-21

profit margins. Rather than spend the amount necessary to properly service those loans (for instance, confirming with each borrower whether they in fact had requested a forbearance), Wells Fargo continues to profit at the borrowers' expense.

C. Wells Fargo's Misconduct Harmed the Very Consumers that the CARES Act Was Intended to Protect.

182. These gains come at the expense of borrowers, who were placed into unwanted forbearances or who had forbearance terms extended without their intent. Despite Wells Fargo's protestations in its response to Senators Warren and Schatz, these forbearance plans led to real and substantial damages to borrowers.

183. As has previously been briefed before this Court, FICO performed an analysis which concluded that the majority of borrowers whose loans were placed into a CARES Act forbearance can expect a resulting decrease in their credit score.[58]

184. In addition, regardless of any direct impact on borrowers' credit scores, in practical effect a forbearance is such a negative indicia that borrowers are rendered ineligible to refinance and capitalize on record low interest rates, or potentially remove PMI, during the term of the forbearance and for up to a year after the forbearance plan ends.

185. The actions taken by Defendants were in direct contravention of the CARES Act requirements that forbearances be provided in response to the request of the borrower, and with an attestation of hardship due to COVID-19. In many instances, the borrowers received no notice that they had been placed in forbearance at all, and in those instances in which the borrowers received some notice, it was woefully insufficient under the requirements of RESPA, 12 U.S.C. §§ 2601 *et seq.*

[58] Paul Panichelli, *Simulated FICO Score Impacts due to Mortgage Forbearance*, FICO, (Sept. 29, 2020), https://www.fico.com/blogs/simulated-fico-score-impacts-due-mortgage-forbearance.

186. Many borrowers, unaware that they were in forbearance, continued to make or attempted to make payments on their loans. Upon information and belief Wells Fargo failed to timely credit those payments to borrowers' mortgage loans, instead, holding those payments in separate "unapplied funds" accounts without notifying the borrowers.

187. Even when Wells Fargo did, internally, credit borrower payments, its failure to report timely payments to the credit reporting agencies during the unauthorized forbearance periods was tantamount to a failure to timely credit, because prospective lenders would not be able to confirm payments by the borrowers by reference to their credit reports. For those borrowers whose loans were owned by Wells Fargo, this failure to timely credit payments constituted an actionable violation of the Truth in Lending Act, 15 U.S.C. § 1601, as detailed *infra*.

188. Some individuals, such as the Castros, Ms. Doctor, and Mr. Jacob, noticed that their mortgages had been noted as "in forbearance," despite never having requested that relief, and that their credit scores had declined as a result of Wells Fargo's actions. When Mr. Jacob and Ms. Doctor submitted notices of dispute to the credit reporting agencies, upon receipt of the notices of disputes from the credit reporting agencies, Wells Fargo was obligated under FCRA, 15 U.S.C. § 1681i, to adequately investigate and correct the matter. Wells Fargo did not, violating FCRA.

189. Many borrowers, like Mr. Forsburg, were in the process of seeking a HAMP loan modification or had already received such relief. In an article by Pulitzer Prize-winning journalist Gretchen Morgenson, writing for NBC News, a Wells Fargo representative explained that it was Wells Fargo's practice to unilaterally place loans of borrowers who were in the modification process into forbearance status under the CARES Act, without such borrowers' prior knowledge or consent.[59] By

[59] Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him*, NBC NEWS, (July 16, 2020), https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.

placing borrowers into forbearance, Wells Fargo risked rendering them ineligible for the HAMP loan modifications that they would otherwise have been eligible to receive.

190. In Mr. Forsburg's case, Wells Fargo terminated his fully executed modification agreement without notice, telling him he would have to resubmit his modification application after the forbearance period ended.

191. Tragically, the harms have disproportionately impacted borrowers of color. Borrowers of color were twice as likely to miss mortgage payments during the early months of the pandemic.[60] When borrowers attempted to refinance during the historic low interest rates of 2020, Wells Fargo approved refinancing applications for only 47% of Black homeowners, compared to 72% of White homeowners.[61]

192. The representative Plaintiffs' experiences further demonstrate some of the harms caused by the unilateral forbearance scheme.

D. Wells Fargo Placed Plaintiffs' Loans in Forbearance Without Their Consent

1. Pamela Delpapa, a California resident.

193. One of the many victims of Wells Fargo's Faulty Forbearance Program is Plaintiff Pamela Delpapa. Ms. Delpapa lost her job at a nail salon due to COVID-19.

194. Concerned about whether she would be able to make her mortgage payments, she called Wells Fargo—her mortgage servicer—to learn about her options.

[60] *CFPB Issues Reports Detailing Mortgage Borrowers' Continuing COVID-19 Challenges*, CONSUMER FIN. PROT. BUREAU, (May 04, 2021), https://files.consumerfinance.gov/f/documents/cfpb_csbs_consumers-forbearance-guide_2020-05.pdf https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-reports-detailing-mortgage-borrowers-continuing-covid-19-challenges/

[61] Ann Choi, Bloomberg News, *Wells Fargo Faces Persistent Racial Gap in Mortgage Refinancing*, (March 25, 2022 at 12:20 PM PDT), https://www.bloomberg.com/news/articles/2022-03-25/wells-fargo-faces-persistent-racial-gap-in-mortgage-refinancing

195. At that point, she was paid in advance for five months; in fact, the Wells Fargo representative she spoke to said she would *not* be a candidate for assistance at this time, but should feel free to call back in five months. She relied on this misrepresentation to her detriment.

196. Unbeknownst to her, after that call Wells Fargo placed her loan in forbearance anyway. She only found out when she called her mortgage broker to refinance her home. Her mortgage broker told her she could not refinance because her loan was in forbearance. She was understandably shocked.

197. When she called Wells Fargo to complain, a Wells Fargo employee told her that when a borrower calls the bank and pushes the button directing them to information on COVID mortgage options, the bank automatically places those accounts in forbearance.

198. Ms. Delpapa never requested that her mortgage be placed in forbearance. In a June letter to her, Wells Fargo admitted it placed her mortgage in forbearance without her consent and without discussing it with her "in detail":

> We found that On March 17, 2020, your account was set up for the 90-day forbearance option that was being offered to our customers. After listening to the phone call between you and our representative, we discovered that you never requested to be placed on the plan nor was the plan discussed with you in detail. On May 21, 2020, we updated the account and removed your account from the forbearance plan as you requested. Additionally we updated our reporting to ensure the forbearance comment was removed.

199. The bank's letter also conceded that by reporting her mortgage as in forbearance, Wells Fargo may have damaged Ms. Delpapa's ability to get consumer credit, as she experienced firsthand:

> The credit bureaus have independent credit score models. We cannot speculate how any of their proprietary models account for this; however, we do know, generally, those are not used for underwriting of credit. If you apply for credit while on a forbearance plan, however, the lender will see the "account in forbearance" comment on your credit report, and the fact that your account is in forbearance may impact your ability to qualify for new credit or refinance.

200. Since then, Ms. Delpapa attempted to refinance her loan to capitalize on historically low interest rates. Despite having been prepaid for the period she was in forbearance, that is, despite *not missing a single payment*, she was unable to refinance for months as a result of the forbearance notation.

201. This delay in refinancing cost Ms. Delpapa hundreds of dollars, as she remained locked into her higher interest payment with Wells Fargo for months after Wells Fargo represented that they had removed her account from a forbearance plan she never requested.

2. Jenna Doctor, a Florida resident

202. Ms. Doctor's mortgage loan, secured by a lien against her property located at 7 Hitching Post Ln, Casselberry, FL 32707, is a loan backed by the FHA and serviced by Wells Fargo.

203. Ms. Doctor and her husband are both employed and have been able to continue making their monthly mortgage payments without interruption. Mr. and Mrs. Doctor were current on their mortgage loan.

204. Around the second week of April 2020, Ms. Doctor, using her Wells Fargo online account, reviewed information about Wells Fargo's COVID-19 and CARES Act relief. After reviewing the information, Ms. Doctor elected not to enroll in the forbearance program because Ms. Doctor and her husband were able to continue making their payments and they had no financial need to forgo payments.

205. At no time did Ms. Doctor consent to or request that Wells Fargo place her mortgage loan account in forbearance.

206. However, at some point prior to June 29, 2020, Wells Fargo placed Ms. Doctor's mortgage loan account in forbearance status without Ms. Doctor's knowledge or consent.

207. In the summer of 2020, Ms. Doctor was pregnant, with her baby due in late 2020. In June 2020, Ms. Doctor learned that her baby had developed a medical condition that would require treatment, causing Ms. Doctor and her husband to incur additional out-of-pocket medical expenses. Ms. Doctor

and her husband also wished to make certain upgrades and improvements to their home prior to the birth of their child.

208. On or about June 29, 2020, Ms. Doctor contacted a loan officer at the Fairwinds Credit Union (the "Credit Union"), where Ms. Doctor is a member and account holder. Ms. Doctor sought to obtain a secured loan to cover both the out-of-pocket medical expenses for herself and her unborn child and the improvements to her homestead.

209. The Credit Union made a "hard inquiry" with Equifax on June 29, 2020. The credit information the Credit Union received in response to its inquiry indicated that Ms. Doctor's mortgage loan was in forbearance.

210. Also on June 29, 2020, the Credit Union informed Ms. Doctor that it could not extend Ms. Doctor credit because her mortgage loan was in forbearance. Ms. Doctor then informed the Credit Union that she was not in forbearance, that she had made her monthly mortgage payments each month, and that she never requested a forbearance with Wells Fargo.

211. Prior to June 29, 2020, Ms. Doctor had applied for and received several loans with the Credit Union. Ms. Doctor was informed by the Credit Union that the reason for the decision not to extend credit to Ms. Doctor on June 29, 2020 was because of the reporting or furnishing to the credit reporting agency that her Wells Fargo account was in forbearance for May and June 2020.

212. During the phone call with Wells Fargo on June 29, 2020, Ms. Doctor was informed that she was automatically put in forbearance, since every Wells Fargo borrower has been affected by COVID-19. The Wells Fargo representative indicated that Ms. Doctor's account was in a forbearance from May 1, 2020 through July 1, 2020, but Ms. Doctor could "opt-out" of the forbearance program. Ms. Doctor demanded that her account be removed from the forbearance program, as she had never requested any forbearance relief with Wells Fargo.

213. On July 1, 2020, Ms. Doctor contacted Wells Fargo and spoke with a representative concerning its reporting of the unwanted forbearance to the credit agencies. Wells Fargo refused to change the information it reported regarding Ms. Doctor's account and stated that the account would reflect she had chosen to opt out of the final forbearance month of July 2020.

214. On July 6, 2020, Ms. Doctor contacted the Credit Union loan officer about the steps she took with Wells Fargo and what she needed to do to move forward with a loan. Ms. Doctor was informed by the Credit Union that her Wells Fargo account was still reported as in forbearance.

215. On July 6, 2020, Ms. Doctor called Wells Fargo and spoke with a Wells Fargo supervisor. Ms. Doctor explained that she needed the forbearance removed from Wells Fargo's reporting to the credit reporting agencies because continued reporting would result in her being denied a loan with her Credit Union. The Wells Fargo supervisor stated Wells Fargo could only send Ms. Doctor an official "opt out" document.

216. Also on July 6, 2020, Wells Fargo sent an email to Ms. Doctor attaching a letter dated July 1, 2020, which referenced "Confirming your request to opt out of mortgage payment suspension" and stated that Wells Fargo was returning the account to normal servicing and "reporting payment activity to the consumer reporting agencies."

217. For the months of April through July 2020, Wells Fargo furnished information to the credit reporting agencies that the status of Ms. Doctor's monthly mortgage payments was paid, paid as agreed, or current. In addition, Wells Fargo furnished information that Ms. Doctor's mortgage loan account was in forbearance for at least May and June of 2020.

218. On July 7, 2020, Ms. Doctor filed a complaint online with the Consumer Financial Protection Bureau about Wells Fargo's credit reporting and reporting incorrect information. Specifically, Ms. Doctor complained that Wells Fargo placed her mortgage loan account in forbearance without her knowledge or consent and reported her mortgage loan as in forbearance to the credit

reporting agencies, which would prevent Ms. Doctor from obtaining credit from her Credit Union until the reference to the forbearance was removed from her credit reports.

219. On or about July 7, 2020, Ms. Doctor disputed with Equifax the reporting of false and incorrect information furnished by Wells Fargo stating that Ms. Doctor's mortgage loan account was in forbearance. On information and belief, Equifax sent notice of Ms. Doctor's disputes to Wells Fargo pursuant to 15 U.S.C. § 1681s-2(b).

220. On or about July 16, 2020, Ms. Doctor complained again about Wells Fargo's credit reporting and, by July 16, 2020, Equifax began a re-investigation of Ms. Doctor's dispute relating to Wells Fargo's reporting of her account as in forbearance.

221. On July 31, 2020, Ms. Doctor sent written disputes to Equifax, Transunion, and Experian. On information and belief Wells Fargo received notice from each of those credit reporting agencies pursuant to 15 U.S.C. § 1681s-2(b).

222. On or about July 31, 2020, Ms. Doctor received a response from Wells Fargo concerning her complaint with the CFPB regarding Wells Fargo's placement and reporting of her account in a forbearance status. Wells Fargo states that it is "unable to remove the forbearance comment that was previously reported for April 1, 2020, through June 1, 2020." Wells Fargo goes on to state that the "account was last reported to the consumer reporting agencies on July 15, 2020, as current with no forbearance comment."

223. As of August 6, 2020, Ms. Doctor's Equifax report still noted that her mortgage loan account was in forbearance for the months of May and June 2020.

3. Gerald Forsburg, a Virginia resident

224. Mr. Forsburg's mortgage loan, secured by a lien against his property located at 129 Shannon Avenue in Mount Jackson, Shenandoah County, Virginia, is a loan backed by the FHA and serviced by Wells Fargo.

225. Mr. Forsburg' personal liability on the mortgage loan secured by the Shannon Avenue property was discharged in a Chapter 7 bankruptcy in 2016, although the remaining unpaid debt on that loan continues to be secured by a lien against the Shannon Avenue property.

226. After his 2016 bankruptcy, Mr. Forsburg's mortgage loan fell into default, and Mr. Forsburg began working with Wells Fargo in an effort to obtain a FHA Home Affordable Mortgage Program ("HAMP") loan modification in order to reduce his interest rate and monthly mortgage payment and to catch up on the arrears owing on the mortgage loan.

227. In connection with his mortgage modification efforts, Mr. Forsburg accepted a trial modification plan offered by Wells Fargo, which required Mr. Forsburg to make three monthly payments of $848.53 for January, February, and March of 2020 as a precondition to Wells Fargo providing Mr. Forsburg with a final mortgage modification.

228. Mr. Forsburg made each of the trial modification payments under the trial modification plan on time and in full, as required.

229. On March 11, 2020, Wells Fargo approved Mr. Forsburg's loan for a final FHA HAMP mortgage modification.

230. The monthly payment under the terms of Mr. Forsburg's modified mortgage loan is $831.75, with the first post-modification installment due May 1, 2020.

231. Mr. Forsburg was not required to make a monthly payment for April of 2020 under the terms of his mortgage modification agreement. Moreover, Mr. Forsburg's modified monthly payment of $831.75 represents substantial savings compared with his pre-modification monthly mortgage payment of approximately $1,052.68. Additionally, the contractual annual interest rate for Mr. Forsburg's modified loan is 3.5%, a significant reduction of the pre-modification interest rate of 4.875%.

232. Mr. Forsburg's mortgage modification recapitalized $8,648.26 in unpaid amounts, resulting in a $148,633.85 new modified principal balance for his mortgage loan secured by the Shannon Avenue property.

233. On March 18, 2020, Wells Fargo sent final modification paperwork via FedEx to Mr. Forsburg, with instructions that Mr. Forsburg needed to sign the documents and have them notarized before returning the executed documents to Wells Fargo.

234. Mr. Forsburg received the FedEx from Wells Fargo with the final modification paperwork on March 19, 2020.

235. On March 20, 2020, Mr. Forsburg executed the final modification documents before a notary, who notarized Mr. Forsburg's signature and returned the final modification documents to Wells Fargo.

236. On or about April 2, 2020, Mr. Forsburg attempted to log into Wells Fargo's online payment portal in order to confirm that Wells Fargo had implemented his FHA HAMP mortgage modification and to make his May 1, 2020 modified monthly mortgage payment of $831.75.

237. When he attempted to log in to make his mortgage payment on April 2, 2020, Mr. Forsburg received a message from Wells Fargo stating that his mortgage loan had not yet been updated with the terms of his March 11, 2020, Wells Fargo approved, fully executed, final FHA HAMP modification, and Wells Fargo indicated that it would "be in touch" with Mr. Forsburg "soon."

238. Unbeknownst to Mr. Forsburg, sometime after March 20, 2020 and prior to April 2, 2020, Wells Fargo had placed his original, unmodified loan into a three-month forbearance program, effective as of the mortgage payment due for April of 2020.

239. Mr. Forsburg did not request that his mortgage loan be placed into forbearance prior to April of 2020, or at any time thereafter.

240. Prior to placing Mr. Forsburg's loan into forbearance status for April of 2020, Wells Fargo did not inform Mr. Forsburg that placing his loan into forbearance would result in Wells Fargo terminating the final mortgage modification agreement Mr. Forsburg had accepted on March 20, 2020.

241. Because Mr. Forsburg's loan was in forbearance status, Wells Fargo stopped implementation of the final FHA HAMP mortgage modification that it offered to Mr. Forsburg, which Mr. Forsburg had accepted.

242. Instead, without notice to Mr. Forsburg, Wells Fargo unilaterally placed Mr. Forsburg's original, unmodified mortgage loan into forbearance status.

243. As a result, without Mr. Forsburg's prior knowledge or consent, Wells Fargo cancelled the final FHA HAMP modification Mr. Forsburg had accepted on March 20, 2020.

244. When Mr. Forsburg contacted Wells Fargo by telephone to make his May 2020 payment under the newly modified loan terms, he was told that he did not need to make a payment because his loan was in forbearance. Mr. Forsburg was not told at that time that his modification had not been implemented by Wells Fargo.

245. As recently as July 21, 2020, a Wells Fargo representative told Mr. Forsburg that Wells Fargo placed all loans that were in the modification process into forbearance status.

246. Moreover, upon information and belief, after cancelling the modification and placing the loan in forbearance, Wells Fargo has also placed Mr. Forsburg's loan in foreclosure status.

247. Mr. Forsburg has contacted Wells Fargo multiple times regarding this issue and, despite spending anywhere from 45 – 90 minutes on the phone, has not received a definitive answer from Wells Fargo regarding this issue. Indeed, Wells Fargo's representatives have given him conflicting information about the status of his mortgage loan after Wells Fargo placed his account in forbearance.

248. In an article by Pulitzer Prize winning journalist Gretchen Morgenson, writing for NBC News, a Wells Fargo representative explained that it was Wells Fargo's practice to unilaterally place

loans of borrowers who were in the modification process into forbearance status under the CARES Act, without such borrowers' prior knowledge or consent.[62]

249. Wells Fargo's website's "FAQ" section related to COVID-19 and CARES Act forbearance indicates that Wells Fargo cancels pending modification applications for its borrowers when borrowers accept a CARES Act forbearance. Yet, Mr. Forsburg was told by a Wells Fargo representative that *Wells Fargo* placed borrowers with pending loan modifications into forbearances.

250. Mr. Forsburg had the ability and intention of making the payments required of him under his modified loan terms, as set forth in the final modification documents he executed and returned to Wells Fargo on March 20, 2020.

251. Mr. Forsburg did not want or request a CARES Act forbearance from Wells Fargo.

252. During the unauthorized forbearance period, Mr. Forsburg was prevented from making any payment via Wells Fargo's online payment system, other than payment in the amount of his pre-modification loan; Wells Fargo gives him no option to specify a different payment amount.

253. Wells Fargo's actions in placing Mr. Forsburg's loan in forbearance, without Mr. Forsburg's knowledge or consent, deprived Mr. Forsburg of the opportunity to cure his arrears and lower his interest rate through the modification.

4. Luis and Marisol Castro, Texas residents

254. Mr. and Mrs. Castro's mortgage loan, secured by a lien against their homestead property located at 3221 San Marcus Ave., Dallas, TX 75228, is a federally related mortgage loan backed by Fannie Mae and serviced by Wells Fargo.

[62] Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him*, NBC NEWS (July 16, 2020, 2:00 AM PST), https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.

255. In late March, Mr. Castro went to Wells Fargo's website to pay their April 2020 mortgage payment.

256. While Mr. Castro was on Wells Fargo's website, he noticed a large "box" on the website that referenced COVID-19 and contained a button marked "Get Help Now" for payment assistance.

257. Mr. Castro was curious about what "payment assistance" would involve and clicked on the "Get Help Now" button on Wells Fargo's website, expecting more information about the various payment assistance options that might be available to him.

258. Once Mr. Castro clicked that "Get Help Now" button, Wells Fargo's website displayed a message "congratulating" him and informing him that his loan has been enrolled in a forbearance plan.

259. Mr. Castro did not receive any additional information at that time explaining the terms or the consequences of the forbearance program, and Mr. Castro assumed that being automatically enrolled in the program would not be detrimental to him or Mrs. Castro.

260. Despite Wells Fargo placing Mr. and Mrs. Castro's loan account into a forbearance that he did not request, Mr. Castro proceeded to make his April 2020 payment that same day in late March.

261. Wells Fargo accepted Mr. and Mrs. Castro's April 2020 mortgage payment.

262. In late April, Mrs. Castro went to Wells Fargo's website to make their May 2020 mortgage payment but found that she was unable to log on to make the payment.

263. Later that same day, Mrs. Castro called Wells Fargo and made the May 2020 mortgage payment by telephone. Wells Fargo accepted Mr. and Mrs. Castro's May 2020 payment.

264. While speaking with the Wells Fargo representative in connection with their May 2020 mortgage payment, the Wells Fargo representative informed Mrs. Castro that she was unable to make her payment online because their loan was in forbearance status.

265. Mrs. Castro did not understand at the time she was speaking with the Wells Fargo representative that having a loan in forbearance status could be harmful to her credit or otherwise, but

Mrs. Castro also did not like being unable to make payments online. Accordingly, during her call in late April 2020, Mrs. Castro asked Wells Fargo's representative to remove whatever it was that was keeping her from making her payments online.

266. Wells Fargo subsequently removed the restriction on Mr. and Mrs. Castro's account that prevented them from making their monthly mortgage payments online, and they have made their June – August 2020 mortgage payments.

267. Wells Fargo did not remove Mr. and Mrs. Castro's mortgage loan from forbearance status in April 2020.

268. In fact, Wells Fargo sent Mr. and Mrs. Castro a letter dated April 16, 2020, regarding the "short-term payment suspension." The April 16, 2020 letter stated: "This payment suspension option is based on an incomplete application for assistance. Other payment assistance options may be available. If you would like a review for all available assistance options, you may submit a complete application, which would include information about your income and expenses. This review is available whether or not you accept this short-term payment suspension. Please contact us for more information."

269. The April 16, 2020 letter also stated: "Note: If you find you don't need this short-term payment suspension, please continue to make your normal payments. Take advantage of this payment suspension only when you really need it, because you may need to repay any missed payments at the end of the short-term payment suspension period."

270. Further, the April 16, 2020 letter did not disclose that the forbearance status of Mr. and Mrs. Castro's mortgage loan account would be reported to the credit reporting agencies or that Wells Fargo would suppress its reporting regarding the payments it was receiving from Mr. and Mrs. Castro during the forbearance period.

271. In late May 2020, Mr. and Mrs. Castro decided to refinance their mortgage loan. At the time, Mr. and Mrs. Castro did not know or understand that Wells Fargo was reporting their mortgage loan to the credit reporting agencies as in forbearance status.

272. Mr. and Mrs. Castro attempted to obtain a refinance but were unable to close on their refinance of their mortgage loan account in July 2020 because Wells Fargo had reported their mortgage loan account as in forbearance status.

273. Moreover, due to the credit reporting of their loan as in forbearance preventing Mr. and Mrs. Castro from closing their refinance, Mr. and Mrs. Castro incurred a late fee for their July 2020 monthly mortgage payment because they anticipated that they would not have to make a mortgage payment in July 2020 due to their anticipated refinance.

274. The tradelines for Mr. and Mrs. Castro's mortgage loan serviced by Wells Fargo on their TransUnion credit reports indicate in the "Remarks" section of the report that their mortgage loan account is in forbearance. Further, the "Terms" section of the report states "$0 per month for 360 months, Deferred" and Wells Fargo did not report that Mr. and Mrs. Castro made their April – June 2020 mortgage payments.

275. Similarly, the tradelines for Mr. and Mrs. Castro's mortgage loan serviced by Wells Fargo on their Equifax credit reports indicate in the "Comments 2" section that their mortgage loan account was in forbearance in April and May 2020 and the "Payment History" section does not indicate that Mr. and Mrs. Castro made their April – July 2020 monthly mortgage payments. Moreover, the "Terms Frequency" is listed as "DEFERRED" and the "Comments" section states their mortgage loan account is in forbearance.

276. The tradeline for Mr. and Mrs. Castro's mortgage loan serviced by Wells Fargo on Mrs. Castro's Experian report states the "Status" of the loan as "Open/Never late. Deferred, payments begin Oct 2020," and states the monthly payment is "$0." Further, the payment history section does not reflect

Wells Fargo's receipt of Mr. and Mrs. Castro's April through June 2020 mortgage payments and the "Comment" section states "Account in Forbearance."

277. Wells Fargo sent Mr. and Mrs. Castro a letter dated July 9, 2020, which informed Mr. and Mrs. Castro that Wells Fargo had extended the forbearance period for another three months. The Castro's did not consent to Wells Fargo's extension of the forbearance, which they had not wanted or authorized in the first place.

278. Mr. and Mrs. Castro then contacted Wells Fargo via telephone on multiple occasions in June and July of 2020, asking to be removed from the forbearance program.

279. On a call in late July 2020, Mr. Castro was informed by a Wells Fargo representative that the "Get Help Now" button was placed on Wells Fargo's website due to higher than normal call volume that resulted in five hour wait times before customers could speak to a Wells Fargo representative.

280. On August 3, 2020, Mr. Castro called Wells Fargo again in a further attempt to get his account removed from forbearance status. He spoke to four different Wells Fargo representatives and none of them were able to remove his loan from forbearance status. Ultimately, a Wells Fargo representative hung up on him.

5. Samara Green, a Georgia resident

281. Plaintiff Samara Green has a mortgage serviced by Wells Fargo.

282. On or about June 15, 2020, a representative from Wells Fargo called Ms. Green to address concerns Ms. Green had about her escrow payments. During this call, the Wells Fargo representative talked to Ms. Green about the option of placing her mortgage in forbearance.

283. Ms. Green told the Wells Fargo representative that she was not interested in Wells Fargo's forbearance program.

284. Before the June 15, 2020 phone call, Ms. Green had already made a mortgage payment to Wells Fargo on June 12, 2020.

285. However, unbeknownst to Ms. Green, her June 12, 2020 payment was not timely applied to her mortgage or her escrow account because Wells Fargo placed her mortgage in forbearance without her knowledge or consent.

286. On or around June 26, 2020, Ms. Green called Wells Fargo again to further inquire about fees and the application of escrow payments. During the phone call, the Wells Fargo representative informed Ms. Green that her mortgage had been placed in forbearance.

287. Ms. Green informed the representative that she had never requested nor consented to forbearance on her mortgage, that Wells Fargo had acted without her knowledge or consent, and demanded that her account be taken out of forbearance.

288. Ms. Green received a letter from Wells Fargo dated July 1, 2020 which memorialized this conversation. As the letter recounted, Wells Fargo placed Ms. Green's mortgage into forbearance though she "did not request this."

289. Wells Fargo admits in the letter that though Ms. Green called Wells Fargo to discuss her escrow account, Wells Fargo instead suspended all her mortgage payments.

290. Wells Fargo never informed Ms. Green, either on the June 26, 2020 phone call or in the July 1, 2020 letter, that Wells Fargo had failed to apply her June 12, 2020 payment to her mortgage or her escrow account.

291. On or about July 15, 2020, Ms. Green went to a Wells Fargo bank branch in order to make another mortgage payment to Wells Fargo.

292. However, when Ms. Green spoke with the Wells Fargo representative at the bank branch, she was told that the amount due on her mortgage was over $3,500, that her prior June payment had not been applied to her mortgage or her escrow, and that her mortgage had been placed in forbearance.

293. After Ms. Green's visit to the Wells Fargo branch, she immediately called Wells Fargo and spoke to a representative. The Wells Fargo representative confirmed that Ms. Green's mortgage

payment had not been applied to her mortgage or her escrow because she had been placed in forbearance. The Wells Fargo representative told Ms. Green that her payment had been placed in an "unapplied fund" and that those payments would be reversed because they could not be applied to her mortgage or escrow while she was in forbearance.

294. Wells Fargo placed Ms. Green's loan in forbearance without her consent and incorrectly reported this to credit reporting agencies.

295. Because Wells Fargo failed to timely apply her June 12, 2020 payment, Wells Fargo reported to the Credit Reporting Agencies that Ms. Green was 30 days late on her mortgage for the month of June 2020.

296. While Wells Fargo did, ultimately, apply the June 12, 2020 payment to her mortgage, they did so months late and after reporting Ms. Green as in forbearance.

297. Ms. Green did not request a forbearance of her mortgage loan payment obligations, did not contact Wells Fargo about a forbearance, and she did not—and does not—want a forbearance of her mortgage payment obligations.

6. Patrick Healy, a California resident.

298. Mr. Healy's residential property located in San Marcos, California is encumbered by a lien securing repayment of a mortgage that is serviced by Wells Fargo.

299. In June of 2020, Mr. Healy discovered that Wells Fargo had been persistently reporting inaccurate credit information about this mortgage loan account with Wells Fargo. Specifically, Wells Fargo had been falsely reporting that his mortgage loan was in forbearance and that no payments had been made on the account for months, at least as of April 2020.

300. In a letter from Wells Fargo dated June 3, 2020, Wells Fargo incorrectly stated that Mr. Healy "had asked for help with [his] mortgage payments because [he] was facing a financial

hardship as a result of the [COVID-19] crisis." The letter then went on to say, "To help, we suspended your mortgage payments for three months, but you've still been making your payments."

301. However, Mr. Healy never requested or agreed to a forbearance on his mortgage loan or any type of deferment.

302. During the purported period of forbearance, Mr. Healy has been making each monthly mortgage payment in full and on time, yet Wells Fargo furnished to the credit reporting agencies the indisputably false and inaccurate information that he had not made any recent monthly payments during the several months that his account was wrongfully placed in forbearance.

303. Mr. Healy contacted Wells Fargo about the forbearance status on the loan that he did not request. In response, in a letter from Wells Fargo, dated June 15, 2020, Wells Fargo stated "Thank you for updating us on your situation. We're confirming that we've canceled the short-term payment suspension."

304. In fact, in a letter from Wells Fargo dated July 6, 2020, Wells Fargo admitted that Mr. Healy did not request a forbearance. Specifically, Wells Fargo stated: "We found that when you first spoke with us you requested information about the forbearance plan. We can confirm you did not request or accept the plan at that time and the plan was added to the account in error." The letter further stated in part, "We apologize for any confusion or frustration regarding how your credit report may have been impacted due to the COVID-19 pandemic."

305. Unfortunately, as a result of the false mortgage forbearance reporting by Wells Fargo, Mr. Healy was deprived of a home mortgage refinance loan with another lender who declined to extend Mr. Healy credit in light of Wells Fargo's reporting of the account in forbearance with no recent payment made.

306. After the inaccurate credit reporting with Experian was disputed, Experian in response indicated that following their "reinvestigation" of the dispute, "The information you disputed has been

updated," and the credit report, generated on June 20, 2020, then showed that the mortgage account was current on payments from January to June 2020.

307. Only after the dispute was corrected was Mr. Healy able to secure new credit that had previously been denied for months.

7. Brett Jacob, a New York resident.

308. Plaintiff Brett Jacob has a mortgage serviced by Wells Fargo.

309. On or about March 16, 2020, Mr. Jacob called Wells Fargo and asked that his mortgage payments no longer be automatically debited from his bank account.

310. Mr. Jacob requested that he be permitted to make payments at a time and in a manner of his own choosing. Wells Fargo honored Mr. Jacob's request and, a few days later, Mr. Jacob received a letter from Wells Fargo dated March 20, 2020 confirming that Wells Fargo had "completed your request to suspend your automatic mortgage payments."

311. However, approximately one week later, Mr. Jacob received a second letter from Wells Fargo dated March 26, 2020. This letter informed Mr. Jacob, much to his surprise, that Wells Fargo had placed his mortgage into forbearance for six months. The letter stated that his monthly mortgage obligations had been suspended until October 1, 2020.

312. Mr. Jacob never requested that Wells Fargo place his mortgage into forbearance.

313. Since being placed in forbearance, Mr. Jacob has tried to make mortgage payments, but Wells Fargo suspended his online payment option.

314. Further, though Wells Fargo assures its customers otherwise, the forbearance that he did not request is reflected on his credit report. Mr. Jacob filed a written notice of dispute with Experian on September 9, 2020.

315. After Wells Fargo placed him in forbearance, Mr. Jacob attempted to secure a small-business loan but was denied, at least in part because the lender pulled his credit report and saw that his mortgage had been placed in forbearance.

316. In addition, Mr. Jacob's attempt to refinance his mortgage and to obtain a lower interest rate on his mortgage was denied because Wells Fargo placed his mortgage into forbearance without his consent.

317. Wells Fargo placed Mr. Jacob's loan in forbearance without his consent and incorrectly reported this to credit reporting agencies such that it appears on Mr. Jacob's credit report.

318. Mr. Jacob disputed this inaccurate credit reporting with Experian. On information and belief, Experian sent notice of Mr. Jacob's dispute to Wells Fargo pursuant to 15 U.S.C. § 1681s-2(b).

319. Experian added a comment to Mr. Jacob's credit report, generated on September 25, 2020, that opined, "The information you disputed has been verified as accurate; however, information unrelated to your dispute has been updated."

320. Mr. Jacob disputed the forbearance notation, as he had never requested a forbearance. Rather than investigate whether it had erred in placing Mr. Jacob into a forbearance, Wells Fargo merely confirmed to Experian that it *had* placed Mr. Jacob into a forbearance. This paltry investigation is inadequate – akin to a debt collector only investigating whether a disputed debt had been paid, and not whether they had reported it against the right debtor.

321. The credit reporting concerning the forbearance was incorrect, as Mr. Jacob did not request a forbearance of his mortgage loan payment obligations, did not contact Wells Fargo about a forbearance, and did not—and does not—want a forbearance of his mortgage payment obligations.

8. Charles Johnson, a California resident.

322. Plaintiff Charles Johnson has a mortgage serviced by Wells Fargo.

323. At the end of March 2020, Mr. Johnson called Wells Fargo and asked to be placed into the forbearance program, to receive short-term payment relief for his mortgage account.

324. Per his request, Mr. Johnson's forbearance period was to last three months, from April through June 2020.

325. Mr. Johnson received a letter from Wells Fargo dated April 6, 2020 confirming that they had "suspended [his] obligation to make monthly mortgage payments for three months" and that Mr. Johnson needed to resume his "regular mortgage payment schedule beginning on July 1, 2020."

326. Wells Fargo sent Mr. Johnson a letter dated May 26, 2020 informing him that his account was due for two payments "for the month(s) of April 1, 2020 through May 26, 2020."

327. Concerned by this correspondence, Mr. Johnson called Wells Fargo and spoke to a customer representative and asked specifically to be removed from the program when his three-month period ended.

328. He also asked about the process of resuming payments when his forbearance period ended on July 1, 2020.

329. Mr. Johnson did not ask that his forbearance period be extended; in fact, he requested the exact opposite.

330. Despite this conversation, Mr. Johnson received a letter from Wells Fargo dated June 17, 2020, asking Mr. Johnson if he wished to extend his period of forbearance for another three months.

331. Mr. Johnson did not want the period of forbearance be extended, and since he already called Wells Fargo he expected that he would be taken out of the forbearance program.

332. However, in a letter from Wells Fargo dated July 8, 2020, Mr. Johnson was informed that Wells Fargo had yet again "suspended [his] mortgage payments for an additional three months." Mr. Johnson was told that he would not need to resume his mortgage payments until October 1, 2020.

333. Mr. Johnson made a $1,446.80 mortgage payment on or about July 1, 2020 which Wells Fargo accepted.

334. However, Wells Fargo failed to apply Mr. Johnson's July 1, 2020 payment to his mortgage account.

335. Mr. Johnson made a $1,446.80 mortgage payment on or about August 1, 2020 which Wells Fargo accepted.

336. However, Wells Fargo failed to apply Mr. Johnson's August 1, 2020 payment to his mortgage account, and decrease his principal and interest.

337. Mr. Johnson called Wells Fargo on or about July 16, 2020, told a customer service representative that he never requested that his forbearance period be extended, and requested to be removed from the forbearance program.

338. Wells Fargo did not provide Mr. Johnson with answers to his questions nor was he told that he was removed from the forbearance program.

339. Instead, Mr. Johnson was told to not make a payment on his mortgage and that he would be receiving further correspondence.

340. Mr. Johnson did not receive any further correspondence regarding the status of his mortgage account.

341. Mr. Johnson called Wells Fargo three additional times—on or about August 6th, 7th, and 11th—but Wells Fargo was not able to tell Mr. Johnson that he had been removed from the forbearance program.

342. Because Mr. Johnson's mortgage was placed in an extended forbearance program without his consent and without his knowledge, Wells Fargo incorrectly reported to the credit reporting agencies that his mortgage was in forbearance after July 1, 2020 and until October 1, 2020.

343. Mr. Johnson's credit score dropped by 13 points after July 1, 2020 as a result of Wells Fargo's incorrectly reporting to the credit reporting agencies that his mortgage was in forbearance.

344. Wells Fargo placed Mr. Johnson's loan in a second forbearance without his consent, and incorrectly reported this to credit reporting agencies such that it appears on Mr. Johnson's credit report.

345. Wells Fargo also incorrectly reported the total balance of Mr. Johnson's mortgage, failing to account for the payments made for the months of April 2020 and May 2020.

346. Further, despite placing Mr. Johnson unwillingly into forbearance during these months and taking Mr. Johnson's payments, Wells Fargo reported to the credit reporting agencies that Mr. Johnson's mortgage balance had increased from $141,175 in April 2020 to $143,288 in June 2020.

347. As such, Mr. Johnson suffered damages to his credit and reputation.

348. Further, Wells Fargo's extension of Mr. Johnson's forbearance without his request, failure to account for the payments he made, incorrect reporting to the credit bureaus, and to date failure to remedy the issues, are continuously causing Mr. Johnson mental anguish, embarrassment, and stress.

9. Barbara Prado, a California resident

349. Barbara Prado is a chef by trade. Until September 1, 2020, for eight years, she had been employed as a manager by the Bon Appetit cafe and restaurant chain, including throughout March 2020.

350. Ms. Prado has two FHA mortgage loans that are serviced by Wells Fargo and are secured by her homestead property, which is located in Fremont, California.

351. Ms. Prado's primary mortgage loan has an account number ending in 4898 (the "Primary Mortgage Loan").

352. From April through September 2020, Ms. Prado's monthly payment on her Primary Mortgage Loan has been $1,594.70, which includes principal, interest, and escrow for property taxes and insurance.

353. Ms. Prado's secondary mortgage loan has an account number ending in 9035 (the "Secondary Mortgage Loan").

354. The monthly payment on Ms. Prado's Secondary Mortgage Loan is $167.90.

355. Prior to April 2020, Ms. Prado had arranged for her payments on the Secondary Mortgage Loan to be automatically drafted from her bank account by Wells Fargo each month in the amount of $200.00, designating the $32.10 surplus to be applied to further reduce the loan's principal balance.

356. Ms. Prado called Wells Fargo on Saturday, March 28, 2020, to inquire about COVID-19 related payment assistance options with respect to her Primary Mortgage Loan only. Including hold time, Ms. Prado's March 28, 2020 call to Wells Fargo lasted approximately 43 minutes.

357. Ms. Prado does not recall or believe that she ever requested "forbearance" during her March 28, 2020 call with Wells Fargo and she does not recall authorizing Wells Fargo to place her Primary Mortgage Loan account into forbearance status effective April 1, 2020.

358. Wells Fargo sent Ms. Prado a letter dated September 4, 2020, in which Wells Fargo asserts that Ms. Prado called Wells Fargo regarding her Primary Mortgage Loan on March 28, 2020, "and stated that [Ms. Prado] would need two months deferred as [she] did not know when [she] would be going back to work."

359. Wells Fargo's September 4, 2020 letter does not assert that Ms. Prado ever requested "forbearance" as to her Primary Mortgage Loan, nor does it assert that Ms. Prado agreed on March 28, 2020 (or at any other time) to a "payment suspension" that would be immediately effective.

360. On September 15, 2020, a Wells Fargo representative, Erica Nosbisch, informed Ms. Prado that Wells Fargo placed her Primary Mortgage Loan account into forbearance status on March 30, 2020.

361. Ms. Prado actually made her monthly mortgage payments on her Primary Mortgage Loan from April through September of 2020.

362. In addition to placing Ms. Prado's Primary Mortgage Loan into forbearance following Ms. Prado's March 28, 2020 call, Wells Fargo placed Ms. Prado's Secondary Loan Account into forbearance status, without Ms. Prado requesting a forbearance on her Secondary Mortgage Loan and without her knowledge or consent.

363. Wells Fargo's September 4, 2020 letter to Ms. Prado acknowledges that Wells Fargo placed Ms. Prado's Secondary Mortgage Loan into forbearance status without Ms. Prado's consent, "because of the request from [her] on [her Primary Mortgage Loan]. Due to high call volumes, the process was automated and forbearance assistance was provided for all accounts associated with [Ms. Prado's Primary Mortgage Loan]."

364. When Wells Fargo placed Ms. Prado's Secondary Mortgage Loan into forbearance status, it also terminated the pre-arranged automatic electronic monthly payments that Ms. Prado had set up with Wells Fargo for her Secondary Mortgage Loan without prior notice to Ms. Prado.

365. Because she had come to expect that the $200 monthly payment on her Secondary Mortgage Loan would be automatically drafted from her bank account each month, Ms. Prado did not notice that her Secondary Mortgage Loan payments to Wells Fargo for April, May, and June 2020 had not been drafted from her account.

366. On June 10, 2020, at her daughter's urging, and with her daughter present, Ms. Prado called Wells Fargo to obtain information about the CARES Act forbearance program.

367. During her June 10, 2020 call, after listening to a Wells Fargo representative's attempt to explain how the forbearance program would work, Ms. Prado informed Wells Fargo that she was not interested in forbearance at that time.

368. The Wells Fargo representative Ms. Prado spoke with on June 10, 2020 did not mention to Ms. Prado that both her Primary Mortgage Loan and her Secondary Mortgage Loan were already, or had already been, in forbearance.

369. On July 9, 2020, Ms. Prado received an email from Wells Fargo informing her that Wells Fargo would be extending the forbearance term on her Secondary Mortgage Loan for an additional 90 days.

370. Ms. Prado was alarmed by Wells Fargo's July 9, 2020 email extending the term of the unauthorized forbearance on her Secondary Mortgage Loan.

371. Ms. Prado did not request that Wells Fargo extend the forbearance on her Secondary Mortgage Loan.

372. On July 9, 2020, Ms. Prado attempted to call Wells Fargo to get information about why Wells Fargo was sending her an email that said her Secondary Mortgage Loan account was in forbearance status. However, she was kept on hold for so long that it was interfering with her work and she ultimately was forced to hang up before she was able to speak with anyone at Wells Fargo.

373. So, after getting off work on July 9, 2020, Ms. Prado went to a Wells Fargo branch bank to seek an explanation for Wells Fargo's email indicating that her Secondary Mortgage Loan was in forbearance.

374. Upon Ms. Prado's arrival at the Wells Fargo branch bank at approximately 4:30pm on July 9, 2020, Ebonique Edogun, a Wells Fargo representative at the Wells Fargo branch banking location, attempted to assist Ms. Prado that evening by trying to call Wells Fargo's mortgage division to obtain information about the forbearance on the Secondary Mortgage Loan.

375. Ms. Edogun's call to Wells Fargo on Ms. Prado's behalf remained on hold past the Wells Fargo branch bank's business hours, until approximately 5:30 p.m. Pacific time. At that point, Ms. Prado asked Ms. Edogun to end the call so they could both go home.

376. The next morning, at approximately 5:30 a.m. Pacific time on July 10, 2020, Ms. Prado again called Wells Fargo to inquire about the July 9, 2020 email regarding extension of the forbearance on her Secondary Mortgage Loan.

377. During the July 10, 2020 call, Ms. Prado first spoke with a Wells Fargo representative named Colleen, who later transferred Ms. Prado's call to a supervisor named Rosemary.

378. While speaking with Colleen during the July 10, 2020 call, Ms. Prado learned, to her surprise, that her Primary Mortgage Loan was also in forbearance status.

379. During the July 10, 2020 call, Ms. Prado also learned that her Secondary Mortgage Loan was three months behind because of the unauthorized forbearance on her Secondary Mortgage Loan account and Wells Fargo's undisclosed cancellation of her automatic electronic payment arrangement with Wells Fargo for the Secondary Mortgage Loan.

380. While speaking with Rosemary during the July 10, 2020 call, Ms. Prado requested to have the forbearance removed from both loans.

381. Rosemary, Wells Fargo's representative, advised Ms. Prado during the July 10, 2020 call that Ms. Prado would be able to defer the missed (forborne) payments on her Secondary Mortgage Loan to the end of her loan, and that this process would be done through correspondence Ms. Prado would receive by mail.

382. Later in July, instead of offering to defer the missed (forborne) payments on her Secondary Mortgage Loan, Wells Fargo sent Ms. Prado a letter dated July 13, 2020, informing Ms. Prado that she had an overdue balance on her Secondary Mortgage Loan account and requesting that Ms. Prado call Wells Fargo because "...we want to help you."

383. Ms. Prado made her July 2020 Secondary Mortgage Loan payment directly to Wells Fargo in the amount of $200, which Wells Fargo initially accepted and applied to Ms. Prado's Secondary Mortgage Loan account on July 14, 2020, designating $167.90 as the regular payment, and $32.10 as a principal payment, as reflected on the July 14, 2020 statement Wells Fargo sent Ms. Prado.

384. Wells Fargo then sent Ms. Prado a second statement in July 2020, dated July 16, 2020, which reverses the $32.10 that Wells Fargo applied as a principal payment on July 14, 2020, and places $32.10 into an unapplied funds account.

385. Wells Fargo also sent Ms. Prado a letter dated July 14, 2020, congratulating Ms. Prado because she was once again enrolled in monthly automatic payments for her Secondary Mortgage Loan, beginning August 14, 2020.

386. Wells Fargo next sent Ms. Prado a letter dated July 15, 2020 stating that her account was due for "3 payment(s) for the month(s) of May 1, 2020 through July 15, 2020 [sic] . . .." Wells Fargo's July 15, 2020 letter offers Ms. Prado various options to "help [her] stay in [her] home," none of which included deferral of her payments to the end of the note, as she had been told previously.

387. On July 22, 2020, Ms. Prado called Wells Fargo regarding her Secondary Mortgage Loan account because she was confused by Wells Fargo's correspondence, which did not comport with her prior conversation on July 10, 2020 with Wells Fargo's representative, Rosemary, in which Rosemary informed Ms. Prado that the forborne payments on her Secondary Mortgage Loan would be put at the end of her loan.

388. A Wells Fargo representative named Raphael spoke with Ms. Prado during the July 22, 2020 call. Raphael informed Ms. Prado that he could see no indication in Wells Fargo's system that Ms. Prado had requested forbearance on her Secondary Mortgage Loan and that a Wells Fargo representative named "Tayion Pugh" appeared to be the person who put the process in motion that resulted in Ms. Prado's Secondary Mortgage Loan account being placed into forbearance status. Raphael was not able to explain why the forborne (without authorization) payments on Ms. Prado's loan were not being deferred.

389. On July 28, 2020, Ms. Prado accessed her Secondary Mortgage Loan account information through Wells Fargo's website in order to determine how much she would need to pay to

bring her Secondary Mortgage loan current. According to Wells Fargo's website as of July 28, 2020, Ms. Prado was required to pay $610.40 to bring her loan current at that time.

390. The next day, July 29, 2020, Ms. Prado went to a Wells Fargo branch bank and paid $610.40, believing that she was bringing her account contractually current.

10. Renrick and Vivian Robinson, Texas residents

391. The Robinsons' residence, in Grand Prairie, Texas, is encumbered by a Veterans Administration mortgage, which on information and belief was originated by Wells Fargo, refinanced by Wells Fargo, and is serviced by Wells Fargo.

392. On March 20, 2020, Ms. Robinson called Wells Fargo to discuss a potential refinance, to take advantage of the historically low prevailing interest rates. The Wells Fargo representative told her about the forbearance program and asked if she wanted to receive some literature on forbearance relief. Ms. Robinson agreed to accept the literature, but expressly stated that she was not accepting forbearance.

393. As Wells Fargo explained in a letter sent to the Robinsons months later, the customer service representative added the coding on the Robinsons' loan to have the informational packet sent, however, this also placed their mortgage into forbearance.

394. When the Robinsons received the information, they reviewed it together. They decided that they did not want or need a forbearance and threw away the notice. However, Wells Fargo had already placed them into a forbearance.

395. The Robinsons discovered this when Mr. Robinson applied for a personal line of credit from American Express, seeking the travel benefits and perks associated with that credit card. He was denied because he was in forbearance.

396. Shocked, the Robinsons called Wells Fargo and demanded to be removed from forbearance.

397. Although Wells Fargo represented that they had been removed, Mr. Robinson's application for the personal line of credit was again denied due to the forbearance code on his credit report. Ultimately, he was only able to secure the personal line of credit after sending verification of his income.

VI. CLASS ACTION ALLEGATIONS

398. Plaintiffs bring this complaint on behalf of themselves and all others similarly situated under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), or alternatively 23(b)(4). The Nationwide Class that Plaintiffs seek to represent is defined as follows:

> All residential mortgage borrowers for whom Wells Fargo Bank, N.A., placed a residential mortgage into forbearance or continued forbearance without receiving the borrower's request or continued consent for a forbearance and affirmance that the borrower is experiencing a financial hardship due to COVID-19.

399. In addition, Plaintiffs Delpapa, Healy, Johnson, and Prado seek to represent the following California Class:

> All residential mortgage borrowers for whom Wells Fargo Bank, N.A., placed a residential mortgage secured by real property in California into forbearance or continued forbearance without receiving the borrower's request for a forbearance and affirmance that the borrower is experiencing a financial hardship due to COVID-19.

400. In addition, Plaintiff Doctor seeks to represent the following Florida Class:

> All residential mortgage borrowers for whom Wells Fargo Bank, N.A., placed a residential mortgage secured by real property in Florida into forbearance or continued forbearance without receiving the borrower's request for a forbearance and affirmance that the borrower is experiencing a financial hardship due to COVID-19.

401. In addition, Plaintiff Green seeks to represent the following Georgia Class:

> All residential mortgage borrowers for whom Wells Fargo Bank, N.A., placed a residential mortgage secured by real property in Georgia into forbearance or continued forbearance without receiving the borrower's request for a forbearance and affirmance that the borrower is experiencing a financial hardship due to COVID-19.

402. In addition, Plaintiff Jacob seeks to represent the following New York Class:

> All residential mortgage borrowers for whom Wells Fargo Bank, N.A., placed a residential mortgage secured by real property in New York into forbearance or continued forbearance without receiving the borrower's request for a forbearance and affirmance that the borrower is experiencing a financial hardship due to COVID-19.

403. In addition, Plaintiffs Renrick and Vivian Robinson and Luis and Marisol Castro seek to represent the following Texas Class:

> All residential mortgage borrowers for whom Wells Fargo Bank, N.A., placed a residential mortgage secured by real property in Texas into forbearance or continued forbearance without receiving the borrower's request for a forbearance and affirmance that the borrower is experiencing a financial hardship due to COVID-19.

404. In addition, Plaintiff Gerald Forsburg seeks to represent the following Virginia Class:

> All residential mortgage borrowers for whom Wells Fargo Bank, N.A., placed a residential mortgage secured by real property in Virginia into forbearance or continued forbearance without receiving the borrower's request for a forbearance and affirmance that the borrower is experiencing a financial hardship due to COVID-19.

405. Excluded from the Classes are Wells Fargo's officers, directors and employees; the judicial officers and associated court staff assigned to this case; and the immediate family members of such officers and staff.

406. **Numerosity**: The members of the Classes are so numerous that joinder of all members would be impractical. Wells Fargo is one of the nation's largest home lenders and servicers, and media reports indicate borrowers in at least 14 states have experience non-requested forbearances. The Consumer Financial Protection Bureau has documented dozens of complaints. Wells Fargo recently reported to the United States Senate that approximately 1,600 borrowers had called to complain about being placed into unwanted forbearances. Based on the elevated volume of Wells Fargo's borrowers placed into forbearances, when compared to its industry peers, Plaintiffs estimate that hundreds of thousands of forbearances were the result of Wells Fargo's faulty program.

407. **Commonality and Predominance**: Common questions of law and fact predominate over any questions affecting only individual members of the Classes. For Plaintiffs and the Classes, the common legal and factual questions include, but are not limited to the following:

A. Whether Wells Fargo negligently or intentionally enrolled customers in forbearance programs without their consent;

B. Whether Wells Fargo has breached terms implied in its contracts with Plaintiffs and the Class Members;

C. Whether Wells Fargo's actions or inactions violated the consumer protection statutes invoked herein;

D. Whether Plaintiffs and the Class members were damaged by Wells Fargo's conduct and, if so, the appropriate amount of damages;

E. Whether, because of Wells Fargo's misconduct, Plaintiffs and the Classes are entitled to equitable and declaratory relief, and, if so, the nature of such relief.

408. **Typicality**: The representative Plaintiffs' claims are typical of the claims of the members of the Classes. Plaintiffs and all the members of the Classes have been injured by the same wrongful practices of Wells Fargo. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Classes and are based on the same legal theories.

409. **Adequacy**: Plaintiffs will fully and adequately assert and protect the interests of the Classes, and have retained class counsel who are experienced and qualified in prosecuting class actions. None of the Plaintiffs nor their attorneys have any interests contrary to or in conflict with the Classes.

410. **Predominance and Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class members are likely in the hundreds of millions of dollars, the individual

damages incurred by each Class member are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

411. Further, individual members of the Classes do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also result in varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and the court system because of multiple trials of the same factual and legal issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Wells Fargo has acted or refused to act on grounds generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief with regard to the Class members as a whole is appropriate.

412. Wells Fargo has, or has access to, address and/or other contact information for the Class members, which may be used to provide notice of the pendency of this action.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO") on Behalf of Plaintiffs and the Nationwide Class

413. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

414. This claim is brought by Plaintiffs against Wells Fargo & Co. and Wells Fargo Bank N.A. for actual damages, treble damages, and equitable relief under 18 U.S.C. § 1964, for violations of 18 U.S.C. § 1961, et seq.

415. Section 1962(c) makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity …" 18 U.S.C. § 1962(c).

416. At all relevant times, each Defendant is and has been a "person" within the meaning of 18 U.S.C. § 1961(3), because they are capable of holding, and do hold, "a legal or beneficial interest in property."

417. WFC and Wells Fargo Bank conducted the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c), as described herein.

418. Plaintiffs are each a "person," as that term is defined in 18 U.S.C. § 1961(3), and have standing to sue under 18 U.S.C. § 1964(c) as they were and are injured in their business and/or property "by reason of" the RICO Act violations described herein.

419. Plaintiffs demand the applicable relief set forth in the Prayer for Relief below.

A. WFC, Wells Fargo Bank, and Black Knight Comprised an Enterprise Whose Activities Affect Interstate or Foreign Commerce.

420. Section 1961(4) defines an enterprise as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4).

421. Based upon Plaintiffs' current knowledge and belief, the following persons constitute an associated in fact enterprise that will be referred to herein as the "Fraudulent Forbearance Enterprise:" (1) WFC; (2) Wells Fargo Bank; and (3) vendors, including (without limitation) Black Knight, Inc., that created, maintained, and implemented the systems and processes used by Wells Fargo to impose unrequested forbearances and to voluntarily repurchase GSE backed loans that had been placed into unrequested forbearances.

422. The Fraudulent Forbearance Enterprise is an ongoing organization that engages in, and whose activities affect, interstate commerce.

423. The members of the Fraudulent Forbearance Enterprise function as a continuing unit and share the common purpose of maximizing their profits by placing borrowers into CARES Act forbearances. The Fraudulent Forbearance Enterprise is linked systematically through contractual relationships, financial ties, and parent/subsidiary relationships.

424. Wells Fargo Bank has contracted with Black Knight, Inc. for the purposes of using the MSP mortgage servicing system to identify loans to be placed into unsolicited forbearance. Wells Fargo Bank contracts with Black Knight, Inc. for the purposes of using Black Knight's Loss Mitigation services to identify borrowers who can be placed into deferment post-forbearance, entitling Wells Fargo to GSE incentive payments, and Wells Fargo Bank uses Black Knight to convey COVID-forbearance specific false credit reporting to credit reporting agencies, to process loan modifications, and to effectuate early pool buyouts.

425. While all Enterprise members participate in and are part of the Fraudulent Forbearance Enterprise, they each also exist as separate and distinct entities apart from the Enterprise.

426. WFC is a diversified financial services company organized under the laws of Delaware and registered as a financial holding company and a bank holding company under the Bank Holding Company Act of 1956, as amended.

427. WFC provides banking, investment and mortgage products and services, as well as consumer and commercial finance through banking locations, ATMs, the internet and mobile banking.

428. WFC conducts substantially all of its operations through its subsidiaries, including but not limited to Wells Fargo Bank, although WFC is a separate and distinct legal entity from its subsidiaries, including Wells Fargo Bank.

429. A significant source of the funds WFC uses to pay dividends on its common and preferred stock and debt service on its debt is dividends from WFC's subsidiaries, including dividends from Wells Fargo Bank generated by the Wells Fargo Enterprise's fraudulent forbearance scheme and Wells Fargo's capital markets business's conversion of unrequested forbearance into illicit profit vehicles.

430. WFC uses funds it obtains from Wells Fargo Bank, including funds generated in connection with the Fraudulent Forbearance Enterprise, to satisfy WFC's financial obligations, including payments of principal and interest on WFC's debt.

431. WFC and Wells Fargo Bank control, operate, and direct the affairs of the Fraudulent Forbearance Enterprise by, among other things, working with Black Knight to program their computer systems to identify borrower accounts for inclusion in the fraudulent forbearance scheme.

432. The Fraudulent Forbearance Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity.

B. The Fraudulent Forbearance Enterprise Committed Thousands of Predicate Acts.

433. Section 1961(1) of RICO provides that "racketeering activity" includes any act indictable under 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire fraud). As set forth herein, Defendants have engaged, and continue to engage, in conduct violating each of these laws in order to effectuate their scheme.

434. As alleged herein, for the purpose of executing and/or attempting to execute the above-described scheme to defraud or obtain money by means of false pretenses, representations or promises, Defendants, in violation of 18 U.S.C. § 1341, placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carriers, and received matter and things from the Postal Service or commercial interstate carriers, including but not limited to serving through the mail correspondence with some

borrowers and correspondence regarding proposed loan retention workout options with respect to accounts placed into unauthorized forbearance status.

435. For the purpose of executing and/or attempting to execute the above-described scheme to defraud or obtain money by means of false pretenses, representations or promises, the Defendants, in violation of 18 U.S.C. § 1343, transmitted and received by wire, matter and things, including but not limited to loan data, proposed post-forbearance workout terms and agreements, false forbearance notices, false reporting to the GSMC's, as well as to the Securities and Exchange Commission, Federal Reserve Board, and the Office of the Comptroller of the Currency, among others, regarding loans Wells Fargo subjected to its fraudulent forbearance scheme, as well as related email correspondence, monthly mortgage statements and online account information, and telephone correspondence.

436. The matter and things sent by Defendants via the Postal Service, commercial carrier, wire, or other interstate electronic media included, inter alia: false reports to credit reporting agencies that borrowers requested forbearance and/or failure to report and/or disclose payment receipts; false, deceptive and misleading written correspondence with borrowers; email correspondence; misleading websites and mobile device electronic user interfaces that placed borrowers into forbearance with the click of a single button without warning or explanation, as well as other data used to place accounts into forbearance status and/or to inform third-parties of borrowers' loans that Wells Fargo placed into forbearance status without borrowers' consent; agreements; monthly mortgage statements; investor reporting; correspondence; and payments.

437. Other matter and things sent through or received via the Postal Service, commercial carrier, wire, or other interstate electronic media by Defendants include information or communications in furtherance of or necessary to effectuate the scheme.

438. Defendants' misrepresentations, acts of concealment, and failures to disclose were knowing and intentional and made for the purpose of deceiving borrowers, the GSEs, investors in GSE-

backed trusts, the credit markets, equity and debt investors in Wells Fargo, and other persons, regulators, and entities to conceal or perpetuate Wells Fargo's unlawful scheme.

439. Because this is a class action, and there were numerous acts of mail and wire fraud that were used to carry out the scheme, it would be impracticable for Plaintiffs to plead all details of the scheme with particularity. Therefore, Plaintiffs cannot plead the precise dates of all of Defendants' use of the U.S. mail and interstate wire facilities, and corresponding acts of mail and wire fraud, as this information cannot be alleged without access to Defendants' records.

440. Defendants either knew or recklessly disregarded the fact that the misrepresentations and omissions described above were material, and that the GSMCs, their investors, Defendants' debt and equity investors, the credit reporting agencies, and participants in credit markets that rely on the integrity of credit information, as well as the Plaintiffs and the other members of the Class, relied upon or were injured by their and others' reliance upon the Defendants' misrepresentations and omissions. Had the GSMCs and their investors, Wells Fargo's debt and equity investors, the participants in the credit markets, and Plaintiffs and other members of the Class, known that Wells Fargo's placement of loans into forbearance status without borrower authorization was used as a profit center and/or unlawful loss mitigation hedge, rather than to effectuate bona fide requested and agreed-to forbearance plans, they would have immediately halted Defendants' misconduct.

C. Pattern of Racketeering Activity.

441. The Defendants have engaged in a "pattern of racketeering activity," as defined by 18 U.S.C. § 1961(5), by committing at least two acts of racketeering activity, i.e., indictable violations of 18 U.S.C. §§ 1341 and 1343 as described above, within the past four years.

442. Defendants began placing of borrowers' mortgage loans into unauthorized forbearances in March of 2020, which is within four years of Plaintiffs' filing of their original complaint in this case.

443. Each of the Defendants has committed numerous acts of racketeering activity. Racketeering activities include delivering false and misleading communications to borrowers via mail or wire; false and misleading communications to government sponsored entities like Ginnie Mae, involving the exercise of the early pool buyout option and resecuritization of loans that would never have been non-performing but for Wells Fargo's unlawfully placing them into forbearances; and false and misleading communications to credit reporting agencies. These communications continue to this day.

444. Each act of racketeering activity was related, had a similar purpose, involved the same or similar participants and method of commission, had similar results and impacted similar victims, including Plaintiffs and the other Class members.

445. The multiple acts of racketeering activity that Defendants committed were related to each other and amount to and pose a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5). Wells Fargo continues to profit, by resecuritizing billions of dollars in illicitly repurchased GNMA loans, and reaping the windfalls associated with servicing and holding those loans up until they are resecuritized.

446. As a direct and proximate result, Plaintiffs and class members have been injured in their business or property or both by the predicate acts, which make up the Defendants' patterns of racketeering activity.

447. Plaintiffs were injured by Wells Fargo's material omissions of fact and fraudulent placement of their loans into forbearance status, including credit damage, loss of access to credit markets and/or home equity lines of credit, an inability to refinance and costs associated with delayed refinancing, reputational damage, frustration, outrage, and various out-of-pocket costs, and other pecuniary damages and general damages.

SECOND CAUSE OF ACTION

Violation of the Truth in Lending Act, 15 U.S.C. § 1601 et seq. ("TILA")
on Behalf of Plaintiffs and the Nationwide Class

448. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

449. TILA requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights. In 2010, the Dodd–Frank Wall Street Reform and Consumer Protection Act amended the Truth in Lending Act ("TILA") to, among other things, require servicers to promptly credit mortgage payments. 15 U.S.C. § 1639f.

450. This requirement is implemented through Regulation Z, which states that:

> "In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall . . . (f)ail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency …"

Reg Z., 12 C.F.R. § 226.36(c)(1)(i).

451. The Dodd–Frank Act amendments to the Truth in Lending Act ("TILA") also mandate that servicers credit periodic payments on consumer credit transactions secured by a consumer's principal dwelling as of the date of receipt. 15 U.S.C. § 1639f(a).

452. As demonstrated through the experiences of the Castros, Ms. Green, Ms. Doctor, Mr. Forsburg, and Mr. Johnson, Wells Fargo failed to timely credit payments.

453. In some instances, Wells Fargo reversed payments. In others, Wells Fargo accepted the payments, but did not credit those payments to the mortgage account. Instead, the payments were held, without the borrowers' knowledge or consent, in "unapplied funds" accounts.

454. Wells Fargo's failure to timely credit resulted in negative credit reporting, as Wells Fargo continued to report the borrowers as "in forbearances," despite their never having asked for that relief, and failed to report those payments.

455. Because being in a forbearance is a significant indicator of a lack of creditworthiness, the failure to timely credit and negative credit reporting resulted in concrete harms, such as the inability to refinance, the inability to secure additional lines of credit, damage to credit scores, and reputational harm.

456. For some borrowers, like Mr. Forsburg, the failure to timely credit a payment resulted in the denial of a HAMP modification agreement,

457. TILA provides a private right of action for violations of these provisions. 15 U.S.C. § 1640(a). This cause of action extends to suits against entities who violate the provisions of TILA and who, at some point, owned the loan obligation. 15 U.S.C. § 1641(f). On information and belief, Wells Fargo voluntarily repurchased tens of billions of dollars of loans that had been placed into fraudulent forbearance, subjecting them to liability for TILA servicing violations for those loans.

458. Plaintiffs are entitled to actual damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2)(B), and attorney's fees, under 15 U.S.C. § 1640(a)(4).

THIRD CAUSE OF ACTION

Violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 22601 et seq. ("RESPA") on Behalf of Plaintiffs and the Nationwide Class

459. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

460. The residences secured by the mortgages in question were the principal residences of the Plaintiffs.

461. RESPA, and the accompanying Regulation X, impose requirements on loan servicers who receive incomplete applications for loan modification. 12 C.F.R. § 1024.41. Borrowers' inquiries into forbearance are incomplete applications for loan modification, even where those communications are not requests for forbearances. *Lender Letter (LL-2020-02)*, FANNIE MAE (updated Dec. 9, 2020), https://singlefamily.fanniemae.com/media/22261/display.

462. Generally, loan servicers are not to "evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon" an incomplete application. 12 C.F.R. § 1024.41(c)(2)(i). However, upon receipt of an incomplete application, a loan servicer may nonetheless offer a short-term payment forbearance program based on that application. *Id.* § 1024.41(c)(2)(iii). "Promptly after offering" a forbearance program, unless the borrower rejects the offer, "the servicer must provide the borrower a written notice stating the specific payment terms and duration of the program or plan, that the servicer offered the program or plan based on an evaluation of an incomplete application, that other loss mitigation options may be available, and that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all loss mitigation options available to the borrower regardless of whether the borrower accepts the program or plan." *Id.*

463. Many borrowers did not receive any notification letter, in contravention to RESPA.

464. In addition to those requirements, RESPA incorporates other notification requirements, through 12 C.F.R. § 1024.38(b). For instance, 12 C.F.R. § 1024.38(b)(2)(v) requires loan servicers that service federally-backed-loans to comply with the notification and other servicing requirements of the loan owners, even where those notification requirements go further than what is detailed in 12 C.F.R. § 1024.41. For federally backed loans, Wells Fargo was required to send an Evaluation Notice along with the offer of a forbearance program. *See Lender Letter (LL-2020-02)*, FANNIE MAE (updated Dec. 9, 2020), https://singlefamily.fanniemae.com/media/22261/display. The Evaluation Notice template

provided by Fannie Mae is optional, though "it reflects a minimum level of information that the servicer must communicate and illustrates a level of specificity that complies with the requirements of this Guide." *Servicing Guide, D2-2-05, Receiving a Borrower Response Package*, FANNIE MAE (06/09/2021), https://singlefamily.fanniemae.com/media/31901/display.

465. If not using the template, the notice to be sent communicating the offer of forbearance must: "Be written in clear, concise language; (i) identify whether the borrower is receiving an offer of a workout option and, if so, the decision for the workout option that is being offered to the borrower; (p)rovide the steps the borrower must take to participate in or accept any offer;" and "provide a 14-day time frame for the borrower to accept or decline the workout option or inform the servicer of the borrower's intent to accept the workout option, if applicable." *Id.*

466. In the instances in which Wells Fargo did send a notice, that notice was woefully inadequate. It did not provide any timeline for acceptance. Instead, it informed the borrower that the bank was "confirming the following short-term payment relief for [their] account" – relief that had been unilaterally imposed by the bank.

467. The notice stated that borrowers could terminate the forbearance either by continuing to make payments, or by contacting Wells Fargo. However, as Plaintiff Johnson discovered, this was not so. Instead of shortening or canceling forbearance plans after receiving payments or requests to terminate, forbearance plans were *extended*, in direct contravention to the CARES Act.

468. The CARES Act expressly states, in a subsection titled "Requirements for Servicers," that a forbearance "may be extended for an additional period of up to 180 days **at the request of the borrower**, provided that, the borrower's request for an extension is made during the covered period, and, at the borrower's request, **either the initial or extended period of forbearance may be shortened.**" Section 4022(c)(1) of the CARES Act, Pub. L. No. 116-136, 134 Stat. 281, 490 (2020) (codified at 15 U.S.C. § 9056(c)(1)) (emphasis added).

469. In addition, as alleged above, Fannie Mae's Evaluation Notice template includes the following sections regarding the impacts of forbearance:

> We will not pursue foreclosure during the forbearance plan term. However, the terms of your mortgage remain unchanged. By not making your mortgage payments during the plan's term you will become more delinquent and your credit score may be impacted. For more information refer to the **Additional Forbearance Plan Information and Legal Notices**.

and

> **Additional Forbearance Plan Information and Legal Notices**
>
> **Credit Reporting**:
> - We will continue to report the delinquency status of your mortgage as well as your entry into a forbearance plan to credit reporting agencies in accordance with applicable law.
> - **CREDIT REPORTING AGENCIES MAY CONSIDER THE ENTRY INTO A FORBEARANCE PLAN AS AN INCREASED CREDIT RISK. HOWEVER, A FORECLOSURE WOULD HAVE A MORE NEGATIVE IMPACT TO YOUR CREDIT SCORE.**

470. Wells Fargo's notice provided no warnings about the potential credit impacts of being placed in forbearance.

471. The CARES Act does contain an amendment to the notice requirements of Regulation X, granting greater flexibility to loan servicers, but only with regard to deferrals, not forbearances. *See* 12 U.S.C. § 1024.41(c)(2)(v). Congress thus made a clear distinction between a loan deferral, and forbearance. The latter is an important financial decision that borrowers should make for themselves, and only when armed with all the necessary information.

472. Not only did Wells Fargo omit such warnings when sending notices to borrowers after placing them in unwanted forbearance plans, when those borrowers contacted Wells Fargo about this misconduct, the bank provided assurances which this Court has already instructed them to correct about the absence of credit harm from being placed into a forbearance. In fact, as Plaintiffs Delpapa, Jacob, and Johnson learned, being placed into forbearance had a serious and negative impact on their credit score and creditworthiness.

473. Wells Fargo's failure to provide accurate information when making an offer of forbearance caused concrete harms. Some borrowers, like the Robinsons, understood that by not

affirmatively accepting the forbearance plan they would not be placed in a forbearance. Others were misled as to their ability to terminate the forbearance, and the impact it would have on their ability to refinance.

474. Had Wells Fargo provided adequate and accurate information about the potential negative consequences of being placed into a forbearance, the borrowers would have been able to more expeditiously resolve their unwanted forbearances and become eligible to refinance sooner.

475. Providing inaccurate or incomplete information in response to a borrowers' request for information with respect to a borrower's loan is a violation of RESPA. 12 C.F.R. § 1024.38(b)(1)((iii-iv).

476. RESPA contains a private right of action for violations of this provision. 12 C.F.R. § 1024.41(a). ("A borrower may enforce the provisions of this section [Regulation X] pursuant to section 6(f) of RESPA (12 U.S.C. § 2605(f)"). Plaintiffs allege a violation of Regulation X for the proposed Nationwide class, as even the notices that some borrowers received were inadequate and inaccurate.

477. Plaintiffs are entitled to actual and statutory damages under 12 U.S.C. § 2605(f) and attorneys fees under 12 U.S.C. § 2605(f)(3).

FOURTH CAUSE OF ACTION

Violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA")
on Behalf of Plaintiffs and the Nationwide Class

478. Plaintiffs repeat and reallege the allegations in this complaint.

479. Plaintiffs Jacob and Doctor are "consumers" as that term is defined by 15 U.S.C. § 1681a(c).

480. Wells Fargo is a "furnisher" of consumer information as defined by 12 C.F.R. § 1022.41(c) and as described throughout the Fair Credit Reporting Act ("FCRA"), as Wells Fargo

regularly reports consumer account information to the credit reporting agencies for inclusion in credit reports.

481. Wells Fargo willfully violated 15 U.S.C. § 1681s-2(b) by failing to adequately investigate and correct inaccurate credit reporting information with the credit reporting agencies following Plaintiffs Doctor and Jacob's formal reinvestigation requests with the credit reporting agencies under 15 U.S.C. § 1681i. Alternatively, Wells Fargo negligently violated 15 U.S.C. § 1681s-2(b) by failing to adequately investigate and correct inaccurate credit reporting information with the credit reporting agencies following Plaintiffs Doctor and Jacob's formal reinvestigation requests with the credit reporting agencies under 15 U.S.C. § 1681i.

482. Plaintiffs and the putative class members in this case have had their credit information compiled and furnished by Wells Fargo regarding their mortgage loans indicating falsely that Plaintiffs' and the putative class members' loans are in forbearance when Plaintiffs and the putative class members did not request forbearance.

483. Wells Fargo knew, or should have known, that Plaintiffs and the Class members did not request or affirmatively consent to the mortgage loan forbearances that Wells Fargo reported to the credit reporting agencies.

484. Despite the fact that Wells Fargo knew or should have known that it placed borrowers into mortgage forbearances that they did not request or consent to, Wells Fargo had a policy of reporting the forbearance in the comments section of Plaintiffs' and the Class members' credit reports.

485. Plaintiff Jacob submitted a dispute letter to Experian on September 9, 2020, disputing Wells Fargo's reporting of his mortgage loan account as "in forbearance" when Plaintiff Jacob never requested or authorized such forbearance.

486. Wells Fargo received notice of Plaintiff Jacob's dispute from the credit reporting agencies and failed to reasonably investigate the dispute.

487. Wells Fargo failed to conduct and report the results of a complete investigation into each dispute raised by Mr. Jacob. Wells Fargo failed to promptly delete, modify, or block reporting of inaccurate, incomplete, or unverifiable information in response to each dispute raised by Mr. Jacob.

488. Wells Fargo has breached its duties as set forth in 15 U.S.C. § 1681s-2(a) by failing to adequately investigate and fully correct inaccurate credit reporting information with the credit reporting agencies following Mr. Jacob's dispute of the credit reporting errors.

489. Mr. Jacob has incurred actual damages and has suffered physically, mentally, and emotionally as a result of Wells Fargo's willful violations of the Fair Credit Reporting Act.

490. Plaintiff Doctor likewise submitted dispute letters to Equifax on July 7, 2020 and July 16, 2020.

491. Wells Fargo received notice of these disputes from the credit reporting agencies and failed to conduct and report the result of a complete investigation into Ms. Doctor's dispute. Wells Fargo continued to misleadingly report Ms. Doctor as in a "forbearance", despite the fact that she had never requested to be placed in such a program.

492. Being reported as in a "forbearance" communicates to potential creditors or third-parties that a borrower has experienced a financial hardship, and results in an abridgement of the borrowers' ability to access new credit, such as refinancing their mortgages to receive a lower interest rate, or to borrower against the equity in their homes.

493. Ms. Doctor experienced actual damages as a result of Wells Fargo's continued inaccurate reporting, including her inability to access credit, time spent attempting to rectify Wells Fargo's inaccurate reporting, and emotional and mental distress and anguish,

494. Based on Wells Fargo's violations of 15 U.S.C. § 1681s-2(b), Plaintiffs and the Class members are entitled to actual damages, costs, and attorneys' fees pursuant to 15 U.S.C. § 1681o.

495. Moreover, as a result of each and every negligent violation of the FCRA, Plaintiffs and the Class are entitled to statutory damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1681o.

496. Plaintiffs and the Class members are also entitled to statutory damages, punitive damages, and reasonable attorneys' fees for each and every of Wells Fargo's willful violation of the FCRA pursuant to 15 U.S.C. § 1681n(a).

FIFTH CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing on Behalf of Plaintiffs and the Nationwide Class

497. Plaintiffs brings this claim on behalf of themselves and the Nationwide Class.

498. Plaintiffs, the Class members, and Wells Fargo were parties to contracts, referred to as Deeds, Deeds of Trust, or Securities (collectively, "Deeds"). Wells Fargo may be either a signatory to

with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

those contracts as the mortgage lender, as in the case of the Robinsons, or an assignee of that contract as mortgage servicer. For instance, in Ms. Delpapa's case, Wells Fargo, as the loan servicer, assumed the obligations of the original lender in her Deed:

499. In either case, those Deed's for GSE-backed loans are substantially identical for all borrowers in material respects. The covenant of good faith and fair dealing is a common foundation inherent in all of the Deeds between the Plaintiffs, Class members, and Wells Fargo.

500. In addition to the above language contained in the deeds, some borrowers, had HAMP agreements with Wells Fargo, which Wells Fargo violated by unilaterally changing those terms.

501. Every contract contains an implied covenant of good faith and fair dealing. The implied covenant obligates the parties to cooperate so that each party may obtain the full benefit of performance of the contract. The duty of good faith and fair dealing means that parties may not interfere with or fail

to cooperate in the other party's performance. Neither party may engage in conduct that impairs or prevents the other party from enjoying the benefits of the contract or engage in conduct that prevents the other party from performing under the contract.

502. Wells Fargo impliedly covenanted as a servicer that it would undertake its duties in good faith. In particular, Wells Fargo has a contractual duty under the Deed to apply payments it receives from borrower to interest, principal, and escrow items, in that order. Borrowers are obliged to timely pay the amounts due for those items.

503. By placing the Class members in forbearance without their consent, Wells Fargo frustrated and interfered with Class members' ability to perform under the Deeds and failed to cooperate with the Class members' performance of their contracts.

504. No reasonable party would expect that Wells Fargo would put their mortgage into forbearance without their consent.

505. Wells Fargo likewise engaged in conduct that was contrary to the spirit of the contracts and the Class members' rights thereunder. Wells Fargo lacked diligence in performing its duties, acted recklessly in its servicing of the Class members' mortgages, and abused its power by placing loans in forbearance without consent for its own interest.

506. By its actions, Wells Fargo engaged in conduct that was contrary to the spirit of the contracts, lacked diligence and constituted an abuse of its power.

507. As a result of Wells Fargo's breaches of the covenant of good faith and fair dealing, Plaintiffs were injured. Their damages include, but are not limited to, damage to their credit including increased borrowing costs, increased interest accrued as a result of the forbearance, and an inability to refinance or secure additional lines of credit.

SIXTH CAUSE OF ACTION

Unjust Enrichment on Behalf of Plaintiffs and the Nationwide Class

508. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

509. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

510. Plaintiffs and members of the Nationwide Class have conferred a benefit upon Wells Fargo which received benefits by placing Plaintiffs and the Nationwide Class into forbearance without their consent. By placing Plaintiffs' and members of the Nationwide Class's mortgages in forbearance, Wells Fargo continued to hold and service those mortgage loans, preventing Plaintiffs and the Class from refinancing with another institution, and thus increasing the value of the mortgage servicing rights.

511. Wells Fargo's forcing Plaintiffs and the Nationwide Class into forbearance without consent also provides a potential predicate for Wells Fargo to place GSE-backed mortgages in payment deferrals or repayment plans, making Wells Fargo eligible for GSE incentive payments of up to $1,000 per mortgage.

512. Wells Fargo's forcing of Plaintiffs and the Nationwide Class into forbearance without consent additionally capped Wells Fargo's potential obligations to make principal and interest advancements on loans that remained in the GSE trusts when nonperforming.

513. As alleged *supra*, Wells Fargo's voluntary repurchase of loans from the GSE trust presents a substantial source of unjust profits. By placing the loans into forbearance, Wells Fargo simultaneously rendered those loans eligible for voluntary repurchase out of the GSE trusts, and distressed the value of the loans. Wells Fargo exercised the voluntary repurchase option at a historic rate, buying tens of billions of dollars of loans out of the GSE trusts, at par value. As the borrowers did not request forbearance, these loans are easily resold or resecuritized at the normal traditional trading value of 5% to 10% above par after the borrowers become current.

514. Wells Fargo's retention of these benefits is unjust because it placed those loans in forbearance without the consent of the Plaintiffs and the Nationwide Class and in contravention of the requirements of the CARES Act.

515. Some of the profits Wells Fargo made are restitution – that is, they are coextensive with losses suffered by the borrowers. When Wells Fargo services loans that it owns, it profits through spread – the difference between interest payments made on the loans and the cost to service the loan. Because being placed into a forbearance restricted borrowers from refinancing to lower interest rates, borrowers were forced to continue making larger interest payments to Wells Fargo.

516. However, most of Wells Fargo's ill-gotten profits are nonrestitutionary – not coextensive with the corresponding loss to the borrowers. However, the borrowers did suffer losses, including those associated with the inability to refinance, and damages in law alone would be inadequate to redress this wrong. Wells Fargo's profit incentives led to the faulty forbearance program, and nonrestitutionary disgorgement is necessary to deter and prevent future conduct. Wells Fargo's profits from placing borrowers into forbearance are not coextensive with the damages Plaintiffs suffered, save for above-market interest payments made to Wells Fargo while borrowers were barred from refinancing.

517. While the damages to the Cass members is capable of proof with sufficient certainty, Wells Fargo's profits are more certain and swiftly calculable. The future harm to consumers due to reduced credit scores, restricted access to credit, and inability to refinance, are less fixed than Wells Fargo's profits, and preventing Wells Fargo from retaining those profits is the only adequate remedy.

518. As a result, the Plaintiffs and Nationwide Class members are entitled to disgorgement of the benefits Wells Fargo has unjustly retained as a result of its forbearance program, in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*
Asserted on Behalf of Plaintiffs Delpapa, Healy, Johnson, Prado, and the California Class

519. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

520. Plaintiffs Delpapa, Healy, Johnson, and Prado bring this claim on behalf of the California Class.

521. California's Unfair Competition Law ("UCL"), Business and Professions Code § 17200, prohibits any "unlawful, unfair, or fraudulent business act or practices." Wells Fargo engaged in unlawful and unfair business acts and practices in violation of the UCL as follows.

522. Wells Fargo's nonconsensual forbearance program is unlawful under the UCL because it violates Sections 4022 and 4023 of the CARES Act, which require that a borrower affirmatively request that their mortgage be placed in forbearance and affirmatively acknowledge they are experiencing a hardship due to COVID-19, and that loan servicers only extend forbearance upon a borrower's request. Additionally, by failing to comply with federal guidance regarding the CARES Act, Wells Fargo's forbearance program violated Cal. Civ. Code § 3273.11(a).

523. Additionally, Wells Fargo's practices are unlawful because they violate Regulation N, "Mortgage Acts and Practices—Advertising," which forbids "any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product[.]" 12 C.F.R. § 1014.3. Wells Fargo violated Regulation N by failing to inform borrowers that they were placing their mortgages in forbearance without their consent, and by sending notices with inaccurate information regarding the impact of forbearances.

524. Additionally, Wells Fargo violated Regulations X and Z, as alleged *supra*, by failing to timely credit loan payments and by failing to provide adequate notice to borrowers associated with the unilateral forbearance plans.

525. Wells Fargo's conduct described herein threatens an incipient violation of California's consumer protection laws, violates the policy or spirit of such laws, and/or otherwise significantly threatens or harms competition by avoiding procedures intended by the Legislature to protect California's consumers, including under the California Consumer Credit Reporting Act, Cal. Civ. Code § 1785. 25, *et seq*., and the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.*

526. Wells Fargo's practices were also unfair under the UCL because placing borrowers' mortgages in forbearance without their consent is contrary to established public policy; immoral, unethical, oppressive or unscrupulous; and causes injury to consumers that outweighs its benefits.

527. The harm to Plaintiffs and Class members of being placed in a mortgage forbearance without their consent outweighs the utility, if any, of Wells Fargo's policies and practices.

528. Plaintiffs and the Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misconduct.

529. Pursuant to Cal. Bus. & Prof. Code § 17200, Plaintiffs and the Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices; any such orders or judgments as may be necessary to restore to Plaintiffs and the Class members any money acquired by unfair competition, including restitution, as provided in Cal. Bus. & Prof. Code §§ 17203 and 3345; public injunctive relief to prohibit future violations as alleged herein in the interest of protecting the California public; and any other just and proper relief available under the California UCL. To the extent these remedies are equitable, Plaintiffs seek them in the alternative to any adequate remedy at law they may have.

EIGHTH CAUSE OF ACTION

California Consumer Credit Reporting Act, Cal. Civ. Code § 1785. 25 *et seq.*
Asserted on Behalf of Plaintiffs Delpapa, Healy, Johnson, Prado, and the California Class

530. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

531. Plaintiffs Delpapa, Healy, Johnson, and Prado bring this claim on behalf of the California Class.

532. The California Consumer Credit Reporting Act (CCRA) provides that a "person shall not furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate." Cal. Civ. Code § 1785.25(a).

533. Wells Fargo, a "person" under the CCRA, furnished information on Plaintiffs' and Class member's mortgage forbearances that it knew or should have known was incomplete or inaccurate to consumer credit reporting agencies.

534. Chiefly, Wells Fargo reported borrowers as in forbearances, with the attendant implications of financial hardship, when the borrowers had not requested that relief and were not unable to make payments. One clear example is Ms. Delpapa, who was prepaid for the duration of her forbearance.

535. For borrowers who *did* continue to make payments while on unrequested forbearances, those payments were not properly reported. For instance, Wells Fargo reported Mr. Healy as "Account in Forbearance," and also falsely claimed he had not made any recent payments during the forbearance even though he had, in fact, made every single monthly payment in full and on time even during the time period that his account had been placed into forbearance.

536. The forbearance information reported by Wells Fargo was incomplete, inaccurate, or materially misleading because the Plaintiffs did not request that their account would be placed in forbearance, or for that forbearance to be extended, and the false information was negative to the Plaintiffs and Class members.

537. Plaintiffs suffered actual damage as a result of this violation because they were not able to pursue a refinancing or other forms of credit while in forbearance and for months after exiting those plans.

538. Wells Fargo's violation was willful under Cal. Civ. Code § 1785.31 because Wells Fargo acted with reckless disregard for the rights of the Plaintiffs and the Class in exploiting a statutory scheme meant to help, not further harm, borrowers.

539. As a result of Wells Fargo's negligent and willful violations of the CCRA, Plaintiffs seek all available remedies under the CCRA, including actual damages, court costs, loss of wages, attorney's fees, pain and suffering, and punitive damages.

NINTH CAUSE OF ACTION

Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.*
Asserted on Behalf of Plaintiffs Delpapa, Healy, Johnson, Prado, and the California Class

540. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

541. Plaintiffs Delpapa, Healy, Johnson, and Prado bring this claim on behalf of the California Class.

542. The Rosenthal Fair Debt Collection Practices Act ("Rosenthal FDCPA") prohibits debt collectors from, among other things, making false, deceptive, or misleading representations in an effort to collect a debt. Cal. Civ. Code § 1788.

543. Wells Fargo is a "debt collector" because it "regularly . . . engages in debt collection" as a mortgage servicer. *See* Cal. Civ. Code § 1788.2(c). Plaintiffs and Class members are "person[s]", and their mortgage loans are "consumer debts" under the Rosenthal FDCPA. *Id*. § 1788.2(f), (g).

544. The Rosenthal FDCPA incorporates by reference and prohibits violations of the federal Fair Debt Collection Practices Act. Cal. Civ. Code § 1788.17. That includes the Federal Act's prohibition of "false, deceptive, or misleading representation or means in connection with the collection of any debt[,]" including the false representation of the status of any debt, "communicating or threatening to communicate to any person credit information which is known or which should be known to be false," and the "use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." 15 U.S.C. § 1692e(2), (8), (10).

545. Wells Fargo violated the Rosenthal FDCPA through its violations of Section 1692e of the Federal Act, when it provided false, deceptive, or misleading information about the mortgage debt of Plaintiffs and the Class.

546. As a result of Wells Fargo's violation of the State and Federal Acts, Plaintiffs are entitled to actual and statutory damages, fees, and costs available under those Acts. *See* Cal. Civ. Code § 1788.17; 15 U.S.C. § 1692k.

TENTH CAUSE OF ACTION

Georgia Fair Business Practices Act O.C.G.A. §§ 10-1-390, *et seq*.
Asserted on behalf of Plaintiff Green & the Georgia Class

547. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

548. Wells Fargo committed unfair business acts and practices in violation of The Georgia Fair Business Practices Act, O.C.G.A §§ 10-1-390, et seq. ("GFBA"), by inaccurately reporting to credit reporting agencies that Plaintiff Green's and the purported Class members' mortgages were "in

forbearance" when Plaintiff and the putative Georgia Class members never requested to be entered into Wells Fargo's COVID-19 mortgage forbearance program.

549. Wells Fargo failed to disclose the consequences of the forbearance option, and moreover, involuntarily enrolled Plaintiff Green and the Georgia Class Members into this program.

550. Wells Fargo's unconscionable, deceptive and/or unfair practices caused damages to Plaintiff Green and the Georgia Class members who were unaware that their mortgages had been placed in forbearance without their knowledge or consent.

551. Defendants' foregoing deceptive acts and practices, including their omissions, were likely to deceive, and did deceive, consumers acting reasonably under the circumstances.

552. As a direct and proximate result of Wells Fargo's unfair and deceptive practices, Plaintiff Green and the Georgia Class members suffered and will continue to suffer actual damages.

553. As a direct and proximate result of Defendants' deceptive acts and practices, including their omissions, Plaintiff Green and the Georgia Class members have been damaged as alleged herein, and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial.

554. In addition, Plaintiff Green and the Georgia Class members seek equitable and injunctive relief against Wells Fargo on terms that the Court considers reasonable, and reasonable attorneys' fees and costs.

ELEVENTH CAUSE OF ACTION

New York Deceptive Trade Practices Act., N.Y. Gen. Bus Law § 340
Asserted on behalf of Plaintiff Jacob & the New York Class

555. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

556. Wells Fargo committed unfair business acts and practices in violation of NY Gen. Bus. §349, *et seq*., by inaccurately reporting to credit reporting agencies that Plaintiff Jacob's and the New York Class members' mortgages were "in forbearance" when Plaintiff Jacob and the New York Class members never requested to be entered into Wells Fargo's COVID-19 mortgage forbearance program.

557. Wells Fargo failed to disclose the consequences of the forbearance option, and moreover, involuntarily opted Plaintiff Jacob and the New York Class members class into this program.

558. Wells Fargo's practices were consumer oriented because they essentially placed unwilling consumers, who wished to continue making payments on their loans and preserve their credit history, into forbearance, without even notifying such consumers or obtaining their permission.

559. Wells Fargo's unconscionable, deceptive and/or unfair practices caused damages to Plaintiff Jacob and the New York Class members who were unaware that their mortgages had been place "in forbearance" without their knowledge or consent.

560. Defendants' foregoing deceptive acts and practices, including their omissions, were likely to deceive, and did deceive, consumers acting reasonably under the circumstances.

561. As a direct and proximate result of Wells Fargo's unfair and deceptive practices, Plaintiff Jacob and the New York Class members suffered and will continue to suffer actual damages.

562. Defendants' practice was misleading in a material respect because it caused Plaintiff and the New York Class members damages.

563. Plaintiff Jacob and the New York Class members did not wish to opt into forbearance, and yet, that was not an option for them.

564. As a direct and proximate result of Defendants' deceptive acts and practices, including their omissions, Plaintiff Jacob and the New York Class members have been damaged as alleged herein, and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial.

565. In addition, Plaintiff Jacob and the New York Class members seek equitable and injunctive relief against Wells Fargo on terms that the Court considers reasonable and appropriate, as well as reasonable attorneys' fees and costs.

TWELFTH CAUSE OF ACTION

Texas Debt Collection Practices Act, Tex. Fin. Code § 392
Asserted on behalf of the Castros, the Robinsons and the Texas Class

566. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

567. Wells Fargo committed unfair business acts and practices in violation of the Texas Debt Collection Practice Act, ("TDCPA") Tex. Fin. Code § 342, *et seq.*, by inaccurately reporting to credit reporting agencies that the Robinsons and the Texas class members' mortgages were "in forbearance" when the Robinsons and the Texas Class members never requested to be entered into Wells Fargo's COVID-19 mortgage forbearance program.

568. Jose and Maria Castro, and Renrick and Vivian Robinson, are "consumers" as that term is defined by the TDCPA.

569. The Robinsons' and Castros' relationships with Wells Fargo arose out of a "consumer debt" as that term is defined under the TCPA.

570. Wells Fargo Bank NA regularly collects consumer debt and is a "debt collector" as that term is defined in the TCPA.

571. Wells Fargo violated the TCPA by misleadingly reporting to the credit agencies that the Robinsons, the Castros, and the Texas Class members were in "forbearance," when those individuals had never requested or consented to forbearance.

572. Moreover, Wells Fargo failed to provide adequate disclosures to the Texas Class members about the negative consequences of being placed into a forbearance before placing them into

that program. Wells Fargo's communications with borrowers were false and misleading in that they omitted known negative consequences of being placed into a forbearance, and inaccurately described the consequences that Wells Fargo did disclose.

573. Wells Fargo also made misrepresentations to the credit reporting agencies, reporting that the Castros, the Robinsons, and the Texas Class members were in forbearances, despite those borrowers never having request that relief. Since a loan servicer cannot unilaterally place a borrower into a forbearance, being reported as in such a program directly imputes that the borrower requested that relief and is experiencing financial hardship.

574. The Robinsons and the Texas Class members have suffered actual damage, as alleged above, as a result of Wells Fargo's misleading reporting of their loan status.

575. The Texas Class members are entitled to their actual damages, attorneys' fees, and injunctive relief under § 392.403 of the TDCPA.

THIRTEENTH CAUSE OF ACTION

Florida Consumer Collections Practices Act., N.Y. Gen. Bus Law § 340
Asserted on behalf of Plaintiff Doctor and the Florida Class.

576. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

577. Plaintiff Jenna Doctor is a "consumer," as she is a natural person obligated to pay a debt on her homestead property.

578. The debt which Defendants attempted to collect was a "consumer debt" within the meaning of § 559.55(6) of the Florida Consumer Collection Practices Act ("FCCPA"), as Ms. Doctor's mortgage debt in question arises out of debt incurred for family or household purposes.

579. Defendants violated § 559.72(5) of the FCCPA when Defendants represented to the credit reporting agencies that Ms. Doctor's mortgage loan account was in forbearance, when Ms. Doctor

did not, in fact, consent to the placement of her account into forbearance status. Defendants knew that the information they reported to the credit reporting agencies was false because Defendants knew Ms. Doctor did not consent to the placement of her account in forbearance when it made each representation to the credit reporting agencies.

580. As alleged above, Defendants made representations to the credit reporting agencies that the mortgage loan accounts of the members of the Florida Class were in forbearance when the members of the Florida Class did not request or consent to the forbearance, and Defendants knew that the information it reported to the credit reporting agencies regarding the Florida Class members' mortgage loan accounts was false.

581. Defendants' representations to the credit reporting agencies regarding Ms. Doctor and the members of the Florida Class harmed Ms. Doctor's and the Florida Class members' reputations. Specifically, due to Defendants' representations to the credit reporting agencies that Ms. Doctor's mortgage loan account was in forbearance, Ms. Doctor's application for credit was denied.

582. Pursuant to § 559.77(2) of the FCCPA, Ms. Doctor is entitled to her actual damages, statutory damages of $1,000.00, and her reasonable attorneys' fees and costs. The members of the Florida Class are entitled to statutory damages in the amount of $500,000 or 1% of the Defendants' net worth, whichever is less.

FOURTEENTH CAUSE OF ACTION

Gross Negligence on Behalf of Plaintiffs and the Nationwide Class

583. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

584. In a mortgagor-mortgagee relationship, a lender owes a borrower the duty to exercise reasonable care to avoid a foreseeable risk of injury to the borrower. *Hurd v. BAC Loan Servicing, LP*, 880 F. Supp.2d 747, 763 (N.D. Tex. 2012) (citing *Thrash v. Ocwen Loan Servicing, LLC*, 433 B.R. 585,

598-97 (Bankr. N.D. Tex. 2010). *See also Lukasik v. San Antonio Blue Haven Pools, Inc.*, 21 S.W.3d 394, 403 (Tex. App.—San Antonio 2008, no pet.)(citing *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987)(Every person has a duty to exercise reasonable care to avoid foreseeable risk of injury to others.)); *Trevino v. HSBC Mortgage Services, Inc. (In re Trevino)*, 535 B.R. 110, 150-151 (Bankr. S.D. Tex. 2015).

585. By knowingly placing borrowers' loans into forbearance status without their consent, Defendants demonstrated an utter disregard of prudence amounting to complete neglect of the safety and financial welfare of the Plaintiffs and the other Class representatives. Wells Fargo's misconduct is such a degree of negligence as would shock any fair-minded person. *Ferguson v. Ferguson*, 212 Va. 86, 92, 181 S.E.2d 648, 653 (1971) (emphasis omitted).

586. Alternatively, or additionally, Wells Fargo acted with willful and wanton negligence, with conscious disregard or reckless indifference, to Plaintiffs' and the other Class members' rights by placing Plaintiffs' and other Class members' mortgage loans into forbearance status without their knowledge or consent. Wells Fargo knew from its knowledge of existing circumstances and conditions, as reflected by its own website and published materials and its own institutional knowledge regarding how the credit markets would function and the effect a forbearance notation would have on consumers' credit, that its conduct probably would cause injury to Plaintiffs and the other Class members. *Woods v. Mendez*, 265 Va. 68, 76-77 (2003).

587. As a result of Wells Fargo's conduct as described herein, Plaintiffs have been damaged, including the cancellation mortgage modifications, credit damage, loss of access to credit markets and/or home equity lines of credit, reputational damage, frustration, outrage, and various out-of-pocket costs and other pecuniary damages and general damages.

VIII. REQUEST FOR RELIEF

588. Plaintiffs, individually and on behalf of all others similarly situated, request that the Court enter judgment against Defendants, and for Plaintiffs, as follows:

A. Certify the Classes under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), or alternatively 23(b)(4), and appoint Plaintiffs as representatives of the Classes and appoint Plaintiffs' counsel as Class counsel;

B. Award declaratory relief, including but not limited to a declaration that Wells Fargo's actions and business practices are unlawful and that Wells Fargo must comply with state and federal lending laws;

C. Award injunctive relief, including public injunctive relief permanently enjoining Wells Fargo from performing further unfair and unlawful acts as alleged;

D. Award all recoverable compensatory, statutory, and other damages sustained by Plaintiffs and the Classes, including penalties, and all other relief allowed under applicable law;

E. Grant Plaintiffs and the Class awards of restitutionary and nonrestitutionary disgorgement of Wells Fargo's profits from its unfair and unlawful practices described above;

F. Award all costs of prosecuting this action, including attorneys' fees and expert fees as may be allowable under applicable law;

G. Award both pre-judgment and post-judgment interest on any amounts awarded;

H. Award treble or punitive damages insofar as they are allowed by applicable laws;

I. Award appropriate individual relief as requested above; and

J. Grant such other and further relief, including declaratory, injunctive, and equitable relief, as the Court may deem proper.

IX. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED this 28th day of September, 2022.

KELLER ROHRBACK L.L.P.

By *s/ Zachary W. Gussin*

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CERTIFICATION OF SERVICE

I, Zachary W. Gussin, hereby certify that on September 28, 2022, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record who have appeared in this action.

s/ Zachary W. Gussin
Zachary W. Gussin

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: Wells Fargo Forbearance Litigation	§ § § § § § § § § § § § § §	Case No. 2:24-cv-01026-MHW-EPD **DECLARATION OF PROF. ZACHARY CLOPTON IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR APPOINTMENT AS CLASS COUNSEL** Judge Michael H. Watson Magistrate Judge Elizabeth Preston Deavers Class Action

I, Prof. Zachary Clopton, hereby declare as follows:

1. I am over the age of eighteen years, of sound mind, and am competent to make this statement. I have personal knowledge of the matters stated below. If called as a witness, I could competently testify about the substance of this declaration under oath based upon my own personal knowledge.

SUMMARY

2. When overlapping class actions are filed, there is a risk that named plaintiffs and their attorneys will compete to settle the case—and obtain any benefits reserved for named plaintiffs and class counsel—by being willing to accept ever-smaller settlements.

3. This well-known and oft-criticized phenomenon has been called a reverse auction.

4. A reverse auction in class actions can result in under-compensation and under-deterrence, among other problems.

5. In 2022, I provided a declaration to this Court explaining that this case presented many of the hallmarks of a reverse auction and therefore risked many of the negative consequences that follow from reverse auctions in class actions. The prior declaration is included as Exhibit 1.

6. Since that time, events have played out consistent with a reverse auction—specifically, after this Court exercised its discretion to stay the *Echard* settlement, counsel for Consolidated Plaintiffs have obtained agreement on a settlement worth substantially more than a prior negotiated settlement, both in total and per person.

BACKGROUND AND QUALIFICATIONS

7. I am a Professor of Law and Associate Dean of Academic Programs at Northwestern Pritzker School of Law.

8. I hold a J.D. *magna cum laude* from Harvard Law School, a M.Phil. in International Relations from Cambridge University, and a B.A. in History and Political Science from Yale University.

9. I am a member of the American Law Institute and I am licensed to practice law in New York and Illinois.

10. My scholarship and teaching relate to civil procedure and complex litigation, including class actions. I have written multiple articles on class action litigation, multidistrict litigation, and related issues.

11. My publications and additional qualifications are listed in the curriculum vitae included as Exhibit 2.

12. In preparation for this declaration, I reviewed *Plaintiffs' Motion for Reconsideration, to Lift the Stay, or Interlocutory Appeal*, Dkt. 157; *Defendant Wells Fargo Bank, N.A.'s Notice of Status of Settlement Negotiations and Request for Status Conference*, Dkt. 175; *Consolidated Plaintiffs' Status Report*, Dkt. 176; *Consolidated Plaintiffs' Updated Status Report*,

Dkt. 179; and *Joint Status Report and Request for Abeyance* (N.D. Cal. Feb. 9, 2024). I also have reviewed documents referred to in my prior declaration (Exhibit 1), as well as relevant academic articles, treatises, and case law, including but not limited to those cited herein.

13. Prior to my involvement in this case, to the best of my knowledge I had no relationship with any of the parties or attorneys involved in the case. All statements in this declaration reflect my own opinions, not any of my employers or affiliations.

14. The opinions described in this declaration are based on my review of the aforementioned materials, my knowledge and experience with civil litigation, and research performed for purposes of this case. I describe below the facts of the case necessary to render these opinions.

15. I have not testified as an expert in the last four years at trial or by deposition.

16. For study and preparation of this report, I was paid my customary rate of $900 per hour.

THE REVERSE AUCTION IN CLASS ACTIONS

17. Scholars of civil procedure and litigation have identified and studied a phenomenon known as the reverse auction in class actions. *See*, *e.g.*, John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 COLUM. L. REV. 1343 (1995); Rhonda Wasserman, *Dueling Class Actions*, 80 B.U. L. REV. 461 (2000).

18. The reverse auction concept has been used to describe a potential result of overlapping class actions. When overlapping class actions are filed, a defendant interested in settling might seek to "buy" peace from each of the potential classes. In this situation, a defendant has rational incentives to hold a "reverse auction," offering to settle with whichever class is willing to accept the lowest settlement value. In a reverse auction, representatives of each potential class action may act on their self-serving incentives to accept lower valuations of the settlement so that

they can capture any returns. It thus presents a particularly concerning example of the potential for a conflict of interest between the members of a class and class counsel.

19. The risk of a reverse auction in class actions has been acknowledged by the Manual for Complex Litigation, Newberg and Rubenstein on Class Actions, and more. *See*, *e.g.*, Manual Complex Lit. § 21.61 (4th ed.); 4 Newberg and Rubenstein on Class Actions § 13:60 (6th ed. June 2022 Update). Caselaw, too, acknowledges this phenomenon. *See*, *e.g.*, *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 839 (7th Cir. 1999); *Crawford v. Equifax Payment Servs., Inc.*, 201 F.3d 877, 882 (7th Cir. 2000); *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 283 (7th Cir. 2002); *In re Community Bank of Northern Virginia*, 418 F.3d 277, 308 (3d Cir. 2005).

20. Reverse auctions in class actions can have any number of negative consequences for the involved litigation, including under-deterrence of defendant, under-compensation of class members, and settlements that do not appropriately protect absent class members. Reverse auctions also can have negative consequences for the structure of the market for legal services and for public policy. If reverse auctions in class actions were to go unchecked, it would create incentives for counsel in future cases to file duplicative litigation in hopes of obtaining fee awards without adding value to the class, and would further burden courts in complex cases.

21. Thus, courts should try to mitigate reverse auctions and their effects, both because reverse auctions create these negative consequences for the litigation and because the potential for reverse auctions creates incentives for counsel to file duplicative litigation contrary to the interests of public policy.

THE PRIOR RED FLAGS OF A REVERSE AUCTION IN THIS LITIGATION

22. As explained in more detail in my prior declaration (Exhibit 1), the *Echard* case presented the risk of a reverse auction.

23. Any overlapping class actions can lead to reverse auction, but the *Echard* case in particular presented at least five red flags of a potential reverse auction.

24. First, because reverse auctions can be harder to police when cases are in different courts, it is notable that the *Echard* case was pending in the same court as the Consolidated Plaintiffs' cases before the *Echard* parties jointly stipulated to the transfer to another venue. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Joint Mot. to Transfer, ECF No. No. 53 (N.D. Cal. Oct. 1, 2021).

25. Second, not only was the *Echard* case transferred away from related cases, but the Consolidated Plaintiffs have raised questions about the process by which that transfer was obtained. *In re Wells Fargo Forbearance Litigation*, No. 2:20-CV-006009, Transcript of Proceedings (N.D. Cal. Aug. 18, 2022) at 26.

26. Third, in order for defendants to engage in reverse auctions, they must ascertain the values at which plaintiffs are willing to settle. It is notable, therefore, that the joint request to transfer to this Court appeared to have been filed shortly after a mediation in the consolidated cases broke down. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Renewed Mot. to Intervene, Oct. 4, 2022, ECF No. No. 123, at 2 (describing the timeline).

27. Fourth, Consolidated Plaintiffs have provided evidence suggesting that counsel for the *Echard* plaintiffs was attentive to the attorney-fee division in the consolidated action. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Renewed Mot. to Intervene, Oct. 4, 2022, ECF No. 123, at 3-4 (citing Bartholow Decl. and Preusch Decl.); *id.* at 15-16.

28. Fifth, Consolidated Plaintiffs also have raised questions about communications from *Echard* plaintiffs' counsel purporting to offer incentives in exchange for not opposing the settlement. *Id.* at 16. *Cf. Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1164-1165 (9th Cir. 2013) (discussing how incentives can undermine adequacy of representation in a class action).

SUBSEQUENT EVENTS CONSISTENT WITH A REVERSE AUCTION IN THIS LITIGATION

29. Perhaps the central risk of a reverse auction in class actions is that cases subject to a reverse auction will settle at values that under-compensate plaintiffs and under-deter defendants. Thus, one would expect a class action subject to a reverse auction to settle at a lower value than one in which the reverse auction was removed or its effects were mitigated.

30. Events in the cases at issue are consistent with these predictions about reverse auctions. Specifically, as a result of this Court's intervention, this case presents an unusual opportunity to observe the disparate settlement values reached in overlapping cases potentially subject to a reverse auction.

31. In this litigation, an initial settlement was reached in the *Echard* action and presented to the court for preliminary approval. The proposed settlement was for $94 million. *See Plaintiffs' Motion for Reconsideration, to Lift the Stay, or Interlocutory Appeal*, Dkt. 157.

32. After attention was drawn to the potential for a reverse auction, this Court exercised its discretion to stay the *Echard* action. *Id.* at 1.

33. In seeking to reconsider the decision to stay, counsel for *Echard* represented to this Court that the $94 million settlement was an "excellent result" that was "in the best interest of the class." *Id.* at 4, 8.

34. Meanwhile, Consolidated Plaintiffs and Wells Fargo engaged in mediation sessions with The Honorable Layn R. Phillips (Ret.). Counsel for the *Echard* plaintiffs attended the mediation sessions. Based on Judge Phillips's recommendation, the Consolidated Plaintiffs and Wells Fargo agreed in principle to a settlement of $185 million dollars for a class including all persons who Consolidated Plaintiffs allege were injured by Defendants' conduct. *See Consolidated Plaintiffs' Status Report*, Dkt. 176 at 1-2; *Defendant Wells Fargo Bank, N.A.'s Notice of Status of*

Settlement Negotiations and Request for Status Conference, Dkt. 175 at 1; *Joint Status Report and Request for Abeyance* (N.D. Cal. Feb. 9, 2024) at 1.

35. This new settlement is substantially greater in overall value than the original settlement (almost twice as large); it includes a larger number of potential class members; and it would provide a greater pro rata recovery for each class member than the prior settlement. *Consolidated Plaintiffs' Status Report*, Dkt. 176 at 1 ("Even with the significantly larger class, under the terms of the new agreement in principle, the pro rata recovery of each class member will be substantially greater than the pro rata recovery under the Echard proposed settlement."); *Defendant Wells Fargo Bank, N.A.'s Notice of Status of Settlement Negotiations and Request for Status Conference*, Dkt. 175 at 1 ("In November 2023, Wells Fargo and the Consolidated Plaintiffs agreed in principle to a settlement in which Wells Fargo agreed to pay materially more money for the benefit of the settlement class.").

36. In short, after a prior settlement that raised red flags of a reverse auction was not entered, and after this Court exercised its discretion to mitigate a reverse auction, a substantially larger settlement was reached. This series of events is consistent with the general understanding of how reverse auctions result in under-compensation and under-deterrence.

37. Counsel for Consolidated Plaintiffs' alerting this Court to the potential of a reverse auction, and their negotiating a superior settlement after this Court stayed the *Echard* case, are also suggestive of their superior ability in representing the class.

38. Moreover, when making decisions about the appointment of class counsel, courts should be attentive to the precedent set by rewarding reverse auctions, which could create incentives for counsel in future cases to file duplicative litigation in hopes of obtaining fee awards without adding value to the class and contrary to the interests of public policy.

CONCLUSION

39. In sum, aspects of the *Echard* litigation raised red flags suggesting the possibility of a reverse auction and all of the negative consequences that may follow from it.

40. Consolidated Plaintiffs' settlement provided substantially greater recovery to an even larger class than the proposed settlement in the *Echard* litigation. This supports Consolidated Plaintiffs' application as counsel equipped to represent the best interests of the class.

* * *

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

DATED this 12th day of April, 2024.

Prof. Zachary Clopton

ZACHARY D. CLOPTON
Northwestern Pritzker School of Law
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ACADEMIC APPOINTMENTS

Northwestern Pritzker School of Law
Associate Dean of Academic Programs, 2023-present
Professor of Law, 2019-present

Cornell Law School
Associate Professor of Law, 2018-2019
Assistant Professor of Law, 2015-2018

University of Chicago Law School
Public Law Fellow, 2013-2015

Courses: Civil Procedure I; Civil Procedure II; Complex Litigation; Government Litigation; International Arbitration & Complex Litigation; International Litigation; Legal & Regulatory Process; National Security Law; Public Law Colloquium

EDUCATION

Harvard Law School
J.D., *magna cum laude*, 2007

Cambridge University, Clare College
M.Phil., International Relations, High Performance, 2004
Gates Cambridge Scholarship, Bill and Melinda Gates Foundation

Yale University
B.A., History and Political Science, *magna cum laude*, 2003

PROFESSIONAL EXPERIENCE

United States Attorney's Office, Assistant United States Attorney, Northern District of Illinois, Civil Division, 2010-2013

Wilmer Hale, National Security group, Washington, D.C., 2007-2009

CLERKSHIPS & JUDICIARY

Advisory Committee on Civil Rules, Academic Member (Appointed by the Chief Justice of the United States), 2023-present

Seventh Circuit Committee on Pattern Civil Jury Instructions, Reporter, 2022-present

Academic Advisory Board, Supreme Court Fellows Program, Member, 2018-present

Hon. Diane P. Wood, U.S. Court of Appeals for the Seventh Circuit, Judicial Clerk, 2009-2010

ACADEMIC PUBLICATIONS

Suing Cities, 133 YALE LAW JOURNAL __ (forthcoming 2024) (with Nadav Shoked)

The Necessary and Proper Stewardship of Judicial Data, 76 STANFORD LAW REVIEW __ (forthcoming 2024) (with Aziz Huq)

Power and Politics in Original Jurisdiction, 91 UNIVERSITY OF CHICAGO LAW REVIEW 83 (2024)

The City Suit, 72 EMORY LAW JOURNAL 1351 (2023) (with Nadav Shoked)

Public Law Litigation and Electoral Time, 2023 WISCONSIN LAW REVIEW 1513 (with Kate Shaw)

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Clifford Symposium: Opioid Cases and State MDLs, 70 DEPAUL LAW REVIEW 245 (2021) (with Theodore Rave)

First 100 Days Symposium: An Arbitration Agenda for the Biden Administration, 2021 UNIVERSITY OF ILLINOIS LAW REVIEW ONLINE 104 (2021) (with David Noll)

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How to Build a More Open Justice System, 369 SCIENCE 134 (2020) (with coauthors)

Pound Symposium: Texas MDL, 24 LEWIS & CLARK L. REV. 367 (2020) (with Theodore Rave)

Clifford Symposium: Civil Enforcement and the (Green) New Deal, 69 DEPAUL LAW REVIEW 335 (2020)

Judge Diane P. Wood: A True Friend, UNIVERSITY OF CHICAGO LAW REVIEW ONLINE (2020)

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The Meaning of the Seventeenth Amendment and a History of State Defiance, 107 NORTHWESTERN UNIVERSITY LAW REVIEW 1181 (2013) (with Steven Art)

Extraterritoriality and Extranationality: A Comparative Study, 23 DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW 217 (2013)

Executive Foreign Policy and the States: Recent Developments, 111 MICHIGAN LAW REVIEW FIRST IMPRESSIONS 28 (2012)

Bowman Lives: The Extraterritorial Application of U.S. Criminal Law after Morrison v. National Australia Bank, 67 NYU ANNUAL SURVEY OF AMERICAN LAW 137 (2011)

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FIELD, KAPLAN, CLERMONT & CLOPTON, MATERIALS FOR A BASIC COURSE IN CIVIL PROCEDURE (14th ed. 2023)

SELECTED BRIEFS AUTHORED

Brief for *Amici Curiae* of Professors of Law in Support of Petitioners, Petition for Writ of Certiorari, *Cuker Interactive, LLC v. Pillsbury Winthrop Shaw Pittman, LLP* (2022)

Brief of *Amici Curiae* of Professors of Law in Support of Petitioners, *Cassirer v. Thyssen-Bornemisza Collection Foundation* (2021)

Brief of Scholars of Foreign Relations and Federal Courts as *Amici Curiae* in Support of Plaintiff-Appellee, *Minnesota v. American Petroleum Institute* (10th Cir. 2021)

Brief of *Amici Curiae* of Professors of Law in Support of Petitioners, Petition for Writ of Certiorari, *Cassirer v. Thyssen-Bornemisza Collection Foundation* (2021)

Brief of Professors of Civil Procedure and Federal Courts as *Amici Curiae* in Support of Respondents, *Wolf v. Innovation Law Lab* (2021)

Brief of Professors of Civil Procedure and Federal Courts as *Amici Curiae* in Support of Respondents, *Trump v. Pennsylvania* (2020)

Brief of *Amici Curiae* of Civil Procedure Professors in Support of Respondents, *Ford Motor Co. v. Montana Eighth Judicial District* (2020)

Brief of Law Professors as *Amici Curiae* in Support of Plaintiff-Appellee, *City of Chicago v. Whitaker*, (7th Cir. 2019)

Brief of Professors of Conflict of Laws and Civil Procedure as *Amici Curiae* in Support of Petitioners, *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co.* (2018)

Brief of *Amici Curiae* of Civil Procedure Professors in Support of Respondents, *Bristol-Myers Squibb Co. v. Superior Court* (2017) (cited by dissenting opinion)

HONORS & AWARDS

American Law Institute (2020-present)

Outstanding First Year Professor, Northwestern Pritzker School of Law (2021-2022)

Student Bar Association Faculty Appreciation Award (2021-2022)

Clifford Scholar in Residence (2020)

Civil Justice Scholarship Award, Pound Civil Justice Institute (2020)

GRANT FUNDING

Consultant, Administrative Conference of the United States (ACUS), Nationwide Injunctions and Federal Regulatory Policy (2021-present)

National Science Foundation, Systematic Content Analysis of Litigation Events (SCALES) (2019-present)

Research Director, State Courts' Role in Federal Policy, National Center for State Courts (with funding from the State Justice Institute) (2020-2022)

Co-Primary Investigator, Cornell Center for the Study of Inequality (2017-2019)

Primary Investigator, Cornell Institute for the Social Sciences (2016-2019)

SELECTED PRESENTATIONS & CONFERENCES

Cornell Law Review Symposium, Mass Torts (2024)

Civil Procedure Workshop (2015, 2017, 2018, 2019, 2020, 2021, 2023 & 2024)

State Courts Roundtable, *State Democracy Research Initiative* (2024)

Contemporary Issues in Complex Litigation, Northwestern University (2019, 2020, 2022 & 2024)

Public Law in the States, State Democracy Research Initiative, University of Wisconsin (2023)

Review of Litigation Symposium, University of Texas Law School (2022 & 2023)

Managerial Judges Symposium, Yale Law School (2022)

Judicial Administration Roundtable, Duke Law School (2018, 2021 & 2022)

Fordham Law Review Symposium (2022)

American Society of International Law: International Law in Domestic Courts Workshop (2017 & 2021)

American Bar Association, Administrative Law Conference (2021)

University of Pennsylvania Law Review Symposium (2021)

Clifford Symposium on Civil Justice (2019 & 2020)

Association of American Law Schools Annual Meeting (2020)

Pound Symposium: Class Actions, Mass Torts, and MDLs (2019)

Yale-Stanford-Harvard Junior Faculty Forum (2019)

Ira C. Rothgerber Conference, Byron R. White Center for the Study of American Constitutional Law, University of Colorado (2019)

Center on Civil Justice, NYU School of Law, "MDL at 50" (2018)

Loyola Constitutional Law Colloquium (2011, 2012, 2017 & 2018)

Junior Faculty Federal Courts Workshop (2014, 2015, 2017 & 2018)

Remedies Roundtable, Notre Dame Law School (2018)

Compliance Studies Symposium (2018)

Conference on Empirical Legal Studies (2017)

Symposium: The Prospects for American Democracy in the Age of Trump, Cornell University (2017)

Fifty Years of Class Actions: A Global Perspective, Tel Aviv University (2017)

New York University Law Review Symposium (2016)

Law and Society Association Annual Meeting (2014 & 2016)

Junior International Law Scholars Association Annual Meeting (2014 & 2016)

University of Chicago Law Review Symposium (2015)

New Voices in Civil Justice Workshop, Vanderbilt Law School (2015)

American Law and Economics Association Annual Meeting (2014 & 2015)

Junior Faculty Exchange, University of Indiana (2014)

Chicago Junior Faculty Workshop (2014)

American Society of International Law Annual Meeting (2014)

University of Chicago Legal Scholarship Workshop (2012)

Northwestern University Legal Scholarship Workshop (2012)

American Society of Comparative Law, Perspectives on Comparative Law (2012)

Bigelow Writing Series, University of Chicago Law School (2012)

ACADEMIC & PROFESSIONAL SERVICE

Board of Advisors, American Constitution Society, Chicago Lawyer Chapter (2023-present)

AALS Planning Committee for Appointments Committees Workshop (2022-2023)

Editor, Transnational Litigation Blog, (2022-present)

Steering Committee, Civil Procedure Workshop (2020-present)

Scholars Council, Humphreys Center for Complex Litigation (2020-present)

Academic Fellow, Pound Institute for Civil Justice (2018-present)

Symposium Organizer, Climate Change Litigation, Cornell Law School (2018)

Law and Society Association, Article Prize Committee (2016-2017)

Faculty Advisor, University of Chicago Institute of Politics (2013-2015)

Editor, Benchbook on International Law, American Society of International Law (2014)

American Society of International Law, Annual Meeting Symposium Organizer, State Law Litigation of International Norms, (2014)

Senior Fellow, International Security & Biopolicy Institute, DePaul University College of Law (2009)

LAW SCHOOL SERVICE

Northwestern Pritzker School of Law

- Curriculum Committee (2023-2024)
- Appointments Committee Chair (2021-2022)
- Appointments Committee (2020-2021)
- Co-Host, Northwestern Complex Litigation Conference (2021-present)
- Faculty Mentor (2019-present)
- Clerkships Committee (2019-2020)

Cornell Law School

- Academic Programs and Planning Committee (2017-2019)
- Alumni in Academia Committee (2015-2019)
- Clerkship and Jurist-in-Residence Committee (2015-2019)
- Faculty Mentor (2016-2019)
- Faculty Secretary (2015-2017)
- Law, Psychology & Human Development Advisory Committee (2015-2019)
- Moot Court Judge (2015-2019)
- Paris Summer Institute (2016-2019)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRIAN ECHARD, Plaintiff, v. WELLS FARGO BANK, N.A., Defendants.	§ § § § § § § § § §	No. 2:21-CV-05080-MHW-KAJ **DECLARATION OF PROF. ZACHARY CLOPTON IN SUPPORT OF MOTION TO INTERVENE** Judge Michael H. Watson Magistrate Judge Kimberly A. Jolson

I, Prof. Zachary Clopton, hereby declare as follows:

1. I am over the age of eighteen years, of sound mind, and am competent to make this statement. I have personal knowledge of the matters stated below. If called as a witness, I could competently testify about the substance of this declaration under oath based upon my own personal knowledge.

SUMMARY

2. When overlapping class actions are filed, there is a risk that named plaintiffs and their attorneys will compete to settle the case—and obtain any benefits reserved for named plaintiffs and class counsel—by being willing to accept ever-smaller settlements.

3. This well-known and oft-criticized phenomenon has been called a reverse auction.

4. A reverse auction in class actions can result in under-compensation (especially for absent class members) and under-deterrence, among other problems, though the negative effects of reverse auctions may be mitigated if the class actions are consolidated in front of a single judge.

5. This case presents many of the hallmarks of a reverse auction and therefore risks many of the negative consequences that follow from reverse auctions in class actions.

BACKGROUND AND QUALIFICATIONS

6. I am a Professor of Law at Northwestern Pritzker School of Law.

7. I previously served as a professor at Cornell Law School, the Public Law Fellow at the University of Chicago, an Assistant United States Attorney in the Northern District of Illinois (Civil Division), and a judicial clerk for The Honorable Diane P. Wood of the United States Court of Appeals for the Seventh Circuit. I am a member of the American Law Institute and I am licensed to practice law in New York and Illinois.

8. I hold a J.D. *magna cum laude* from Harvard Law School, a M.Phil. in International Relations from Cambridge University, and a B.A. in History and Political Science from Yale University.

9. My scholarship and teaching relate to civil procedure and complex litigation, including class actions. I have written multiple articles on class action litigation, multidistrict litigation, and related issues.

10. My publications and additional qualifications are listed in the curriculum vitae included as Exhibit 1.

11. In preparation for this declaration, I reviewed documents related to this litigation as described in Exhibit A to the Declaration of Matthew Preusch in Further Support of the Renewed Motion to Intervene. I also reviewed relevant academic articles, treatises, and case law, including but not limited to those cited herein.

12. Prior to my involvement in this case, to the best of my knowledge I had no relationship with any of the parties or attorneys involved in the case. All statements in this declaration reflect my own opinions, not any of my employers or affiliations.

13. The opinions described in this declaration are based on my review of the aforementioned materials, my knowledge and experience with civil litigation, and research

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performed for purposes of this case. I describe below the facts of the case necessary to render these opinions.

14. I have not testified as an expert in the last four years at trial or by deposition.

15. For study and preparation of this report, I was paid my customary rate of $800 per hour.

THE REVERSE AUCTION IN CLASS ACTIONS

16. Scholars of civil procedure and litigation have identified and studied a phenomenon known as the reverse auction in class actions. *See*, *e.g.*, John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 COLUM. L. REV. 1343 (1995); Rhonda Wasserman, *Dueling Class Actions*, 80 B.U. L. REV. 461 (2000).

17. A reverse auction is an auction where the traditional roles of buyers and sellers are reversed. In a traditional auction, many buyers compete to purchase an item from a seller by increasing their price. In a reverse auction, many sellers compete to sell an item to one buyer by decreasing their price.

18. The reverse auction concept has been used to describe a potential result of overlapping class actions. When overlapping class actions are filed, a defendant interested in settling might seek to "buy" peace from each of the potential classes. The classes are "selling" finality at the settlement value. In this situation, a defendant might hold a "reverse auction," offering to settle with whichever class is willing to accept the lowest settlement value.

19. Three features of class actions underlie the reverse auction problem. First, class actions are representative actions. *See* Fed. R. Civ. P. 23(a). Because class-action plaintiffs are representatives, there may be multiple potential class representatives, meaning that there is the possibility of multiple overlapping class actions.

20. Second, class actions bind individuals other than the named plaintiffs, so the first class action to be resolved can preclude further litigation by absent class members (except those who opt out). *See Cooper v. Federal Reserve Bank of Richmond*, 467 U.S. 867, 874 (1984) ("There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation."). This means that if one of the overlapping class actions settles, then all other class-member claims are usually precluded (except for the opt outs).

21. Third, class action settlements may provide additional compensation for lead plaintiffs and attorney fees for class counsel. *See* 5 Newberg and Rubenstein on Class Actions § 17:1 (6th ed.) (incentive awards); *id.* § 15:23 (attorney fees). The opportunity to capture these benefits means that there may be strong incentives for competition among classes and their lawyers when there are overlapping class actions.

22. Taken together, the presence of multiple overlapping suits, each which can effectively preclude the others, creates the conditions under which plaintiffs and their lawyers may compete to "sell" settlement to defendants at the lowest price.

23. These conclusions have been repeated in the academic literature. Professor Coffee explained the reverse auction in class actions as:

> a jurisdictional competition among different teams of plaintiffs' attorneys in different actions that involve the same underlying allegations. The first team to settle with the defendants in effect precludes the others (who may have originated the action and litigated it with sufficient skill and zeal that the defendants were eager to settle with someone else). . . . Once rival plaintiff teams are in competition with each other, and each is able to agree to a binding settlement of a nationwide class action, the "reverse auction" can begin. No explicit agreement among the

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> participants is needed; all that is necessary is that each team of plaintiffs' attorneys sees that it can be divested of any participation in the action unless it reaches a settlement with the defendants first.

Coffee, *supra*, at 1370, 1372 (internal footnotes omitted).

24. Similarly, in her article on "dueling class actions, Professor Wasserman explained what might happen when there are overlapping class actions:

> The defendant is aware that class counsel is under substantial pressure to settle. Based on this knowledge, the defendant may make a "low ball" offer in an effort to settle the class claim for far less than it is worth. The defendant may even agree not to oppose class counsel's application for exorbitant fees or may propose a side deal that assures class counsel a hefty fee, if class counsel agrees to the low-ball offer. The pressure on class counsel to collude with the defendant in this manner may be extreme. Even if class counsel is able to resist this pressure, the defendant may simply go knocking on the door of another lawyer representing the class to see if she will succumb. Thus, in Professor Jack Coffee's words, the defendant is able to engage in a "reverse auction," pitting the various class counsel against one another and agreeing to settle with the lawyer willing to accept the lowest bid on behalf of the class.

Wasserman, *supra* at 473 (internal footnotes omitted).

25. The risk of a reverse auction in class actions also has been acknowledged by the Manual for Complex Litigation, Newberg and Rubenstein on Class Actions, and more. *See*, *e.g.*, Manual Complex Lit. § 21.61 (4th ed.); 4 Newberg and Rubenstein on Class Actions § 13:60 (6th ed. June 2022 Update). Caselaw, too, acknowledges this phenomenon, *See*, *e.g.*, *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 839 (7th Cir. 1999); *Crawford v. Equifax Payment Servs., Inc.*,

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201 F.3d 877, 882 (7th Cir. 2000); *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 283 (7th Cir. 2002); *In re Community Bank of Northern Virginia*, 418 F.3d 277, 308 (3d Cir. 2005)

THE NEGATIVE CONSEQUENCES OF REVERSE AUCTIONS IN CLASS ACTIONS

26. Reverse auctions in class actions can have any number of negative consequences.

27. First, the reverse auction in class actions might lead to settlements where the parties would prefer to litigate. *See* Wasserman, *supra* at 472-73 ("Even if the class has a very strong claim on the merits and class counsel ordinarily would prefer to go to trial rather than settle at a discount, . . . class counsel most likely will decide that it is in her own best interest to settle the action and guarantee that she is compensated for her work on the case.").

28. Second, the reverse auction might lead to settlements that undervalue the class members' claims. Undervalued settlements result in under-compensation for plaintiffs, which may have consequences for substantive justice.

29. Third, and relatedly, because it is difficult for absent class members to supervise class litigation, there is a particular risk that any under-compensation in the settlement will be to the detriment of absent class members. This issue connects to concerns with adequacy of representation, a central preoccupation in class-action litigation. *See* Fed. R. Civ. P. 23(a)(4), (e)(2)(A) & (B); Fed. R. Civ. P. 23 Committee Notes on Rules—2018 Amendment.

30. Fourth, and also relatedly, if class actions settle for less than they are worth because of a reverse auction, the deterrent effect of the underlying substantive law may be reduced. One important function of the class action is to ensure appropriate levels of deterrence when individual suits are not cost effective. *See* 1 Newberg and Rubenstein on Class Actions § 1:8 (6th ed. June 2022 update) ("In enabling small-claim suits, class actions expose the defendants to the risk of liability and thereby deter them from engaging in wrongdoing in the first place."). When class action settlements are depressed, therefore, under-deterrence may result.

31. Fifth, because reverse auction problems can encourage plaintiffs to settle quickly, sometimes the settlements will cut off discovery or other information gathering that may be beneficial to the parties or the court. This includes suppressing information that might be valuable to the absent class members and to the court in evaluating the merits of the settlement. *See* Wasserman, *supra* at 474-83.

RESPONSES TO REVERSE AUCTIONS IN CLASS ACTIONS

32. The reverse option problem may arise when there are overlapping class actions. One obvious solution would be to eliminate overlapping class actions. However, because of the existing rules of jurisdiction and class certification, this solution is not likely to be obtained in US courts.

33. An alternative response would be to consolidate overlapping class actions in a single court. *See*, *e.g.*, Wasserman, *supra* at 524 ("If all simultaneous dueling class actions could be consolidated into a single action, virtually all of the problems [of overlapping class actions] could be avoided.").

34. Consolidation allows a single judge to supervise the litigation and any potential settlement, and to be apprised of any competition among plaintiffs' attorneys. *See id.* at 533 ("[C]onsolidation would conserve judicial and other resources, alleviate the pressure that existing dueling class actions place on class counsel, remedy many of the informational deficiencies and avoid a myriad of preclusion problems.") (internal footnote omitted).

35. Consolidation may not be possible under current law when cases are pending in different court systems, such as overlapping federal-court and state-court cases.

36. However, when all cases are pending in federal court, this type of consolidation is possible.

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37. Within a single federal court, rules on consolidation and related cases may bring all cases in front of a single judge. *See*, *e.g.*, Fed. R. Civ. P. 42(a) (consolidation); N.D. Cal. Civil L. R. 3-12 (related cases); S.D. Ohio Civ. R. 3.1(b) (related cases); *see also* Manual Complex Lit. § 20.11 (4th ed.) (Cases in Same Court).

38. Across federal courts, parties and courts can rely on venue transfers, either through motions by the parties or on a *sua sponte* basis, to informally coordinate cases in a single court. *See* 28 U.S.C. § 1404(a); *see also* Manual Complex Lit. §§ 20.11-12 (4th ed.).

39. In addition, the Judicial Panel on Multidistrict Litigation can consolidate federal civil cases pending in different districts for pretrial purposes in a single federal court. *See* 28 U.S.C. § 1407(a); *see also* Manual Complex Lit. § 20.11-123(4th ed.). And, indeed, the Panel has used its authority to consolidate multiple overlapping class actions. *See*, *e.g.*, *In re Plumbing Fixtures*, 308 F.Supp. 242, 244 (JPML 1970) ("[P]otential for conflicting or overlapping class actions presents one of the strongest reasons for transferring such related actions to a single district for coordinated or consolidated pretrial proceedings which will include an early resolution of such potential conflicts."); *In re: Discover Card Payment Protection Plan Marketing & Sales Practices Litigation*, 764 F.Supp.2d 1341 (JPML 2011) (consolidating overlapping class actions); *see also* Zachary D. Clopton, *MDL as Category*, 105 CORNELL L. REV. 1297, 1321-22, 1335-36 (2020).

40. Once consolidated, the judge has various tools at their disposal to attempt to mitigate reverse auction problems, including the ability to appoint lead counsel and to hear from all interested parties before approving any settlement. *See* Fed. R. Civ. P. 23(g) (class counsel); 23(e)(2) (hearing); 15 U.S.C. § 78u–4(a)(3) (appointment of lead plaintiff and lead counsel under Private Securities Litigation Reform Act); Manual Complex Lit. § 10.22 (4th ed.) (Coordination in Multiparty Litigation—Lead/Liaison Counsel and Committees).

41. Finally, it should be noted that opting out is often *not* a realistic response to a reverse auction. For classes certified under Federal Rule of Civil Procedure 23(b)(3), absent class members are given notice and the opportunity to opt out of any settlement. It is true that, in the face of a reverse auction, named plaintiffs may opt out of a proposed settlement and not be bound by its terms. But the problem is that, for most 23(b)(3) classes, it would not be cost effective for individual plaintiffs to sue on their own. So even though a class member could opt out of a settlement that is the product of a reverse auction, it is far from certain that such a class member would be able to obtain substantial relief on their own.

THE POTENTIAL FOR A REVERSE AUCTION IN THIS LITIGATION

42. The *Echard* case and the cases filed by proposed Intervenors (together "the cases") present the risk of a reverse auction.

Conditions for a Reverse Auction

43. The first condition of a reverse auction is that the class actions overlap. Here, the cases seem to involve substantial overlap. *See*, *e.g.*, *Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Renewed Mot. to Intervene, Oct. 4, 2022, ECF No. No. 123, at 7-8 (citing Bartholow Decl. ¶ 3, Ex. 1; Preusch Decl. ¶¶ 4-8, Ex. A- C).

44. The *Echard* plaintiffs have acknowledged the overlap. *See*, *e.g.*, *Echard v. Wells Fargo Bank N.A.*, No. 21-cv-06984, Plaintiff's Brief On Order To Show Cause, Dkt. 32 (W.D. Wash. Sept. 3, 2021) at 6 (acknowledging that "the *Delpapa* case significantly overlaps with the case at bar").

45. This Court has acknowledged the overlap. *See*, *e.g.*, *Echard v. Wells Fargo Bank*, N.A., No. 2:21-CV-05080, Order Denying Mot. to Intervene, Apr. 25, 2022, ECF No. No. 106 at 7 ("Movants and Plaintiff Echard have brought some nearly identical claims.").

46. Indeed, proposed intervenors have raised questions about the degree to which *Echard* plaintiffs copied earlier filed complaints. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Renewed Mot. to Intervene, Oct. 4, 2022, ECF No. No. 123, at 14 (citing Bartholow Decl. ¶ 3, Ex. 1; Preusch Decl. ¶ 4, Ex. A).

47. As described above, overlapping class actions mean that a settlement of one case may preclude claims in the other overlapping class actions. That appears to be true here.

48. The opportunity for preclusion, combined the potential rewards for named plaintiffs and class counsel, create the conditions for a reverse auction. That risk is, therefore, present in these cases.

Consolidation and Transfer

49. As noted above, one way to mitigate the risk of a reverse auction is to consolidate cases in a single court.

50. Here, tracking the recommendation to consolidate overlapping class actions, there were efforts by the parties themselves to coordinate their actions in a single court—the Northern District of California. *See*, *e.g.*, *Echard v. Wells Fargo Bank*, N.A., No. 2:21-CV-05080, Renewed Mot. to Intervene, Oct. 4, 2022, ECF No. No. 123, at 4-5 (describing these efforts); *In re Wells Fargo Forbearance Litigation*, No. 2:20-CV-006009, Order re Consolidation and Briefing Schedule, Dkt. 152 (N.D. Cal. Aug. 19, 2022) (consolidating cases).

51. The *Echard* plaintiffs originally agreed that transfer to the Northern District of California was more appropriate than transfer to the Southern District of Ohio because the other cases would be litigated there. *See*, *e.g.*, *Echard v. Wells Fargo Bank N.A.*, No. 21-cv-06984, Plaintiff's Brief On Order To Show Cause, Dkt. 32 (W.D. Wash. Sept. 3, 2021) at 1 ("[I]f the Court decides to transfer this matter, the Northern District of California would be more appropriate because the Northern District of California is either the current or future location of all other

ongoing putative class actions with related claims . . . ."); *id.* at 5 ("[T]he convenience of the parties weighs heavily in favor of transferring to the Northern District of California, rather than to Ohio. All other related matters have moved to transfer to this district to be consolidated into one more manageable case."); *id.* at 6 ("[A]s all of the currently pending related matters have already moved to be transferred to this judge and jurisdiction to be consolidated into one action, it is entirely feasible for this action to also be consolidated with *Delpapa*. Transfer and consolidation of this matter would serve judicial economy and avoid inconsistent judgments in multiple jurisdictions.").

52. Based on these efforts, and again tracking the recommendation, these cases were in fact all pending in the same court at the same time—that is, until the *Echard* case was transferred to this court at the request of the proposed settling parties. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Joint Mot. to Transfer, ECF No. No. 53 (N.D. Cal. Oct. 1, 2021).

53. To say it another way, these cases were temporarily in the same court—the frequent suggestion for mitigating the risk of a reverse auction—before the *Echard* parties requested that their case be moved out to a different court.

54. Note also that the court in the consolidated action has taken some of the steps that are understood to help mitigate the effects of a reverse auction, such as consolidating actions in front of a single judge and inviting a request to appoint class counsel. *See In re Wells Fargo Forbearance Litigation*, No. 2:20-CV-006009, Order re Consolidation and Briefing Schedule, Dkt. 152 (N.D. Cal. Aug. 19, 2022). A motion to appoint interim lead counsel is pending in the Northern District of California. *See In re Wells Fargo Forbearance Litigation*, No. 2:20-CV-006009, Mot. for Appointment of Interim Class Counsel Under FRCP 23(g), Dkt. 163 (N.D. Cal. Sept. 28, 2022).

Red Flags of a Reverse Auction

55. Although it is often rare to find ironclad evidence of an ongoing reverse auction, judges may look for indicia of reverse auctions when evaluating settlements and these cases seem to present some hallmarks of the risk of a reverse auction.

56. First, because reverse auctions can be harder to police when cases are in different courts, it is notable that the *Echard* case was pending in the same court as the proposed Intervenors' cases before the proposed settling parties jointly stipulated to the transfer to another venue. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Joint Mot. to Transfer, ECF No. No. 53 (N.D. Cal. Oct. 1, 2021).

57. Second, not only was the *Echard* case transferred away from related cases, but the proposed Intervenors have raised questions about the process by which that transfer was obtained. *In re Wells Fargo Forbearance Litigation*, No. 2:20-CV-006009, Transcript of Proceedings (N.D. Cal. Aug. 18, 2022) at 26.

58. For example, to the best of my knowledge, the joint administrative motion seeking transfer of the *Echard* case to this Court did not expressly mention the existence of related cases pending in the same court in front of a different judge. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Joint Mot. to Transfer, ECF No. No. 53 (N.D. Cal. Oct. 1, 2021). Whether or not the motion was required to include this information, this fact suggests that additional scrutiny may be appropriate.

59. Third, in order for defendants to engage in reverse auctions, they must ascertain the values at which plaintiffs are willing to settle. It is notable, therefore, that the joint request to transfer to this Court appears to have been filed shortly after a mediation in the consolidated cases broke down. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Renewed Mot. to Intervene, Oct. 4, 2022, ECF No. No. 123, at 2 (describing the timeline).

60. Fourth, proposed Intervenors have provided evidence suggesting that counsel for the *Echard* plaintiffs was attentive to the attorney-fee division in the consolidated action. *See Echard v. Wells Fargo Bank, N.A.*, No. 2:21-CV-05080, Renewed Mot. to Intervene, Oct. 4, 2022, ECF No. No. 123, at 3-4 (citing Bartholow Decl. and Preusch Decl.); *id.* at 15-16. To be sure, counsel frequently attend to fee issues, and this is not necessarily problematic. But disputes among potential class counsel related to fees, combined the presence of overlapping class actions in different courts, should put the court on alert to the risk of a reverse auction.

61. Fifth, proposed Intervenors also have raised questions about communications from *Echard* plaintiffs' counsel purporting to offer incentives in exchange for not opposing the settlement. *Id.* at 16. Although efforts to discourage opposition are not necessarily problematic, when viewed in light of all of the conduct in this litigation, they suggest further scrutiny may be warranted.

62. Importantly, attention to the structure and process of settlement negotiations (such as the risk of a reverse auction) is relevant to evaluating the substantive merits of a settlement. Evaluating the substantive merits of a settlement is often difficult, so judges can and should look at the settlement process to give them some confidence about the substance. When, as here, there are reasons to worry about a reverse auction, there are reasons to worry about the substantive merits of the settlement that results.

CONCLUSION

63. In sum, the overlapping class actions filed against Wells Fargo present conditions in which a reverse auction could occur, and the facts of these cases raise red flags suggesting that the court should be attentive to the possibility of a reverse auction and all of the negative consequences that may follow from it.

* * *

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

DATED this 7th day of November, 2022.

Prof. Zachary Clopton

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In Re: Wells Fargo Forbearance Litigation	No. 2:24-cv-01026-MHW-EPD **Declaration of Economics Expert in Support of Motion for Preliminary Approval** Judge Michael H. Watson Magistrate Judge Elizabeth Preston Deavers

DECLARATION OF EDWARD M. STOCKTON

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I. INTRODUCTION

1. I, Edward (Ted) Stockton hereby declare as follows.

2. My name is Edward M. Stockton. I am the Vice-President of The Fontana Group, Inc. ("Fontana"), an economic consulting firm located in Tucson, Arizona. I also serve as Chairman of the Board of Fontana and as a board member for Fontana's parent company, Mathtech, Inc. I am an independent consultant and have no financial interest in the outcome of this matter.

3. This Declaration relates to the agreement ("Proposed Settlement Agreement") reached by the Plaintiffs and Defendant, Wells Fargo, which resolves claims relating to Wells Fargo's allegedly improper and involuntary assignment of Class Members' mortgage loans to *forbearance* status between in 2020.[1] Under the Proposed Settlement Agreement, Wells Fargo will pay $185 million in overall compensation, which I understand settlement administrators, under the direction of Class Counsel, will distribute, in part, according to certain formulaic criteria and also in connection with individual circumstances substantiated by claimants.

4. Keller Rohrback retained Fontana to evaluate the Proposed Settlement Agreement from an economic perspective and, if appropriate, to form opinions regarding the adequacy of its compensation terms to remedy economic harm likely attributable to Wells Fargo's alleged misconduct.

5. For reasons set forth in more detail, I find with a reasonable degree of professional certainty that the Proposed Settlement Agreement provides sufficient compensation to remedy both (i) aggregate systematic harm attributable to the alleged misconduct, and (ii) reasonably foreseeable levels of potential individual harm arising from the alleged misconduct. More specifically, the Proposed Settlement Agreement amount of $185 million is well in excess of the approximately

[1] The *Proposed Settlement Agreement* appears as an exhibit to Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

$109.4 million aggregate impact from the two foreseeable elements of economic harm: (a) $70.5 million in excess borrowing costs attributable to refinancing delays, and (b) $38.9 million in elevated borrowing costs associated with reduced credit scores of borrowers with forbearance indicators in their credit profiles. Allowing for fees and costs, which I understand to be a maximum of 30% of the gross settlement pool, net settlement benefits would be at least $129,500,000. This is at least $20 million in excess of reasonably anticipated economic harm from the alleged misconduct and allows for either increased subsequent distribution or funding claims for individualized types of harm that might be covered by the Proposed Settlement Agreement.

II. QUALIFICATIONS

6. I have qualifications and experience directly relevant to this assignment. I have bachelor's and master's degrees in economics and applied econometrics, respectively, and have over 25 years of experience providing economic consulting services in a professional capacity. My Curriculum Vitae appears as **Exhibit 1**.

7. I consulted extensively on *Jabbari v. Wells Fargo*, No. 15-02159 (N.D. Cal.), which involved analysis of the economic harm caused to customers by Wells Fargo's establishment of unauthorized accounts and payment obligations. In that matter, through retention by Keller Rohrback, my colleague, Dr. Sanford Weisberg, and I developed a method that estimated the degree to which Wells Fargo's allegedly unauthorized activity increased its customers' subsequent borrowing costs as a result of artificially diminished credit scores. The Court approved the use of this *credit impact damage* ("CID") model in the *Jabbari* settlement. With that approval, I directed a diverse set of professionals, both internal and from various recognized entities operating within US retail credit markets, to apply the CID model to calculate highly individualized estimates of

elevated borrowing costs, which formed the basis for CID compensation within the *Jabbari* settlement.

8. The *Jabbari* experience is particularly useful here. The highly individualized estimates referenced in the prior paragraph were the product of extensive research of elements of retail credit markets. Relevant and applied topics included, among others:

- Identification and classification of types of consumer borrowing (tradelines);
- Relationships between borrowing cost within tradeline type and credit scores;
- Tradeline duration (time that consumers held various types of credit lines);
- Duration of credit score impact on borrowing costs.

9. I have also consulted on other major class action matters in other industries. Examples include the Volkswagen Diesel Emissions matter in the U.S., Canada, and other countries, Plains Pipeline oil spill, Facebook privacy litigation, Hyundai/Kia Theft litigation, privacy matters, and others. In the Plains Pipeline and *Jabbari* matters, Keller Rohrback was the retaining law firm. In the Facebook and US Volkswagen Diesel Emissions (consumers) matters, I worked meaningfully and directly with Keller Rohrback attorneys among multi-firm plaintiff leadership groups.

10. I also gained subject matter knowledge through independent analysis in this case. Keller Rohrback engaged Fontana at an early stage to identify relevant data, perform qualitative investigation of potential economic harm that might result from the alleged misconduct, construct a model by which economic harm might be investigated, quantify the reasonably anticipated magnitude of economic harm, and assist in preparation for settlement negotiations.

III. NATURE OF ECONOMIC HARM

III.1. Introduction to Economic Harm Concepts

11. Prior to discussing the Proposed Settlement Agreement, I briefly describe a general framework through which one can assess economic harm. While the example below is quite simplified, it describes relevant concepts that I apply throughout this declaration. These include identification of the challenged behavior or alleged misconduct, the manner in which the challenged behavior or alleged misconduct might be expected to cause economic harm, and the assessment of that harm. The discussion below also identifies why it is often preferable, as it is here, to emphasize study of the affected entity under its normal circumstances.

12. As a general matter, economic harm occurs through the introduction of some disruption (usually unexpected or unauthorized) of a function, event, or behavior. While the unexpected disruption creates the possibility of economic harm, that harm is not certain. Whether and the degree to which the disruption causes economic harm depends, in effect, on a comparison of outcomes with and without the disruption present. In other words, what happened with the disruption in place, and what would have happened had the disruption not occurred? In describing this comparison, the outcome with the disruption present is often referred to as the *actual* scenario, whereas the outcome without the disruption is the *but for* scenario or *counterfactual* scenario.

13. A simple hypothetical illustration of these concepts might be as follows. Firm A is in the business of harvesting shellfish and selling them to high-end seafood restaurant chain, Firm B. The contract between Firm A and Firm B requires that Firm A deliver its daily catch at an agreed loading location by 6:00 PM sharp, at which time and place Firm B's refrigerated trucks pick up the product for distribution. While this delivery generally occurs without interruption, on one day, Firm A is delayed and arrives with its catch at 6:05 PM. As a result, Firm A's late delivery disrupts the contract between Firm A and Firm B, which we assume to breach the agreement between Firms

A and B, and also creates the possibility of economic harm. However, the existence of that harm is not certain. Evaluation of potential damages requires more information.

14. Two examples of that information might be as follows. In the first case, Firm B operates on a tight distribution schedule—it must pick up the catch at 6:00 PM to deliver the product to an airfield for distant distribution. In this scenario, the late delivery causes Firm B to lose all net benefits it would have captured from selling Firm A's catch, since the shellfish will not keep until the next delivery. Alternatively, it might be the case that a third entity, Firm C, is another shellfish supplier that was also at the loading location at 6:00 PM. While Firm A usually arrives at the delivery location first and has its product loaded first, here, Firm A's late delivery required only that Firm B load firm C's catch first, rather than loading Firm A's catch first. While this practice is not typical, and Firm A did not meet its obligations, Firm B still leaves at the time it would have, with the same catch ready for distribution. In other words, Firm B's distribution still operates as it would have had Firm A arrived on time, and damages from the disruption are negligible.

15. The admittedly simple economic harm example illustrates the link between a disruption, potentially adjudged as misconduct, and economic harm from that disruption. It also introduces a more subtle concept, which is a preferred principle of the study of economic harm and one that I apply within this Declaration. That principle is to emphasize, where possible, study of the system/function/event that is disrupted, and then to evaluate the impact of that disruption in terms of how it disrupts the normal operation of affected. In the hypothetical example above, while it was Firm A that failed to deliver its product when agreed, we knew nothing of the consequences of this failure unless and until we learned of Firm B's distribution system. With that information in hand, we could use that information to discern the impact of a delayed delivery at a given location.

III.2. Economic Harm Concepts Applied to Current Matter

16. Here, the system disrupted by Wells Fargo's alleged misconduct (unauthorized forbearances) is more complicated than the simple movement of seafood catch from the supplier to the retail market. However, many broader concepts from the simple illustration still apply. The market for home mortgages is a large and generally well-understood segment of the market for retail credit. Borrowers who participate in the home mortgage market engage in measurable behaviors that are sensitive to the presence of forbearance arrangements. They initiate new loans, pay (timely or not) their existing loans, retire loans, and refinance new loans. Data are available to observe these behaviors, at least in aggregate. Furthermore, varying market factors like interest rates, availability of credit, home values, and the ability of borrowers to support payments are inherently reflected in the amounts and types of mortgage activity that occur on a daily basis.

17. Here, forbearance arrangements impair the ability of consumers to refinance existing mortgage loans for some period of time. As a result, consumers who would have otherwise refinanced their mortgages, instead have had loan terms and overall outcomes that were different because of the presence of the forbearances than those they would have had absent the alleged misconduct. That is, their incumbent mortgages stay in place longer than they otherwise would have, and the refinanced mortgages they eventually assume have different terms than they otherwise would have. The expected differences in the timings and terms of mortgage loans creates the possibility of the comparison of actual and counterfactual scenarios for consumers potentially affected by the alleged misconduct.

18. A second element of economic harm relates to alleged misconduct by Wells Fargo in this matter, but analysis of harm from this conduct follows directly from findings in the *Jabbari* matter. A study conducted by retail credit market analytics firm, Fair Isaac Corporation ("Forbearance FICO Study") found that approximately 54% of consumers with forbearance designations on their

credit reports experienced an average of 6.9-point reductions in their credit scores.[2] As a result, consumers with forbearance designations on their credit reports tended to have less attractive borrowing profiles than they otherwise would have. Damages from this element of economic harm reflect a comparison of borrowing costs under typical credit score profiles and credit score profiles impaired by the score reduction. I refer to the reduction of a FICO or credit score as *credit injury*.

IV. ESTIMATED ECONOMIC HARM FROM MISCONDUCT

19. In this section, I describe the manner in which I estimate economic harm to Class Members from Wells Fargo's alleged misconduct. The first portion discusses economic harm from delayed refinancing. The second portion discusses CID from the credit injury that resulted from the forbearance designation.

IV.1. Delayed Refinancing

20. An ordinary element of the mortgage market is that consumers refinance existing loans and replace those loans with new loans. The operative mechanism for consumers to do so is as follows. A buyer who carries an existing mortgage agrees to terms with either an existing lender or with an alternative lender, whereby, the replacement lender pays off the existing mortgage balance; in exchange, and the borrower repays the new loan under terms that prevail in the current market, i.e., the market at the time of refinance.[3] A simple refinance example might involve a hypothetical borrower who currently carries a 30-year mortgage with a balance of $250,000 and an interest rate of 4.5%, who refinances that loan amount, also with a 30-year term, at a rate of 3.5%, paying

[2] Paul Panichelli, *Simulated FICO Score Impacts due to Mortgage Forbearance*, FICO (Sept. 29, 2020), https://www.fico.com/blogs/simulated-fico-score-impacts-due-mortgage-forbearance.

[3] Consumers may refinance their loans because the terms are more attractive, e.g., lower interest rate, or lower payments. Consumers may also refinance loans for amounts considerably larger than the remaining balance on the prior mortgage and use the excess funds for discretionary purposes, like debt consolidation, etc. Here, the loan amount of interest is the loan balance at the time of desired refinance.

$2,500 in costs at initiation. With some additional information, such as the existing loan's initial balance, initiation date, and the average duration during which consumers carry their mortgage loans (prior to sale, refinance, or retirement of the debt), it is possible to compare the hypothetical consumer's expected borrowing costs under the existing loan and the refinanced loan.

21. An implication of the alleged misconduct here is that the unauthorized forbearance designations restricted consumers who otherwise would have refinanced their mortgage loans from doing so. As a result, anticipated refinances that otherwise would have occurred could not occur until the refinance restrictions expired. For a given borrower for whom the alleged misconduct frustrated refinance plans, potential economic harm is discernible by comparing expected borrowing costs under a scenario in which the refinance occurred at the time desired to the expected borrowing costs associated with a mortgage refinance that occurred after the forbearance-induced delay.

22. While refinance intent is not available to me for any given affected borrower, relevant overall data are. To conduct this analysis, I gathered broad information regarding borrowers' overall propensity to refinance loans, average loan balances held by month, prevailing refinance interest rates by month, loan costs, estimated loan length terms (15 year/30 year), average age of loan at refinance, average original loan amounts, and estimated loan duration. Applying an estimated nine-month delay in refinancing attributable to the alleged misconduct, this enabled me to construct monthly estimates of expected borrowing costs for those buyers who (a) intended to refinance their mortgages and (b) would have qualified to refinance their mortgage loans.

23. The use of actual market-wide refinance propensities inherently accounts for broader economic factors that affect consumers' relative desires to refinance their loans and the willingness of lenders to offer those loans. As a result, estimates of the proportion of Wells Fargo mortgage

customers who likely would have been willing and able to refinance their loans are reliable. Furthermore, by relying on data sources of the type relied upon by decision-makers and analysts in the field and vetted in *Jabbari*, estimates of the expected borrowing costs associated with those potential refinance opportunities are also reliable.

24. While the harm associated with delayed refinancing in any given month depends upon, at least, the relative interest rates in the desired refinance month and the delayed refinance month, I found that interest rates during the delayed refinance period were generally lower, if not substantially lower than those present in active loans held during the delayed refinance period. As a result, consumers broadly incurred much higher borrowing costs on incumbent balances than they otherwise would have had refinancing been available to them.

25. I find with a reasonable degree of professional certainty that, with an assumed level of 270,000 mortgages affected by unauthorized forbearances, a reasonable estimate of excess borrowing costs is $70.5 million. This amounts to an average of approximately $261.11 per mortgage in place during the forbearance delay.[4]

IV.2. Credit Impact Damages

26. Here, I rely on research and analysis from the *Jabbari* matter. In that case, I researched and built detailed tiers of *rate matrices* among the major types of tradelines recognized by lenders and credit agencies. The term, "rate matrices" refers to the interest rates associated with various types of credit (e.g., credit card, personal loan, mortgage, home equity loan, or home equity line of credit vehicle loan), where those rates depend upon the credit scores or FICO scores of the borrower.[5]

[4] To be clear, this average is per mortgage in place, not per refinance frustrated by the forbearance delay.
[5] *Jabbari v. Wells Fargo*, No. 15-02159, ECF No. 184, Ex. F (Jan. 19, 2018, N.D. Cal.)

27. While credit injury reduces the attractiveness of a prospective borrower's credit profile, credit injury alone is not necessarily sufficient to cause a consumer's borrowing rate to increase. However, since rate matrices tend to delineate borrowing costs based upon ranges of FICO scores, a reduction in FICO score, even a small one, can result in negative *tier migration*, by which the credit injury exposes the consumer to *credit cost injury*, in which the borrowing rate associated with the reduced FICO score is higher than the counterfactual rate that would apply to the higher, unaffected FICO score. When a consumer takes on new credit in the presence of *credit cost injury*, increased borrowing cost or CID occurs.

28. I found, in *Jabbari*, that while the rate matrices of given lenders may vary, the presence of rate matrices, in general, are commonplace. Thus, while it is not certain that the interaction between a given credit injury event and the initiation of a tradeline with a given lender will or will not result in CID, in a probabilistic sense, credit injury correlates closely with increased borrowing costs.

29. In this matter, the type of comprehensive inquiry undertaken in *Jabbari* was not feasible. However, it was possible to import findings from *Jabbari* to this matter to estimate the impact on borrowing costs from credit injury associated with the forbearance designation. The Forbearance FICO Study indicates that 54% of borrowers with short-term forbearance designations in their credit profiles experience an average of 6.9-point reductions in their FICO scores.

30. In the *Jabbari* matter, I found at moderate levels (without a more severe specific type of "derogatory" designation not at issue here) of credit injury, that Class Members experienced increased borrowing costs of $9.33 per annual point reduction in their FICO scores. This figure reflects the volume and mix of tradelines initiated by *Jabbari* Class Members following credit

injury events. While it is reasonable to apply this finding to estimate CID harm in the current matter, some adjustments are necessary. I describe these adjustments below.

31. First, some assumption regarding the duration of the existence of credit injury is necessary. While the duration of various types of impact upon credit scores can vary, the shortest duration of which I am aware for a negative mark occurs in connection with a credit inquiry. This duration is one year. For late payments, the duration is much longer. For more serious specific types of derogatory designations, the duration can last seven years or even potentially longer. Here, a reasonable expectation of a forbearance designation is two years, as that allows the designation to have an impact for approximately 18 months after the termination of the forbearance period. This assumption may be conservative.

32. Second, given the tendency of price levels to increase over time, as well as ongoing economic growth, the aggregate amount of debt assumed by consumers tends to increase over time. In this matter, I find that a 40% increase in the amount of FICO score dependent debt is a reasonable estimate.

33. Finally, the Forbearance FICO Study's finding of a 6.9-point FICO score decrease among 54% of borrowers with forbearance designations does not provide information on the other 46% of borrowers. Absent more detail, I assume that that those buyers suffer no credit injury.

34. Under the findings and assumptions set forth above, I estimate that increased borrowing costs among affected Class Members here are approximately $38.92 million based upon an estimated 400,000 borrowers exposed to credit injury. This equates to average economic harm of approximately $97.30 per consumer.

V. SUMMARY OF FINDINGS

35. The foregoing describes my finding that systematic economic harm from the alleged misconduct here is approximately $109,420,000. Given the magnitude of the Proposed Settlement Agreement, even after fees and costs, over $20 million would remain to compensate Class Members for individualized harm that occurred for reasons other than the delayed opportunity to refinance their mortgages or increased borrowing costs associated with credit injury. As these systematic sources of harm are the most identifiable and quantifiable on a Class-wide basis, it is highly likely that any harm that is (a) outside the systematic sources of harm, and (b) threatens to deplete the settlement fund that would remain even if all Class Members were compensated fully for systematic harm, would be highly individualized. It is more likely that perceived economic harm suffered by Class Members and not covered by fixed payments already contemplated by the terms of the Proposed Settlement Agreement would be captured by the two major systematic elements of harm discussed here, and for which the settlement fund already fully and adequately accounts.

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

Dated: April 16, 2024

Edward M. Stockton

Edward M. Stockton

4878-9246-6615, v. 1

EDWARD M. STOCKTON

EDUCATION

University of Arizona, Tucson, AZ
M.S., Agriculture and Resource Economics (Applied Econometrics), 2010.
Western Michigan University, Kalamazoo, MI
B.A., Economics, 1998

POSITIONS

The Fontana Group, Inc., Tucson, Arizona
Vice President Economics Services: 2012 - present
Director of Economics Services: 2011 - 2012
Case Manager: 2005 - 2011
Senior Analyst: 2000 - 2005
Analyst: 1998 - 1999
Old Ina Corporation Tucson, AZ
Supervisor, Analyst, Manager: 1995 - 1998

RESEARCH AND CONSULTING EXPERIENCE

Mr. Stockton studies complex economic problems across multiple industries, including the retail automobile and other complex markets for durable goods. Additionally, he consults on matters involving conceptual foundations and calculation of economic harm. He has provided consultation for clients in numerous areas including:

- Retail automobile franchising, economics and marketing
- Economic impact of market malfunctions
- Allocation of new vehicles during shortages
- Franchise terminations and establishments
- Principles of customer satisfaction measurement
- Principles of sales performance measurement
- Financial forecasts and other analysis
- Applied econometrics
- Consumer credit markets
- Economic theory of competition and investment
- Competition in markets for durable, differentiated goods

REPRESENTATIVE CLIENT ASSIGNMENTS

Ronnie's Cycle Sales of Pittsfield, Inc., v. Harley-Davidson Motor Company, Inc., Pittsfield, MA, 2024.

In Re: Chrysler Pacifica Fire Recall Products Liability Litigation, Brighton, MI, 2024.

Len Stoler, Inc. d/b/a Len Stoler Hyundai, v. Hyundai Motor America Corp. And Genesis Motor America LLC, Glen Burnie, MD, 2024.
Provided deposition testimony.

Florida Automobile Dealers Association, v. Ford Motor Company, Tallahassee, FL, 2024.

W.N. Motors, Inc. d/b/a Coastal Nissan, v. Nissan North America, Inc., Norwell, MA, 2023.

William Lessin and Carol Smalley, et al, on behalf of themselves and all others similarly situated, v. Ford Motor Company, a Delaware Corporation, San Diego, CA, 2023.

Universal Auto Group d/b/a Subaru of Glendale, a California Corporation, v. Subaru of America, Inc., a New Jersey Corporation, Los Angeles, CA, 2023-2024.
Provided deposition testimony.

Marc Baus, Benjamin Bettelli, Richard Carter, David Flynn, Dana L. Herold, John P. Herold, Brian Janik, Judith Janik, Edward Rekemeyer, Thermon Stacy, Ronnie Swindell, Timothy Thuering, and John Wiley on behalf of themselves and all others similarly situated, v. Ford Motor Company, Detroit, MI, 2023.

Darling's d/b/a, Darling's Bangor Ford, and Darling's Brunswick Ford, LLC, v. Ford Motor Company, and Maine Automobile Dealers Association, Bangor, ME, 2023-2024.

William D. Berluti, individually and directly, William D. Berluti, derivatively on behalf of 120 Universal Drive Associates, LLC, William D. Berluti, derivatively on behalf of R&W Real Estate, LLC, William D. Berluti, derivatively on behalf of Peterbilt of Connecticut, Inc., William D. Berluti, derivatively on behalf of REO Truck Rental, Inc., William D. Berluti, derivatively on behalf of Truck Center, Inc., v. Richard M. Berluti and Peterbilt of Massachusetts, LLC, Old Saybrook, CT, 2023.
Provided deposition testimony.

Robert Davis and Dr. Bruce Barton, on behalf of themselves and the Putative Class, v. BMW of North America, LLC, and Bayerische Motoren Werke Aktiengesellschaft T, Newark, NJ, 2023.

Airko, Inc. and Lisa Mae Jennings individually and on behalf of all other similarly situated, v. General Motors LLC, Cleveland, OH, 2021.

Dennis Vita and FXR Construction, Inc. individually and on behalf of all others similarly situated, v. General Motors LLC, Brooklyn, NY, 2022.

Tim Nauman, individually and on behalf of all others similarly situated, v. General Motors LLC, a Delaware limited liability company, Seattle, WA, 2022.

Roger Heater, individually and on behalf of all others similarly situated, v. General Motors LLC, Clarksburg, WV, 2022.

Roy White, individually and on behalf of all others similarly situated, v. General Motors LLC, Denver, CO, 2022.

Dominguez Hurry and Terry Wasdin, individually and on behalf of all others similarly situated, v. General Motors LLC, Opelika, AL, 2023.

Robert Awalt, individually and on behalf of all others similarly situated, v. General Motors LLC, Boston, MA, 2023.

Robert Riddell, individually and on behalf of all others similarly situated, v. General Motors LLC, St. Louis, MO, 2023.

Lucid Group USA, Inc., v. Monique Johnston, in Her Official Capacity as Director of the Motor Vehicle Division of the Texas Department of Motor Vehicle; Daniel Avitia, in His Official Capacity as Executive Director of the Texas Department of Motor Vehicles; and Corrie Thompson, in Her Official Capacity as Director of the Enforcement Division of the Texas Department of Motor Vehicles, Austin, TX, 2023.

Kia Hyundai Vehicle Theft Marketing, Sales Practices, and Products Liability Litigation, Encino, CA, 2023.

Volkswagen Group Diesel Efficiency Foundation v. Volkswagen Aktiengesellschaft, Utrecht, NL, 2023.

Volkswagen Group Diesel Efficiency Stichting v. Volkswagen Aktiengesellschaft, Groningen, NL, 2023.

Aaron Gant, et al. v. Ford Motor Company, Orlando, FL, 2023-2024.
Provided deposition testimony.

Juliet Murphy, et al., v. Toyota Motor Corporation, et al., Sherman, TX, 2023.

Cowin Equipment Company, Inc., v. CNH Industrial America LLC and Scott Moore, Birmingham, AL, 2023-2024.
Provided deposition testimony.

Hyundai Subaru of Nashville, Inc. d/b/a Downtown Hyundai v. Hyundai Motor America, Inc., Nashville, TN, 2023.
Provided hearing testimony.

Rusnak/Pasadena, a California Corporation v. Jaguar Land Rover North America, LLC, Las Angeles, CA, 2023.
Provided deposition testimony.

Shakopee Chevrolet, Inc., v. General Motors, LLC, Shakopee, MN, 2023.

CJ's Road to Lemans Corp dba Audi Fresno, a California Corporation, v. Volkswagen Group of America, Inc., a New Jersey Corporation, dba Audi of America, Inc., Fresno, CA, 2023.

Ranbir Gujral and Danielle Emerson, on behalf of themselves and the Putative Class, v. BMW Of North America, LLC, and Bayerische Motoren Werke Aktiengesellschaft, Cherry Hill, NJ, 2023.
Provided deposition testimony.

Action Nissan, Inc. D/b/a Universal Hyundai for Itself and in the Name of the Department of Highway Safety and Motor Vehicle of the State of Florida, for its Use and Benefit v. Hyundai Motor America and Genesis Motor America, LLC, Orlando, FL, 2023.
Provided deposition testimony.

Al Piemonte Ford, Inc., at al v. Ford Motor Company, Chicago, IL, 2023.
Provided deposition testimony and hearing testimony.

Wasko Automotive, Inc. D/b/a St. Marys Chrysler Dodge Jeep Ram Fiat, Spitzer, v. FCA US LLC, St. Marys, PA, 2023.

Yandery Sanchez, Louise Knudson, Andrea Reiher-Odom, Derrick Smith, Amber Witt, and Mark Treston, on behalf of themselves and all others similarly situated, v. Kia Motors America, Inc., Central District of CA, 2023.
Provided deposition testimony.

Larson Motors, Inc. v. General Motors LLC, et al. Seattle, WA, 2023.
Provided deposition testimony.

Kpauto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company, Los Angelas, CA, 2023.
Provided hearing testimony.

Durwin Hampton, individually and on behalf of all others similarly situated v. General Motors LLC, Poteau, OK, 2023.

Estate of William D. Pilgrim, et al., on behalf of themselves and all others similarly situated v. General Motors, LLC, Detroit, MI, 2022-2023.
Provided deposition testimony.

Hyundai Motor America Corporation v. EFN West Palm Motor Sales, LLC (Defendant/Counterclaim Plaintiff/Third-Party Plaintiff) Gene Khaytin; Ernesto Revuelta; Edward W. Napleton; Geovanny Pelayo, Jorge Ruiz (Defendants), EFN West Palm Motor Sales, LLC; For Itself and in the Name of the Department of Highway Safety and Motor Vehicles of the State of Florida, for its Use and Benefit (Counterclaim-Plaintiff/Third-Party Plaintiff) v. Hyundai Motor America Corporation (Counterclaim-defendant) And Hyundai Motor Company (Third-party Defendant), West Palm Beach, FL, 2021-2023.
Provided deposition and trial testimony.

Sloan/Siqueiros, et al. v. General Motors LLC, San Francisco, CA, 2019-2022.
Provided deposition and trial testimony.

Spitzer Autoworld Akron, LLC, v. Fred Martin Motor Company, Akron, OH, 2022-.
Provided deposition and trial testimony.

Hyundai Motor American Corporation v. North American Automotive Services, Inc. Et al, West Palm Beach, FL, 2021-2023.

Jason Nuwer, Mark Minkowitz, Amarillis Gineris, Christina Vigoa, and Kevin Van Allen v. FCA US LLC f/k/a Chrysler Group LLC, Miami, FL, 2021-2022.
Provided deposition testimony.

Chapman, et al, v. General Motors, LLC., Detroit, MI, 2021-2023.
Provided deposition testimony.

In Re: Duramax Diesel Litigation, Relating to: Nancy Anderton, et al., v. General Motors LLC, et al., Detroit, MI, 2020-2022.
Provided deposition testimony.

Fox Hills Auto, Inc. D/b/a Airport Marina Ford v. Ford Motor Company, Central Ford Automotive, Inc., dba Central Ford v. Ford Motor Company and Los Feliz Ford, Inc., dba Star Ford Lincoln v. Ford Motor Company, Los Angeles, CA, 2021-2022.
Provided deposition testimony.

West Palm Beach Acquisitions, Inc. d/b/a Greenway Kia West Palm Beach and Florida Department of Highway Safety & Motor Vehicles, v. Kia Motors America, Inc., West Palm Beach, FL, 2020-2022.
Provided deposition testimony.

Kenneth John Williams and Another Applicants v. Toyota Motor Corporation Australia Limited, New South Wales, Australia, 2020-2022.
Provided trial testimony.

Gabriel Patlan, Ryan Cornell, and La Della Levy, on behalf of themselves and all others similarly situated v. BMW of North America LLC; Wendy Vazquez, on behalf of herself and all individuals similarly situated v. BMW of North America, LLC; Vikkie Wilkinson, on Behalf of Herself and the Putative Class, v. BMW of North America, LLC and Bayersiche Motoren Werke Aktiengesellschaft, Trenton, NJ. 2020-2023.
Provided deposition testimony.

Peterson Motorcars, LLC et al v. BMW of North America, LLC, Louisville, KY, 2019-2021.
Provided deposition testimony.

James Bledsoe, Paul Chouffet, Martin Rivas, Jeremy Perdue, Michael Erben, Martin Witberg, Marty Ward, Alan Strange, James Forshaw, Matt Langworthy, Natalie Beight, Jordan Hougo, Dawn Roberts, and Marc Ganz, on Behalf of Themselves and All Others Similarly Situated, v FCA US LLC, a Delaware Corporation, and Cummins Inc., an Indiana Corporation, Detroit, MI, 2021.
Provided deposition testimony.

Ricardo R. Garcia, et al. v. Volkswagen Group of America, Inc., et al., Alexandria, VA, 2020-2022.
Provided deposition testimony.

Paul Weidman, et al., v Ford Motor Company, Detroit, MI, 2020-2022.
Provided deposition testimony.

Milind Desai v. Geico Casualty Company, Cleveland, OH, 2020-2021.
Provided deposition testimony.

Eric Stevens, Christopher L. Rodriguez, Michael S. Frakes, Terry Pennell, Ray Moore, Kent Larry Bakken, Lynn E. Kirkpatrick, and Michael E. Stone v. Ford Motor Company. Corpus Christi, TX, 2021-2022.
Provided deposition testimony.

In the matter of Luxury Cars of Bayside, Inc., v. BMW of North America, LLC, Long Island, NY, 2019-2022.
Provided hearing testimony.

Clarence Simmons, Franklin Navas, Jorge Arroyave, Joseph Dabbs, Jennifer DeWitt, Anne Erdman, Mark James, Shand Jackson, Mike Tierney, Mark Van Bus Kirk, John Buczynski, Ilja Lopatik, Brian Yarborough, William MacSaveny, Ryan Marshall, Allyson Rogers, Peter Tulenko, and Greg Licktenberg, on behalf of themselves and all others similarly situated v. Ford Motor Company, Miami, FL, 2021.
Provided deposition testimony.

Kimberley Carter and Keith Halliday v. Ford Motor Company of Canada, Ltd., Ford Credit Canada Limited and Ford Motor Company, Toronto, Canada, 2020-2022.
Provided cross-examination testimony.

Braman Motors, Inc., d/b/a Braman BMW, for Itself and in the Name of the Department of Highway Safety and Motor Vehicles of the State of Florida, for its Use and Benefit, and Palm Beach Imports, Inc., d/b/a Braman Motorcars, for Itself and in the Name of the Department of Highway Safety and Motor Vehicles of The State of Florida, for its Use and Benefit, and The Department of Highway Safety and Motor Vehicles of the State of Florida, for the Use and Benefit of Braman Motors, Inc. and Palm Beach Imports, Inc. v. BMW of North America, LLC. Miami, FL, 2021.
Provided deposition testimony.

Gina Signor, Individually and on Behalf of All Those Similarly Situated v. Safeco Insurance Company of Illinois, Ft. Lauderdale, FL, 2020-2021.
Provided deposition testimony.

Between Barry Rebuck and Ford Motor Company and Ford Motor Company of Canada, Limited and Yonge-Steeles Ford Lincoln Sales Limited Proceeding under the Class Proceedings Act, 1992, Toronto, Ontario, Canada, 2018-2020.
Provided cross-examination testimony.

In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation Nemet v. Volkswagen Group of America, Inc., San Francisco, CA, 2019-2020.
Provided deposition testimony.

William South, Individually and on Behalf of All Those Similarly Situated v. Progressive Select Insurance Company, Tampa, FL, 2020-2021.
Provided deposition testimony.

Biljana Capic v. Ford Motor Company of Australia Limited, New South Wales, Australia, 2019-2020.
Provided trial testimony.

Jason Counts, Donald Klein, Oscar Zamora, Derek Long, Bassam Hirmiz, Jason Silveus, John Miskelly, Thomas Hayduk, Christopher Hemberger, Individually and on Behalf of All Others Similarly Situated, v. General Motors, LLC, Robert Bosch GMBH, and Robert Bosch, LLC, Detroit, MI, 2019-2023.
Provided deposition testimony.

Alfredo's Foreign Cars, Inc., d/b/a Larchmont Chrysler Jeep Dodge v. FCA US LLC, NY, NY 2019.
Provided hearing testimony.

George Tershakovec, et al. v. Ford Motor Company, Miami, FL, 2019-2024.
Provided deposition testimony and trial testimony.

Continental Imports Inc. d/b/a Mercedes Benz of Austin v Swickard Austin, LLC d/b/a Mercedes Benz of South Austin, Austin, TX, 2019-2020.
Provided deposition and hearing testimony.

Vista Ford Oxnard, LLC., d/b/a Vista Ford Lincoln of Oxnard v. Ford Motor Company and Ford of Ventura, Inc., d/b/a Ford of Ventura, Intervenor, Oxnard, CA, 2019.
Provided deposition and hearing testimony.

Colonial Chevrolet Co., Inc., et al.; Alley's of Kingsport, Inc., et al.; and Union Dodge, Inc., et al. v. The United States, Washington, DC, 2011-2019.
Provided deposition and trial testimony.

Barber Group, Inc., d/b/a Barber Honda v. American Honda Motor Co., Inc., Galpinsfield Automotive, LLC, Intervenor. Bakersfield, CA, 2018-2021.
Provided deposition and hearing testimony.

Association of Equipment Manufacturers, AGCO Corporation, CNH Industrial America LLC, Deere & Company, and Kubota Tractor Corporation, v. the Hon. Doug Burgum, Governor of the State of North Dakota, in His Official Capacity, and the Hon. Wayne Stenehjem, Attorney General of the State of North Dakota, in His Official Capacity, and North Dakota Implement Dealers Association, Intervenor-Defendant, Bismarck, ND, 2018.
Provided deposition testimony.

Napleton's Arlington Heights Motors, Inc. f/k/a Napleton's Palatine Motors, Inc. d/b/a Napleton's Arlington Heights Chrysler Dodge Jeep RAM, an Illinois Corporation; et. al, v FCA US LLC, Chicago, IL, 2017-2019.
Provided deposition and hearing testimony.

Star Houston, Inc. d/b/a Star Motor Cars v. Volvo Cars of North America, LLC, Houston, TX, 2017-2020.
Provided deposition and hearing testimony.

Sioux City Truck Sales, Inc. v. Peterbilt Motors Company, *Sioux City, IA,* 2017.
Provided deposition and hearing testimony.

Capitol Buick GMC, LLC v. General Motors LLC, Baltimore, MD, 2017-2018.
Provided deposition and hearing testimony.

Crown Chrysler Jeep, Inc. d/b/a Crown Kia v. Kia Motors America, Columbus, OH, 2017-2018
Provided deposition and hearing testimony.

Folsom Chevrolet, Inc. dba Folsom Chevrolet v. General Motors, LLC, Folsom, CA, 2017-2018.
Provided deposition and hearing testimony.

Sunnyvale Automotive Inc., dba Sunnyvale Ford Lincoln v. Ford Motor Company, Sunnyvale, CA, 2017.
Provided deposition testimony.

Omar Vargas, Robert Bertone, Michelle Harris, and Sharon Heberling, individually and on behalf of a class of similarly situated individuals v. Ford Motor Company, Los Angeles, CA, 2017-2020.

Charles Johnson, et al. individually and on behalf of all others similarly situated v. Ford Motor Company, Huntington, WV, 2017.
Provided deposition testimony.

Shawn Panacci v. Volkswagen Aktiengesellschaft, Volkswagen Group Canada, Inc., Audi Aktiengesellschaft, VW Credit Canada, Inc. and Audi Canada, Toronto, Ontario, Canada, 2017.

Rebecca Romeo and Joe Romeo v. Ford Motor Company and Ford Motor Company Canada, Limited, Toronto, Ontario, Canada, 2017-2019.
Provided cross-examination testimony.

Duncan McDonald v. Samsung Electronics Canada, Inc. Toronto, Ontario, Canada, 2017.
Provided cross-examination testimony.

The Estate of Richard C. Poe, Richard C. Poe II v. Paul O Sergent, Jr., et al., El Paso, TX, 2017-2018. Provided deposition testimony.

Star Houston, Inc. d/b/a Star Motor Cars v. VCWH. LLC d/b/a Volvo Cars West Houston and Volvo Cars of North America, LLC, Houston, TX, 2017.
Provided deposition testimony.

Option Consommateurs et Francois GrondinPersonne Désignée C. Volkswagen Group Canada Inc. et al.(2L), Montreal, Quebec, 2016-2018.

Option Consommateurs et Francois GrondinPersonne Désignée C. Volkswagen Group Canada Inc. et al. (3L), Montreal, Quebec, 2017-2018.

John M. McIntosh v. Takata Corporation, TK Holdings, Toyota Motor Corporation, Toyota Motor Manufacturing, Canada Inc., and Toyota Motor Manufacturing Indiana, Inc., Toronto, Ontario Canada, 2017.

Rick A. Des-Rosiers and Stephen Kominar v. Takata Corporation, TK Holdings, Honda Motor Co., LTD, Honda of America Manufacturing, Inc., and Honda Canada, Toronto, Ontario, Canada 2017.

Yogesh Kalra v. Mercedes-Benz Canada Inc., Daimler AG, Mercedes-Benz USA LLC and Mercedes-Benz Financial Services Canada Corporation, Toronto, ON, Canada, 2017-2022.
Provided cross-examination (deposition) testimony.

Lake Forest Sports Cars, LTD v. Aston Martin Lagonda of North America, Inc., Chicago, IL, 2017.
Provided deposition testimony.

Shahriar Jabbari and Kaylee Heffelfinger on behalf of themselves and all others similarly situated v. Fargo Company and Wells Fargo Bank, N.A. San Francisco, CA, 2016-2021.

Matthew Robert Quenneville et al. v. Volkswagen Group Canada, Inc.,Volkswagen Aktiengesellschaft, Volkswagen Group of America, Inc., Audi Canada, Audi Aktiengesellschaft, Audi of America, Inc., Inc., and VW Credit Canada, Inc. (2L), Ontario, Canada, 2016-2021.

Matthew Robert Quenneville et al. v. Volkswagen Group Canada, Inc.,Volkswagen Aktiengesellschaft, Volkswagen Group of America, Inc., Audi Canada, Audi Aktiengesellschaft, Audi of America, Inc., Inc., and VW Credit Canada, Inc. (3L), Ontario, Canada, 2017-2018.

Fort Collins Nissan, Inc. d/b/a Tynan's Kia, v. Kia Motors America, Inc., Ft. Collins, CO, 2015-2018.
Provided deposition testimony.

In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, Napleton et al v. Volkswagen Group of America et al., No. 16-02086, 2015-2019.

Above including *J. Bertolet, Inc. et al v. Robert Bosch, LLC and Robert Bosch GmbH.*, MDL No. 02672-CRB (JSC), 2016-2019.
Provided deposition testimony 8/2019.

Northwest Hills Chrysler Jeep, LLC; Gengras Chrysler Dodge Jeep, LLC; Crowley Jeep Dodge, Inc.; Papa's Dodge, Inc. v. FCA US, LLC and Mitchell Dodge, Inc., Canton, CT, 2015-2017.
Provided deposition and hearing testimony.

VMDT Partnership, LP, v. Thornbury Township, Delaware County, Pennsylvania, 2015-2017.
Provided hearing testimony.

John Deere Construction & Forestry Company v. Rudd Equipment Company, Inc., Houston, TX, 2015-2017.
Provided hearing testimony.

Ball Automotive Group d/b/a Ball Kia, v. Kia Motors America, Inc., San Diego, CA, 2015-2017.
Provided deposition testimony.

GB Auto Corporation d/b/a Frisco Kia, v. Corinth Automotive Plano, d/b/a Central Kia of Plano, Kia Motors America, Inc. Intervenor, Dallas, TX, 2015-2017.
Provided deposition testimony.

Walter Enterprises, Inc., d/b/a Timmons Subaru v. Subaru of America, Inc., Long Beach, CA, 2016-2017.
Provided deposition testimony.

Motor Werks Partners, LP, v. General Motors, LLC, Chicago, IL, 2015-2017.
Provided deposition testimony.

Jeff Looper et al., v. FCA US LLC, f/k/a Chrysler Group, LLC, et al., California and Texas, 2015-2016.
Provided deposition testimony.

In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, San Francisco, CA*, 2015-2017.*

Dependable Dodge, Inc. v. Fiat Chrysler Automobiles, Inc., Canoga Park, CA, 2015-2017.
Provided deposition and hearing testimony.

Wayzata Nissan, LLC v. Nissan North America, Inc., et al., Wayzata, MN, 2015-2017.
Provided pre-filed trial testimony.

Glick Nissan, Inc. v. Nissan North America, Inc., Westborough, MA, 2015-2016.

Volvo Construction Equipment North America, LLC v. Clyde/West, Inc., Spokane, WA, 2015.

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Tom Matson Dodge Inc. v. FCA US LLC., Seattle, WA, 2015.

Ferrari of Atlanta, Atlanta, GA 2015.

Grossinger Autoplex, Inc. v. General Motors, LLC, Chicago, IL, 2015-2016.
Provided deposition and hearing testimony.

Mathew Enterprise, Inc. v. Chrysler Group LLC, San Jose, CA, 2015-2016.
Provided deposition and trial testimony.

Navistar v. New Baltimore Garage, Warrenton, VA, 2015-2016.
Provided hearing testimony.

Mathew Enterprise, Inc., a California Corporation, and Mathew Zaheri, an individual v. Chrysler Group, LLC, a Delaware Liability Company; Chrysler Group Realty Company, LLC, a Delaware Limited Liability Company, and DOES 1-40, San Jose, CA 2014-2015.
Provided trial and deposition testimony.

CNH America, LLC n/k/a CNH Industrial America, LLC v. Quinlan's Equipment, Inc., Racine, WI, 2014-2015.
Provided deposition testimony.

Grayson Hyundai, LLC and Twin City Hyundai, Inc., v. Hyundai Motor America, Knoxville, TN, 2014-2015.
Provided deposition testimony.

TrueCar, Inc. v. Sonic Automotive, Inc., and Sonic Divisional Operations, LLC, Los Angeles, CA, 2015-2016.
Provided deposition testimony.

TECC, Complaintant v. GM Respondent before the California New Motor Vehicle Board, Oakland, CA, 2014-15.

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Bates Nissan, Inc., v. Nissan North America Inc., Killeen, TX, October 2014-2017.
Provided deposition and hearing testimony.

Recovery Racing, LLC d/b/a Maserati of Fort Lauderdale v. Maserati North America, Inc., and Rick Case Weston, LLC, d/b/a Rick Case Maserati, Ft. Lauderdale, FL, 2014-2015.
Provided hearing testimony.

Sweeten Truck Center, L.C. v. Volvo Trucks North America, a Division of Volvo Group North America, LLC, Before the Texas Department of Motor Vehicles Motor Vehicle Division, Austin, TX, 2014-2015.
Provided deposition and hearing testimony.

Beck Chevrolet Co, Inc. v. General Motors LLC, New York, NY 2014-2016.
Provided trial testimony.

BSAG Inc., and Bob Stallings Nissan of Baytown, Inc. v. Baytown Nissan, Inc., Burklein Family Limited Partnership, Nissan North America, Inc., and Frederick W. Burklein, Harris County, TX 2014.
Provided deposition testimony.

Richard C.B. Juca v. Larry H. Miller Corporation, Peoria, AZ, 2014.

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Provided deposition testimony.

Century Motors Corporation v. Chrysler Group, LLC et al., Wentzville, MO 2014-2015.
Provided deposition and trial testimony.

Keyes European, LLC v. Encino Mercedes, LLC, Steve Zubieta, David Floodquist, Shimon Broshinsky and Does 1-20, Los Angeles, CA, 2014.

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Butler Toyota et al v. Toyota Motor Sales, Indianapolis, IN, 2014.

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Santa Cruz Nissan, Inc., dba Santa Cruz Nissan v. Nissan North America, Inc., Santa Cruz, CA 2013-2015.
Provided deposition and hearing testimony.

Majid Salim v. Henry Khachaturian aka Hank Torian, Torian Holdings, Fremont Automobile Dealership, LLC., and Does 1-20, Alameda County, CA, 2013-2014.
Provided deposition and trial testimony.

GMAC v. Lloyd Belt, Lloyd Belt GM Center, Inc., and Lloyd Belt Chrysler, Inc., Eldon, MO 2013-2014.
Provided deposition testimony.

General Motors v. Englewood Auto Group, LLC, Englewood, NJ, 2012-2014.

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Provided hearing testimony.

Van Wie Chevrolet, Inc. d/b/a Evans Chevrolet v. General Motors LLC and Sharon Chevrolet, Inc., Baldwinsville, NY, 2012-2017.
Provided deposition testimony.

Midcon Compression L.L.C. v. Loving County Appraisal District, Loving County, TX, 2013.
Provided deposition testimony.

Texas Automobile Dealers Association, Austin, TX, 2013.
Provided hearing testimony before Business and Industry Committee in Texas H.O.R.

Tyler Automotive, Niles, MI, 2013.

Sutton Suzuki, Matteson, IL 2013.

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Provided deposition and hearing testimony.

James T. Stone, individually, and on Behalf of JDJS Auto Center, Inc. v. Jacob A. DeKoker, Pro Financial, Inc., and JDJS Auto Center, Inc., Tyler, TX, 2012.

New Country Automotive Group, Saratoga Springs, NY, 2013-2017.

Goold Patterson, Las Vegas, NV, 2012.

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Law Office of Gary E. Veazey, Memphis, TN, 2012.

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Chrysler Group, LLC v. Sowell Automotive, Inc. et al., 2012-2013.

Morrie's European Car Sales, Inc. dba Morrie's Cadillac-Saab v. General Motors, LLC, Minneapolis, MN, 2012-2015.
Provided deposition testimony.

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Provided hearing testimony.

Bowser Cadillac, LLC v. General Motors, LLC v. Rohrich Cadillac, Inc., McMurray, PA, 2012-.
Provided hearing testimony.

In Re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Expert Report of Products Liability Litigation, Santa Ana, CA, 2010-2013.

Planet Subaru, John P Morrill, and Jeffrey R. Morrill v. Subaru of New England, Hanover, MA, 2011-2012.

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Napleton Automotive Group, Chicago, IL, 2011.

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Provided deposition and hearing testimony.

First United, Inc. A California Corporation dba De La Fuente Cadillac v. General Motors, Greiner Poway, Inc. and Does 1-50, San Diego, CA, 2012.

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Riverside Motorcycle, Inc. dba Skip Fordyce Harley-Davidson v. Harley-Davidson Motor Company, Riverside, CA, 2011- 2012.
Provided deposition and hearing testimony.

Leep Hyu, LLC, an Iowa Corporation also known as Lujack Hyundai v. Hyundai Motors America, Green Family Hyundai Inc., and Green Family Holdings LLC, Davenport, Iowa, 2011.
Provided trial testimony.

Royal Motor Sales, San Francisco, CA, 2011-2012.

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Star Houston, Inc., d/b/a Star Motor Cars v. Mercedes-Benz USA, LLC, Houston, TX, 2010-2013.
Provided deposition testimony and hearing testimony.

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Provided deposition and hearing testimony.

Laidlaw's Harley-Davidson Sales, Inc. dba Laidlaw's Harley-Davidson v. Harley-Davidson Motor Company, Sacramento, CA, 2011- 2012.
Provided deposition and hearing testimony.

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Boas International Motors dba San Francisco Honda v. American Honda Motor Co., San Francisco, CA, 2011.

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Mega RV Corp. v. Mike Thompson Recreational Vehicles, Irvine, CA, 2010-2014. Provided deposition testimony.

Harry W. Zanville, Esq., San Diego, CA, 2010-.

Pond, Athey, Athey & Pond, Front Royal, VA, 2010-2014.

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Laura Buick-GMC, Collinsville, IL, 2011.

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Provided deposition testimony.

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Provided deposition testimony.

Rally Auto Group, Inc. v. General Motors, LLC, Palmdale, CA, 2010.
Provided hearing testimony.

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Provided hearing testimony.

Cape County Auto Park I, Inc. v. Chrysler Group, LLC, Cape Girardeau, MO, 2010.
Provided hearing testimony.

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Provided declaration.

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Provided deposition and hearing testimony.

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Provided deposition testimony.

Wiggin & Nourie, P.A., Manchester, NH, 2007-2008.

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Volkswagen of America, Inc., and Aristocrat Volkswagen East, Inc. v. Royal Automotive, Inc., d/b/a Royal Volkswagen, Orlando, FL, 2007-2008.

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Trends in Franchise Economics and a Theory of Dealer Investment, presented to CPA group, Oklahoma City, OK, 2014.

"Sales expectations vs Sales Expectations," presentation to AutoCPA Group, 2013.

Testimony before the Texas House of Representatives on behalf of the Texas Automobile Dealers Association regarding public policy issue related to franchise law, April 9, 2013.

"Navigating the Post-Slump Environment," presentation to Chief Financial Officers Group, Palm Springs, CA, April 2012.

"How Dealers Can Protect Themselves" presentation to AutoCPA Group, 2011.

Minnesota Auto Dealers, issues related to General Motors and Chrysler bankruptcies and dealer arbitrations, 2010.

Arizona Electric Power Cooperative, hourly load forecasting using econometric estimation, 2006.

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRIAN ECHARD, ET AL,	)	
	)	
PLAINTIFFS,	)	CASE NO. 2:21-cv-5080
	)	
vs.	)	
	)	
WELLS FARGO BANK NA, ET AL,	)	
	)	
DEFENDANTS.	)	
	)	
IN RE WELLS FARGO FORBEARANCE LITIGATION,	)	
	)	
	)	CASE NO. 2:24-cv-1026
	)	

TRANSCRIPT OF MOTION HEARING PROCEEDINGS
BEFORE THE HONORABLE MICHAEL H. WATSON
WEDNESDAY, MAY 22, 2024; 10:05 A.M.
COLUMBUS, OHIO

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Proceedings recorded by mechanical stenography, transcript produced by computer.

Wednesday Morning Session

May 22, 2024

- - -

THE DEPUTY CLERK: These are case numbers 2:21-cv-5080 Echard, et al versus Wells Fargo Bank NA, et al, and case number 2:24-cr-1026, In Re Wells Fargo Forbearance Litigation. Counsel, please enter your appearances.

MR. LOESER: Good morning, Your Honor. Thank you for holding this hearing. My name is Derek Loeser. I'm from Keller Rohrback for the consolidated plaintiffs.

THE COURT: Thank you.

MR. BARTHOLOW: Good morning, Your Honor. Thad Bartholow also for the consolidated plaintiffs. My firm is Kellett & Bartholow.

THE COURT: Thank you.

MS. TONRY: Morning, Your Honor. Claire Tonry for the Echard plaintiffs from Smith & Lowney.

MR. LOWNEY: Good morning, Your Honor. Knoll Lowney for the Echard plaintiffs also from Smith & Lowney.

THE COURT: Thanks for coming.

So I have concerns about your proposed settlement agreement.

MS. WILLIAMS: Apologies, Your Honor. Amy Williams with Troutman Pepper here for Wells Fargo.

THE COURT: Thank you.

MR. MAYBERRY: Good morning, Your Honor. Bill Mayberry with Troutman Pepper for Wells Fargo.

MR. WEIGAND: Good morning, Your Honor. Steve Weigand with the Faruki law firm for Wells Fargo.

THE COURT: I know you want to get this over with. I want to get this over with. I want you to tell me how to do it.

As I say, I have concerns about the settlement agreement. We have two cases, the Echard case and the consolidated case, and perhaps the Stoff case is yet a third case. By my read of the settlement agreement, you envision these cases proceeding simultaneously under two or three different case numbers with one settlement agreement, one class definition, and one notice form and process. I'm concerned that this framework will create unnecessary legal complexities or contradictions.

As some examples, if Jane Doe meets the class definition, would she receive multiple notices of settlement, one for each case number? Is she a member of the Echard class or the consolidated class, or both? Is she a member -- if she's a member of both, it seems she not be able to recover under both for the same injury, but how do we decide which case she gets to recover in? Does being a member of one class mean Jane Doe releases all her claims from the other case? What does that mean if all the claims are the same?

In addition, I'm concerned about the Stoff case. By your new filing it sounds like the Stoff people would be class members here but would have different release language in their settlement. I'm not sure that we can do that unless we have two subclasses, a California subclass which would be all the Stoff people and a non-California subclass which is everyone else.

Bottom line, I'm sceptical that this sort of settlement is proper and at least at the moment I'm not inclined to approve it. I'm willing to be enlightened as to how we can permit the same settlement with the same class definition to proceed in multiple separate lawsuits.

To that end, you may file one joint brief not to exceed 15 pages explaining how this type of settlement is proper. To clarify, I do not want a list of cases where courts have approved this type of settlement without discussion of these issues. I want to know whether this type of settlement can be proper.

As a final note, it seems like consolidation could solve at least some of the problems. Feel free to discuss that in your brief, too.

Would a deadline of Friday, June 21st at 5:00 p.m. work? That's a question.

MR. LOESER: Your Honor, may I approach the podium?

THE COURT: You may.

MR. LOESER: First of all, that deadline is fine. I am hoping that, perhaps, through this conversation we can make some of this unnecessary and further briefing, perhaps, unnecessary.

The structure is highly unusual. I think Your Honor is right to be concerned about it. There is, however, no interest by anyone here to have more than one settlement, more than one class, more than one notice, and more than one approval order.

So what's happened here is, as you know, we started this litigation, we were litigating it, the Echard folks showed up, they settled the case out from under the active litigation and then there was this contest that happened about whether that settlement was appropriate or not. We informed Your Honor we thought it was not and Your Honor stayed that case and did not preliminarily approve that settlement.

That then allowed us to get back to Wells Fargo to restart the negotiations that we had started several years before and reach a new settlement. The new settlement is $185 million. It nearly doubles the Echard settlement. It adds about 50 percent more class members.

Now, there's no interest and no plan for you to issue two orders, to keep these cases separately proceeding. And so what we would like to see happen is if Your Honor preliminarily approved the settlement, that preliminary approval would approve one settlement that would have all of these cases

within it.

The consolidation issue, Your Honor, the reason why these cases aren't consolidated, frankly, is that, as we've informed the Court, we were very concerned about a lot of the conduct that occurred and we wanted to make sure that our separate representation remained intact. It was not because we wanted there to be more than one settlement.

And so if Your Honor issues a settlement order, frankly, Your Honor could take the consolidated litigation, issue an order in that case, or it can take both of these cases, issue an order in both cases. But the result of that order will be one settlement, one class, one notice, and so on.

So if what Your Honor is concerned about is that there's something other than that being proposed here, I absolutely agree that trying to do this with multiple settlements, multiple classes would be a disaster. And I don't think anyone in this courtroom is suggesting to you that that's what should happen.

The parties worked quite hard to file a uniform preliminary approval motion. Frankly, Your Honor, that was not easy to do because we have such a different view of the litigation history here than the Echard counsel. But it did happen. We did file a uniform motion.

We sat aside the one issue that's disputed here which is who should be appointed class counsel. Once Your Honor makes

that decision, and frankly, we think you have everything you need to make that decision, and class counsel is appointed, some of these other concerns Your Honor is highlighting go away. And I think, frankly, it will become much more efficient once there's a class counsel determination. Obviously we think it should be us. I know Echard counsel believes otherwise.

THE COURT: Let me finish and I'll get back with you.

While we're here, I know there are pending motions to appoint class counsel and motions to seal and to enforce mediation privileges related to the motions to appoint. Given my concerns with the settlement agreement, I'm striking the motions to appoint class counsel as premature.

Because those motions are stricken, I'm also striking the related motions concerning confidentiality as moot because stricken documents are no longer part of the public record. The unusual concerns for sealing documents do not apply. Accordingly, I'll direct the clerk to seal ECF number 187 and 188 in the Echard case and the corresponding documents in the consolidated case.

The plaintiffs may file renewed motions to appoint class counsel within 21 days of my approval of a final settlement agreement for all these cases. However, you should also know that if I approve the settlement agreement, I am inclined to make all plaintiffs' counsel co-class counsel. If you disagree and still dispute who should be class counsel, I strongly

encourage you to work together to avoid a repeat of all the sealing and mediation issues.

I'll follow this up with an order so you'll know what I'm talking about here.

What else have you?

MR. LOESER: Your Honor, I do think we should take this time, Court permitting, to talk some about the settlement itself which I think is an excellent result for the class. I think if we can give the Court additional information about the settlement that facilitates the Court's decision in determining that it should be preliminarily approved, I think that would be helpful. So if you are interested in hearing that, I can tell you a bit more about the settlement and what it provides.

THE COURT: Well, you're all here so let's hear about it.

MR. LOESER: Okay. So as I started to say, Your Honor, after you stayed the Echard case, the parties went back to mediation. Layn Phillips was selected as a mediator and obviously mindful of all the privilege issues, some of which you've heard about.

What I can say about that mediation is that Judge Phillips and his team did an excellent job. They managed to take a group of people, a defendant had already settled the case. It's pretty hard to get defendants to increase settlements once they make a decision. And through the

excellent work of the mediator, the settlement was virtually doubled.

THE COURT: That's the problem in another case I have. So go ahead.

MR. LOESER: And we had a lot of concerns about the prior settlement and I think in looking at the factors for preliminary approval, one of them obviously is the arm's length nature of the negotiations. I think that it's very clear from what happened and the result that this was an arm's length negotiation that was very, very successful and we're very thankful to Judge Phillips for the work that he did.

I will say with regard to Judge Phillips, to the extent Your Honor has any questions at all of the sort that the Ohio mediation act allows this Court to ask of a mediator, he has told the parties that he is available to answer any questions the Court may have. And we encourage the Court to ask him any questions you have. I'm sure you'll find that he's available to answer them.

The feature of the settlement I think is most remarkable is the relief that's provided. It's pretty rare in class action settlements to provide make-whole relief. And yet here, what we've been able to do with the $185 million settlement is provide total make-whole relief and, frankly, then some, for the types of damages that people incurred or likely incurred because of Wells Fargo's conduct.

When you are put into forbearance, there's a credit harm that occurs. There's also people in forbearance can't refinance their loans. And in the environment when this was occurring, interest rates were dropping. And so there's a lost opportunity to decrease borrowing costs. And we have submitted the expert report of Ted Stockton who is an economist we worked for in other cases. In fact, he was our expert in the Wells Fargo unauthorized account case.

And he used models to show and calculate what the harm was from those events, the credit events and the inability to refinance using a probabilistic methodology and was able to determine that $185 million, even after all the fees and costs and administrative expenses are deducted, is still significantly more than necessary to provide make-whole relief.

So I think that's a real accomplishment in this case and something that was very hard fought and is a wonderful result for this class. And we're happy to report that that occurred.

THE COURT: What happens to their credit?

MR. LOESER: What happens to people's credit when you're in forbearance is, based upon Mr. Stockton's analysis, it can cause a decline in the credit score. And when your credit score goes down, your costs to borrow go up.

So his analysis, he's not actually looking at every single person in this case. He actually did that in our other case because he had all the data. He's looking at making sort

of a probabilistic determination. This is the amount of harm that would occur. This is the amount of impact that would have on typical debt of class members.

And then on the refinance side of things, it's not a credit issue. It's simply the inability to refinance and so he's analyzed the amount that rates went down during this time period, the time period during which people could not refinance, and has calculated, based on that, an estimate of what that costs people.

THE COURT: Will they ever be able to refinance?

MR. LOESER: Yes.

THE COURT: Some have?

MR. LOESER: I'm sure some have. I can't name them for you. But the people who are no longer in forbearance are able to refinance. Whether they want to in a rising rate environment is obviously different than a falling.

THE COURT: A different market now.

MR. LOESER: So the one other thing about the settlement, Your Honor, I want to describe is who's in the class and what was done to determine who should be in the class. Because that was another --

THE COURT: Also speak to the Stoff matter, too.

MR. LOESER: Yes. Certainly, Your Honor.

So this was not an easy task in this case to figure out who is someone who did not ask for but got a forbearance. One

would think that's an easy thing to figure out. But the way Wells Fargo's systems work and the records that they keep, it's not that easy to figure out. And we -- in advance of the very first mediation we did in this case, there was an exchange of information in discovery but also for the mediation that was an enormous quantity of data about the several million people who were potentially impacted by this.

And we happen to have an associate, Zach Gussin, who is here in the courtroom. Mr. Gussin, who in addition to his legal skills, is tremendously good with databases and programming Excel.

And Zach did an inordinate amount of work to figure out who are all these people and how did they get from here to there by programming these databases. And that enabled us to have a very good understanding of the different channels that people went through and how they ended up where they are. Which then allowed us to have very substantive and detailed conversations with Wells Fargo about that.

That work started before the first mediation. That work was something that we also prepared and continued in the mediation with Judge Phillips. And I just want to give you a little more information about that. I think it's really important, particularly in light of the concerns, again, that we had about the prior settlement.

One of the groups of people in the class are borrowers

who are placed into forbearance without any request at all. And those are referred to in the settlement as the business decision group. And that's a large group of people that through that data analysis and the operation of a bunch of screens we could say, these people, they never made any request whatsoever. So they're in the class.

There's then a second group of borrowers who were placed into forbearance after they used Wells Fargo's automated online what are called IVR systems at a time when the use of those systems didn't have with it accurate information about what would happen with regard to your credit, among other things. And that's a population that it's a little bit nuanced because if you found yourself in forbearance using that system but then you asked to continue with forbearance, you're not in the group. But if you didn't, then you're in the group. Again, a lot of data, a lot of categorizing, figuring out with who are these people.

And then there is a third group of people who ended up in forbearance based on phone calls that they made in which they were asking questions of Wells Fargo. Again, required a lot of work, listening to phone calls and recordings, among other things, to figure out what's the population of people who, based upon these phone interviews, should not be in forbearance. And that is a third group of persons.

It was through all of that analysis that we were able to

come to this Court before and say, this class doesn't have all of the people who were harmed. The work was not done to figure out who should be here.

That work has been done and now we can say with great confidence that this settlement provides relief to all of the impacted borrowers who were placed into forbearance without their consent.

THE COURT: I want to clarify that my concerns are not with the substance of the settlement. It's about the legality and the logistics of the settlement.

MR. LOESER: Right. And that's helpful to know, Your Honor. And with that, I think the Court certainly has a detailed brief about the settlement. I'm happy to hear the Court doesn't have concerns about the settlement. I do hope that my assurance to the Court that there is no interest whatsoever in a complicated proceeding with multiple different settlement classes, multiple different notices, none of that is contemplated.

The only dispute the parties have, frankly, is over the appointment of class counsel. And for all the reasons that I think Your Honor has heard about, we have great concerns and we think that in light of the work we've done to accomplish the settlement that we should be appointed class counsel in this case.

But we appreciate the opportunity to discuss this with

you. If Your Honor has other questions for me, I'm happy to answer them.

THE COURT: Good. Thank you.

MR. LOWNEY: Thank you, Your Honor. Knoll Lowney representing the Echard plaintiffs. Claire Tonry is my partner and co-counsel is here, as is Nathan Hunter, our local. And also I wanted to recognize Mr. Brian Echard is here today. He is the Ohio plaintiff in this case. He's also a veteran and he's taken time off from his current job at the Department of Defense to come here today, so we thank him.

THE COURT: What do you do at the Department of Defense?

MR. ECHARD: I'm an IT manager.

MR. LOWNEY: I just want to hit a couple issues that I think are really important. But I want to start by saying Your Honor did ask us about our positions on consolidation early on and you might recall that we said of course this case should be consolidated. And I think it has always been confusing to us how we wouldn't be consolidated. And I think that's a fundamental point that we believe, at least the Echard plaintiff side, is let's get the class's business done first and put all the jockeying to later. And I think consolidation makes sense.

We also want to see this happen as soon as possible. So if Your Honor wanted us to file a motion to consolidate, we

could file it in a day or two so that you could consider it. Would that be helpful?

THE COURT: File the first brief I'm asking for first.

MR. LOWNEY: Thank you, Your Honor. So a few short remarks about the settlement.

The non-reversionary 185 million settlement is a great deal for the class worthy of preliminary approval. We were happy to have consolidated counsel kick off for the reasons they said. Previously objectors, now they're advocates for this.

And fairness, as Your Honor has mentioned, comes from arm's length negotiations and mediations. And here, I've never seen a more mediated settlement. Four full days with Judge Guilford and then two full days and countless other sessions with retired Judge Phillips and the two other mediators in his team.

It fully satisfied the consolidated plaintiffs' objection. The class definition is largely the same but it does make three tweaks that added this additional number of people. And that is important to the -- to resolve that objection. So we're supportive.

The issue that I wanted to mention is in addition to the normal standards for settlement approval that we're all mostly used to, there's another one that applies here which is the concept of non-dilution.

This is a legal and ethical standard that applies whenever there is a revised settlement that adds new class members. We need to make sure, the courts need to make sure that you're not just like extending the release and giving more money to other people on the backs of the original settlement. And so *Graff v. United Collection Bureau*, 132 F.Supp.3d 470, is a great example of where they denied settlement because there was a dilution. And our ethics expert also talks about how this is an ethical standard.

And here, this is an important standard that applies but we meet it. Overall, more money is added. $91 million was added to the settlement. The original settlement was $503 per loan. That's bumped up now to $677 per loan. So it's not just there's a premium here that is being paid, presumably for global peace.

The global settlement also maintains the same three-stage settlement process as the original settlement. Each phase maintains the non-dilution standard.

So first of all, there's an immediate automatic payment, and that is so important. So it's not like the lawyers get paid first and then there's a claims process. It's like within 30 days, 37 percent of this money goes out in automatic checks, $69 million. It's the same 37 percent as in the original settlement.

Second, there is a claims -- a supplemental claims

process. And it specifically says that it will cover all the same damages as the Echard settlement does. And Mr. Loeser says it's make whole. We agree it's make whole. And that's really important.

There are two slight differences between this settlement and the original one on this claims process. One is that we're not using a special master anymore. We're going to be using the settlement administrator and a claims specialist that they retain.

And the second is that there's an automatic payment for co-borrowers. It's 83.33. And that compensates for their credit damages. And now that probably could have been claimed in the original settlement but it's such a small amount of money, people wouldn't probably make that claim. And so by making it automatic, there's going to be a higher uptake and more -- those co-borrowers get what they deserve.

THE COURT: What's 83.33 going to buy somebody?

MR. LOWNEY: Excuse me?

THE COURT: What's it going to buy somebody?

MR. LOWNEY: Not a lot. But it will be sent with the original check. So it just basically is a bump up in that check. And so what it does is it recognizes that for those people who don't have damages that are sufficient for them to actually put a claim in in the second part, it at least gets them that extra bump in addition to the automatic payment of

253 per loan. So that's the automatic payment to everybody. But if there were two co-borrowers, they'd get another $160.

So it's not nothing in the context of these kind of class action settlements. It's significant. And then the remaining money basically goes out pro rata to everybody who cashed a first check.

So the global settlement meets the non-dilution standard and warrants approval. And two other things I'd like to mention.

One is that this is real money for real people. That's why one of the reasons why I wanted to bring Mr. Echard in here. He did -- he was able to refinance. He wasn't able to at first and eventually was able to. These real people have been waiting, it's been four years since this problem happened.

So you could see like we were relieved that you didn't -- that this hearing didn't get postponed. We're a little bit nervous that we're not filing -- that we're not signing the preliminary approval order today because we really want to get that notice out so that we can start this process. It's been 18 months since we were here with you before.

Finally, we just want to thank all the parties for coming together in the global mediation. The other alternative is we could have just kept fighting and that would not have been good. We would have eventually gotten back here but we're proud that everyone is here today joining together.

And we recognize that there is this issue. There's a confusion by our failure to consolidate when we're all signing the settlement agreement and so we've been sort of jaws hung out like, why aren't we consolidating? And I'm sorry that we didn't push it and file a motion earlier. But when we told you our position, we sort of thought, we sort of assumed that you would just go ahead and consolidate it. We think it's within your power. We think it's the appropriate thing to do. If I had my druthers I would say just order consolidation now, sign the approval paper, and let's get this going. But I'm available to answer any questions you might have.

THE COURT: I want to know about the Stoff case.

MR. LOWNEY: The Stoff case, I think these two are the best place.

THE COURT: Thank you, Mr. Lowney.

MR. LOESER: With regard to Stoff, I forgot to discuss that earlier, Your Honor. I think there's a solution. Stoff has withdrawn its motion to intervene.

What happened when they filed their motion, we called the folks there, as did, I know, Wells Fargo. We had a few conference calls. Their concern is they have a certified class that some portion of it -- if you had a Venn diagram, it would be a little piece overlaps with this case. They have one cause of action there, state law claim.

That case is not about people in forbearance without

authorization. It has some people without authorization but a larger group without.

And what we proposed to them and what they accepted was something we've done in many, many cases including other Wells Fargo cases we're involved in. Which is that in this release, it indicates that that particular claim that they have that is unique is not released by this settlement. For that small subgroup that overlaps, they retain that claim. That overlaps. There's people in this class that are also in that class. For those people, they retain that one claim.

The impact is something that is determined in that other case. So they may want to argue that the recovery that those overlapping people received here should not be a setoff. And Wells Fargo will argue well you can't be made whole twice or you shouldn't recover twice. So it might be a setoff. The good news, I think this is generally how this is handled where you have two class actions with different courts, is the determination of whether it is or is not a setoff is something that happens in the other case.

In this case, that issue is just preserved and sent to that other case. Frankly, that makes a lot of sense. It's the other judge that has a lot of knowledge about that claim and what it means and who it covers and what it should or should not provide. Not really this court where this claim is not being litigated.

That proposal was made to counsel in that case. There were a few conversations about it and they withdrew their motion to intervene as a result. So I think that issue, unless Wells Fargo knows something I don't, I think that issue is fully resolved.

THE COURT: Where are you on consolidation?

MR. LOESER: Here's the thing about consolidation, Your Honor. And in a normal situation we obviously would have no problem with consolidation.

What Mr. Lowney has not indicated to the Court, as part of the very difficult process to move this forward, there was an agreement reached by the parties, Mr. Lowney, Wells Fargo, and us, that the parties would not seek consolidation and, instead, would relate the cases. We transferred all of our cases here.

That was one of the conditions for why we were willing to come here, do this all here instead of in California, was that Mr. Lowney agreed that the cases would not be consolidated, they would be related. So when he stands up and says we want you to consolidate, that's violating the agreement that he reached with the parties.

Now, our intention was not to duplicate the proceedings by not having them consolidated. It was simply to take this one issue of who should be class counsel and have that issue determined separate from everything else. And that's the only

reason why the cases are not consolidated.

Once Your Honor issues the lead counsel order, at that point it doesn't matter anymore. The cases can come together or not. The Court could pick the consolidated litigation which, frankly, were filed a lot before the Echard case. It could pick those and make that the leading case. There are six cases that all have been transferred here to this court. It could become the lead case. Everything could happen in that case. Or the Court could consolidate. It really doesn't matter at that point.

The only reason why we fought so hard against consolidation is that we were -- I know it's hard to see behind the curtain here and I'm reluctant and I have a lot of -- I think the civility rules are extremely important. I know this Court believes they're very, very important. So it's very difficult to talk about situations that create a situation where it's very, very hard to work with people. But that's what's happened here.

So consolidation, there was an agreement which has now been violated. But once the Court makes the decision on lead counsel, the issue simply goes away. That's the only reason why it was flagged and separated the way that it was.

THE COURT: Anything else from anyone?

MS. WILLIAMS: At some point I'd like to say something, Your Honor. But I'll wait until after Mr. Lowney.

THE COURT: Thank you.

MR. LOWNEY: Thank you, Your Honor.

I am a little confused but I think that we -- if the Court did consolidate, it still would be making its 23(g) decision. That happens in single cases whether they're consolidated, a single case, or whatever. So obviously you have that.

Our priority is obtaining relief for the class without delay. That's all the consumers care about. So we don't support side shows or distractions. We've always felt like it just makes sense for everybody. We've all agreed to a settlement to just go forward professionally and work through it.

We didn't make an agreement not to do consolidation, but we also didn't make an agreement that the parties couldn't agree to consolidation. So it kind of was left to this Court, in our opinion.

Typically, when there's a global settlement, there's consolidation and everyone is made co-counsel. We had an agreement here not to denigrate each other, to be civil, and I think that that's where we're at.

I did want to say that since we filed the motion for the 23(g) motions, which of course we didn't want to do but it was required as part of the settlement, we have sort of looked at whether there's a third path for the Court to sort of move

forward with the settlement and avoid this fight skirmish between counsel. We're going to have to have a skirmish among counsel but it's about attorneys' fees and that's 90 days forward. We think we should finish the work for the class first.

But that approach that we've seen in other cases and we think Your Honor has done as well is to appoint both teams as provisional class counsel or interim basis for settlement purposes only. And you did that in the *In Re: Procter & Gamble* case. You said you provisionally appoint and then you did a dozen different law firms were appointed. I'm sure they didn't all get along. I'm sure some of them went first in their cases. And also *Stephens v. ADS* you also said for settlement purposes only.

So this is not rocket science, we don't think. But what we do think is that the relief for the class should not be delayed for any skirmishes among plaintiffs' counsel. And that's our main point. Thank you, Your Honor.

THE COURT: Thank you.

I'll hear from counsel for the bank. How are you?

MS. WILLIAMS: Good morning, Judge Watson. How are you? Amy Williams for Wells Fargo. And I'll be brief, Your Honor.

But we, on behalf of Wells Fargo, we wanted to emphasize that Wells Fargo, having made the decision, the commitment to

settle the case and agreed to the settlement agreement, which we do think is more than a make-whole resolution for these class members, our interest is in seeing it approved, noticed, and getting the money out the door as quickly as possible. And to that end, anything that we can do to expedite that process we are happy to do for the Court. If the Court asks anything of Wells Fargo in that regard.

I do want to emphasize that from our perspective, regardless of how many case captions appear on a document, this is a single settlement agreement with a single notice going out to a single class with a single class administrator and a single claims process. So the class members might see two captions if we keep the same structure, but they're going to get a notice that very plainly says you're a member of this class and it goes through all the requisites of a class notice.

Here's the money you're going to get automatically. Here's a process if you think that you were damaged and here's how you can go claim more damages. And if this settlement is not for you, here's how you object, here's how you opt out. Just as with any other class.

I don't think that the presence of two case captions will be found to be confusing to anyone. And for that reason, I advocate for the ability to move forward as is, but I understand the Court has asked for briefing. So we will all address that.

I wanted to make sure the Court didn't have any further questions about Stoff. Mr. Brown, who represents Stoff, is fully satisfied with the carve out and he's going to proceed in California and those folks can participate.

THE COURT: What is their claim?

MS. WILLIAMS: So I don't represent Wells Fargo in that case. My understanding is they have a single -- the California credit reporting act is a little bit of a different animal and that class agrees that they asked for this -- they asked for their forbearance, they wanted their forbearance. But they claim that there were unintended credit impacts.

We then get into their view of the case versus Wells Fargo's view of the case which is that the credit reporting was absolutely proper and in accordance with both the CARES Act and with the Fair Credit Reporting Act.

I think two points to make. Not everyone who is a member of this class who is from California is in Stoff. And not everyone who is in Stoff is in this case.

So, as Mr. Loeser said, a Venn diagram, frankly, of whichever way you thought about it, there's an overlap but it's not duplicative. And their theories are, the facts are the same but their theory is a little bit different.

But the main point here for this settlement is those people who are in Stoff, that they can receive money under the settlement and they're not releasing their claim in that case.

That case, there's a certified class but there hasn't been any finding as to liability. They've got a ways to go, I think, before they get into any actual liability much less a trial.

I just wanted to make sure the Court didn't have any concerns about the way in which we handled the Stoff piece.

THE COURT: Not that I can think of right now.

MS. WILLIAMS: Okay.

THE COURT: Thank you.

MS. WILLIAMS: That's really all. I could talk a little bit about the Court asked some questions about refinance. There's a reason why these cases get settled. And there's a flip side to that coin which is that mortgage rates continued to go down until the end of 2021, and most of the conduct that we're talking about here was 2020. Most people were out of forbearance and had the ability to go forward with refinances.

But I think all of that is covered by the concept that these were disputed claims and this is a very favorable settlement for the class.

THE COURT: Thank you.

MS. WILLIAMS: Thank you, Your Honor.

THE COURT: Thanks for coming in, folks. Appreciate it. We will follow up with an order.

(Proceedings concluded at 10:45 a.m.)

C E R T I F I C A T E

I, Lahana DuFour, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Michael H. Watson, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Lahana DuFour
Lahana DuFour, RMR, CRR
Official Federal Court Reporter
May 24, 2024

EXHIBIT F

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	CASE NO. 2:24-cv-01026-MHW-EPD (Judge Michael H. Watson) (Magistrate Judge Elizabeth A. Preston Deavers)

FIRST AMENDED SETTLEMENT AGREEMENT

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FIRST AMENDED SETTLEMENT AGREEMENT

This First Amended Settlement Agreement (the "Agreement") is made and entered into as of the Execution Date between the Plaintiffs, both individually and on behalf of the Class, and Wells Fargo (the "Settling Parties").[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 Actions on their own behalf and on behalf of the proposed Class against Wells Fargo;

WHEREAS, in the early days of the COVID-19 pandemic, many Wells Fargo customers expressed concern about financial hardship and their ability to make their next Mortgage payment;

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

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

WHEREAS, Plaintiffs' pleadings filed in the respective Actions alleged, among other things, that Wells Fargo placed Customers, including Plaintiffs, into a Forbearance without their informed consent, and asserted claims for breach of contract, breach of fiduciary duty, fraud, unjust

[1] Capitalized terms are defined in Section I.

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enrichment, negligence, negligent misrepresentation and violations of TILA, RESPA, FCRA, RICO and the State Statutes, among others;

WHEREAS, Wells Fargo denies each and all of the claims and allegations of wrongdoing made by Plaintiffs; denies that it has violated any law or other duty; denies that it 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 it 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 it 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 Settling Parties have engaged in extensive formal and informal discovery concerning the strength and value of Plaintiffs' claims;

WHEREAS, the Consolidated Plaintiffs and Wells Fargo attended mediation sessions in front of Robert A. Meyer on July 21, 2021, August 5, 2021, and August 20, 2021, which resulted in an impasse;

WHEREAS, the *Echard* Plaintiffs and Wells Fargo attended mediation sessions in front of the Honorable Andrew Guilford (Ret.) on April 6, 2022, April 28, 2022, May 18, 2022, and July 19, 2022, which resulted in Judge Guilford making, and the parties accepting, a mediator's settlement proposal;

WHEREAS, the *Echard* Plaintiffs and Wells Fargo executed a settlement agreement on or about September 8, 2022;

WHEREAS, the *Echard* Plaintiffs thereafter moved for preliminary approval of the *Echard* Settlement in front of the Honorable Michael Watson of the U.S. District Court for the Southern District of Ohio;

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WHEREAS, the Consolidated Plaintiffs moved to intervene in the *Echard* action and object to the *Echard* Settlement;

WHEREAS, on March 15, 2023, Judge Watson stayed the *Echard* action pending resolution of *In re Wells Fargo Forbearance Litigation* without ruling on the pending motion for preliminary approval of the *Echard* Settlement;

WHEREAS, on October 3, 2023 and October 24, 2023, the Consolidated Plaintiffs, Wells Fargo, and the *Echard* Plaintiffs attended mediation sessions in front of the Honorable Layn Phillips (Ret.);

WHEREAS, following the two October 2023 mediation sessions, Judge Phillips made, and the Consolidated Plaintiffs and Wells Fargo accepted, a mediator's recommendation to settle the Actions on the monetary and class composition terms described herein to which the *Echard* Plaintiffs subsequently assented;

WHEREAS, the Settling Parties attended a third mediation session in front of the Honorable Layn Phillips (Ret.) on December 3, 2023, to address issues other than the proposed class definition and settlement amount;

WHEREAS, on February 8, 2024, Defendants and the Consolidated Plaintiffs filed status reports in *Echard* at Dkt. Nos. 175, 176;

WHEREAS, a Term Sheet was fully executed on February 12, 2024 ("Term Sheet");

WHEREAS, as a condition of the Term Sheet, the Parties agreed to seek transfer of the Consolidated Action to the Southern District of Ohio;

WHEREAS, that motion to transfer was granted;

WHEREAS, the Settling Parties executed a settlement on or about April 15, 2024, which Plaintiffs thereafter submitted to the Court for preliminary approval on April 17, 2024;

WHEREAS, the Settling Parties executed a First Amendment to the Settlement Agreement on or about May 17, 2024;

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WHEREAS, the Settling Parties executed a Second Amendment to the Settlement Agreement on or about June 6, 2024, which superseded and replaced the First Amendment to the Settlement Agreement;

WHEREAS, the Court entered an order on July 1, 2024, which suggested that the Settling Parties consider revising the settlement agreement executed by Plaintiffs and Wells Fargo on or about April 15, 2024 and associated notices;

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, which, subject to the approval of the Court as provided below, will supersede any and all prior agreements between the Settling Parties, including, but not limited, to the Term Sheet entered into by the Parties on or about February 12, 2024; the settlement agreement entered into by Wells Fargo and the *Echard* Plaintiffs on or about September 8, 2022; and the settlement agreement entered into by Plaintiffs and Wells Fargo on or about April 15, 2024, and which was subsequently amended on or about May 17, 2024 and June 6, 2024, respectively;

WHEREAS, Plaintiffs have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Actions' respective pleadings, the legal and factual defenses thereto and the applicable law, that the claims asserted in the Actions 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 Plaintiffs' 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,

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(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 Actions 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 Actions 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. "Actions" means, collectively, *Echard v. Wells Fargo Bank, N.A.*, Case No. 2:21-cv-05080-MHW-KAJ, currently pending in the United States District Court for the Southern District of Ohio, and *In re Wells Fargo Forbearance Litigation*, Case No. 2:24-cv-01026-MHW-EPD, currently pending in the United States District Court for the Southern District of Ohio, which were consolidated for settlement purposes only on June 12, 2024 under the case captioned *In re Wells Fargo COVID Forbearance Settlement Litigation*, Case No. 2:24-cv-1026.

2. "Administrator" or "Settlement Administrator" or "Claims Administrator" means Epiq Class Action & Claims Solutions, Inc.

3. "Agreement" means this First Amended Settlement Agreement entered into by the Settling Parties, which supersedes and replaces the settlement agreement entered into by the Settling Parties on or about April 15, 2024, as later amended on May 17, 2024 and June 6, 2024, respectively.

4. "Allocation Plan" means the plan to distribute Supplemental Payments to Eligible Class Members out of the Supplemental Payment Fund as set forth in Paragraph IV.D.2. of this Agreement.

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5. "At-Issue Forbearance" means a Forbearance that Wells Fargo initially provided to a Customer Without Adequate Informed Consent between March 1, 2020 and December 31, 2021 without regard for the Forbearance's end date.

6. "Automatic Payment" means the *pro-rata* fixed sum payments made to Eligible Class Members out of the Automatic Payment Fund as set forth in Paragraph IV.B.1.

7. "Automatic Payment Fund" means a $69,000,000.00 fund that the Settlement Administrator will create after Final Approval utilizing funds from the Settlement Fund.

8. "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 Without Adequate Informed Consent between March 1, 2020 and December 31, 2021; and (b) were not 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, Class Counsel, or any judge involved in this action or their immediate families. 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.

9. "Class Counsel" refers to Consolidated Plaintiffs' Counsel and *Echard* Counsel, which the Court appointed as interim class counsel, for settlement purposes only, on June 12, 2024, until such time as the Court further appoints class counsel pursuant to Fed. R. Civ. P. 23(g). If the Court makes a further appointment of class counsel pursuant to Fed. R. Civ. P. 23(g), "Class Counsel" shall refer to those attorneys.

10. "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 Consolidated Plaintiffs' Counsel and *Echard* 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.

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11. "Class Notice" has the meaning set forth in Paragraph II.D. of the Agreement.

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

13. "Class Releasors" has the meaning set forth in Paragraph III.A. of the Agreement.

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

15. "Class Representatives" means Plaintiffs Luis Castro, Marisol Castro, Pamela Delpapa, Jenna Doctor, Brian Echard, Patricia Foley, Samara Green, Patrick Healy, Barbara Prado, Renrick Robinson, and Vivian Robinson, and Heather Shimp.

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

17. "Consolidated Action" or "*In re Wells Fargo Forbearance Litigation*" means *In re Wells Fargo Forbearance Litigation*, No. 2:24-cv-01026-MHW-EPD (S.D. Ohio), which consists of the following actions that were consolidated on August 19, 2022 for all pretrial proceedings: *Delpapa v. Wells Fargo Bank, N.A., et al*., No. 2:24-cv-01026-MHW-EPD (S.D. Ohio); *Green v. Wells Fargo & Co., et al.*, No. 2:24-cv-01027 (S.D. Ohio); *Forsburg v. Wells Fargo & Co, et al.*, No. 2:24-cv-01030 (S.D. Ohio); and *Healy v. Wells Fargo Bank, N.A., et al.*, No. 2:24-cv-01028 (S.D. Ohio).

18. "Consolidated Plaintiffs" means Luis Castro, Marisol Castro, Pamela Delpapa, Jenna Doctor, Samara Green, Patrick Healy, Barbara Prado, Renrick Robinson, and Vivian Robinson.

19. "Consolidated Plaintiffs' Counsel" shall refer to Derek Loeser, Gretchen Freeman Cappio, and Zachary Gussin of Keller Rohrback L.L.P.; Abbas Kazerounian and Jason Ibey of Kazerounian Law Group, APC; and Thad Bartholow and Karen Kellett of Kellett & Bartholow, PLLC.

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20. "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.

21. "Court" shall refer to the United States District Court for the Southern District of Ohio.

22. "Customers" means individuals who had a Mortgage serviced by Wells Fargo.

23. "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.

24. "Defendants" means Wells Fargo Bank, N.A. and Wells Fargo & Co.

25. "Distribution Plan" is the plan for distributing the Net Settlement Amount.

26. "*Echard*" or "*Echard* Action" means *Echard v. Wells Fargo Bank, N.A.*, Case No. 2:21-cv-05080-MHW-KAJ, currently pending in the United States District Court for the Southern District of Ohio.

27. "*Echard* Counsel" shall refer to Knoll Lowney, Claire Tonry, Marc Zemel, and Alyssa Koepfgen of Smith & Lowney PLLC and Nathan Hunter of Hunter & Hunter LLC.

28. "*Echard* Plaintiffs" means Brian Echard, Patricia Foley, and Heather Shimp.

29. "*Echard* Settlement" means the settlement in *Echard* filed with the Court on September 9, 2022 (Dkt. 108-1).

30. "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.

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

32. "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.

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33. "Execution Date" means the latest date associated with a signature on the fully executed Agreement as set forth on the Agreement's signature pages.

34. "FCRA" means the Fair Credit Reporting Act.

35. "Fee and Expense Applications" means the applications submitted by Consolidated Plaintiffs' Counsel and *Echard* Counsel to the Court for an award of attorneys' fees and reimbursement of reasonable expenses incurred in connection with prosecuting the Actions not to exceed the amount set forth in Paragraph VII.A. of the Agreement.

36. "Fee and Expense Award" means any amounts that are awarded by the Court in response to the Fee and Expense Applications.

37. "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.

38. "Final Approval" has the meaning set forth in Paragraph II.G. of the Agreement.

39. "Final Approval Hearing" means the hearing, to be scheduled by the Court, at which the Court will consider the Motion for Final Approval.

40. "Final Approval Order" has the meaning set forth in Paragraph II.G. of the Agreement.

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41. "Forbearance" means any temporary suspension of a customer's monthly mortgage payment obligations.

42. "Judge Watson" shall refer to the Honorable Michael H. Watson of the U.S. District Court for the Southern District of Ohio.

43. "Judgment" means the order of judgment and dismissal of the Action with prejudice.

44. "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.

45. "Net Settlement Amount" means all amounts in the Settlement Fund, including interest, which is available for distribution to Eligible Class Members after payment of any Fee and Expense Awards approved by the Court, any Service Awards approved by the Court, and the Settlement Administrator's Costs and Expenses.

46. "Notice Deadline" means the deadline for the Settlement Administrator to send the Notice of Settlement and Claim Form to the Class Members in accordance with the Notice Plan and which shall be forty-five (45) Days after Preliminary Approval.

47. "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 A.**

48. "Notice Plan" has the meaning set forth in Paragraph II.E. of the Agreement concerning the proposed form of notice to the Class.

49. "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 Defendants and the challenge is not overruled by the Court or withdrawn by Defendants, 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.

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50. "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.

51. "Plaintiffs" means, collectively, the *Echard* Plaintiffs and the Consolidated Plaintiffs.

52. "Preliminary Approval" has the meaning set forth in Paragraph II.D. of the Agreement.

53. "Preliminary Approval Order" has the meaning set forth in Paragraph II.D. of the Agreement.

54. "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 sent a secured email to Wells Fargo conveying COVID-19 impact or hardship, or requesting assistance or information, between March 20, 2020 and April 2, 2020, and who were provided a Forbearance without an express request;

d. 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

e. Customers who were in an active Chapter 7, 11 or 12 bankruptcy case and who filed a document with the bankruptcy court expressing COVID impact or requesting payments relief between March 18, 2020 and June 8, 2020 and who were provided a Forbearance without an express request.

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55. "Protective Orders" means the Stipulated Protective Orders entered in the respective Actions.

56. "Remaining Amounts" means any monies that remain in the Settlement Fund after the Settlement Administrator distributes: (a) the Automatic Payments; (b) Supplemental Payments; (c) any Fee and Expense Award approved by the Court; (d) any Service Awards approved by the Court; and (e) the Settlement Administrator's Costs and Expenses.

57. "RESPA" means the Real Estate Settlement Practices Act.

58. "RICO" means the Racketeer Influenced and Corrupt Organizations Act.

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

60. "Service Award Applications" has the meaning set forth in Paragraph VII.E of the Agreement.

61. "Settlement" means the settlement of the claims released by the Agreement.

62. "Settlement Administrator's Costs and Expenses" means the Settlement Administrator's costs and expenses to administer the Settlement.

63. "Settlement Fund" means the $185,000,000 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) the Automatic Payments; (b) Supplemental Payments; (c) any Fee and Expense Award approved by the Court; (d) any Service Awards approved by the Court; and (e) the Settlement Administrator's Costs and Expenses.

64. "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.

65. "Settling Parties" means the Plaintiffs, both individually and on behalf of the Class, and Wells Fargo.

66. "State Statutes" means the California Consumer Credit Reporting Act, California Rosenthal Fair Debt Collection Practices Act, California Unfair Competition Law, Georgia Fair

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Business Practices Act, New York Deceptive Trade Practices Act, Virginia Business Conspiracy Statute, Texas Debt Collection Act, Florida Consumer Collections Practices Act and the Ohio Deceptive Trade Practices Act.

67. "Supplemental Payment Fund" means the fund that the Settlement Administrator will create and utilize to distribute Supplemental Payments to Eligible Class Members pursuant to the Allocation Plan set forth in Paragraph V.A. The Supplemental Payment Fund will consist of the amounts remaining in the Settlement Fund after: (a) making Automatic Payments to Eligible Class Members from the Automatic Payment Fund; (b) deducting any Fee and Expense Award and Service Awards approved by the Court; and (c) paying for the Settlement Administrator's Costs and Expenses.

68. "Supplemental Payments" means payments from the Supplemental Payment Fund for which Eligible Class Members may be considered pursuant to the Allocation Plan as set forth in Paragraph IV.B.2. of this Agreement.

69. "Term Sheet" means the Term Sheet agreed to by the Settling Parties on or about February 12, 2024.

70. "TILA" means the Truth in Lending Act.

71. "Wells Fargo" means Wells Fargo Bank, N.A. and Wells Fargo & Co.

72. "Without Adequate Informed Consent" means:

a. the Mortgage entered Forbearance via Wells Fargo's online banking or interactive voice response ("IVR") portal before May 11, 2020, unless the customer (i) made no payments from the date that the Forbearance was requested and continuing during the entire Forbearance period[2]; (ii) also requested Forbearance via Wells Fargo's online banking or IVR portal on or after May 11, 2020; or (iii) requested a Forbearance extension; or

[2] This exclusion shall not apply to customers who were set up on forbearance before April 15, 2020 and for whom Wells Fargo turned off automatic ACH mortgage payments.

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b. the Mortgage entered Forbearance as a result of a Proactive Wells Fargo Business Decision, unless the customer (i) requested forbearance online or through the IVR portal on or after May 11, 2020; or (ii) requested a Forbearance extension; or

c. Wells Fargo previously determined that the Forbearance was provided in error.

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

74. "Plaintiff Stoff" means named plaintiff Michael Stoff in the *Stoff* Action.

75. "*Stoff* Action" means *Stoff v. Wells Fargo Bank, N.A.*, Case No. 37-2020-00020808-CU-BT-CTL, currently pending in the Superior Court of the State of California, County of San Diego.

76. "*Stoff* Class Members" means the class of individuals certified by the court in the *Stoff* Action in its February 5, 2024 Minute Order, which is defined as "All mortgagees with a mortgage in California whose accounts were current, who received a CARES Act forbearance on or after March 27, 2020 and whose account was reported as 'in forbearance' (or something similar) by Defendant to a consumer reporting agency."

77. "*Stoff* Complaint" means the Third Amended Class Action Complaint filed in the *Stoff* Action on March 23, 2023.

78. "*Stoff* Claim" means Plaintiff Stoff's cause of action for violation of California Civil Code § 1785.25(a) as set forth in the *Stoff* Complaint and pled as of March 23, 2023.

79. "*Stoff* Subclass" and *"Stoff* Subclass Members" means *Stoff* Class Members who are also members of the Class.

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

A. Transfer of *In re Wells Fargo Forbearance Litigation*

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1. The Consolidated Plaintiffs and Wells Fargo filed a stipulated motion to transfer *In re Wells Fargo Forbearance Litigation* from the U.S. District Court for the Northern District of California to the U.S. District Court for the Southern District of Ohio. That order was granted on February 29, 2024.

2. The Consolidated Plaintiffs filed a Notice of Related Case pursuant to S.D. Ohio Civ. R. 3.1(b), seeking relation of *In re Wells Fargo Forbearance Litigation* and *Echard*. The Court designated the cases as related on April 3, 2024. On June 12, 2024, the Court consolidated *Echard* into the Consolidated Action for settlement purposes and renamed that action "*In re Wells Fargo COVID Forbearance Settlement Litigation*," and appointed Consolidated Plaintiffs' Counsel and *Echard* Counsel as interim class counsel for settlement purposes only. This Agreement and all related requests, including the Notice of Refiling, the Motion for Final Approval, Motion(s) for Appointment of Class Counsel pursuant to Rule 23(g), and Motions for Service Awards, Litigation Fees, and Costs, all will be presented in *In re Wells Fargo COVID Forbearance Settlement Litigation.*

B. Certification of Class

For settlement purposes only, the Settling Parties agree to certification of the Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Settling Parties do not agree to, and Plaintiffs do not pursue, class certification pursuant to Fed. R. Civ. P. 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 Actions 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

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constitute evidence of or any determination that the requirements for certification of a class for trial or other litigation purposes in the Actions 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 Actions or in any other action on all available grounds as if no class had been certified in the Actions for purposes of the Settlement.

C. Appointment of Class Counsel

If the Court has not already appointed Class Counsel, then concurrently with the filing of the Motion for Final Approval with the Court as set forth in paragraph II.G below, *Echard* Counsel and Consolidated Plaintiffs' Counsel will petition for appointment of Class Counsel as provided by separate agreement addressing leadership, decision-making and other divisions of responsibilities, if such agreement is reached. If no agreement is reached, *Echard* Counsel and Consolidated Plaintiffs' Counsel shall each simultaneously file, concurrently with the Motion for Final Approval separate motions pursuant to Fed. R. Civ. P. 23(g) seeking appointment as Class Counsel with authority to act on behalf of the Class, unless ordered otherwise by the Court. Consolidated Plaintiffs' Counsel and *Echard* Counsel expressly reserve the right to make any argument regarding any matter they deem appropriate in connection with these motions. Notwithstanding the appointment of Class Counsel, all counsel may seek court-awarded litigation expenses and attorneys' fees for time and expenses reasonably expended in the Actions by a single or separate motions in the Actions as set forth in paragraph VII.A.

D. Motion for Preliminary Approval

Plaintiffs previously submitted a Joint Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class on April 17, 2024, which is still pending before the Court. Class Counsel shall submit a Notice of Refiling and Proposed Order that would, for

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settlement purposes only: (1) preliminarily approve this Settlement ("Preliminary Approval"); and (2) certify a conditional settlement class pursuant to Fed. R. Civ. P. 23(a) and (b)(3). Motions to appoint Class Counsel shall be made separate from the Motion for Final Approval as set forth in paragraph II.C.

E. Class Notices

As part of the Motion for Preliminary Approval, Consolidated Plaintiffs' Counsel and *Echard* Counsel shall submit to the 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 direct notice by email, where an email address is available in Wells Fargo's records, or by postcard, where no email address is known. 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 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 A**. The Preliminary Approval Order, Class Notice, and Notice Plan must be agreed to by Wells Fargo before submission to the 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. The Settlement Administrator will use reasonable efforts to update and confirm the accuracy of the Class Members' contact information in the Class List through the United States Postal Service change of address system.

On or before the Notice Deadline (forty-five (45) Days after Preliminary Approval), the Settlement Administrator shall send the Notice of Settlement and Claim Form to the Class Members in accordance with the Notice Plan.

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F. Class Action Fairness Act Notices

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

G. Motion for Final Approval and Entry of Final Judgment

As soon as practicable following the Exclusion/Opt Out Deadline and not less than fourteen (14) days prior to the date set by the Court to consider whether this Settlement should be finally approved, Class Counsel shall submit a Motion for Final Approval of the Settlement by the Court, a courtesy copy of which shall be sent to Wells Fargo prior to submission by Class Counsel, who shall evaluate in good faith Wells Fargo's proposed edits and confer regarding any edits with which they disagree. Class Counsel further agree that the Motion for Final Approval will be limited to solely discussing the fairness and adequacy of the Settlement Agreement without any discussion of the *Echard* Settlement or the conduct of counsel. 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 Court has personal jurisdiction over Plaintiffs and all Class Members and that the 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. 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 Actions, of their right to object to or exclude themselves from the proposed

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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;

5. Finding that Class Counsel and Plaintiffs adequately represented Class Members for purposes of entering into and implementing this Agreement and Settlement;

6. Directing that the Actions and claims for damages be dismissed with prejudice and, except as otherwise explicitly provided for in the Agreement, without costs;

7. Discharging and releasing the Class Releasees from all Class Released Claims;

8. Permanently barring and enjoining the institution and prosecution, by Class Releasors, of any and all of the Class Released Claims;

9. 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;

10. 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;

11. Reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation, and enforcement of this Agreement;

12. 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

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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

13. Containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

H. Non-Suit

Upon the date that the 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 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 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, and trustees, ("Class Releasors") releases and fully discharges 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 all claims asserted in the Actions and from any and all past and/or present claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, 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;

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and those which are accrued, unaccrued, matured or not matured, under the laws of any jurisdiction, which they, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, resulting from, arising from, or relating in any way to the At-Issue Forbearances that Class Releasees provided to the Class Releasors (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, or complaint 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 Actions), 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 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 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, 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 Releasors (including, but

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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 Releasors 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 Releasors 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 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. The Class Releasors 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 Releasors expressly waive and fully, finally, and forever settle and release any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any

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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, all from the beginning of the world until the Effective Date, under the laws of any jurisdiction, which Class Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising out of 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 Releasors 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 Actions 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.

B. Release Carve out for *Stoff* Subclass Members

Notwithstanding the foregoing Section III.A, *Stoff* Subclass Members do not release Class Releasees from the *Stoff* Claim. This carve out for *Stoff* Subclass Members is limited to the *Stoff* Claim and all other Class Released Claims are released. Class Releasees reserve the right to argue in the *Stoff* Action that any payments that *Stoff* Subclass Members receive from the Settlement Fund should offset any potential recovery in the *Stoff* Action. Plaintiff Stoff reserves the right to argue in the *Stoff* Action that any payments that *Stoff* Subclass

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Members receive from the Settlement Fund should not offset any potential recovery in the *Stoff* Action.

IV. SETTLEMENT CONSIDERATION

In full, complete, and final settlement of any and all claims in the Actions, 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 agrees to deposit the sum of $185,000,000 into a Settlement Fund to be maintained by the Settlement Administrator and used to pay for the following obligations under this Agreement: (1) Automatic Payments to Eligible Class Members from the Automatic Payment Fund; (2) Supplemental Payments to Eligible Class Members from the Supplemental Payment Fund; (3) any Fee and Expense Award(s) approved by the Court; (4) any Service Awards approved by the Court; and (5) all costs and expenses associated with administering the Settlement. 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 according to the Distribution Plan. In summary:

1. Automatic Payments.

Within thirty (30) Days of the Effective Date, the first $69 million ($69,000,000.00) will be distributed equally to Eligible Class Members based upon the number of At-Issue Forbearances. Eligible Class Members who are co-borrowers on a Mortgage that received an At-Issue Forbearance will be treated as a single Class Member for the purposes of receiving an Automatic Payment.

2. Supplemental Payment Fund.

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a. The remainder of the Net Settlement Amount shall be placed into a Supplemental Payment Fund and available to pay Supplemental Payments to Eligible Class Members based on an Allocation Plan. Supplemental Payments to Eligible Class Members shall be made as soon as reasonably practicable. The Allocation Plan shall allow Eligible Class Members who are co-borrowers on a Mortgage to receive Supplemental Payments for individually incurred damages.

b. No later than April 12, 2024, (sixty (60) days after the execution of the Term Sheet), Consolidated Plaintiffs' Counsel shall provide *Echard* Counsel and Counsel for Wells Fargo a proposed Allocation Plan which shall be designed in a manner to ensure that it (i) will not be dilutive of the recovery that Eligible Class Members would have received under the *Echard* Settlement, and (ii) will compensate for the forms of damages compensable under the *Echard* Settlement. *Echard* Counsel shall have the right to review the Allocation Plan for the purpose of confirming that it is not dilutive, and, in the event that *Echard* Counsel reasonably believes the Allocation Plan does not prevent dilution, Plaintiffs shall meet and confer in an effort to resolve the issue. If Plaintiffs are unable to reach an agreement on a final proposed Allocation Plan, they agree to first raise the dispute with Layn Phillips to attempt to mediate a resolution, and, if that is unsuccessful, to submit the dispute to the Court for its consideration. Plaintiffs agree that Wells Fargo shall not incur any mediator expense in connection with any disagreement over the Allocation Plan. Submission of the Motion for Preliminary Approval, the hearing on the Motion for Preliminary Approval, and the implementation of the Notice Plan shall not be delayed by any disagreement among Plaintiffs regarding the Allocation Plan. The Allocation Plan shall be submitted to the Court for approval with the Motion for Preliminary Approval.

c. Subject to the conditions set forth in paragraph IV.B.2.b, Wells Fargo bears no responsibility and plays no role in the Allocation Plan.

3. Remaining Amounts

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Remaining Amounts shall be distributed *pro-rata* to Eligible Class Members who cashed a previous Settlement check on a Mortgage account basis (i.e., co-borrowers on Mortgage treated as a single Class Member), unless Eligible Class Members would receive less than $10, in which case the Remaining Amounts would be distributed to a *cy pres* recipient approved by the Court or treated pursuant to state unclaimed funds procedures.

4. 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, provided, however, that payment of any expenses of the Settlement Administrator in excess of $577,500 shall require application and approval by the Court. Wells Fargo shall have no responsibility or liability for the maintenance, preservation, investment, or distribution of any amount of the Settlement Fund. Up to $500,000.00 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 prepared in connection with the Allocation Plan and submitted to the Court with the Notice of Refiling. The Claim Form will allow 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 Class Members to submit claims electronically. 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

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The Notice 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.

C. Time to Appeal

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

The Settlement Administrator shall be responsible for the following tasks:

1. Conducting a National Change of Address search to obtain up-to-date address information on 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 (where email is not available) to each and every Class Member;

3. Printing and disseminating the applicable Claim Form by email (where available) and first-class mail (where email is not available) to each and every Class Member;

4. Furnishing promptly to Class Counsel and Counsel for Wells Fargo 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;

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5. Determining the amount of the Automatic Payments and the Supplemental Payments owed to Eligible Class Members in accordance with this Agreement;

6. 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;

7. Taking all steps necessary to implement the Distribution Plan, including issuing Automatic Payments and Supplemental Payments;

8. Skip-tracing or otherwise attempting to ascertain current address information for each Settlement check returned as undeliverable;

9. Placing a stop-pay order on all Settlement checks not cashed before their void date;

10. Working with Class Counsel to take appropriate measures to maximize the number of Class Members who receive and deposit the Automatic and Supplemental Payment checks awarded to them, which actions may include providing additional notice, reissuing checks, and extending deadlines as mutually agreed to by Class Counsel and Wells Fargo;

11. Performing all tax reporting duties required by federal, state, and/or local law related to the administration of the Settlement Fund, any Automatic Payments, Supplemental Payments, Fee and Expense Award(s), and Service Awards pursuant to this Settlement Agreement;

12. Responding to inquiries of Class Members regarding the terms of Settlement and procedures for filing objections, 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 Class Counsel, and Counsel for Wells Fargo notice of all such inquiries;

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14. Responding to inquiries of Class Counsel regarding Class Members who have contacted Class Counsel regarding the terms of the Settlement and contemporaneously giving Class Counsel and 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 or written communications between the Settlement Administrator and any Class Member;

16. Responding to requests for further information from Class Members via a toll-free number or an email, including providing a copy of this Settlement Agreement, the operative Complaints in the Actions, 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 all Remaining Amount payments have been disbursed;

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;

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

22. Reporting timely each Automatic Payment, Supplemental Payment, and Remaining Amounts payment 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(s) and Service Awards to the Consolidated Plaintiffs' Counsel, *Echard* 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 Class Members who did not cash their Automatic Payment or Supplemental Payment checks so that a new Settlement check can be issued;

26. Disbursing any Remaining Amounts of the Settlement Fund in accordance with Paragraph IV.B.3. of the Agreement; and

27. Performing such other tasks as Class Counsel and Counsel for Wells Fargo 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 Orders previously entered in the Actions 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 Consolidated Plaintiffs' Counsel, *Echard* Counsel and Counsel for Wells Fargo all documents related to the Actions, 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).

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C. Consolidated Plaintiffs' Counsel, *Echard* 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 Class Counsel and Counsel for Wells Fargo 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(s)

Consolidated Plaintiffs' Counsel and *Echard* Counsel each may submit an application or applications (the "Fee and Expense Application(s)") 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 Actions; plus (c) any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund as may be awarded by the Court. Consolidated Plaintiffs' Counsel and *Echard* Counsel agree that the Fee Application(s) will not seek an amount in excess of twenty five percent (25%) of the Settlement Fund for attorneys' fees, plus reasonable and actual expenses. The apportionment of the litigation fees and costs awarded by the Court will be divided among *Echard* Counsel and Consolidated Plaintiffs' Counsel as provided under the separate agreement between them, if such agreement is reached, unless otherwise ordered by the Court. If no such agreement has been reached, the apportionment of the litigation fees and costs, as between Consolidated Plaintiffs' Counsel and *Echard* Counsel, shall be determined by the Court on separate motions submitted in the respective Actions or as ordered otherwise by the Court. Nothing in this Settlement Agreement precludes any party from objecting to another party's Fee and Expense Application.

B. Payment of Fee and Expense Award

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Any amounts that are awarded by the Court pursuant to the paragraph above (the "Fee and Expense Award") shall remain in the Settlement Fund until resolution of all appeals related to the Fee and Expense Award, at which time it shall be paid by the Settlement Administrator from the Settlement Fund, unless ordered otherwise by the Court or agreed to by Consolidated Plaintiffs' Counsel and *Echard* Counsel.

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(s) are not part of the Settlement set forth in this Agreement and are 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(s), 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.1-3 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 Consolidated Plaintiffs' Counsel and *Echard* 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 Consolidated Plaintiffs' Counsel or *Echard* 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 Actions, 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 Consolidated

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Plaintiffs' Counsel or *Echard* 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 Actions.

E. Class Representatives' Service Award Application

Consolidated Plaintiffs' Counsel, *Echard* Counsel, and Class Representatives may submit application(s) to the Court for a Service Award ("Service Award Applications"). Consolidated Plaintiffs' Counsel, *Echard* Counsel and Class Representatives agree that the Service Award Applications 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 Plaintiffs' Counsel that it will not exercise such right and Plaintiffs, through Class Counsel, no longer have the right to terminate this Agreement pursuant to VIII.E;

2. The 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 Actions are dismissed with prejudice pursuant to the Final Approval Order and Judgment; and

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4. The expiration of appeal periods and/or resolution of all appeals relating to the Final Approval Order or Judgment, provided that an appeal solely concerning attorneys' fees or service awards shall not delay the Effective Date:

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 Court and any appellate court reviewing it without material modification, the Agreement shall terminate and cease to have any effect.

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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 with respect to that Mortgage and neither Class Member will be eligible to receive a Settlement payment with respect to that Mortgage; provided, however, that if the co-borrower who did not opt out of the Settlement has a different eligible Mortgage, the co-borrower who did not opt out can receive a Settlement payment with respect to the different eligible Mortgage.

2. No later than five (5) Days after the Exclusion/Objection Deadline, the Settlement Administrator shall provide Consolidated Plaintiffs' Counsel, *Echard* 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 Court a complete list of Opt-Outs, including the name, city, and state of the person requesting exclusion (the "Opt-Out List").

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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 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

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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 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 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 Court does not enter the Preliminary Approval Order within one hundred and eighty (180) days of Plaintiffs' filing the Notice of Refiling; or (3) the Court does not enter the Final Approval Order within one hundred and eighty (180) days of Plaintiffs' filing of 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

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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(s), 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 Actions 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 Actions, and to compromise claims that

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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 Actions.

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 Actions, 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 Actions 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,

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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 Actions necessary to obtain the transfer as set forth in II. A (1), 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 Consolidated Plaintiffs' Counsel and *Echard* Counsel may seek upon application to the Court pursuant to this Agreement shall include all attorneys' fees and litigation costs that Consolidated Plaintiffs' Counsel and *Echard* Counsel and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Consolidated Plaintiffs' Counsel and *Echard* Counsel, seek or may have any right or claim to in connection with the Actions and the Class Released Claims.

C. Plaintiffs represent and warrant that other than Consolidated Plaintiffs' Counsel and *Echard* Counsel, as those terms are defined herein, there is no other person having any interest in

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any award of attorneys' fees, expenses, or litigation costs in connection with the Actions, 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). The 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. Consolidated Plaintiffs' Counsel and *Echard* Counsel represent and warrant that they will not seek out or solicit, and have no present intention to pursue individual or class claims (save for those asserted by existing clients who have already filed suit) 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 Consolidated Plaintiffs' Counsel and *Echard* Counsel from representing persons who seek representation for such claims arising subsequent to the date of this Agreement.

H. Wells Fargo and Plaintiffs and Consolidated Plaintiffs' Counsel and *Echard* Counsel represent and warrant that they will comply with the Protective Orders that apply to the

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Actions and will not use or seek to use the fact or content of the Settlement in the Actions in connection with any other claim, action, or litigation against any Class Releasee (excepting only actions to enforce or construe this Agreement).

I. Consolidated Plaintiffs' Counsel and *Echard* 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, Consolidated Plaintiffs' Counsel, *Echard* Counsel, Counsel for Wells Fargo, 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.

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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. Consolidated Plaintiffs' Counsel and *Echard* 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 Class Counsel. The emails for the potential Class Counsel are set forth below. If directed to Wells Fargo, notices and responses 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.

The email addresses for potential Class Counsel are:

Derek Loeser, dloeser@kellerrohrback.com

Gretchen Freeman Cappio, gcappio@kellerrohrback.com

Zachary Waid Gussin, zgussin@kellerrohrback.com

Abbas Kazerounian, ak@kazlg.com

Jason Ibey, jason@kazlg.com

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Thad Bartholow, thad@kblawtx.com

Karen Kellett, kkellett@kblawtx.com

Knoll Lowney, knoll@smithandlowney.com

Claire Tonry, claire@smithandlowney.com

Marc Zemel, marc@smithandlowney.com

Alyssa Koepfgen, alyssa@smithandlowney.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 Ohio, 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 Ohio 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. If

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such amendments occur after Final Approval, further approval of the Court is not necessary provided that Wells Fargo and Class Counsel mutually determine that the changes are consistent with the Court's Final Approval Order and Final Judgment and do not materially alter the Settlement Agreement. 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 entered into by the Parties on or about February 12, 2024 and the settlement agreement entered into by Wells Fargo and the *Echard* Plaintiffs on or about September 8, 2022, 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

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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 Orders entered in the Actions at the conclusion of the case. All agreements made and orders entered during the course of the Actions 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,

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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 provided by any Settling Party. The Settling Parties further understand and agree that each Settling Party, each Class Member, Consolidated Plaintiffs' Counsel, *Echard* Counsel, and Plaintiff 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.

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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. The Settling Parties agree that any Class Member who is in active bankruptcy proceedings or previously was a party to bankruptcy proceedings during the period of time covered in the definition of the Class may only participate in the Settlement subject to applicable bankruptcy law and procedures. 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 the 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 direction of the 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 action to collect 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

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Settlement or the Agreement create or be construed as evidence of any violation of law or contract. In the event this Agreement is so construed as to a particular Class Member, it can be declared by Wells Fargo to be null and void as to that Class Member only (and in such latter event, the release as to Class Released Claims as to that Class Member shall also be void).

X. Press Release

Plaintiffs, Consolidated Plaintiffs' Counsel, and *Echard* 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, Consolidated Plaintiffs' Counsel, Wells Fargo, or *Echard* Counsel disclose to any third party (i) any confidentially designated discovery obtained 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, Consolidated Plaintiffs Counsel, *Echard* Counsel 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.

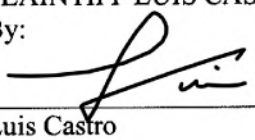
Y. Further Disputes

If any disputes arise out of the finalization of the settlement documentation, said disputes are to be resolved by the Honorable Judge Layn Phillips (Ret.) by way of expedited telephonic mediation, and if mediation is unsuccessful, then by way of final, binding, non-appealable determination. If any such issues relate to a disagreement among Consolidated Plaintiffs' Counsel and *Echard* Counsel, Wells Fargo shall not be responsible for any part of the cost of such mediation.

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Docusign Envelope ID: 984915C0-C739-465D-8975-5AE7590237D7

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 LUIS CASTRO
By: 

Luis Castro

Date: 7/22/24, 2024

PLAINTIFF MARISOL CASTRO
By: Marisol Castro

Marisol Castro

Date: 7/22/24, 2024

PLAINTIFF PAMELA DELPAPA
By:

Pamela Delpapa

Date: _____, 2024

PLAINTIFF JENNA DOCTOR
By:

Jenna Doctor

Date: _____, 2024

Docusign Envelope ID: EECBB9CC-0381-49D1-811C-C7DC3E21F2F0

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 LUIS CASTRO
By:

_____
Luis Castro

Date:_____, 2024

PLAINTIFF MARISOL CASTRO
By:

_____
Marisol Castro

Date:_____, 2024

PLAINTIFF PAMELA DELPAPA
By: DocuSigned by: Pamela Delpapa
C3FDE3F3KF3D488...
Pamela Delpapa

Date: July 22, 2024, 2024

PLAINTIFF JENNA DOCTOR
By:

_____
Jenna Doctor

Date:_____, 2024

DocuSign Envelope ID: 9B4B15C0-C739-465D-8975-5AE759D237D7

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 LUIS CASTRO
By:

_____
Luis Castro

Date:_____. 2024

PLAINTIFF MARISOL CASTRO
By:

_____
Marisol Castro

Date:_____. 2024

PLAINTIFF PAMELA DELPAPA
By:

_____
Pamela Delpapa

Date:_____. 2024

PLAINTIFF JENNA DOCTOR
By: Jenna Doctor

Jenna Doctor

Date: July 22. 2024

Docusign Envelope ID: 984915C0-C739-465D-8975-5AE7590237D7

PLAINTIFF BRIAN ECHARD
By:

Brian Echard

Date: July 17, 2024

PLAINTIFF PATRICIA FOLEY
By:

Patricia Foley

Date:_____, 2024

PLAINTIFF SAMARA GREEN
By:

Samara Green

Date:_____, 2024

PLAINTIFF PATRICK HEALY
By:

Patrick Healy

Date:_____, 2024

PLAINTIFF BARBARA PRADO
By:

Barbara Prado

Date:_____, 2024

Docusign Envelope ID: 984915C0-C739-465D-8975-5AE7590237D7

PLAINTIFF BRIAN ECHARD
By:

_____
Brian Echard

Date:_____, 2024

PLAINTIFF PATRICIA FOLEY
By:

_____
Patricia Foley

Date: July 18, 2024

PLAINTIFF SAMARA GREEN
By:

_____
Samara Green

Date: 07/22/2024, 2024

PLAINTIFF PATRICK HEALY
By:

_____
Patrick Healy

Date:_____, 2024

PLAINTIFF BARBARA PRADO
By:

_____
Barbara Prado

Date:_____, 2024

Docusign Envelope ID: 984915C0-C739-465D-8975-5AE7590237D7

PLAINTIFF BRIAN ECHARD
By:

Brian Echard

Date: July 17, 2024

PLAINTIFF PATRICIA FOLEY
By:

Patricia Foley

Date:_____, 2024

PLAINTIFF SAMARA GREEN
By:

Samara Green

Date:_____, 2024

PLAINTIFF PATRICK HEALY
By:

Patrick Healy

Date: 7/19/24, 2024

PLAINTIFF BARBARA PRADO
By:

Barbara Prado

Date:_____, 2024

Docusign Envelope ID: 984915C0-C739-465D-8975-5AE7590237D7

PLAINTIFF BRIAN ECHARD
By:

Brian Echard

Date:_____, 2024

PLAINTIFF PATRICIA FOLEY
By:

Patricia Foley

Date: July 18, 2024

PLAINTIFF SAMARA GREEN
By:

Samara Green

Date:_____, 2024

PLAINTIFF PATRICK HEALY
By:

Patrick Healy

Date:_____, 2024

PLAINTIFF BARBARA PRADO
By: Barbara Prado

Barbara Prado

Date: 7/22, 2024

Docusign Envelope ID: F55102B8-34AA-4BA0-AD39-D443C6475C23

PLAINTIFF RENRICK ROBINSON
By:

DocuSigned by:
Renrick Robinson
A1245682E42D46B...

Renrick Robinson

Date: July 23, 2024, 2024

PLAINTIFF VIVIAN ROBINSON
By:

DocuSigned by:
Vivian Robinson
A1245682E42D46B...

Vivian Robinson

Date: July 23, 2024, 2024

PLAINTIFF HEATHER SHIMP
By:

_____
Heather Shimp

Date:_____, 2024

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Docusign Envelope ID: 984915C0-C739-465D-8975-5AE7590237D7

PLAINTIFF RENRICK ROBINSON
By:

_____
Renrick Robinson

Date:_____, 2024

PLAINTIFF VIVIAN ROBINSON
By:

_____
Vivian Robinson

Date:_____, 2024

PLAINTIFF HEATHER SHIMP
By:

Heather Shimp
Heather Shimp

Date: July 17, 2024

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Docusign Envelope ID: 984915C0-C739-465D-8975-5AE7590237D7

DEFENDANT WELLS FARGO BANK, N.A.

By: DocuSigned by:
Heber Santos
A131B7B60B2C435...

Title: SEVP, CEO of Consumer Lending

Date: 7/15/2024, 2024

EXHIBIT G

In re: Wells Fargo Forbearance Settlement Litigation

Keller Rohrback Timekeepers*

Professional	Prof. Type	Year of first Admission	Billing Rate**	Time Billed	Total Lodestar
Zachary Gussin	Attorney	2017	$650	3,460.8	$2,249,520
Derek W. Loeser	Partner	1994	$1275	1,161.8	$1,481,295
Gretchen Cappio	Partner	1999	$1150	725.6	$834,440
Alex Smith	Paralegal	N/A	$395	285.1	$112,615
Janet Peterson	Paralegal	N/A	$440	252.4	$111,056
Matthew Preusch	Partner	2013	$780	151	$117,780
Kylie Fisher	Attorney	2020	$550	119.3	$65,615
Jason Dillman	Paralegal	N/A	$425	104.3	$44,328
John Evans	Paralegal	N/A	$330	89.8	$29,634
Joel Garriedo	Paralegal	N/A	$380	75	$28,500
Eric Fierro	Partner	2009	$910	41.7	$37,947

*This reflects all professionals who billed at least 40 hours to the litigation over the span of four years. An additional 73 professionals, primarily paralegals and support staff, billed a combined 416.3 hours. The full time records are available for the Court's in-camera inspection, if desired.

** As of October 10, 2024.

EXHIBIT H

Docusign Envelope ID: 68A034A9-72CE-4587-8A6E-90C4586D31E5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers CLASS ACTION

DECLARATION OF PAMELA DELPAPA IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, Pamela Delpapa, declare:

1. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.
2. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards.
3. I have been appointed as one of the Class Representatives for purposes of this Settlement.
4. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 273,000

Docusign Envelope ID: 68A034A9-72CE-4587-8A6E-90C4586D31E5

mortgages. Additionally, it is my understanding that Settlement Class Members who believe they have proof of credit harm stemming from Wells Fargo's actions may submit a claim to additional compensation from the Settlement Fund.

5. I believe that Wells Fargo placed my residential mortage into a forbearance in or around March of 2020, without a request from me for that forbearance and without my consent. I have participated through this litigation in the belief I was helping all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

6. On August 26, 2020, through my attorneys, I filed a putative class action complaint against Wells Fargo for alleged violations of various state statutes and common law claims relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit bore my name, and was filed in the Northern District of California and assigned Case Number 3:20-CV-06009, before Judge James Donato. Over time, the complaint was amended several additional times, including to consolidate the lawsuit with the similar cases that were filed in that district or transferred from the Southern District of California and Western District of Virginia, ultimately resulting in the Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

7. I have been actively involved in this litigation against Wells Fargo and have kept in communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

8. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I

Docusign Envelope ID: 68A034A9-72CE-4587-8A6E-90C4586D31E5

reviewed the initial complaint as well several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In January of 2023, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided dozens of pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

9. I have been in frequent contact with my attorneys throughout this litigation, including through dozens of calls and emails concerning the status of discovery and numerous motions that were filed, related lawsuits, several mediations and related settlement efforts, as well as the transfer of the case in the Northern District of California to this present Court in the Southern District of Ohio. To date, I have spent more than 8 hours on the phone with my attorneys.

10. I was also kept informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

11. On April 13, 2024, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of $185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

12. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent

Docusign Envelope ID: 68A034A9-72CE-4587-8A6E-90C4586D31E5

out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

13. Since approximately July of 2020, I have spent an estimated 40 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

14. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

15. I recognize that by filing a lawsuit that I was exposing myself to potential public scrutiny.

16. I understand that my attorneys intend to request that I be awarded $12,500 as a service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

17. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

18. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Keller Rohrback L.L.P, Kazerouni Law Group, APC, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of $37,000,000 and reasonable litigation expenses. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many

Docusign Envelope ID: 68A034A9-72CE-4587-8A6E-90C4586D31E5

thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

I declare under penalty of perjury that the foregoing is true and correct, executed on

October 25, 2024

Date

Signed by:
Pamela Delpapa
C3FDE573A7BD488...

Pamela Delpapa

EXHIBIT I

Docusign Envelope ID: C6CE4491-3063-42F6-946E-7175E1962A9C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers CLASS ACTION

DECLARATION OF RENRICK ROBINSON IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, Renrick Robinson, declare:

1. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.
2. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards.
3. I have been appointed as one of the Class Representatives for purposes of this Settlement.
4. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 273,000

Docusign Envelope ID: C6CE4491-3063-42F6-946E-7175E1962A9C

mortgages. Additionally, it is my understanding that Settlement Class Members who believe they have proof of credit harm stemming from Wells Fargo's actions may submit a claim to additional compensation from the Settlement Fund.

5. I believe that Wells Fargo placed my residential mortage into a forbearance in or around March of 2020, without a request from me for that forbearance and without my consent. I have participated through this litigation in the belief I was helping all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

6. On December 24, 2020, through my attorneys, my wife Vivian and I joined a putative class action complaint against Wells Fargo for alleged violations of various state and federal statutes and common law claims relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit was filed in the Northern District of California and assigned Case Number 3:20-CV-06009, before Judge James Donato. Over time, the complaint was amended several additional times, including to consolidate the lawsuit with the similar cases that were transferred from the Southern District of California and Western District of Virginia, ultimately resulting in the Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

7. I have been actively involved in this litigation against Wells Fargo and have kept in communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

8. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I

Docusign Envelope ID: C6CE4491-3063-42F6-946E-7175E1962A9C

reviewed the initial complaint as well several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In January of 2023, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided dozens of pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

9. I have been in frequent contact with my attorneys throughout this litigation, including through dozens of calls and emails concerning the status of discovery and numerous motions that were filed, related lawsuits, several mediations and related settlement efforts, as well as the transfer of the case in the Northern District of California to this present Court in the Southern District of Ohio. To date, I have spent more than 10 hours on the phone with my attorneys.

10. I was also kept informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

11. On April 13, 2024, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of $185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

12. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent

Docusign Envelope ID: C6CE4491-3063-42F6-946E-7175E1962A9C

out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

13. Since approximately July of 2020, I have spent an estimated 60 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

14. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

15. I recognize that by filing a lawsuit that I was exposing myself to potential public scrutiny.

16. I understand that my attorneys intend to request that I be awarded $12,500 as a service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

17. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

18. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Keller Rohrback L.L.P., Kazerouni Law Group, APC, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of $37,000,000 and reasonable litigation expenses. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many

Docusign Envelope ID: C6CE4491-3063-42F6-946E-7175E1962A9C

thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

I declare under penalty of perjury that the foregoing is true and correct, executed on

October 27, 2024

Date

Signed by:
A1245882E42D46B...

Renrick Robinson

EXHIBIT J

Docusign Envelope ID: 40511F1E-F341-457D-9B34-07A50863EDC7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers CLASS ACTION

DECLARATION OF VIVIAN ROBINSON IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, Vivian Robinson, declare:

1. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.
2. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards.
3. I have been appointed as one of the Class Representatives for purposes of this Settlement.
4. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 273,000

Docusign Envelope ID: 40511F1E-F341-457D-9B34-07A50863EDC7

mortgages. Additionally, it is my understanding that Settlement Class Members who believe they have proof of credit harm stemming from Wells Fargo's actions may submit a claim to additional compensation from the Settlement Fund.

5. I believe that Wells Fargo placed my residential mortage into a forbearance in or around March of 2020, without a request from me for that forbearance and without my consent. I have participated through this litigation in the belief I was helping all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

6. On December 24, 2020, through my attorneys, my husband Renrick and I joined a putative class action complaint against Wells Fargo for alleged violations of various state and federal statutes and common law claims relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit was filed in the Northern District of California and assigned Case Number 3:20-CV-06009, before Judge James Donato. Over time, the complaint was amended several additional times, including to consolidate the lawsuit with the similar cases that were transferred from the Southern District of California and Western District of Virginia, ultimately resulting in the Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

7. I have been actively involved in this litigation against Wells Fargo and have kept in communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

8. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I

Docusign Envelope ID: 40511F1E-F341-457D-9B34-07A50863EDC7

reviewed the initial complaint as well several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In January of 2023, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided dozens of pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

9. I have been in frequent contact with my attorneys throughout this litigation, including through dozens of calls and emails concerning the status of discovery and numerous motions that were filed, related lawsuits, several mediations and related settlement efforts, as well as the transfer of the case in the Northern District of California to this present Court in the Southern District of Ohio. To date, I have spent more than 6 hours on the phone with my attorneys.

10. I was also kept informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

11. On April 13, 2024, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of $185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

12. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent

Docusign Envelope ID: 40511F1E-F341-457D-9B34-07A50863EDC7

out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

13. Since approximately July of 2020, I have spent an estimated 40 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

14. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

15. I recognized that by filing a lawsuit that I was exposing myself to potential public scrutiny.

16. I understand that my attorneys intend to request that I be awarded $12,500 as a service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

17. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

18. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Keller Rohrback L.L.P., Kazerouni Law Group, APC, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of $37,000,000 and reasonable litigation expenses. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many

Docusign Envelope ID: 40511F1E-F341-457D-9B34-07A50863EDC7

thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

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

October 27, 2024

Date

Signed by:

A1245682E42D46B...

Vivian Robinson

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

IN RE WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth Preston Deavers Class Action

DECLARATION OF ABBAS KAZEROUNIAN OF KAZEROUNI LAW GROUP, APC IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, ABBAS KAZEROUNIAN, declare:

1. I am one of the attorneys for Plaintiff Samara Green, who is one of the preliminarily appointed Class Representatives, in the above-entitled action ("Action") against Defendants Wells Fargo Bank, N.A., and Wells Fargo & Co. (the "Defendants" or "Wells Fargo").
2. I am over the age of 18 and am fully competent to make this declaration.
3. If called as a witness, I would competently testify to the matters herein from personal knowledge. The declaration is based upon my personal knowledge, except where expressly noted otherwise.
4. I submit this declaration in support of the Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards.
5. I was admitted to the State Bar of California in 2007 and have been a member in good standing ever since that time. I have litigated cases in both state and federal courts in California, Washington, Nevada, Oregon, Arizona, Arkansas, Utah, Nebraska, New York, New Jersey,

Tennessee, Ohio, Virginia, Florida, Georgia, Illinois, Colorado, and Texas. I am admitted in every federal district in California and have handled federal litigation in each of the four federal districts of California. I am also admitted to the state bars of Texas, Illinois, New York, Colorado, Washington, Michigan, District of Columbia, as well as the Ninth Circuit Court of Appeals, the Eighth Circuit Court of Appeals, the Eleventh Circuit Court of Appeals, the First Circuit Court of Appeals, and the Supreme Court of the United States.

6. I am a founding partner of Kazerouni Law Group, APC ("Kazerouni Law Group").

7. Jason A. Ibey is a partner at Kazerouni Law Group.

SUMMARY OF REQUESTED AWARD OF ATTORNEYS' FEES, COSTS AND SERVICE AWARDS

8. I, along with Mr. Ibey, fully support as fair and reasonable the request for an award of attorneys' fees of $37,000,000 to Consolidated Plaintiffs, representing 20% of the $185,000,000 Settlement Fund. We also fully support an award to Consolidated Plaintiffs of reasonable litigation expenses, to be paid from the Settlement Fund.

9. Additionally, I, along with Mr. Ibey, fully support the request for reasonable service awards of $12,500 each to the eight Class Representatives (Luis Castro, Pamela Delpapa, Jenna Doctor, Samara Green, Patrick Healy, Barbara Prado, and Renrick and Vivian Robinson), for their efforts in representing the class.

10. Early in the litigation against Wells Fargo, Kazerouni Law Group, APC; Keller Rohrback L.L.P.; and Kellett & Bartholow PLLC (collectively, the "Consolidated Counsel") came together to jointly prosecute similar cases as part of a coordinated and committed effort in the best interest of the class members. After over four years of litigation, such efforts were successful, with Consolidated Counsel having achieved the $185,000,000 settlement

benefiting thousands of class members nationwide.

11. I, along with Mr. Ibey, believe this $185,000,000 settlement is a superior outcome for class members than the alternative of continuing to litigate this Action for several more years and with the risk of recovering nothing – a settlement that is facially and empirically superior to the since supplanted $94 million settlement that was proposed by counsel for Brian Echard.

SUMMARY OF THE LITIGATION

Contributions of Abbas Kazerounian

12. I have worked on this litigation against Defendants for over *four* years (from approximately July of 2020 to the present), beginning with the representation of some of the Consolidated Plaintiffs in the matter of *Green v. Wells Fargo & Company, et al*., No. 3:20-cv-05296 (N.D. Cal.) ("*Green* Action"), which was filed on July 31, 2020, by plaintiffs Samara Green and Brett Jacob.
13. I was involved in pre-suit investigations and drafting of the initial complaint in the *Green* Action as well as amending the complaint to add as named plaintiff Charles Johnson.
14. I contributed to the preparation of the Rule 26(f) Report and Rule 26(a) Initial Disclosures in the *Green* Action
15. Once the First Amended Complaint ("FAC") was filed in the *Green* Action on August 17, 2020, there was extensive motion practice in which I was an active participant.
16. During this time, I also provided an interview to ABC10 about the impact the alleged violations against Wells Fargo had against consumers, in an effort to draw public interest and perhaps support from state and/or government officials on this important consumer issue. That interview can be accessed at: https://www.youtube.com/watch?v=ZbwaH0mEfac.
17. On September 11, 2020, Wells Fargo filed a Motion to Stay or in the Alternative Motion to

Transfer (*Green* Action, Dkt. No. 19), which my office opposed on September 25, 2020 (*Green* Action, Dkt. No. 22). That motion was ultimately denied on October 23, 2020 (*Green* Action, Dkt. No. 28).

18. On October 9, 2020, Wells Fargo filed a Motion to Dismiss the FAC in the *Green* Action (*Green* Action, Dkt. No. 25), which plaintiffs opposed on October 30, 2020 (*Green* Action, Dkt. No. 29).

19. On November 3, 2020, Wells Fargo filed a Motion for Clarification as to the Court's denial of the Motion to Stay (*Green* Action, Dkt. No. 30). Plaintiffs filed a response in opposition to that motion on November 17, 2020 (*Green* Action, Dkt. No. 34).

20. On December 3, 2020, I appeared as lead counsel at the Initial Status Conference in the *Green* Action where the Court terminated the pending Motion to Dismiss without prejudice and ordered the parties to file a consolidated complaint (*see Green* Action, Dkt. No. 44).

21. On December 24, 2020, in accordance with the Court's December 3, 2020, Order (*Green* Action, Dkt. No. 44), the *Green* Action was consolidated with a related case, in the matter of *Delpapa v. Wells Fargo Bank, N.A., et al.*, No. 3:20-cv-06009 (N.D. Cal) ("*Delpapa* Action") via a Consolidated Amended Complaint ("CAC") filed on December 14, 2020 (*Delpapa* Action, Dkt. No. 70).

22. On February 22, 2021, Wells Fargo filed a Motion to Dismiss the CAC along with a Request for Judicial Notice (*Delpapa* Action, Dkt. Nos. 84, 85), which were terminated without prejudice based on the parties' stipulation to stay the case pending mediation (*Delpapa* Action, Dkt. Nos. 87, 95).

23. On September 17, 2021, Consolidated Plaintiffs filed a Motion to Relate Cases (*Delpapa* Action, Dkt. No. 96), which was opposed by Wells Fargo on September 21, 2021 (*Delpapa*

Action, Dkt. No. 97).

24. On October 7, 2021, Wells Fargo filed an Amended Motion to Dismiss and Request for Judicial Notice (*Delpapa* Action, Dkt. Nos. 102, 103), which Consolidated Plaintiffs opposed on October 21, 2021 (*Delpapa* Action, Dkt. No. 106). Those motions were ultimately withdrawn on March 16, 2022, pursuant to an agreement between the parties for Consolidated Plaintiffs to file a Second Amended Consolidated Complaint (*Delpapa* Action, Dkt. No. 122).

25. On January 4, 2022, Consolidated Plaintiffs served a first set of written discovery on Wells Fargo, which Wells Fargo responded to on March 7, 2022. The parties engaged in numerous meet and conferrals throughout March, April and May of 2022, until an impasse was reached on certain discovery responses in June of 2022 requiring court intervention (*see Delpapa* Action, Dkt. Nos. 131, 135, 146-147, 156). Through Consolidated Plaintiffs' persistence, Wells Fargo was forced to produce key documents germane to class certification.

26. During this time, I also worked cooperatively with counsel for the other Consolidated Plaintiffs, including, for example, assisting with the litigation strategy for some of the related matters that were filed in *Healy v. Wells Fargo Bank, N.A.*, No. 3:20-cv-01838 (S.D. Cal.) ("*Healy* Action") and *Urista v. Wells Fargo & Company*, No. 3:20-cv-01689 (S.D. Cal.) ("*Urista* Action").

27. On January 11, 2022, despite opposition by Wells Fargo, the *Healy* Action and *Urista* Action were transferred to the North District of California and, at the Consolidated Plaintiffs' request, were later consolidated with the *Delpapa* Action, becoming *In Re: Wells Fargo Forbearance Litigation*. I was personally responsible for organizing and orchestrating the *Healy* Action and *Urista* Action to be consolidated with the aforementioned cases as a consolidated action. My firm lead the development of the arguments and theories in opposition to Wells Fargo's

motions to transfer the *Healy* Action and *Urista* Action away from California, as well as in support of the motions to transfer the *Healy* Action and *Urista* Action to the Northern District of California.

28. On April 15, 2022, Consolidated Plaintiffs filed an Amended Consolidated Complaint (*Delpapa* Action, Dkt. No. 123), which Wells Fargo moved to dismiss on May 27, 2022 (*Delpapa* Action, Dkt. No. 128). That motion was vacated in light of the parties' Stipulation to Consolidated Related cases (*see Delpapa* Action, Dkt. No. 147), which resulted in the filing of a Third Amended Consolidated Complaint ("TAC") on September 28, 2022 (*Delpapa* Action, Dkt. No. 162).

29. On October 21, 2022, Wells Fargo again moved to dismiss, this time as to the TAC (*Delpapa* Action, Dkt. No. 162), which Consolidated Plaintiffs opposed on November 4, 2022 (*Delpapa* Action, Dkt. No. 179). On May 2, 2023, the Court in the *Delpapa* Action dismissed the RICO, unjust enrichment, and implied covenant claims with leave to amend, denied the motion as to the TILA and UCL claims, and dismissed certain claims relating to credit reporting with prejudice (*Delpapa* Action, Dkt. No. 191).

30. On May 19, 2023, Consolidated Plaintiffs filed a Fourth Amended Consolidated Complaint (*Delpapa* Action, Dkt. No. 192), which Wells Fargo moved to dismiss on June 16, 2023 (*Delpapa* Action, Dkt. No. 197) and Consolidated Plaintiffs opposed on July 14, 2023 (*Delpapa* Action, Dkt. No. 199).

31. The case was stayed shortly thereafter pending mediation (*Delpapa* Action, Dkt. No. 202).

32. I have participated, and will continue to participate, in regular weekly Zoom meetings with counsel for the Consolidated Plaintiffs. Over the course of this litigation, Consolidated Counsel routinely met with one another to discuss how various tasks were to be delegated and

assigned in order to facilitate cooperation, efficiency, communication, and a fair division of labor among counsel. I will continue to work collaboratively with Consolidated Counsel through final approval of the preliminarily approved class settlement.

33. I was also involved in the extensive written and oral discovery that was conducted in the *In Re: Wells Fargo Forbearance Litigation*. For example, I took the in-person deposition of an employee of Defendants, Kari Tekolste, in Des Moines, Iowa, on July 13, 2023.

34. I also personally assisted with the preparation for several other depositions, including attending the in-person deposition of one of Defendants' employees, John Buzzoni, in Colorado Springs, Colorado, on June 22, 2023.

35. I have contributed substantially to all legal briefs and motions that were filed in the *Delpapa* Action and *In Re: Wells Fargo Forbearance Litigation*, as well as two different motions to intervene in the matter of *Echard v. Wells Fargo Bank, N.A., et al.*, No. 2:21-cv-05080 (S.D. Ohio) ("*Echard* Action").

36. I attended an in-person hearing in the *Delpapa* Action on August 18, 2022 (concerning various case management issues, including the issue of consolidation).

37. On December 8, 2022, I attended another in-person hearing in the *In Re: Wells Fargo Forbearance Litigation*, concerning, in-part, one of Defendants' motions to dismiss.

38. I traveled to and attended an in-person hearing in the *Echard* Action on January 11, 2023, and assisted co-counsel Thad O. Bartholow, III, of Kellett & Bartholow PLLC with preparation for oral argument.

39. I was also an active participant in all of the several mediation sessions that were conducted in connection with the *Delpapa* Action and the *In Re: Wells Fargo Forbearance Litigation*, some of which were in person and others via Zoom. Also, I spent many hours working with co-

counsel on the detailed mediation briefs for Plaintiffs.

Contributions of Jason A. Ibey

40. Mr. Ibey has worked on this litigation against Defendants since approximately July of 2020 to the present.

41. Mr. Ibey assisted with drafting an opposition to Defendants' motion to stay, or in the alternative, transfer proceeding, which opposition was filed in the *Green* Action on September 25, 2020.

42. In the *Green* Action, Mr. Ibey also contributed to the Motion to Limit Defendant's Communications with Putative Class Members Pursuant to Fed. R. Civ. P. 23(d) that was filed on October 23, 2020.

43. Mr. Ibey has been the primary point of contact for Plaintiff Samara Green, as well as for plaintiffs Brett Jacob and Charles Johnson. He has kept in regular contact with clients retained by my office throughout this litigation, both via email and by telephone, concerning, for example, the status of discovery, motion practice, settlement efforts and litigation in general.

44. Mr. Ibey has worked cooperatively with counsel for the other Consolidated Plaintiffs at different law offices, including, for example, providing input and assistance with the related matters that were filed in the *Healy* Action and *Urista* Action, and helping to achieve the initial consolidation of related actions that were pending in California.

45. Over the last few years, Mr. Ibey and I have acted informally as liaison counsel with respect to the *Healy* Action and *Urista* Action on the one hand, and the broader group of counsel for the Consolidated Plaintiffs on the other.

46. With respect to the *Healy* Action and *Urista* Action, Mr. Ibey and I provided input on the

motions to transfer the *Healy* Action and *Urista* Action to the Northern District of California[1] as well as discovery.

47. After significant effort, the *Healy* Action and *Urista* Action were ultimately transferred to the North District of California[2] and, at the plaintiffs' request, consolidated with the *Delpapa* Action. That action later became captioned *In Re: Wells Fargo Forbearance Litigation* when the matter of *Forsburg v. Wells Fargo & Co.*, No. 5:20-cv-00046 (W.D. Va.) was ordered transferred to the Northern District of California on May 16, 2022, and consolidated with the *Delpapa* Action on or about August 19, 2022 (*see also* Third Amended Consolidated Complaint filed on September 28, 2022).

48. Mr. Ibey assisted with fact-finding efforts, including written discovery requests to Defendants and deposing in-person Defendants' representative, Cristelo Garza, in San Antonio, Texas, on July 19, 2023. Mr. Ibey questioned Mr. Garza for several hours concerning, but not limited to, thirty-five exhibits of documentation relating to topics such as Wells Fargo's written communications with consumers during COVID-19 (and the development over time of some of those communications), as well as Wells Fargo's policies and procedures. By the time the deposition was concluded, Consolidated Plaintiffs' Counsel had introduced and questioned Wells Fargo representatives in this litigation on 272 exhibits.

49. Mr. Ibey participated in a discovery meet and confer call with Defendants on May 6, 2022, concerning discovery sought by Plaintiffs, as outlined in the Plaintiffs' detailed 33-page meet and confer letter served on Defendants on or about April 12, 2022.

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[1] Those motions to transfer were filed in the Southern District of California on January 13, 2021 (in *Healy* Action) and September 14, 2021 (in *Urista* Action).

[2] The *Healy* Action and *Urista* Action were each ordered transferred to the Northern District of California on January 11, 2022, despite opposition by Wells Fargo.

50. Mr. Ibey reviewed thousands of pages of documents produced by Defendants in discovery, to amend pleadings, the prepare for mediations, and to prepare for depositions, among other things.

51. Mr. Ibey contributed substantially to all of the legal briefs that were filed in the *Delpapa* Action and *In Re: Wells Fargo Forbearance Litigation*, including for example an opposition to Defendants' Amended Motion to Dismiss the First Amended Complaint, which opposition was filed on October 21, 2021; an opposition to Defendants' Motion to Dismiss the Second Amended Complaint, which opposition was filed on June 17, 2022; an opposition to Defendants' Motion to Dismiss the Third Amended Complaint, which opposition was filed on November 4, 2022; and an opposition to Defendants' Motion to Dismiss the Fourth Amended Complaint, which opposition was filed on July 14, 2023.

52. Mr. Ibey contributed substantially to amended pleadings that were filed in the *Delpapa* Action and *In Re: Wells Fargo Forbearance Litigation*, including the First Amended Complaint filed on December 24, 2020; the Second Amended Complaint filed on April 15, 2022; the Third Amended Consolidated Complaint filed on September 28, 2022; and the Fourth Amended Consolidated Complaint filed on May 19, 2024.

53. Mr. Ibey worked with co-counsel on a discovery dispute letter filed with the Court in the *Delpapa Action* on June 1, 2022, and on August 5, 2022, seeking to compel discovery from Defendants.

54. Mr. Ibey preformed legal research for and worked on two separate motions to intervene in the matter of *Echard v. Wells Fargo Bank, N.A., et al.*, No. 2:21-cv-05080 (S.D. Ohio), filed on November 5, 2021, and October 4, 2022.

55. Mr. Ibey participated in several of the mediations that were conducted in connection with the

Delpapa Action.

56. Mr. Ibey assisted Consolidated Plaintiffs in responding to written discovery requests from Wells Fargo, including written discovery responses from Samara Green, Brett Jacob, and Charles Johnson that were served on Defendants on January 23, 2023, in connection with the *Delpapa* Action. Mr. Ibey was in charge of organizing the combined document production for the Consolidated Plaintiffs in the *Delpapa* Action that was served on Defendants on May 8, 2023, consisting of 2,601 pages.

57. Mr. Ibey has participated in regular meetings over the last few years with counsel for the Consolidated Plaintiffs, including counsel for plaintiffs in the *Forsburg* Action (before and after it became part of *In Re: Wells Fargo Forbearance Litigation*), where various tasks were assigned with an eye toward cooperation, efficiency and fair division of labor.

58. Mr. Ibey worked closely with other counsel for Consolidated Plaintiffs on the settlement agreement providing for a settlement fund of $185 million, the motion for preliminary class action settlement approval, and a motion for appointment of class counsel.

BRIEF SUMMARY OF KAZEROUNI LAW GROUP, APC'S EXPERIENCE AND BACKGROUND

59. My firm, Kazerouni Law Group, in which I am a principal, has litigated over 15,000 cases in the past seventeen years. My firm has offices in Orange County, California; San Diego, California; Phoenix, Arizona; Las Vegas, Nevada; St. George, Utah; Dallas, Texas; Seattle, Washington; New York, New York; Mt. Laurel, New Jersey; and Minneapolis, Minnesota.

60. Kazerouni Law Group has extensive experience in consumer class actions and other complex litigation. My firm has a history of aggressive, successful prosecution of consumer class actions. Approximately 95% of my practice concerns consumer litigation in general.

61. My firm and I have litigated many consumer rights class actions, both on the state and federal

level, under various consumer protection statutes, such as the Fair Debt Collection Practices Act ("FDCPA"), the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), California's Unfair Competition Law ("UCL"), California's False Advertising Law ("FAL"), California's Consumer Legal Remedies Act ("CLRA"), Fair Credit Reporting Act ("FCRA"), California Invasion of Privacy Act ("CIPA"), Real Estate Settlement Procedures Act ("RESPA"), and Telephone Consumer Protection Act ("TCPA"), just to name a few.

Cases Against Wells Fargo

62. On September 30, 2024, I was appointed as Executive Committee Chair in a nationwide consumer class action against Wells Fargo in the matter of *In Re Wells Fargo Unauthorized Products Litigation*, Case No. 3:24-cv-01223-TLT (N.D. Cal.).

63. Over the past several years, my firm has obtained many favorable consumer class action settlements against Wells Fargo, including the following cases I was involved in:

    a. *Luster v. Wells Fargo Dealer Services, Inc*., 15-cv-1058 (TWT) (N.D. Ga. Nov. 8, 2017) (TCPA class action finally approved in the amount of $14,834,058.00);

    b. *Mount v. Wells Fargo Bank, N.A*., BC395959 (Sup. Ct. Los Angeles) (final approval of surreptitious call recording class action for $5,600,000);

    c. *Barani v. Wells Fargo Bank, N.A*., No. 12CV2999-GPC(KSC), 2014 U.S. Dist. LEXIS 49838, at *7 (S.D. Cal. Apr. 9, 2014) (co-lead class counsel in a settlement under the TCPA for the sending of unauthorized text messages to non-account holders in connection to wire transfers, finally approved on March 6, 2015, for over $1,000,000; and Judge Gonazlo P. Curiel, stating, in reference to me and my co-counsel, that "Class Counsel have experience prosecuting class actions relating to privacy and consumer rights, including TCPA actions. . . "); and

d. *Malta, et al. v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290-IEG (BLM) (served as co-lead counsel for a settlement class of borrowers in connection with residential or automotive loans and violations of the TCPA in attempts to collect on those accounts; obtained a common settlement fund in the amount of $17,100,000; final approval granted in 2013).

Cases Against Other Financial Institutions

64. Kazerouni Law Group has extensive experience litigating consumer class actions against other financial institutions, including the following settlements in which I was involved in obtaining:

a. *Barbano v. JP Morgan Chase Bank,* N.A., No. EDCV 19-1218 JGB (SPx), 2021 U.S. Dist. LEXIS 204354, at *23 (C.D. Cal. Oct. 18, 2021) (RESPA class action finally approved with a $1,000 payment to each class member and noting that Mr. Kazerounian is "one of the main plaintiff litigators of consumer rights cases in the Central District of California");

b. *Barrow v. JPMorgan Chase Bank, N.A*., 1:16-cv-03577-AT (N.D. Ga.) (class counsel in TCPA class action settlement with $2,250,000 common fund, finally approved on November 6, 2018);

c. *McPolin v. Credit Service of Logan,* 16-cv-116 BSJ (Utah District Court) (FDCPA class action with consumers each receiving $1,428.57, debt relief, and tradeline deletion finally approved on November 9, 2017);

d. *Medeiros v. HSBC Card Services, Inc. et al.,* 2017 U.S. LEXIS 178484 (C.D. Cal. Oct. 23, 2017) (finally approving CIPA class action settlement for $13,000,000);

e. *Pastor v. Bank of America,* 3:15-cv-03831-VC (N.D. Cal. Aug. 16, 2018) (finally

approving FCRA class action settlement);

f. *Couser v. Comenity Bank*, 12-cv-02484-MMA-BGS (S.D. Cal. Oc. 2, 2014) (finally approved for $8,475,000 on May 27, 2015, served as co-lead counsel);

g. *Rose v. Bank of America Corporation et al.,* 12-cv-04009-EJD (N.D. Cal.) (finally approved for $32,000,000 in 2014);

h. *Gehrich v. Chase Bank, N.A.,* 12-cv-5510 (N.D. Cal.) (finally approved for $34,000,000);

i. *Hoffman v. Bank of America Corporation*, 12-CV-00539-JAH-DHB (S.D. Cal.) (co-lead counsel in California class action settlement under Penal Code 632, *et seq*., with a common fund of $2,600,000, finally approved on November 6, 2014); and

j. *Conner v. JPMorgan Chase Bank, et al.,* 10-CV-1284 DMS (BGS) (S.D. Cal.) (finally approved at $11,973,558).

FDCPA/RFDCPA Experience

65. With regards to class action cases specifically involving the FDCPA and/or RFDCPA, in the last few years I have served as counsel and settled several cases, including but not limited to:

a. *Almada v. Kriger Law Firm*, No. 19-CV-2109 TWR (MDD), 2023 U.S. Dist. LEXIS 15717, at *11 (S.D. Cal. Jan. 30, 2023) (FDCPA / RFDCPA case for form letter violation where each class member received $507.11; finally approved January 20, 2023);

b. *Calderon v. Wolf Firm, Inc*., No. 16-1266-JLS (KESx), 2018 U.S. Dist. LEXIS 159435, at *23 (C.D. Cal. Sep. 18, 2018) (FDCPA and RFDCPA class action finally approved September 18, 2018);

c. *Burkhammer v. Allied Interstate, LLC*, 2017 Cal. Super. LEXIS 109 (Sup. Ct. San Luis Obispo) (RFDCPA class action finally approved on October 30, 2017);

d. *Moreno-Peralta v. TRS Recovery Services, Inc*., 2017 Cal. Super. LEXIS 548 (Sup. Ct. San Luis Obispo Oct. 10, 2017) (RFDCPA class action finally approved);

e. *McPolin v. Credit Service of Logan*, 16-cv-116 BSJ (D. Utah) (FDCPA class action with consumers to each receive $1,428.57, debt relief, and tradeline deletion finally approved on November 9, 2017); and

f. *Macias v. Water & Power Cmty. Credit Union*, 2014 Cal. Super. LEXIS 17567, *2 (Sup. Ct., Los Angeles, Dec. 14, 2014) (appointed as class counsel in certified FDCPA class action; class action settlement finally approved on April 21, 2016).

UCL / FAL Experience

66. My firm has settled several false advertising and unfair competition cases, including but not limited to:

a. *Maxin v. RHG & Company, Inc*., 2017 U.S. Dist. LEXIS 27374 (S.D. Cal. Feb. 27, 2017) (finally approved class action settlement for $900,000);

b. *Scheuerman v. Vitamin Shoppe Industries, Inc*., BC592773 (Los Angeles Sup. Ct.) (finally approved class action settlement for up to $638,384);

c. *Oxina v. Lands' End, Inc.*, 3:14-cv-02577-MMA-NLS (S.D. Cal. 2016) (finally approved settlement under California Made in the USA statute);

d. *Giffin v. Universal Protein Supplements*, BC613414 (Los Angeles Sup. Ct.) (finally approved, class received over $210,000);

e. *Ayala, et al. v. Triplepulse, Inc.*, BC655048 (Los Angeles Sup. Ct. Nov. 13, 2018) (finally approved consumer false advertising class action settlement);

f. *Holt, et al. v. FoodState Inc*., 17-CV-00637-LM (D.N.H. 2017) (finally approved, $2.1 million fund).

g. *Kline v. Dymatize Enters., LLC*, No. 15-CV-2348-AJB-RBB, 2016 U.S. Dist. LEXIS 142774, at *16 (S.D. Cal. Oct. 13, 2016) (finally approved class action settlement regarding slack fill claim);

h. *Dowlatshahi v. Mcilhenny Company*, No. 30-2017-00911222-CU-NP-CXC (Orange County Sup. Ct. Oct. 10, 2018) (granting final approval to product false advertising settlement);

i. *Duenas v. Freedom Laser Therapy, Inc. d/b/a iRestor*e, No. 30-2019-01060877-CU-BT-CXC (Orange County Sup. Ct.) (finally approved class action settlement involving alleged false or misleading claims concerning a laser hair growth product); and

j. *Baumrind v. Brandstorm, Inc*., 30-2020-01160083-CU-MC-CXC, 2021 Cal. Super. LEXIS 9571 (Orange County Sup. Ct. Dec. 3, 2021) (finally approved class action settlement for false and misleading claims on the packaging of a consumer product).

Notable Published Decisions

67. A brief summary of a non-inclusive list of notable published decisions are as follows:

a. *Burt v. Bd. of Trs. of the Univ. of R.I*., No. 20-465-JJM-LDA, 2021 U.S. Dist. LEXIS 42059 (D.R.I. Mar. 4, 2021) (denying in part and granting in part motion to dismiss breach of contract claims involving putative class action for refund as a result of campus closure due to COVID-19);

b. *Hill v. Quicken Loans, Inc*., No. ED CV 19-0163 FMO (SPx), 2020 U.S. Dist. LEXIS 140980 (C.D. Cal. Aug. 5, 2020) (denying defendant's motion to dismiss and motion to compel arbitration of TCPA case);

c. *Fishman v. Subway Franchisee Advert. Fund Tr., Ltd*., No. 2:19-cv-02444-ODW (ASx), 2019 U.S. Dist. LEXIS 200710 (C.D. Cal. Nov. 18, 2019) (denying a defendant's motion to dismiss case for lack of personal jurisdiction where jurisdiction as based on an agency relationship);

d. *Meza v. Sirius XM Radio Inc*., No. 17-cv-02252-AJB-JMA, 2020 U.S. Dist. LEXIS 32379 (S.D. Cal. Feb. 25, 2020) (was co-lead counsel; obtained order denying the defendant's motion to strike class allegations and motion to dismiss complaint where defendant challenge the constitutionality of the TCPA);

e. *Delisle v. Speedy Cash*, No. 3:18-CV-2042-GPC-RBB, 2019 U.S. Dist. LEXIS 96981 (S.D. Cal. June 10, 2019) (denying defendant's motion to compel arbitration, for a second time);

f. *Marks v. Crunch San Diego, LLC*, 2018 U.S. App. LEXIS 26883 (9th Cir. 2018) (TCPA class action where Ninth Circuit upheld Ninth Circuit precedence on the definition of an Automatic Telephone Dialing System);

g. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-GPC-WVG (S.D. Cal.) (TCPA class action where Defendant's motion for summary judgment was denied holding that a single call or text message with the use of an ATDS may be actionable under the TCPA);

h. *Olney v. Progressive Casualty Insurance Company*, 13-CV-2058-GPC-NLS, 2014 U.S. Dist. LEXIS 9146 (S.D. Cal.) (Defendant's motion to dismiss or in the alternative

to strike class allegations was denied after finding that debt collection calls were not exempt from coverage under the TCPA);

i. *Iniguez v. The CBE Group, Inc.*, No. 13-CV-00843-JAM-AC, 2013 U.S. Dist. LEXIS 127066 (E.D. Cal.) (denying Defendant's motion to dismiss and to strike class allegations holding that the TCPA applies to any call made to a cellular telephone with an Automatic Telephone Dialing System);

j. *Stemple v. QC Holdings, Inc*., No. 12-cv-01997-BAS (WVG), 2014 U.S. Dist. LEXIS 125313 (S.D. Cal. Sep. 5, 2014) (order denying defendant's motion for reconsideration of class certification under the TCPA); and

k. *Chen v. Allstate Ins. Co.,* 819 F.3d 1136 (9th Cir. 2016) (order affirming decision finding unaccepted offer of judgment under Fed. R. Civ. P. 68 did not moot the plaintiff's individual TCPA claims).

LODESTAR AND COSTS FOR KAZEROUNI LAW GROUP, APC

68. From approximately July of 2020 through October 10, 2024, Kazerouni Law Group dedicated a considerable amount of time and financial resources to this litigation. My firm has not been compensated for any time or expenses in this risky litigation involving novel issues and the COVID-19 pandemic.

69. Specifically, from approximately July of 2020 to October 10, 2024, Kazerouni Law Group has incurred approximately 3,450 attorney hours during this litigation against Wells Fargo (as discussed in further detail below), with a total attorney lodestar for my firm of $2,934,647.50.[3]

70. From July of 2020 to October 10, 2024, Kazerouni Law Group has incurred approximately

[3] This figure does not include a reasonable estimate of the anticipated additional hours through final approval.

210.80 support staff hours during this litigation against Wells Fargo (as discussed in further detail below), with a total support staff lodestar for my firm of $37,935.50.

71. The combined attorney and support staff lodestar at Kazerouni Law Group through October 10, 2024, is $2,972,583.

72. Of this time, my firm (attorneys and support staff) incurred approximately 570.80 hours in the litigation prior the date when Brian Echard filed suit on January 28, 2021.

73. Upon the Court's request, I am willing to provide detailed time records for time incurred in this litigation by my firm. Also, upon the Court's request, I am willing to provide detailed expense records for the litigation costs incurred by my firm.

74. As of October 24, 2024, my firm has incurred $132,856.85 in litigation expenses. I believe the costs incurred in this matter are necessary, fair and reasonable. Below is a summary by category of these expenses:

Category	Total
Airfare	$17,748.70
Court Fees	$828.60
Printing, Copying, Postage	$4,166.64
Research and Database Access Fees	$3,266.28
Hotels	$7,693.80
Meals	$2,456.82
Parking and Ground Transportation	$1,143.26
Deposition Costs	$2,693.11
Expert Fees	$17,120.66
Mediation Services	$75,738.98
TOTAL	**$132,856.85**

75. My firm anticipates incurring additional costs for filing a motion for final approval of a class action settlement (due November 26, 2024) and in preparing for and traveling to the Final Approval Hearing scheduled for December 10, 2024. Also, I anticipate between one and two hundred additional hours will likely be incurred by my firm through completion of the settlement.

76. My firm has not been paid anything for our time in working on this matter on a contingency fee basis.

Hours Incurred by Abbas Kazerounian and Summary of Experience

77. From July of 2020 to October 10, 2024, I have incurred approximately **1,926.8** hours during this litigation against Wells Fargo. All hours were logged contemporaneously in the normal course of business.

78. I have spent approximately **104** hours on Co-Counsel Communications; **36.10** hours on Internal Team Communications; **20** hours on Communications with Opposing Counsel**; 0.20** on Communications with Clients; **9.8** hours on Communications with the Courts; **16.90** hours on Communications (Other); **6.10** hours on Administrative Duties; **51.5** hours on Research; **102.10** hours on Depositions; **306.70** hours on Discovery; **191.8** hours on Investigations and Document Review; **118.50** hours on Litigation Strategy; **25.10** hours on Pleadings; **551.8** hours on Motions Practice; **377.4** hours on Mediation / Settlement; and **8.80** relating to travel for and my interview on ABC10 news relating to the litigation.

79. Based on my extensive experience litigating consumer class actions since 2007 and my prior fee approval rates, as detailed below, I believe my hourly rate of $1,025 for this litigation is fair and reasonable.

80. On September 10, 2024, I was approved for the hourly rate of $975 in the finally approved

class action settlement of *Orellana v. Parenthood L.A.*, Case No. 21STCV44106 (Los Angeles Sup. Ct. Sept. 10, 2024). Prior to that, in January of 2024, I was approved for the hourly rate of $900 in the finally approved class action settlement of *Hellyer v. Smile Brands, Inc.*, No. 8:21-cv-01886-DOC-ADSx, 2024 U.S. Dist. LEXIS 8096, at *4 (C.D. Cal. Jan. 16, 2024) (Hon. David O. Carter opining "[t]he hours and rates encompassed by the lodestar are reasonable given the complexity of this case and the attorneys' experience."). I was also approved for an hourly rate of $900 in *Stoffers v. Dave, Inc.*, 2023 Cal. Super. LEXIS 99280 (Los Angeles Sup. Ct. Dec. 12, 2023) (granting final approval).

81. At a rate of $1,025 for this litigation, and with the hours incurred above of 1,926.8, my loadstar is $1,974,970 for this Action through October 10, 2024.

82. Since my admission to the State Bar of California in 2007, I have been engaged exclusively in the area of consumer rights litigation, primarily in the area of unfair business practices, unfair debt collection, the TCPA, CIPA pursuant to Penal Code § 630, *et seq*., false advertising actions concerning consumer products, FCRA, RESPA, and other consumer statutes.

83. I have been appointed as class counsel for settlement purposes in several consumer class actions, including but not limited to:

    b. Serving as settlement class counsel in *Schneider v. All-Clad Metalcrafters, LLC*, Case No.: 30-2021-01189853-CU-BT-CXC (Orange County Sup. Ct.) involving claims under the Song-Beverly Consumer Warranty Act, UCL, and CLRA (finally approved on October 11, 2024).

    c. Served as one of class counsel in finally approved unlawful recording class action settlement in *Goodwin v. K M P Enters*., 2024 Cal. Super. LEXIS 2143 (Los Angeles Sup. Ct. Feb. 14, 2024).

d. On January 16, 2024, in *Hellyer, et al. v. Smile Brands*, No. 8:21-cv-01886-DOC-ADS (C.D. Cal. Jan. 16, 2024), I was approved as co-lead class counsel for settlement purposes in a data breach class action.

e. On December 12, 2023, I was approved as class counsel for settlement purposes in *Stoffers v. Dave Inc*., 2023 Cal. Super. LEXIS 99280 (Los Angeles Sup. Ct. Dec. 12, 2023) for a case concerning alleged violations of the California Consumer Privacy Act of 2018, UCL, and for breach of contract.

f. On November 28, 2023, I was approved as class counsel for settlement purposes in *Bell v. Redfin Corp.,* No. 20-cv-02264-AJB-SBC, 2023 U.S. Dist. LEXIS 211383 (S.D. Cal. Nov. 28, 2023).

g. On January 30, 2023, I was approved as class counsel in an action for violations of the RFDCPA and FDCPA. *See Almada v. Kriger Law Firm*, No. 19-CV-2109 TWR (MDD), 2023 U.S. Dist. LEXIS 15717, at *11 (S.D. Cal. Jan. 30, 2023).

h. I was class counsel in a class action involving alleged violations of the Song-Beverly Warranty Act (Cal. Civ. Code § 1793.1(a)(1)), the Consumer Legal Remedies Act, and Unfair Competition Law that was finally approved on November 3, 2022, entitled *Lo v. Nutribullet, LLC*, No. 21STCV12852 (Los Angeles Sup. Ct. Nov. 3, 2022).

i. I was approved as class counsel in another data breach case entitled *Kolar, et al v. ClearBalance* filed in San Diego Superior Court; Case No. 37-2021-00030426-CU-NP-CTL.

j. In June of 2022, I was also approved as class counsel in another data breach case. *See Newman v. Jm Bullion*, 2022 Cal. Super. LEXIS 37967 (Kern County Sup. Ct. June 30, 2022).

k. In 2022, I served as co-lead counsel in *R.O., et al. v. Rady Children's Hospital - San Diego*, No. 37-2020-00011841-CU-BT-CTL (May 10, 2022) (granting final approval of class action settlement in a California Confidentiality of Medical Information Act case).

l. On April 15, 2022, I was appointed as liaison counsel in *Orellana, et al. v. Planned Parenthood Los Angeles*, No. 21STCV44106 (Los Angeles Sup. Ct. Apr. 15, 2022) (data breach class action; finally approved on September 10, 2024).

m. On November 4, 2021, I was appointed as interim co-lead class counsel in *Vakilzadeh v. The Trustees of The California State University,* Case No. 20STCV23134 (Los Angeles Sup. Ct. Nov. 4, 2021) (consolidated class action for failure to provide in-person classes and access to on-campus services during the COVID-19 pandemic).

n. In 2020, I served as one of co-class counsel preliminarily approved data breach settlement in *Cotter v. Checkers Drive-In Restaurants, Inc*., 8:19-cv-01386-VMC-CPT (M.D. Fl. June 20, 2020).

o. In 2019, I was appointed co-lead counsel in a securities class action in *Jiao v. Merrill Lynch Pierce Fenner & Smith, Inc. et al*., No. 3:17-cv-00409-L-MMD (S.D. Cal.).

84. In April of 2017, argued before the Ninth Circuit Court of Appeals in the case of *Afewerki v. Anaya Law Grp*., 868 F.3d 771 (9th Cir. 2017). This resulted in an order in favor of my client. On May 15, 2019, I again argued before the Ninth Circuit Court of Appeals in the case of *Afewerki v. Anaya Law Group, et a*l., No. 18-55100, which resulted in an order in favor of my client's FDCPA claim. *See Afewerki v. Anaya Law Group*, No. 19-56486 (9th Cir. Jan. 21, 2021).

85. On December 6, 2016, I successfully argued before the Ninth Circuit Court of Appeals in the

case of *Marks v. Crunch San Diego, LLC*, which resulted in an order in favor of my client's TCPA claim in terms of the meaning of an automatic dialing system. *See Marks v. Crunch San Diego*, LLC, 2018 U.S. App. LEXIS 26883 (9th Cir. 2018).

86. I argued before the Ninth Circuit Court of Appeals in the case of *Knutson v. Sirius XM Radio,* No. 12-56120 (9th Cir. 2014), which resulted in an order in favor of my client.

87. I was co-counsel on an appeal to the Eleventh Circuit Court of Appeals in *Dunn v. Global Trust Management, LLC, et al.*, Appeal No. 21-10120-JJ.

88. I have worked on numerous other appeals to the Ninth Circuit Court of Appeals as well as the California Court of Appeal where a favorable result was obtained for my clients in several cases, including but not limited to:

    a. *Delisle v. Speedy Cash*, No. 19-55794 (June 9, 2020) (affirmed lower court's holding that a consumer's right to seek public injunctive relief under California law is non-waivable, and remanding for further proceedings);

    b. *Rahmany v. T-Mobile USA Inc.*, No. 17-35084, 2018 U.S. App. LEXIS 8645 (Apr. 5, 2018) (affirmed denial of the defendant's motion to compel arbitration);

    c. *Flores v. Adir Int'l, LLC*, 685 F. App'x 533, 533 (9th Cir. 2017) (reversing order granting the defendant's motion to dismiss TCPA action);

    d. *Maghen v. Quicken Loans Inc.*, 680 F. App'x 554 (9th Cir. 2017);

    e. *William Mount, et al., v. Wells Fargo Bank, N.A.*, No. B260585 (Cal. Ct. App., Feb. 10, 2016);

    f. *Mojtahedi v. Vargas*, 228 Cal. App. 4th 974, 176 Cal. Rptr. 3d 313 (2014).

89. I have trial experience, both in state and federal courts located in California, including but not limited to:

a. *Richardson v. J. Pletting, et al.*, 5:18-CV-00961-KES (C.D. Cal. 2023) Civil Jury Trial (lead counsel in trial before the Honorable Karen E. Scott);

b. *Pongsai v. American Express,* 8:19-cv-01628-DOC-JDE (C.D. Cal. 2021) Civil Jury Trial (lead trial counsel in identity theft FCRA trial before the Honorable David O. Carter);

c. *Singlton v. Scott Kernan, et al.*, No. 3:16-cv-02462-BAS-NLS (S.D. Cal.) (lead counsel in trial before the Honorable Cynthia A. Bashant);

d. *Alison Bastek v. Comenity Bank*, No. 37-2016- 00017012-CU-BC-CTL (San Diego Sup. Ct. 2016) (bench trial before Judge Stauss);

e. *CACH LLC vs. Ezand, Mahdad M*, No. 14A03873 (Los Angeles Sup. Ct. Aug. 2015) (bench trial);

f. *Hadsell v Madrich Law Group*, No. 12CV0235 AJB(RBB) (S.D. Cal. 2015) (co-lead trial counsel in jury trial before Judge Anthony Battaglia);

g. *CACH LLC vs. Michael Troutman*, No. 37-2011-00058243-CL-R3-NC (San Diego Sup. Ct. Sept. 2012) (bench trial before Judge Nugent);

h. *Contreras v. Rent-A-Wheel*, No. 37-2010-00096692-CU-CL-CTL (San Diego Sup. Ct. Mar. 2012) (jury trial before Judge Lewis);

i. *Counsel Press vs. Hyde & Swigart APC* (San Diego Sup. Ct. Jan. 2010) (bench trial before Judge Meyer);

j. *Eric Lira vs. Sweetwater School District*, No. 37-2009-00080975-CU-PO-CTL (San Diego Sup. Ct. 2010) (jury trial before Judge Blum); and

k. *Ayala v. Ramzi*, No. 05K05256 (Los Angeles Sup. Ct. June 2007) (bench trial).

90. I have filed and litigated numerous consumer class actions over the last several years, including but not limited to the following, which I am or have been personally involved in:

a. *Lemieux v. EZ Lube, LLC, et al.*, No. 12-CV-01791-JLS-WYG (S.D. Cal.) (served as co-lead counsel; finally approved on December 8, 2014);

b. *In Re: Midland Credit Management, Inc., Telephone Consumer Protection Act Litigation*, No. 11-md-2286-MMA (MDD) (S.D. Cal.) (counsel for a Plaintiff in the lead action, prior to the action being recategorized through the multi-district litigation process; finally approved for $18,000,000);

c. *In Re: Portfolio Recovery Associates, LLC Telephone Consumer Protection Act Litigation*, No. 11-md-02295-JAH (BGS) (S.D. Cal.) (counsel for a Plaintiff in the lead action, prior to the action being recategorized through the multi-district litigation process; finally approved for $18,000,000);

d. *Mills v. HSBC Bank Nevada, N.A.*, No. 12-CV-04010-SI (N.D. Cal.) (finally approved for $39,975,000);

e. *In Re Jiffy Lube International, Inc.*, MDL No. 2261 (S.D. Cal.) (finally approved for $47,000,000);

f. *Sherman v. Kaiser Foundation Health Plan, Inc.*, No. 13-CV-0981-JAH (JMA) (S.D. Cal.) (settled for $5,350,000 and finally approved on May 12, 2015; served as co-lead counsel);

g. *Barrett v. Wesley Fin. Grp., LLC*, No. 13cv554-LAB (KSC), 2015 U.S. Dist. LEXIS 189410 (S.D. Cal. Mar. 30, 2015) (served as one of class counsel in TCPA case, achieving certification of an injunctive relief class);

h. *LaPuebla v. BirchBox, Inc.*, No. 3:15-cv-00498-BEN-BGS (S.D. Cal. 2016) (finally approved settlement in unlawful auto-renewal action);

i. *Stemple v. QC Holdings, Inc.*, No. 12-cv-01997-BAS-WVG (S.D. Cal. Nov. 7, 2016) (finally approved for $1,500,000);

j. *Abdeljalil v. GE Capital Retail Bank*, No. 12-cv-02078−JAH−MDD (S.D. Cal.) (class certification granted and finally approved for $7,000,000);

k. *Hooker v. Sirius XM Radio Inc.*, No. 4:13-cv-00003-AWA-LRL (E.D. Va. Dec. 22, 2016) (served as co-lead counsel in finally approved TCPA class action settlement with a monetary fund of $35,000,000);

l. *Knell, et al. v. FIA Card Services, N.A.*, 13-CV-01653-AJB-WVG (S.D. Cal.) (California class action settlement under CIPA resulting in a common fund of $2,750,000; finally approved in August 15, 2014);

m. *Zaw v. Nelnet Business Solutions, Inc. et al*., No. 13-cv-05788-RS (N.D. Cal.) (finally approved in 2014 for $1,188,110 in action under CIPA);

n. *Ronquillo-Griffin v. Telus Communications, Inc. et al.*, No. 3:17-cv-00129-JM-MLB (S.D. Cal.) (finally approved in May 2019 for $425,000 in an action under Cal. Pen. Code § 630, *et seq*.);

o. *Reid v. I.C. System, Inc*., 2017 U.S. Dist. LEXIS 43770 (D. Ariz. Mar. 24, 2017) (TCPA class actions finally approved in the amount of $3,500,000);

p. *Couser v. Dish One Satellite, LLC*, No. 5:15-cv-02218-CBM-DTB (C.D. Cal. Nov. 21, 2017) (TCPA class action preliminarily approved in the amount of $935,000);

q. *McAfee v. Treasure Island, LLC*, No. A-18-772302-C (D. Nev. May 23, 2019) (served as class counsel for settlement purposes in a finally approved data breach class action settlement);

r. *Khoury v. Wynn Resorts*, No. A-18-773073-C (8th Jud. Dist. Nev. Apr. 15, 2019) (served as class counsel for settlement purposes in finally approved class action settlement for deceptive parking signs);

s. *Defranks v. Nastygal.com USA Inc.*, No. 1:19-cv-23028-GAYLES (S.D. Fla. Sept. 4, 2020) (served as class counsel for settlement purposes in TCPA class action finally approved for over $5,000,000);

t. *Hofstader v. Providence Health & Servs.*, No. 2:18-cv-00062-SMJ, 2021 U.S. Dist. LEXIS 31663 (E.D. Wash. Feb. 19, 2021) (served as class counsel for settlement purposes; final approval granted);

u. *Newman v. AmeriCredit Financial Services*, 11-cv-03041-DMS-BLM (S.D. Cal.) (finally approving TCPA settlement for over $6,500,000 on March 28, 2016);

v. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (W.D. Wash.) (Nationwide settlement achieving the then-largest monetary settlement in the history of the TCPA concerning calls to cellular telephone at the time: $24.15 million; final approval granted in 2012).

91. Many of the cases listed above, which have settled, resulted in the creation of combined common funds and/or distribution to class member in the hundreds of millions of dollars. Mr. Ibey worked with me on many of those cases.

92. I am an adjunct professor at California Western School of Law where I teach a three-credit course in consumer law where I teach, among other things, the UCL, FCRA and RFDCPA.

93. I have undergone extensive training in the area of consumer law since 2008.

94. For more than a decade, I have been a frequent speaker at seminars and conventions across the country on consumer law issues. In 2024, specifically, I was a speaker at the March 9, 2024, CAOC Conference in Sonoma, California on "Pre-Trial Nuts & Bolts of Federal Litigation"; a speaker at the July 2024 CAOC DE&I Speaker Series; and a speaker at "A Conversation with Plaintiff's Attorneys on Accounts Recovery National Webinar" on July 29, 2024.

95. I am often called upon to give legal analysis on popular television and radio shows such as Dr. Drew Midday Live and Fox 5.

96. I was named Rising Star by San Diego Daily Tribune in 2012, and Rising Star in Super Lawyers Magazine in 2013, 2014 and 2015. I was named a Super Lawyer by Super Lawyers Magazine in 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024.

97. I was named among Top 50 Attorneys in Orange County 2021, 2022, 2023, and 2024 and Top 100 Attorneys in Southern California by Super Lawyers in 2021, 2022, 2023, and 2024.

98. I was selected for membership into The National Trial Lawyers: Top 40 Under 40 in 2016, 2017 and 2018.

99. In 2016, I wrote an article entitled "Finding a Balance" that was published in the Nutrition Business Journal, concerning a lawsuit filed under the Racketeer Influenced and Corrupt Organization Act.

100. My article "The FDCPA: The Forgotten Statute," was published in the Daily Journal in September of 2016.

101. I was given the Wiley W. Manuel Award by the State Bar of California for Pro Bono Work in 2017.

102. I wrote an article entitled, *Collateral Damage, Beyond the personal injury: When creditors and collection agencies stalk your client*, published in the September 2017 edition of Plaintiff Magazine.

103. I wrote an article entitled, "*Screening for a Class Representative*," for the June 2020 issue of the Northern California Plaintiffs' Attorneys' Magazine.

104. I wrote an article entitled, "*The Unique Value of Class Actions and Mass Tort Claims*," published in the January/February 2024, Consumer Attorneys of California, Form Magazine.

105. I am a member in good standing of the following local and national associations:

a. Consumer Attorneys Association of Los Angeles;

b. The Orange County Bar Association;

c. Member in good standing of National Association of Consumer Advocates;

d. Twice served as former President of the Orange County Chapter of the Iranian American Bar Association;

e. Member of Consumer Attorneys of California – Fourth Vice President;

f. Member of the Federal Bar Association;

g. Member of the Leading Forum of the American Association of Justice;

h. Member of the American Bar Association; and

i. Member of the Western Trial Lawyers Association.

Hours Incurred by Jason A. Ibey and Summary of Experience

106. From July of 2020 to October 10, 2024, Mr. Ibey has incurred approximately **832.5** hours during this litigation against Wells Fargo. All hours were logged contemporaneously in the normal course of business.

107. Mr. Ibey is a partner at Kazerouni Law Group, APC, and has been employed by my firm for

almost 12 years.

108. Based on Mr. Ibey's extensive experience litigating consumer class actions, I believe his hourly rate of $725 for this litigation is fair and reasonable, in light of his experience in this field since 2012.

109. According to contemporaneously kept electronic billing records, Mr. Ibey has spent approximately **72.2** hours on Co-Counsel Communications; **10.9** hours on Internal Team Communications; **9.90** hours on Communications with Opposing Counsel**; 8.7** on Communications with Clients; **0.50** hours on Communications with the Courts; **9.3** hours on Communications (Other); **20.8** hours on Administrative Duties; **4.9** hours on Research; **36.20** hours on Depositions; **106.9** hours on Discovery; **32** hours on Investigations and Document Review; **65.9** hours on Litigation Strategy; **38.7** hours on Pleadings; **256.5** hours on Motions Practice; **157.7** on Mediation / Settlement; **0.90** hours on Experts; **0.50** hours on Miscellaneous Tasks.

110. At a rate of $725 for this complex litigation, Mr. Ibey's loadstar is $603,562.50 for this Action through October 10, 2024.

111. In a case involving consumer issues, Mr. Ibey was approved for the hourly rate of $490 in *Schneider v. All-Clad MetalCrafters, LLC*, No. 30-2021-01189853-CU-BT-CXC (Los Angeles Sup. Ct. Oct. 18, 2024).

112. Mr. Ibey is an attorney admitted to the State Bar of California on November 26, 2012, and has been a member in good standing since admission. He is also admitted to the Utah State Bar and the Bar of the Commonwealth of Massachusetts, and in good standing in those jurisdictions. Further, Mr. Ibey is admitted to the Ninth Circuit Court of Appeals.

113. Prior to being admitted to practice law in California, Mr. Ibey interned for the Honorable

Deborah Sanchez of the Los Angeles Superior Court, at the Courthouse in Bellflower, California.

114. Mr. Ibey was selected to Rising Stars in 2018-2022 by Super Lawyers, for consumer law; selected to Super Lawyers in 2023-2024 by Super Lawyers, for consumer law; and selected in 2022 to be among Top 40 Under 40 Civil Trial Lawyers, by The National Trial Lawyers in California.

115. Since late 2012, Mr. Ibey has practiced law almost exclusively in the area of consumer actions, with over 95% of his legal practice dedicated to consumer class actions. He has been involved in litigating several consumer class actions, including in the area of unfair business practices, unfair debt collection, CIPA pursuant to Penal Code § 630, *et seq*., false advertising actions concerning consumer products, the RFDCPA, RESPA, the TCPA, and other consumer statutes and common law claims.

116. Below is a list of cases in which Mr. Ibey has served or is serving as class counsel for settlement purposes:

a. Serving as settlement class counsel in *Schneider v. All-Clad Metalcrafters, LLC*, 2023 Cal. Super. LEXIS 78752 (Orange County Sup. Ct.), involving claims under the Song-Beverly Consumer Warranty Act, California's Unfair Competition Law, and Consumer legal Remedies Act (finally approved October 11, 2024);

b. Currently serving as one of class counsel in finally approved unlawful recording class action settlement in *Goodwin v. K M P Enters*., 2024 Cal. Super. LEXIS 2143 (Los Angeles Sup. Ct. Feb. 14, 2024);

c. Served as one of class counsel in finaly approved Song-Beverly Consumer Warranty Act case, *Lo v. NutriBullet, LLC*, No. 21STCV12852 (Los Angeles Sup. Ct. Nov. 3, 2022);

d. Served as one of class counsel in finally approved product false adverising case in *Deunas v. Freedom Laser Therapy, Inc., d/b/a iRestore*, No. 30-01060877-CU-BT-CXC (Orange County Sup. Ct. 2021);

e. Served as one of class counsel in finally approved data breach class action settlement in *Cotter v. Checkers Drive-In Restaurants, Inc*., No. 8:19-cv-01386-VMC-CPT (M.D. Fla. Aug. 25, 2021);

f. Served as one of class counsel in finally approved product false advertising class action settlement in *Hinkle v. Sports Research Corp*., No. 37-2020-00001422-CU-NP-NC (San Diego Sup. Ct. Mar. 26, 2021);

g. Served as one of class counsel in finally approved product false advertising class action settlement in *Holt v. Foodstate, Inc*., No. 1:17-cv-00637-LM (D.N.H. Jan. 16, 2020);

h. Served as one of the appointed class counsel in a contested case concerning alleged unlawful surcharges at certain restaurants in the matter of *Holt v. Noble House & Resorts, Ltd*., No. 17-cv-2246-MMA-BLM (S.D. Cal. Oct. 16, 2018);

i. Served as one of class counsel in finally approved unlawful recording class action settlement in *Ronquillo-Griffin v. Telus Communs., Inc*., 3:17-cv-00129-JM-BLM, (S.D. Cal. Nov. 1, 2018);

j. Served as one of class counsel in finally approved product false advertising settlement in *Ayala v. TriplePulse Inc*., 2018 Cal. Super. LEXIS 3242 (Los Angeles Sup. Ct. Nov. 13, 2018);

k. Served as one of class counsel in finally approved TCPA class action settlement in *Fox v. Spectrum Club of Santa Barbara*, No. 16CV00050 (Santa Barbara Sup. Ct. March 23, 2017).

117. Mr. Ibey has contributed significantly to several other consumer putative class actions in which a favorable published decision was issued, including but not limited to the following cases:

a. *Miholich v. Senior Life Ins. Co.*, No. 21-cv-1123-WQH-AGS, 2022 U.S. Dist. LEXIS 23981 (S.D. Cal. Feb. 10, 2022) (denying defendant's motion to dismiss and strike class allegations in TCPA action for alleged unsolicited telemarketing to consumers on the National Do-Not-Call Registry);

b. *Read v. Cenlar FSB,* No. EDCV 21-504 JGB (SPx), 2022 U.S. Dist. LEXIS 3586 (C.D. Cal. Jan. 7, 2022) (striking some of the defendant's affirmative defenses, including the defendant's prayer for costs of suit and attorneys' fees);

c. *Hill v. Quicken Loans, Inc.*, No. ED CV 19-0163 FMO (SPx), 2020 U.S. Dist. LEXIS 140980 (C.D. Cal. Aug. 5, 2020) (denying defendant's motion to dismiss and motion to compel arbitration of TCPA case);

d. *Delisle v. Speedy Cash,* No. 3:18-CV-2042-GPC-RBB, 2019 U.S. Dist. LEXIS 96981 (S.D. Cal. June 10, 2019) (denying defendant's motion to compel arbitration of claims for allegedly charging excessive APR);

e. *Rahmany v. T-Mobile USA Inc.,* 717 F.App'x 752 (9th Cir. 2018) (reversing order granting defendant's motion to compel arbitration);

f. *Marks v. Crunch San Diego, LLC,* No. 14-56834, 2018 U.S. App. LEXIS 26883 (9th Cir. Sep. 20, 2018) (unanimous three-panel decision on the meaning of an automatic

telephone dialing system under the TCPA);

g. *Meza v. Sirius XM Radio, Inc.,* No. 17-cv-2252-AJB-JMA, 2018 U.S. Dist. LEXIS 164601 (S.D.Cal. Sep. 25, 2018) (denying motion to dismiss, based in part of challenge to constitutionality of the TCPA);

h. *Ahmed v. HSBC Bank USA, N.A.,* No. ED CV 15-2057 FMO (SPx), 2017 U.S. Dist. LEXIS 183910 (C.D.Cal. Nov. 6, 2017) (granting plaintiffs' motion to strike some of the affirmative defenses); and

i. *Greenley v. Laborers' Int'l Union of N. Am.,* 271 F. Supp. 3d 1128 (D. Minn. 2017) (denying motion to dismiss on several grounds, including a challenge to the constitutionality of the Telephone Consumer Protection Act).

118. Mr. Ibey has contributed significantly to nearly a dozen appellate briefs before the Ninth Circuit Court of Appeals, and he has experience presenting oral argument in two different matters before the Ninth Circuit Court of Appeals:

a. On August 16, 2018, presented oral argument in *Self-Forbes v. Advanced Call Center*, No. 17-15804 (9th Cir. 2018), and obtained a successful ruling for our client. *Self-Forbes v. Advanced Call Ctr. Techs., LLC*, 2018 U.S. App. LEXIS 30577, at *1 (9th Cir. Oct. 29, 2018); and

b. On October 20, 2017, presented oral argument before the Ninth Circuit Court of Appeal in the matter of *Carter v. Rent-A-Center, Inc.*, No. 16-15835.

119. Mr. Ibey has written the following published articles relating to consumer protection issues:

a. "*What is an autodialer? The Supreme Court will decide*," published in Forum magazine for September/October 2020;

b. "*Pay your arbitration fees on time or lose the right to arbitrate*," published on October 25, 2019, in the Daily Journal;

c. "*California's Invasion of Privacy Act*", published in the May 2018 edition of Plaintiff magazine;

d. *"Think twice before filing that Article III challenge*," published in the Daily Journal on November 1, 2016; and

e. *"Those annoying robo calls and the changing standard of prior express consent*," published in the March 2015 edition of Plaintiff Magazine.

Hours Incurred by Pamela Prescott and Summary of Experience

120. From July of 2020 to October 10, 2024, Ms. Prescott has incurred approximately **139** hours during this litigation against Wells Fargo. All hours were logged contemporaneously in the normal course of business.

121. Ms. Prescott is an associate attorney at my firm.

122. Ms. Prescott has contributed to many aspects of the case, including but not limited to: (1) participating in some of the many weekly meetings with Consolidated Plaintiffs' counsel; (2) assisting with drafting the preliminary approval motion; (3) staying in regular communication with the other Consolidated Plaintiff's counsel; and (4) motion practice.

123. Based on Ms. Prescott experience litigating consumer class actions, I believe her proposed hourly rate of $500 for this litigation is fair and reasonable, in light of her experience in this field since 2019, combined with her prior fee approval rates.

124. According to contemporaneously kept electronic billing records, Ms. Prescott has spent approximately **8.7** hours on Co-Counsel Communications; **1.20** hours on Internal Team Communications; **0.20** hours on Communications with Opposing Counsel**;** **0.40** on

Communications with Clients; **6.1** hours on Administrative Duties; **0.40** hours on Research; **1.70** hours on Depositions; **22** hours on Discovery; **0.90** hours on Investigations; **1.90** hours on Litigation Strategy; **31.1** hours on Mediation / Settlement; and **64.40** hours on Motions.

125. At a rate of $500 for this litigation, Ms. Prescott's loadstar is **$69,500** for this Action through October 10, 2024.

126. In January of 2023, Ms. Prescott was approved at an hourly rate of $400 in *Almada v. Kriger Law Firm*, No. 19-CV-2109 TWR (MDD), 2023 U.S. Dist. LEXIS 15717, at *11 (S.D. Cal. Jan. 30, 2023) (class action settlement finally approved concerning violations of the FDCPA and RFDCPA). Ms. Prescott was also approved for the hourly rate of $395 in *Goodwin v. K M P Enters*., 2024 Cal. Super. LEXIS 2143 (Los Angeles Sup. Ct. Feb. 14, 2024). Before that, in November of 2022, Ms. Prescott was approved at the hourly rate of $300 in *Lo v. Nutribullet*, 2022 Cal. Super. LEXIS 84831, *5 (Los Angeles Sup. Ct. Nov. 3, 2022) (finally approved class action settlement in consumer warranty case).

127. Ms. Prescott has been a member in good standing of the State Bar of California since December 2019. Ms. Prescott is also a member of the bar of Minnesota as of April 2021, and she is admitted in every federal district in California. Ms. Prescott has handled litigation in California, Illinois, Colorado, Florida, Texas, New Jersey, Illinois, Massachusetts, and Rhode Island.

128. Since her admission to the State Bar of California in 2019, Ms. Prescott has been engaged exclusively in the area of consumer rights litigation, primarily in the area of fair debt collection under the FDCPA and RFDCPA (both individually and on a class-basis), the defense of debt collection lawsuits, class action litigation under the TCPA, CIPA pursuant to Penal Code § 630, *et seq.*, false advertising actions concerning consumer products, unfair

competition and other consumer statutes.

129. Ms. Prescott has spent a majority of her legal career thus far litigating complex cases such as this one, and she has assisted in resolving various class actions, resulting in numerous class action settlements, benefiting consumers thought out the country.

130. In January of 2023, Ms. Prescott was approved as class counsel for settlement purposes in a class action involving unfair debt collection practices under the FDCPA and RFDCPA resulting in settlement class members each obtaining a $507.11 settlement payment. *See Almada*, 2023 U.S. Dist. LEXIS 15717, at *8. In that action, Ms. Prescott was extensively involved in the resolution of the case and handled negotiations with opposing counsel, drafted the preliminary and final approval motions, and participated the mediation session that resulted in the class wide settlement. Ms. Prescott was also involved in overseeing the claims administration process and attended the final approval hearing.

131. For the past five years, over approximately 60% of Ms. Prescott case load has been devoted to handling complex class action matters such as this one.

132. Some notable published decisions in which Ms. Prescott was personally involved in include:

a. *Tate v. United States*, No. CV 15-9323 FMO (JPRx), 2021 U.S. Dist. LEXIS 250473, at *7 (C.D. Cal. Nov. 8, 2021) (granting, in part, plaintiff's motion to exclude evidence at trial for a pro bono case under the Federal Tort Claims Act);

b. *Kamrava v. Cenlar Capital Corp.*, No. 2:20-CV-11465-AB (Ex), 2021 U.S. Dist. LEXIS 209314, at *9 (C.D. Cal. Oct. 7, 2021) (denying defendant's motion to bifurcate discovery and permitting plaintiff to proceed with both class and individual discovery for RFDCPA and TCPA class action case);

c. *Phillips v. Royal Appliance Mfg. Co.*, No. 21-cv-987-WQH-KSC, 2021 U.S. Dist.

LEXIS 167976, at *18 (S.D. Cal. Sep. 3, 2021) (granting plaintiffs' motion to remand to state court in a consumer false advertising case regarding unlawful warranty practices);

d. *Burt v. Bd. of Trs. of the Univ. of R.I.*, No. 20-465-JJM-LDA, 2021 U.S. Dist. LEXIS 42059 (D.R.I. Mar. 4, 2021) (denying in part and granting in part motion to dismiss breach of contract claims involving putative class action for refund as a result of campus closure due to COVID-19); and

e. *Hill v. Quicken Loans, Inc.*, No. ED CV 19-0163 FMO (SPx), 2020 U.S. Dist. LEXIS 140980 (C.D. Cal. Aug. 5, 2020) (denying defendant's motion to dismiss and motion to compel arbitration of TCPA case).

133. Ms. Prescott has written several articles concerning consumer protection law and plaintiff's litigation, including but not limited to:

a. "*The Key to Understanding Standing in Consumer Class Actions Post Transunion LLC v. Ramirez*" published in Consumer Attorneys of California | Forum Magazine January/February 2024.

b. "*A first-year associate's survival guide to mediation: What you need to know to get the most out of your first mediation process*" published in Consumer Attorneys of California | Forum Magazine in June 2020.

c. "The Fair Access to Credit Act Provides New Protections to California Consumers Against Predatory Lending Practices" published in Volume 39, Number 1, of the Banking & Financial Services Policy Report in January 2020.

d. "To Confer Or Not To Confer?: An Overview Of A Federal Rule Of Civil Procedure 30(B)(6) Deposition In Light Of The New Meet And Confer Requirement."

134. Ms. Prescott was recognized by Super Lawyer as a Rising Star for 2023 and 2024; and she is a member of the National Trial Lawyers Top 40 under 40 for Civil Plaintiff's litigation, 2023 and 2024.

135. Prior to becoming an attorney, Ms. Prescott served as the California Western Law Review, Executive Editor of Notes and Comments, 2018–2019. Her article was published in California Western Law Review Journal in 2018. *See* "'*Entitled': Why Victims of Sex Discrimination Should Be Entitled to Seek Relief Under Title VII and Title IX*," California Western Law Review: Vol. 54: No. 2, Article 3.

136. Mr. Prescott has trial experience in the following cases:

    a. *Pongsai v. American Express*, 8:19-cv-01628-DOC-JDE (C.D. Cal. 2021) (served as trial counsel in civil jury trial for identity theft FCRA case before the Honorable David O. Carter);

    b. *Tate v. United States*, No. CV 15-9323-FMO-JPR (C.D. Cal 2021) (served as lead trial counsel in civil bench trial for pro bono case relating to violations of the Federal Tort Claims Act before the Honorable Fernando M. Olguin).

137. Additionally, Ms. Prescott has supervised two third-year law students as part of California Western School of Law's Clinical Externship Program in which law students extern for thirteen weeks with a law firm for school credit. The Clinical Externship Program allows law students to gain experience on actual lawyering responsibilities by shadowing a supervising attorney and assisting with complex assignments.

Hours Incurred by Gil Meili and Summary of Experience

138. From early 2021 to October 21, 2024, Mr. Melili has incurred approximately **246.5** hours during this litigation against Wells Fargo. All hours were logged contemporaneously in the

normal course of business.

139. Mr. Melili is an associate attorney at my firm.

140. Mr. Melili has contributed to many aspects of the case, including but not limited to: (1) legal research; (2) document review; (3) client communication; and (4) motion practice.

141. Based on Mr. Melili's experience litigating consumer class actions, I believe his proposed hourly rate of $425 for this litigation is fair and reasonable, in light of his experience in this field since 2021, combined with his prior fee approval rates.

142. According to contemporaneously kept electronic billing records, Mr. Melili has spent approximately **7.8** hours on Co-Counsel Communications; **4** hours on Internal Team Communications; **6.30** on Communications with Clients; **0.40** hours on Communications (Other); **9.8** hours on Administrative Duties; **0.80** hours on Research; **27.70** hours on Depositions; **38.4** hours on Discovery; **12** hours on Investigations and Document Review; **4.30** hours on Litigation Strategy; **82.20** hours on Mediation / Settlement; and **52.70** hours on Motions; and **0.10** on Miscellaneous Tasks.

143. At a rate of $425 for this litigation, Mr. Melili's loadstar is **$104,762.5** for this Action through October 10, 2024.

144. In *Schneider v. All-Clad Metalcrafters, LLC*, Case No.: 30-2021-01189853-CU-BT-CXC (Orange County Sup. Ct.), which was finally approved on October 18, 2024, Mr. Melili was approved at an hourly rate of $350 by Hon. Lon F. Hurwitz.

145. In *Goodwin v. K P M Enterprises, LLC d/b/a Powell Electric*, No. 20STCV18428 (Los Angeles County), which was a class action based on California's eavesdropping statute (CIPA) and finally approved on January 16, 2024, Mr. Melili was approved at an hourly rate of $350 by Hon. Kenneth R. Freeman. In *Bell v. Redfin*, No. 3:20-cv-02264-AJB-SBC (S.D.

Cal.), which was an employment class action settlement which was finally approval on November 28, 2023, Mr. Melili was approved at an hourly rate of $350 by Hon. Anthony J. Battaglia. Mr. Melili was previously approved for a requested hourly rate of $275 in *Nese v. Scenario Cockram USA, Inc.*, No. 8:21-cv-00814-DOC-JDE (C.D. Cal.), another employment class action settlement that was finally approved by Hon. David O. Carter on October 18, 2022.

146. Mr. Melili was admitted to the State Bar of California on May 20, 2021, and has been a member in good standing ever since that time. Mr. Melili has litigated cases in both state and federal courts in California. He is admitted in every federal district court in California and also in the United States District Court for the Northern District of Illinois.

147. Mr. Melili has been appointed as class counsel in the following matters:

a. *Bell v. Redfin*, No. 3:20-cv-02264-AJB-SBC (S.D. Cal.) (wage-and-hour class settlement finally approved for common fund of $3,000,000); and,

b. *Nese v. Scenario Cockram USA, Inc.*, No. 8:21-cv-00814-DOC-JDE (C.D. Cal.) (wage-and-hour class settlement finally approved for common fund of $275,000).

148. Mr. Melili regularly assists partners and other seasoned associate attorneys at my firm with preparing for class certification hearings, class mediations, and class action settlements as well as preparing for and negotiating mass settlements. Some of the matters Mr. Melili has worked on in these regards include, but are not limited to, the following:

a. *Hooks v. Dignity Health et al.*, No. 23STCV02800 (Sup. Ct. Los Angeles) (on September 1, 2023, presented oral argument on demurrer in putative class action alleging violations of the UCL and for Unjust Enrichment);

b. *Goodwin v. Whole Foods Market*, Inc., No. 21STCV40456 (Sup. Ct. Los Angeles)

(assisted with drafting motion for class certification and presented oral argument concerning the same, filed on June 26, 2023, and presented on December 15, 2023, in product false advertising case);

c. *In re Ford Motor Co. DPS6 Powershift Transmission Products Liability Litigation*, MDL No. 2814 (C.D. Cal.) (assisted with drafting mediation brief for two-day mediation, which Mr. Melili attended and assisted co-counsel in negotiating settlement for several plaintiffs);

d. *Anthony Barbano, et al. v. JP Morgan Chase Bank, N.A.*, No. 5:19-cv-01218-JGB-SP (C.D. Cal.) (assisted with drafting final approval motion and motion for attorneys' fees, costs and service award in a class action involving claims under RESPA);

e. *Franklin v. Ocwen Loan Servicing, LLC*, No. 3:18-cv-03333-SI (N.D. Cal.) (assisted with drafting class settlement approval motion papers in CIPA class action); and

f. *Roy Lo v. Nutribullet LLC*, No. 21STCV12852 (Sup. Ct. Los Angeles) (assisted with drafting preliminary and final approval motion papers in a class action involving violations of the SBA, CLRA, and the UCL).

149. Mr. Melili has assisted with drafting appellate briefs and preparing co-counsel for oral arguments before the Ninth Circuit and Eleventh Circuits in the following matters: (i) *Sylvester v. Merchants Credit Corp.*, 2021 U.S. App. LEXIS 31528 (9th Cir. 2021); and (ii) *Ami Dunn v. Global Trust, LLC, et al.*, No. 21-10120 (11th Cir. 2021).

150. Mr. Melili has federal trial experience, having litigated a case to trial in the U.S. District Court for the Central District of California in *Paul Richardson v. J. Pletting, et al.*, No. 5:18-cv-00961-KES (at the end of a four-day pro bono civil rights trial with a hung jury, Magistrate Judge Karen E. Scott thanked counsel for their "thorough preparation and . . . for . . .

maintaining decorum and cordiality …").

151. Mr. Melili was a recipient of the State Bar of California's Wiley W. Manuel Certificate for Pro Bono Legal Services and he was selected to Rising Stars in 2024 by Super Lawyers for consumer law, class actions and mass torts.

Hours Incurred by Yana Hart and Summary of Experience

152. Ms. Yana Hart is former managing associate at my firm.

153. From approximately July of 2020 to March of 2021, Ms. Hart incurred approximately **163.8** hours during this litigation against Wells Fargo. All hours were logged contemporaneously in the normal course of business.

154. Ms. Hart was involved in several major aspects of the case, including but not limited to: (1) drafting pleadings and discovery; (2) assisting with litigation strategy; (3) reviewing relevant documents; and (4) motion practice.

155. According to contemporaneously kept electronic billing records, Ms. Hart spent approximately **1.20** hours on Co-Counsel Communications; **6.4** on Communications with Clients; **2** hours on Communications with Opposing Counsel; **0.20** hours on Communications (Other); **11.7** hours on Administrative Duties; **8.5** hours on Research; **13.90** hours on Discovery; **6.3** hours on Investigations and Document Review; **19.6** hours on Pleadings; **19.90** hours on Litigation Strategy; **0.40** hours on Mediation / Settlement; and **73.7** hours on Motions.

156. Based on Ms. Hart's extensive experience litigating consumer class actions, and I believe her proposed hourly rate of $625 for this litigation is fair and reasonable, in light of her experience, combined with her prior fee approval rates.

157. At a rate of $625 for this litigation, Ms. Hart's loadstar is **$102,375** for this Action.

158. In January of 2023, Ms. Hart was approved at the hourly rate of $450, which was an hourly rate at the time she was no longer employed at my firm. *See Almada v. Kriger Law Firm*, No. 19-CV-2109 TWR (MDD), 2023 U.S. Dist. LEXIS 15717 (S.D. Cal. Jan. 30, 2023). Before that, in 2019, Ms. Hart was approved the hourly rate of $295 per hour. *See Ronquillo-Griffin v. TransUnion Rental Screening Sols., Inc*., 2019 U.S. Dist. LEXIS 79021 (S.D. Cal. May 9, 2019) (finding class counsel's hourly rates to be reasonable where Ms. Hart requested $295 per hour and class counsel spent over 580 hours prosecuting the case).

159. It is my understanding that Ms. Hart is licensed to practice in the State of California, Florida, and the District of Columbia, and that she is a member in good standing of those State Bars.

160. In 2016, Ms. Hart joined Hyde & Swigart, APC (which eventually merged with my firm, Kazerouni Law Group), where she began litigating many complex cases, focusing over 95% of her practice on consumer-related matters, including but not limited to privacy claims, false advertising and fraud-related claims, privacy actions, violations under the FDCPA, TCPA, FCRA, and other California statutes.

161. As a Managing Associate at my firm (until her departure in approximately April of 2021), Ms. Hart oversaw litigation by many of our junior associates, while also managing/supervising all of our other employees at my firm's San Diego Office.

162. Since 2021, it is my understanding that Ms. Hart has continued to be involved in prosecuting complex consumer matters. *See, e.g., Salazar v. Target Corp*., 83 Cal. App. 5th 571, 584-85 (2022) (reversing lower court's order and finding the plaintiff plausibly alleged UCL, FAL, and CLRA claims); *Pizana v. Sanmedica Int'l LLC*, No. 1:18-cv-00644-DAD-SKO, 2022 U.S. Dist. LEXIS 76989, at *47 (E.D. Cal. Apr. 26, 2022) (granting plaintiff's motion for leave to file a third amended complaint).

Hours Incurred by Alan Gudino and Summary of Experience

163. Mr. Alan Gudino is former associate attorney at the firm.

164. From July of 2020 to February of 2022, Mr. Gudino incurred approximately **94.6** hours during this litigation against Wells Fargo. All hours were logged contemporaneously in the normal course of business.

165. According to contemporaneously kept electronic billing records, Mr. Gudino spent approximately **1.4** hours on Co-Counsel Communications; **7.2** on Communications with Clients; **0.70** hours on Communications (Other); **7.8** hours on Administrative Duties; **8.30** hours on Research; **30.2** hours on Discovery; **1.30** hours on Investigations and Document Review; **1.3** hours on Litigation Strategy; and **36.4** hours on Motions.

166. Based on Mr. Gudino's extensive experience litigating consumer class actions, I believe his proposed hourly rate of $525 for this litigation is fair and reasonable, in light of his experience, combined with his prior fee approval rates.

167. At a rate of $525 for this litigation, Mr. Gudino's loadstar is **$49,665** for this Action.

168. In January of 2023, Mr. Gudino was approved at the hourly rate of $325. *See Almada v. Kriger Law Firm*, No. 19-CV-2109 TWR (MDD), 2023 U.S. Dist. LEXIS 15717 (S.D. Cal. Jan. 30, 2023). Before that, Mr. Gudino was approved at the hourly rate of $295 per hour in December of 2021. *Odom v. ECA Mktg.*, 2021 U.S. Dist. LEXIS 246032 (C.D. Cal. Dec. 22, 2021).

169. Before joining my firm, it is my understanding that he was a judicial law clerk for the Superior Court for the Commonwealth of the Northern Mariana Islands, a position he held for one year and five months.

170. Mr. Gudino was admitted to the State Bar of California in January 2019. He is also admitted to practice in the United States District Courts for the Southern, Northern, Eastern, and Central

Districts of California, as well as the United States Court of Appeals for the Ninth Circuit.

171. At my firm, Mr. Gudino predominantly practiced in the Southern and Central Districts of California, but he also litigated cases in the Northern District of California and the Ninth Circuit Court of Appeals. He practiced almost exclusively in the area of consumer actions, with most of his practice dedicated to consumer class actions. Since he began practicing in 2020, he has been involved in several consumer law actions.

Hours Incurred by Ramona Ladwig and Summary of Experience

172. Ms. Ramona Ladwig is former associate attorney at the firm.

173. From July of 2020 to approximately April of 2021, Ms. Ladwig incurred approximately **44.3** hours during this litigation against Wells Fargo. All hours were logged contemporaneously in the normal course of business.

174. According to contemporaneously kept electronic billing records, Ms. Ladwig spent approximately **0.20** hours on Administrative Duties; **4.3** hours on Research; and **39.8** hours on Motions.

175. At the time Ms. Ladwig was employed at my firm she was licensed in Texas, and it is my understanding that she remains eligible to practice law in Texas.

176. Based on Ms. Ladwig's extensive experience litigating consumer class actions since approximately November of 2014, I believe her proposed hourly rate of $625 for this litigation is fair and reasonable, in light of her experience, combined with his prior fee approval rates.

177. At a rate of $625 for this litigation, Ms. Ladwig's loadstar is **$27,687.50** for this Action.

Hours Incurred by David McGlothlin and Summary of Experience

178. Mr. David McGlothlin is managing partner at the firm over associated attorneys.

179. In 2021, Mr. McGlothlin has incurred approximately **2.5** hours during this litigation. All hours

were logged contemporaneously in the normal course of business. According to contemporaneously kept electronic billing records, Mr. McGlothlin spent approximately **0.60** hours on Communications with Co-Counsel; **0.20** hours on Discovery; and **1.70** hours on Mediation / Settlement.

180. Mr. McGlothlin has been an attorney licensed in California since December of 2007, and has worked on many complex litigation matters, including consumer cases. He is also licensed in Arizona, Oregon and Utah.

181. Based on Mr. McGlothlin's extensive experience in complete litigation actions since approximately 2007, I believe his proposed hourly rate of $850 for this litigation is fair and reasonable, in light of his experience.

182. At a rate of $850 for this litigation, Mr. McGlothlin's loadstar is **$2,125** for this Action.

Hours Incurred by Support Staff

183. Support staff have incurred a total of at least 210.80 hours in assisting my firm with the litigation in this Action. The total lodestar for support staff is $37,935.50 based on 210.80 hours from July of 2020 through October 10, 2024. Clerks billed at a rate of $250; paralegals at a rate of $195; and secretaries at a rate of $150.

EXHIBITS

184. Attached hereto as **Exhibit A** is a true and correct copy of the Declaration of Ahren A. Tiller in Support of Consolidated Plaintiffs' Motion For Attorneys' Fees, Litigation Expenses And Class Representative Service Awards.

185. Attached hereto as **Exhibit B** is a true and correct copy of the Declaration of Babak Semnar in Support of Consolidated Plaintiffs' Motion For Attorneys' Fees, Litigation Expenses And Class Representative Service Awards.

186. Attached hereto as **Exhibit C** is a true and correct copy of the Declaration of Samara Green in Support of Consolidated Plaintiffs' Motion For Attorneys' Fees, Litigation Expenses And Class Representative Service Awards

187. Attached hereto as **Exhibit D** is a true and correct copy of the Declaration of Patrick Healy in Support of Consolidated Plaintiffs' Motion For Attorneys' Fees, Litigation Expenses And Class Representative Service Awards.

RESPECTFULLY SUBMITTED this 28th day of October, 2024.

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian
Abbas Kazerounian, Esq.

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth Preston Deavers Class Action

DECLARATION OF AHREN A. TILLER IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

1. I, Ahren A. Tiller, am over the age of eighteen (18) years. I am an attorney licensed to practice in the State of California, as well as the United States District Court for the Southern, Central, Northern, and Eastern Districts of California. The declaration is based upon my personal knowledge, except where expressly noted otherwise. If called to testify hereto, I could and would do so as follows:
2. I am the Managing Partner of BLC Law Center, APC ("BLC"). As the Managing Partner of BLC, I focus my practice primarily on consumer protection litigation and bankruptcy.
3. I am additionally admitted to practice before the United States Bankruptcy Courts for the Central District of California, the Southern District of California, the Eastern District of California, and the Northern District of California, as well as the Ninth Circuit Court of Appeals.
4. I originally represented the named Plaintiff Jose Urista in the action *Urista et. al. v. Wells Fargo & Company et. al.,* 3:20-cv-01689 (S.D. Cal. 2020). This action was eventually transferred to the Northern District of California, No. 3:22-cv-00227-JD (N.D. Cal. 2022), and

later consolidated into *In re Wells Fargo Forbearance Litigation*, No. 3:20-cv-06009-JD (N.D. Cal. 2020), where I am an attorney of record for the named Plaintiffs, as representatives of the aforementioned class of similarly situated customers of Defendant, Wells Fargo & Company.

BRIEF SUMMARY OF PARTICIPATION IN THE LITIGATION

5. My office initially filed a class action lawsuit against Wells Fargo & Company and Wells Fargo Bank, N.A. (collectively as "Wells Fargo"), on August 29, 2020, in the United States District Court for the Southern District of California, individually and on behalf of all others similarly situated, *Urista v. Wells Fargo & Company et. al.*, No.: 3:20-cv-01689 (SD Cal 2020) (hereinafter the "Urista Suit").
6. My office filed this class action in the United States District Court for the Southern District of California, because the real property in question in connection with Mr. Urista's allegations is located within the County of San Diego, and therefore the United States District Court had subject matter jurisdiction of this matter under the Class Action Fairness Act of 2005.
7. On November 2, 2020, Wells Fargo filed Answer in the Urista Suit.
8. On November 3, 2020, Wells Fargo filed a Notice of related cases identifying four (4) other related class actions.
9. On November 3, 2020, Wells Fargo filed a Motion to Change Venue to Transfer Proceedings, requesting that the Court transfer the Urista Suit to the Western District of Virginia.
10. Soon after the Urista Suit was filed, I worked with Kazerouni Law Group, APC to coordinate litigation against Wells Fargo for similar cases filed by our two firms. Not long thereafter, Mr. Urista and my firm also agreed to work cooperatively and in good faith with counsel for other plaintiffs who had filed similar allegations against Defendant in California (i.e., counsel at Keller Rohrback L.L.P., in addition to Kazerouni Law Group, APC), as well as counsel at

Kellett & Bartholow LLP who represented plaintiffs in the Western District of Virginia (collectively the "Consolidated Counsel"). Substantial effort was made to work together over many months to transfer related litigation the Northern District of California for purposes of consolidation. This included regular calls and virtual meetings to proceed as a join effort to prosecute the litigation in both discovery and motion practice.

11. On November 30, 2020, my office filed an Opposition to Wells Fargo's Motion. In preparing the Opposition, my office did extensive legal research and pleading work.

12. On December 16, 2020, the Court denied Wells Fargo's Motion to transfer venue, and the Urista case proceeded in the normal course including preparation of a proposed joint discovery plan and initial disclosures pursuant to FRCP 26.

13. On February 3, 2021, the Court set an Early Neutral Evaluation and Case Management Conference ("ENE") wherein the Parties were ordered to attend an independent evaluation by the assigned magistrate judge. My office researched and prepared a lengthy brief and submitted it to the Magistrate judge in advance of the ENE.

14. On March 8, 2021, the Court converted the ENE to a telephonic status conference to be held on March 12, 2021, which my firm attended. At the status conference, the Parties informed the Court that they had agreed to attend private mediation, along with Counsel for the named Plaintiffs in other related cases. The Court, in turn, continued the ENE again to allow the Parties to complete private mediation.

15. On March 16, 2021, the Parties jointly prepared and filed a Motion for Stay to allow the Parties to exchange discovery and attend mediation, which the Court later granted.

16. On September 14, 2021, after conferring extensively with Consolidated Counsel, my office researched, prepared and filed a Motion to Change Venue to the Northern District of

California. The gravamen of the Motion argued that a transfer to the Northern District would allow for consolidation of Mr. Urista's case with other similar cases wherein some had advanced beyond Mr. Urista's case, allowing for the Plaintiffs' overlapping and related claims to be united as one consolidated case.

17. On October 18, 2021, Wells Fargo filed a response in opposition to the Motion to Change Venue to the Northern District of California.

18. On or about September 30, 2021, Wells Fargo issued its first set of written discovery on Mr. Urista.

19. On October 25, 2021, my office researched, prepared and filed a Reply to Wells Fargo's Opposition to my client's Motion to Change Venue.

20. On or about November 29, 2021, my office prepared and served our first set of written discovery on Wells Fargo.

21. From November of 2021 through December 22, 2021, the Parties exchanged discovery responses, and my office prepared a letter requesting supplemental responses, as did Wells Fargo request supplemental responses from Mr. Urista. The Parties conducted two separate telephonic "Meet and Confer" calls during this period attempting to resolve each party's respective discovery concerns.

22. On December 20, 2021, my office issued supplemental written discovery responses.

23. On December 28, 2021, the Court issued an Order granting Mr. Urista's Motion to Transfer Venue and transferred his case to the Northern District of California.

24. Once the Urista case was transferred to the Northern District, my office, in cooperation with Consolidated Counsel, researched, prepared and on February 7, 2022, filed a Motion to Consider Whether Cases Should Be Related, requesting the Court consolidate the Urista case

into the larger *In re Wells Fargo Forbearance Litigation* case, No.: 3:20-cv-06009-JD.

25. On August 19, 2022, Judge James Donato ordered the Urista case be consolidated into the *In re Wells Fargo Litigation* case, along with the multiple named Plaintiffs with similar claims against Wells Fargo.

26. After the matter was finally transferred to the Northern District of California, the Parties were forced to engage in multiple rounds of additional written discovery, and the Consolidated Counsel were required to also file multiple Oppositions to multiple rounds of Rule 12 Motions to Dismiss filed by Wells Fargo.

27. Despite Mr. Urista having previously produced written discovery responses to Wells Fargo prior to his matter being transferred to the Northern District of California, including supplemental responses, Defendant persisted in serving the Plaintiffs with additional rounds of written discovery in the consolidated case.

28. Meetings with Consolidated Counsel via zoom were held on a near weekly basis over the last approximate three years since early 2021, in order to address all aspects of the litigation, including but not limited to review of the more than 250,000 pages of documents produced by Wells Fargo as well as Plaintiffs' own discovery responses, deposition preparation, preparing for multiple rounds of mediation, evidence gleaned from depositions, and responses to the multiple rounds of motions filed by Defendants. During this period, Consolidated Counsel also address multiple issues related to the lawsuit by Brian Echard that was filed months after the lawsuits were filed by Consolidated Plaintiffs.

SUMMARY OF BILLED HOURS

29. I personally prepared the attached lodestar billing invoice for my firm in this case. I personally maintained my records of time spent used to determine a portion of the total

attorneys' fees and costs. My records are based upon my personal knowledge and my interoffice record keeping.

30. I can attest to the facts and accuracy of my firm's detailed billings for this litigation. I have reviewed the detailed billing records and it is accurate and complete in all details to the best of my knowledge. I am willing to provide the details billing records to the Court upon request.

31. The summary of fees by category incurred listed below are known to me to be true and correct, for time spent on this litigation from August 25, 2020 through August 29, 2024:

SUMMARY OF FEES INCURRED

CATEGORY	**TOTAL HOURS**	**TOTAL FEES**
LAW AND MOTION	124.8	$81,120
DISCOVERY	79.4	$51,610
CLIENT COMMUNICATION	18.9	$12,285
COURT HEARINGS, MEDIATION	28.2	$18,330
SETTLEMENT	28.1	$18,265
COMMUNICATION / MEET & CONFER WITH OPPOSING COUNSEL	24.9	$16,185
STRATEGIZE / COORDINATE / CONFER WITH CO-COUNSEL	87.6	$56,940

Total Hours: 391.9 Total Fees Incurred: $254,735.00

32. To date, my firm has not been paid anything for our time and expenses incurred in the litigation, as the representation of Mr. Urista and the Class is on a contingency fee basis.

33. To date, my firm has incurred costs of $475 related to this litigation, which included $400.00 for the complaint filing fee and $75.00 for service of the complaint and summons.

HOURLY RATE, BACKGROUND, AND EXPERIENCE

A brief summary of my relevant background and experience is as follows:

34. I have been practicing law and litigating since 2007, which is now over seventeen (17) years. I have been the attorney of record on over 357 civil cases in the United States District Court for the Southern, Northern, Eastern and Central Districts of California, as well as multiple other District Court via applications to be admitted pro hac vice, virtually all of which were representation of Plaintiffs in consumer protection causes of action.

35. I am certified by the American Board of Certification as a Specialist in Consumer Bankruptcy Law, as well as certified as a Specialist in Business Bankruptcy Law. I am also certified by the State Bar of California Board of Legal Specialization as a Bankruptcy Law Specialist. Further, I dedicate a substantial amount of my practice to consumer protection civil litigation in Federal District Court, whereby I have been the attorney of record for Plaintiff's in District Court in 357 cases to date.

36. I have also been the attorney of record on multiple nationwide class action cases whose causes of action cover a wide range of consumer protection claims including alleged violations the FDCPA, TCPA, FCRA, CCRAA, Cal. Bus. & Prof. Code § 17200, Cal. Civ. Code § 1750 *et. seq.*, CCPA/CIPA, and RICO. I have been the attorney of record on the following representative class actions:

McMillan v. Draftkings, Inc., 3:15-cv-02579 (S.D. Cal. 2015);

Arce et. al. v. LVNV Funding, LLC, 3:15-cv-02111 (S.D. Cal. 2015);

Rivera et. al. v. Encore Capital Group, Inc. et. al., 3:15-cv-02112 (S.D. Cal. 2015);

Caldera v. American Medical Collection Agency 2:16-cv-00381 (C.D., Cal. 2016);

Matanane et al v. Jefferson Capital Systems, LLC et al 3:16-cv-01897 (S.D. Cal. 2016);

Bodie v. Lyft, 3:16-cv-02558 (S.D. Cal. 2016);

Delisle v. Speedy Cash 3:18-cv-02042 (S.D. Cal. 2018);

Espinoza v. Walmart Inc. et al. 3:19-cv-01972 (S.D. Cal. 2019);

Dougherty v. Titlemax of California, Inc. 5:19-cv-01709 (S.D. Cal. 2019);

Gioia v. Mylife.com, Inc., 2:19-cv-04672-RGK-GJS (C.D. Cal. 2019);

Bodie v. Snap Finance, LLC, 8:20-cv-00008 (C.D. Cal. 2020);

Marquez v. Wakpamni Lake Community Corporation et al 3:21-cv-00525 (S.D. Cal. 2021);

Huntley et. al. v. Rosebud Economic Development Corporation et. al., 3:22-cv-01172 (S.D. Cal. 2022);

Alvarado v. LexisNexis Risk Data Management, Inc. et. al., 3:22-cv-00050 (S.D. Cal. 2022);

Marquez v. Capital One Bank, USA N.A., et al 3:22-cv-01591 (S.D. Cal. 2022);

Wadeea v. Mercedes-Benz USA, LLC, 3:24-cv-01587 (S.D. Cal. 2023);

Abboud v. Lotta Dough, LLC, 1:24-cv-00482 (W.D. Tex 2024);

Meraz v. Pancho Villa's Inc. et. al., 3:24-cv-00822 (S.D. Cal. 2024).

37. I am also admitted to practice before the Ninth Circuit Bankruptcy Appellate Panel, as well as the Ninth Circuit Court of appeals. I have personally orally argued multiple matters before

the Ninth Circuit Court of Appeals, as well as the 4th and 2nd California Circuit Courts of Appeal. I have successfully won appeals at the Ninth Circuit, including published decisions involving important issues regarding the interplay between the Fair Debt Collection Practices Act (FDCPA – 15 U.S.C. § 1692, *et. seq.*) and the scope of the Telephone Consumer Protection ACT (TCPA 47 U.S.C. § 227 *et. seq.*), as well as consumer protection issues involving the Bankruptcy Code and/or Arbitration and consumer protection statutes. See the following Ninth Circuit Court of Appeals decisions in which I prevailed as Appellate Counsel:

Manikan v. Peters & Freedman, L.L.P., 981 F.3d 712 (9th Cir. 2020);

Delisle v. Speedy Cash, 818 F.App'x 608 (9th Cir. 2020);

Barclay v. Boskoski, 52 F.4th 1172 (9th Cir. 2022).

Davis v. Rockloans Marketplace, LLC, 2024 U.S. App. LEXIS 24620 (9th Cir. 2024)

38. I have tried a Federal Jury trial to verdict, and have been trial counsel in either State Court or Bankruptcy Court, whereby I have tried 37 trials and/or evidentiary hearings to verdict, including 11 jury trials in state and federal court.

39. For this Action, my hourly rate is $650.00 per hour. This hourly rate is reasonable based upon my aforementioned experience and expertise in the field of consumer protection, federal civil litigation, and bankruptcy law. My firm's total *Lodestar* invoice for this matter as of the date of this declaration is $254,735.00 in fees, and $475.00 in costs, totaling an invoice of $255,210.00 billed, based on 391.9 hours incurred.

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

Dated: October 24, 2024,

Ahren A. Tiller
BLC Law Center APC

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers CLASS ACTION

DECLARATION OF BABAK SEMNAR IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, attorney BABAK SEMNAR, the undersigned, declare as follows:

1. I am one of the attorneys for the Plaintiff Patrick Healy, who is one of the Consolidated Plaintiffs in the above-entitled action ("Action").
2. I am over the age of 18 and am fully competent to make this declaration.
3. If called as a witness, I would competently testify to the matters herein from personal knowledge
4. The declaration is based upon my personal knowledge, except where expressly noted otherwise.
5. I submit this Declaration in support of the Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards.
6. I am an attorney admitted to the State Bar of California in June 2003, and I have been a member in good standing since admission.

BRIEF SUMMARY OF PARTICIPATION IN THE LITIGATION

7. My law firm first became involved in representing Mr. Healy in his claims against Wells Fargo in June of 2020.

8. Since the inception of our representation, my firm has maintained detailed billing records for all time spent by myself, my partner Jared M. Hartman, and our staff for all work performed by my firm in litigating this case.

9. I have personally reviewed the time entries for all work performed to ensure reasonableness of all hours billed and to ensure only recoverable work performed is being billed. The billing entries cover the time period of June 15, 2020 to May 17, 2024.

10. Where appropriate, we have omitted from the billable hours any entries that appeared to be clerical/administrative.

11. The detailed billing records statement can be made available upon request for the Court's review.

12. With respect to Client Communications to prepare the case for prosecution, to discuss legal issues involved in the litigation, and to discuss case status updates, my firm has billed approximately 29.8 hours.

13. With respect to Pleadings, including researching causes of action, drafting and filing of our pleadings, reviewing pleadings filed against us and researching and preparing oppositions thereto, my firm has billed approximately 125.8 hours.

14. With respect to attending Court Hearings, including preparing for court hearings, my firm has billed approximately 12.5 hours.

15. With respect to Discovery, including reviewing defense discovery requests served on us, preparing responses to discovery requests served on us, propounding discovery requests

to the defense, reviewing defense responses and documents produced to us, and conducting meet and confer efforts with defense regarding discovery disputes, my firm has billed approximately 92.6 hours.

16. With respect to Settlement Discussions and Mediation, my firm has billed approximately 40.5 hours.

17. With respect to expenses, my firm has incurred $1,492.31 in court fees, $125.00 in process server fees, and $200.95 in copying and printing expenses, for a total of $1,818.26. These expenses are itemized in the table below:

Date	Activity	Description	Cost	Quantity	Line Total
06/23/2020	Cost / Expense - Internal	Printing and postage for 8 certified mail dispute letters	$6.50	8.0	$52.00
06/30/2020	Cost / Expense - External (PAID)	Two certified postage and printing for revised dispute letters to Funding Suite at their current address	$5.50	2.0	$11.00
08/12/2020	Cost / Expense - External (PAID)	New case filing fee -- complex civil filing fee	$1,492.31	1.0	$1,492.31
08/31/2020	Cost / Expense - External (PAID)	Process server	$125.00	1.0	$125.00
01/19/2021	Cost / Expense - External (PAID)	Downloading documents from the Northern District and Virginia cases so I can prepare ENE statement and initial disclosures and maintain consistency between all cases	$27.50	1.0	$27.50
03/02/2021	Cost / Expense - Internal	Printed docs to prepare binder for court hearing next week	$0.10	133.0	$13.30
04/27/2021	Cost / Expense - Internal	Printing docs to prepare binder for court hearing next week	$0.10	129.0	$12.90

10/01/2021	Cost / Expense - Internal	Printing pleadings to prepare binder for court hearing next week	$0.10	156.0	$15.60
11/30/2021	Cost / Expense - Internal	Printing Plaintiff's responses to RFP's and SRogs, set one	$0.10	56.0	$5.60
11/30/2021	Cost / Expense - Internal	Stamps.com postage for mailing Plaintiff's responses to RFP's and SRogs, set one	$3.81	2.0	$7.62
12/14/2021	Cost / Expense - Internal	Printing two copies of Plaintiff's RFP's, set one to Wells Fargo	$0.10	34.0	$3.40
12/14/2021	Cost / Expense - Internal	Stamps.com postage for mailing Plaintiff's RFP's, set one to Wells Fargo	$3.36	2.0	$6.72
12/21/2021	Cost / Expense - Internal	Printing plaintiff's responses to request for privilege log	$0.10	2.0	$0.20
12/21/2021	Cost / Expense - Internal	Stamps.com postage for mailing plaintiff's responses to request for privilege log	$0.53	1.0	$0.53
01/23/2023	Cost / Expense - Internal	Stamps.com postage for mailing Plaintiff's responses to RFPs and SRogs, set one	$7.09	2.0	$14.18
01/23/2023	Cost / Expense - Internal	Printing two copies of Plaintiff's responses to RFPs and SRogs, set one	$0.10	60.0	$6.00
05/17/2024	Cost / Expense - External (PAID)	Downloading docs from the Stoff class action in San Diego superior court to discuss with client his overlap in class membership	$24.40	1.0	$24.40
				Total:	**$1,818.26**

18. To date, my firm has not been paid anything for our time and expenses incurred in the litigation, as the representation of Mr. Healy is on a contingency fee basis.

19. My office initially filed a class action lawsuit against Wells Fargo Bank, N.A. on August 11, 2020 in the San Diego Superior Court, styled "PATRICK HEALY, individually and on behalf of all others similarly situated v. WELLS FARGO BANK, N.A.; and DOES 1

through 5", Case Number 37-2020-00028238-CU-MC-NC.

20. My office filed this class action in San Diego Superior Court, because the real property in question in connection with Mr. Healy's allegations is located within the County of San Diego.

21. On September 18, 2020, Defendant filed a Notice of Removal of the action, which resulted in the action being removed from Superior Court to the U.S. District Court, Southern District of California, and was assigned Southern District Case Number 3:20-cv-01838-CAB-MSB.

22. On November 2, 2020, Defendant filed a Motion to Transfer the Venue of the proceedings to the U.S. District Court for the Western District of Virginia, and sternly insisted that the Southern District was not the proper forum or venue for the class action allegations alleged by Plaintiff.

23. On November 23, 2020, my office filed an Opposition to Defendant's Motion, after conducting extensive hours of research and briefing to support the Opposition. Such motion was largely opposed because it was viewed as inefficient and counter to efforts to consolidate several related actions that were pending in federal courts in California.

24. On December 3, 2020, Judge Marilyn Huff of the Southern District of California denied Defendant's Motion.

25. Not long thereafter, Mr. Healy and his Counsel agreed to work cooperatively and in good faith with counsel for other plaintiffs who had filed similar allegations against Defendant in California (i.e., counsel at Keller Rohrback L.L.P., and Kazerouni Law Group, APC), as well as counsel at Kellett & Bartholow LLP who represented plaintiffs in the Western District of Virginia (collectively the "Consolidated Counsel"), so that the cases could start

to be transferred to the Northern District of California for purposes of consolidation. This included regular calls and virtual meetings to proceed as a coordinate effort to prosecute the litigation in both discovery and motion practice.

26. Mr. Healy was unable to obtain Defendant's agreement to a stipulation in this regard, so Mr. Healy filed a Motion to Transfer Venue of his own on January 13, 2021, asking the Court to transfer the matter to the Northern District of California for purposes of consolidation with other pending class action proceedings. Defendant opposed this Motion, which resulted in Mr. Healy filing a Reply brief.

27. Ultimately, the Court granted Mr. Healy's request, nearly a calendar year after the briefing, as Judge Marillyn Huff granted Mr. Healy's Motion on January 11, 2022 and ordered the matter to be transferred to the Northern District of California for purposes of consolidation with other pending class action proceedings.

28. During that calendar year before a ruling was entered in favor of Mr. Healy's Motion to Transfer Venue, the Parties participated in a mandatory settlement conference and also engaged in written discovery.

29. For example, on January 18, 2021, Mr. Healy and Defendant attended an Early Neutral Evaluation Conference, wherein the Parties met with Magistrate Judge Allison H. Goddard to discuss potential settlement issues and issues related to attempts to narrow the Parties' focus for purposes of discovery.

30. In preparation for this event, Mr. Healy and his Counsel engaged in many hours of preparation time and document review, including the submission of a Confidential brief for the Magistrate Judge.

31. After the matter did not settle at the Conference, the Parties proceeded to formal written

discovery and also attended multiple Status Conferences with the Court to address not only the status of the litigation but also discovery issues that were unable to be resolved between the Parties informally.

32. The written discovery described above included Mr. Healy serving a total of 31 Requests for Documents, which resulted in Defendant producing to Mr. Healy 277 audio recordings of phone calls and more than 9,000 pages of documents, as well as Defendant serving upon Mr. Healy a total of 26 Requests for Documents, which resulted in Mr. Healy producing 547 pages of documents.

33. Although Mr. Healy had already produced written discovery responses and documents to Wells Fargo prior to Mr. Healy's matter being transferred from the Southern District of California to the Northern District of California, Defendant still persisted in serving Mr. Healy with additional rounds of written discovery after the transfer became effective. Mr. Healy responded to those discovery requests and again produced documents to Wells Fargo, in a combined effort with Consolidated Counsel.

34. In particular, the written discovery served by Defendant after the case was transferred to Northern District included not only Requests for Documents similar to what had already been served upon Mr. Healy previously, but this time also included a Request for Mr. Healy to answer Special Interrogatories, one of which contained a total of 22 subparts to the Interrogatory. Such discovery in the consolidated action in the Northern District of California was conducted with the assistance and guidance of Consolidated Counsel, which firms took the lead on the Plaintiffs' written discovery responses and document production, which included a document production from Mr. Healy.

35. Consolidated Counsel together led the efforts to meet and confer on Wells Fargo's

deficient discovery responses and document production, which included at times seeking court assistance to compel further discovery from Wells Fargo.

36. Mr. Healy's counsel reviewed and analyzed many documents from Wells Fargo's production of hundreds of thousands of pages of documents produced in discovery in an effort to understand the scope and extent of Wells Fargo's relevant practices and liability.

37. Consolidated Counsel addressed multiple issues raised by the fact that counsel for the *Echard* matter was attempting to undercut all class action cases by attempting to settle only his own class action case in a way that would have resulted in damaging multiple class allegations being pursued by the Consolidated Plaintiffs' team.

38. As I understand it, this Court did not rule on the *Echard* plaintiffs' motion to preliminarily approve class settlement on March 15, 2023, and instead entered an Order staying the *Echard* litigation, largely based on the facts and issues addressed within the motions to intervene filed by the Consolidated Plaintiffs' team after significant cooperative efforts to prepare and finalize the necessary filings related thereto.

39. Despite all of the issues raised by both Defendants' aggressive litigation tactics and the *Echard* plaintiffs' efforts to undermine the Consolidated Plaintiffs' team, the cooperative and good faith efforts of the Consolidated Plaintiffs' team are finally proving to be fruitful, since Consolidated Plaintiffs and Wells Fargo have reached a significant and quite impressive class action settlement that will result in $185 million being paid by Defendants on behalf of a large class of persons allegedly harmed by Wells Fargo's conduct.

40. I fully support as fair and reasonable the request for a class representative service award of $12,500 for the nine Consolidated Plaintiffs, specifically, Luis Castro, Pamela Delpapa,

Jenna Doctor, Samara Green, Patrick Healy, Barbara Prado, and Renrick and Vivian Robinson.

41. I fully support the request of Counsel for Consolidated Plaintiffs for an award of attorneys' fees of up to $46,250,000 (representing 25% of the Settlement Fund) and also reasonable litigation expenses, all to be paid from the Settlement Fund of $185,000,0000. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many thousands of hours of dedicated and diligent work of Counsel for Consolidated Plaintiffs to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

HOURLY RATE, BACKGROUND, AND EXPERIENCE

42. For this Action, my hourly rate is $685.00 per hour, and my partner Jared M. Hartman's hourly rate is $650.00 per hour. Thus, my firm's total lodestar for this matter as of approximately October 21, 2024 is $195,338.50, based on 69.1 hours incurred by myself and 227.7 hours incurred by Mr. Hartman.

43. A brief summary of my background and experience as a litigator in the State of California is as follows:

    a. I have been actively litigating since June of 2003, which is now more than 20 years.

    b. I have completed 43 trials, 36 of which have been jury trials and 7 of which have been non-jury trials.

    c. Moreover, I have attended the Gerry Spence Trial Lawyers College in 2005, whereby I was in Wyoming for three (3) weeks for the Trial Lawyers College with 50 other attorneys from around the Country, working on our Trial skills

approximately ten (10) to twelve (12) hours a day. There I was not only trained on various skills and insight, but I also had the opportunity to see how other, more experienced attorneys approached the same or similar situations.

d. After graduating from the Gerry Spence Trial Lawyers College in 2005, in 2006, I attended the Graduate program, which is a full week—again in Wyoming—whereby I obtained advanced training in learning, understanding, and ultimately presenting the story of the client to a Judge or Jury.

e. Since graduating from the Gerry Spence Trial College in 2005, I have been actively involved in the Trial Lawyers College list-serve, whereby thousands of legal issues relating to the presentation of trials are raised and resolved. As part of my membership, I have had the benefit of passively and actively being involved in such a continuous education. Similarly, I have part of the San Diego Consumer Attorney's list-serve whereby the issues related to the presentation of evidence at trial is regularly analyzed. As part of my membership with the Trial Lawyers College, I regularly get together other members and work up cases that are set for trial, including scheduling, conducting and analyzing focus groups to better understand various issues in the case.

44. My partner Jared M. Hartman's background and experience as a litigator in the State of California is as follows:

a. Mr. Hartman has been actively litigating since January of 2008, which is now more than 16 years.

b. Mr. Hartman has completed 32 jury trials.

45. Myself, and my partner Jared M. Hartman, are both sworn to practice not only in the State

of California, but also in all U.S. District Courts within the State of California and the District of Colorado, as well as the Ninth and Eleventh Circuits for the U.S. Courts of Appeal.

46. Myself, and my partner Jared M. Hartman, have worked on more than a dozen appeals within the State of California Fourth District Court of Appeals and have also worked on appeals within the U.S. Court of Appeals for the Ninth and Eleventh Circuits.

47. Myself, and my partner Jared M. Hartman, have been certified as class counsel and/or lead representative counsel in the following representative actions:

    a. *Mary Capps v. Law Offices of Peter Singer, et al.*; U.S. District Court, Southern District of Calif., Case No. 3:15-cv-02410 (class action re: FDCPA violations);

    b. *Joseph Moorhead v. HKA Enterprises, LLC*; U.S. District Court, District of South Carolina, Case No. 7:19-cv-00265 (class action re: FCRA violations);

    c. *Fredy Reyes Castellanos v. Miller Paneling Specialties, Inc.*, *et al.*; U.S. District Court, Central District of Calif., Case No. 5:19-cv-00028 (PAGA representative action re: multiple alleged Labor Code violations);

    d. *John Snow v. ADT, LLC*; U.S. District Court, Central District of Calif., Case No. 5:19-cv-00021 (PAGA representative action re: multiple alleged Labor Code violations);

    e. *Erika Maldonado; et al. v. Broker Solutions, Inc.*; Orange County Superior Court, Case No. 30-2020-001175149-CU-OE-CJC (PAGA representative action re: multiple alleged Labor Code violations).

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

Executed this 25th day of October 2024 in Temecula, California.

Respectfully Submitted

Babak Semnar

Babak Semnar, Esq.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers CLASS ACTION

DECLARATION OF SAMARA GREEN IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, Samara Green, declare:

1. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.
2. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards.
3. I have been appointed as one of the Class Representatives for purposes of this Settlement.
4. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 273,000

mortgages. Additionally, it is my understanding that Settlement Class Members who believe they have proof of credit harm stemming from Wells Fargo's actions may submit a claim to additional compensation from the Settlement Fund.

5. I believe that Wells Fargo placed my residential mortage into a forbearance in or around June of 2020, without a request from me for that forbearance and without my consent. I have participated through this litigation in the belief I was helping all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

6. On July 31, 2020, through my attorneys, I filed a putative class action complaint against Wells Fargo for alleged violations of various state statutes relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit was filed in the Northern District of California and assigned Case Number 3:20-CV-05296, and at the time included my then Co-Plaintiff Brett Jacob. Subsequently, an amended complaint was filed on August 17, 2020, adding as a named Plaintiff Charles Johnson, and asserting additional causes of action against Wells Fargo. A further amended complaint was filed on December 24, 2020, which consolidated the claims with another action filed by Pamela Delpapa and Renrick and Vivian Robinson into Case Number 3:20-CV-06009, before Judge James Donato. Over time, the complaint was amended several additional times, including to consolidate the lawsuit with the similar cases that were transferred from the Southern District of California and Western District of Virginia, ultimately resulting in the Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

7. I have been actively involved in this litigation against Wells Fargo and have kept in

communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

8. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I reviewed the initial complaint as well several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In January of 2023, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided over 400 pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

9. Also, I have been in frequent contact with my attorneys throughout this litigation, including through dozens of calls and emails concerning the status of discovery and numerous motions that were filed, related lawsuits, several mediations and related settlement efforts, as well as the transfer of the case in the Northern District of California to this present Court in the Southern District of Ohio.

10. Further, I was kept informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

11. On April 13, 2024, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of

$185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

12. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

13. Since approximately July of 2020, I have spent an estimated 37 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

14. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

15. In filing the lawsuit, I understood that there was potential risk that I might have to pay some of Defendants' costs if I lost the lawsuit. I also recognize that by filing a lawsuit that I was exposing myself to potential public scrutiny.

16. I understand that my attorneys intend to request that I be awarded $12,500 as a service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

17. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

18. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Kazerouni Law Group, APC, Keller Rohrback L.L.P, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of up to $46,250,000 and reasonable litigation expenses, all to be paid from the $185,000,000 Settlement Fund. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

I declare under penalty of perjury that the foregoing is true and correct, executed on October 24, 2024, at Conyers, Georgia, pursuant to the laws of the United States of America.

Samara Green

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers CLASS ACTION

DECLARATION OF PATRICK HEALY IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, Patrick Healy, declare:

1. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.
2. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards.
3. I have been appointed as one of the Class Representatives for purposes of this Settlement.
4. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 273,000

mortgages. Additionally, it is my understanding that Settlement Class Members who believe they have proof of credit harm stemming from Wells Fargo's actions may submit a claim to additional compensation from the Settlement Fund.

5. I believe that Wells Fargo placed my residential mortgage into a forbearance in or around June of 2020, without a request from me for that forbearance and without my consent. I have participated through this litigation in the belief I was helping all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

6. On August 11, 2020, through my attorneys, I filed a putative class action complaint against Wells Fargo for alleged violations of various state statutes relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit was filed in the San Diego Superior Court, North County Division and assigned Case Number 37-2020-00028238-CU-MC-NC, because my real property in question was located within the County of San Diego. On September 18, 2020, Defendant filed a Notice of Removal of the action, which resulted in the action being removed from Superior Court to the U.S. District Court, Southern District of California and assigned Case Number 3:20-cv-01838-CAB-MSB.

7. On November 2, 2020, Defendant filed a Motion to Transfer the Venue of the proceedings to the U.S. District Court for the Western District of Virginia. On November 23, 2020, through my attorneys, I filed an opposition to Defendant's motion. On December 3, 2020, Judge Marilyn Huff of the Southern District of California denied Defendant's Motion.

8. In January of 2021, through my attorneys, I filed a motion to transfer this action to the Northern California District of California, because there were other Plaintiffs who had

filed similar allegations against Defendant in California and for purposes of consolidation, after being unable to obtain Defendant's agreement to a stipulation. In January of 2022, the motion to transfer was granted and Judge Marilyn Huff ordered the matter to be transferred to the Northern District of California for the purposes of consolidation with other pending class action proceedings, ultimately resulting in the Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

9. I have been actively involved in this litigation against Wells Fargo and have kept in communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

10. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I reviewed the initial complaint and several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In 2021, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided over 500 pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

11. I have been in frequent contact with my attorneys throughout this litigation, including through dozens of calls and emails concerning the status of discovery and numerous motions that were filed, related lawsuits, several mediations and related settlement efforts,

as well as the transfer of the case in the Northern District of California to this present Court in the Southern District of Ohio.

12. I was also kept informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

13. On April 14, 2024, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of $185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

14. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

15. Since approximately July of 2020, I have spent an estimated 36 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

16. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

17. In filing the lawsuit, I understood that there was potential risk that I might have to pay some of Defendants' costs if I lost the lawsuit. I also recognize that by filing a lawsuit that I was exposing myself to potential public scrutiny.

18. I understand that my attorneys intend to request that I be awarded $12,500 as a service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

19. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

20. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Kazerouni Law Group, APC, Keller Rohrback L.L.P, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of up to $46,250,000 and reasonable litigation expenses, all to be paid from the Settlement Fund of $185,000,000. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

I declare under penalty of perjury that the foregoing is true and correct, executed on October 25, 2024, at San Marcos, California, pursuant to the laws of the United States of America.

Patrick Healy

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re:	Case No. 2:24-cv-01026-MHW-EPD
	Judge Michael H. Watson
WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Magistrate Judge Elizabeth Preston Deavers
	Class Action

DECLARATION OF THEODORE O. BARTHOLOW III IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

I, THEODORE O. BARTHOLOW III, declare:

1. My name is Theodore O. Bartholow III. I am over the age of eighteen years, of sound mind, and I am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct.

2. I am an attorney duly licensed to practice in the states of Texas and New York, as well as in the United States District Courts for the Northern, Eastern, and Southern Districts of Texas and for the Southern District of New York, as well as the Fifth U.S. Circuit Court of Appeals. I am a partner of the law firm Kellett & Bartholow PLLC ("K&B").

3. Together with our co-counsel, Abbas Kazerounian and Jason Ibey (Kazerouni Law Group APC ("KLG")), and Zachary Gussin, Derek Loeser, and Gretchen Freeman-Cappio (Keller Rohrback LLP ("KR")), my law partner, Karen L. Kellett, and I (collectively, we are referred to as the "Consolidated Leadership Team"), represent the Consolidated Plaintiffs in this case.

4. I file this declaration in support of Consolidated Plaintiffs' motion for attorney's fees, litigation expenses, and class representative service awards (the "Motion").

5. Throughout this litigation, my firm and I have represented the proposed class on a contingency fee basis. We advanced the costs of bringing the *Forsburg* case in Virginia,[1] and, since we entered into a joint prosecution agreement with counsel for the Consolidated Plaintiffs in December of 2020, the Consolidated Leadership Team has shared costs evenly among our three firms. To date, neither I nor my firm have received reimbursement or other compensation for our fees or expenses associated with this case.

6. Since joining together with the other Consolidated Plaintiffs' Counsel who are now seeking compensation pursuant to the Motion, we have worked efficiently and effectively as a team to develop the facts, legal theories, and damages model underpinning the Plaintiffs' claims in this case, and we have jointly prosecuted all aspects of the litigation on behalf of the putative class in this case.

7. My team and I have worked diligently on this case starting before it was filed, in June of 2020, performing many hours of research, responding to inquiries from national media, interviewing and vetting class representatives, engaging in extensive motions practice and briefing, arguing at multiple hearings on contested motions, seeking to intervene in the *Echard* case, conducting discovery, including document production, extensive document review, and multiple depositions, negotiating an early nationwide preliminary injunction, and preparing for and engaging in two difficult mediated settlement negotiations, the latter of which has resulted in the proposed class settlement agreement that we will seek to have finally approved.

8. Kellett & Bartholow and the other members of the Consolidated Plaintiffs' Counsel are responsible for identifying, researching, developing and prosecuting this case against Wells Fargo. As a consequence of our efforts, we achieved an outstanding result in this case in spite of

[1] *Forsburg v. Wells Fargo*, No. 5:20-cv-0046 (W.D. Va. filed July 23, 2020).

substantial interference from *Echard* Counsel, who have demonstrated consistently throughout their involvement in this case that their true interest has been in recovering fees for themselves, not the interests of the class they seek to represent. Even after it appeared that *Echard* Counsel had achieved their goal of settling this case without Consolidated Plaintiffs' Counsel on Wells Fargo's terms and on the cheap, my firm and the other members of the Consolidated Leadership Team doggedly continued to litigate our clients' claims against Wells Fargo. We also took decisive action to prevent the inadequate *Echard* settlement from being approved in this Court, in the face of *Echard* Counsel's steadfast insistence on the adequacy of that facially inadequate settlement.

9. Consolidated Plaintiffs' Counsel, including my firm, Kellett & Bartholow, and our original co-counsel, the Giles & Lambert P.C. and the Limon Law Firm, as well as counsel for the other plaintiffs in the Consolidated Plaintiffs' cases, are therefore entitled to the compensation authorized in the settlement agreement, as requested in our fee application. Consolidated Counsel handled this case responsibly and professionally, keeping the interests of the class paramount at all times. Our claims and factual allegations were carefully researched and tested in contested motions practice. Over Wells Fargo's stout opposition, Consolidated Counsel brought our cases together, navigating disparate judicial venues to transfer our cases for consolidation in the Northern District of California. We sought and obtained a massive volume of data and documentation from Wells Fargo, and we deposed eight Wells Fargo witnesses – four fact witnesses and four corporate representatives, obtaining valuable damning testimony that gave us significant leverage in settlement negotiations.

10. By joining forces and working cooperatively, Consolidated Counsel avoided duplication of effort and inefficiency through our effective team organization and disciplined litigation strategy. Because of our Consolidated Leadership Team's diversity of experience and deep

knowledge of the complexities of the legal theories and statutory schemes involved in this case, we were able to develop and plead viable causes of action, which had a realistic chance of success, had they been tried. Kellett & Bartholow's extensive experience with mortgage servicing litigation was especially valuable in identifying potential sources of recovery based on the substantial profits Consolidated Plaintiffs allege Wells Fargo obtained as a result of its unauthorized COVID forbearance practices. In summary, this was not a case that was easy to put together or for which the harms and remedies were objectively obvious. It required all of our team's skill, experience, and determined pursuit of concrete evidence and testimony from numerous Wells Fargo representatives, over the course of years of contentious litigation, to achieve the settlement we ultimately obtained in this litigation.

11. By contrast, as a matter of sound public policy, the Court should deny all, or substantially all, of *Echard* Counsel's fee and expense petition in this case, since their conduct in this litigation has only multiplied the expense and duration of this litigation, adding no independent value to it. Just one week after Consolidated Counsel and Wells Fargo announced their intent to mediate the class claims in this case – after several months of intense litigation with Wells Fargo in Consolidated Counsel's cases that were still pending in multiple venues – *Echard* Counsel filed their original complaint, which, like the subsequently-filed amended complaint in *Echard*, copied broad swathes of the factual allegations in our *Forsburg* second amended complaint,[2] yet, unlike the *Forsburg* complaint, the *Echard* complaints asserted facially defective causes of action, including the single count they asserted in the original *Echard* complaint on behalf of their military veteran lead plaintiff, for violation of the Servicemembers Civil Relief Act (SCRA), among others.

12. Nevertheless, Consolidated Counsel offered to allow *Echard* Counsel to join our team,

[2] *See, e.g.* **Exhibit A**, Chart showing factual allegations from *Forsburg* second amended complaint that were copied nearly verbatim in the *Echard* amended complaint.

promising them 100% of the fee recovery for any separate servicemembers' or Ohio statewide classes they could certify or convince Wells Fargo to settle. However, *Echard* Counsel refused this offer, insisting instead on securing a fixed percentage of the overall recovery in Consolidated Plaintiffs' case(s), despite having added no new value to the case with their deficient copy-cat complaint. We rejected this demand, believing that it was an improper and extortionate attempt to leverage their copy-cat filing without making any real contribution to the case. *Echard* Counsel proceeded to make good on that threat, playing games with venue selection and ultimately collaborating with Wells Fargo to isolate their case in this venue, away from Consolidated Counsel's cases, on the false pretext that they were doing so to protect interests of a phantom "servicemembers" class that never materialized – and never really had a chance to materialize, as *Echard* Counsel never had a plaintiff with standing to assert such claims. Over the entire course of their lawsuit, *Echard* Counsel engaged in virtually no independent discovery, and they never had their claims meaningfully tested, obtaining no court ruling on any contested dispositive issue in their case. In the end, *Echard* Counsel's only 'achievement' was a defective proposed settlement of claims they did not independently develop. Of course, *Echard* Counsel's settlement was never approved and has now been superseded by the vastly superior, approved settlement Consolidated Counsel obtained in this case.

13. On these facts, as a matter of critical public policy, it is imperative that this Court deny all or substantially all of *Echard* Counsel's fee request, because any meaningful reward of their vexatious and self-serving conduct in this litigation would serve as a loud invitation to other bad faith actors in future class action litigation to engage in similar tactics, to the detriment of class members and the effectiveness of the class action process itself.

A. Summary of Kellett & Bartholow's Work on This Case by Time Period

14. **July 10, 2020 (Case Inception) through January 27, 2021:** Identifying issues with Wells Fargo's unauthorized COVID forbearances; researching and developing factual allegations, legal causes of action, and theories of recovery; interviewing and vetting a deluge of class representatives after NBC News published news articles about our clients and ran a story on its flagship news program, NBC Nightly News with Lester Holt; Wells Fargo admitting to U.S. Senators that it placed borrowers' loans into unauthorized forbearances; obtaining agreed preliminary injunction in *Forsburg*, preventing Wells Fargo from placing borrowers' loans into forbearance without their informed consent; negotiating detailed information and document exchange process and exchanging document and information exchange requests with Wells Fargo;[3] uniting with Consolidated Plaintiffs' counsel and organizing Consolidated Leadership Team; seeking to transfer our case to N.D. California to be consolidated with the other cases pending there; selecting Mr. Meyer as mediator and negotiating mediation process: **1,514.4 hours**.

15. **January 28, 2021 through September 14, 2021:** Three days of mediation with Bob Meyer that significantly advanced a framework for resolving this case but ultimately ended in impasse, preceded by months of intense preparation, including a voluminous confidential mediation document and information exchange with Wells Fargo and extensive negotiations related thereto; gathering and producing extensive personal financial records from class plaintiffs; review of thousands of Wells Fargo documents and sorting a database containing over 946,000 lines of borrower data, each with dozens of data points, for each Wells Fargo loan in a COVID forbearance – to determine criteria for class membership and evaluate common harms; working with experts to prepare damages models for inclusion in a detailed and thorough mediation statement and

[3] Attached hereto as **Exhibit B** is a true and correct of the initial document and information exchange requests we conveyed to Wells Fargo on November 9, 2020.

related research; all while monitoring developments in the late-filed *Echard* case, which was transferred to N.D. California at *Echard* counsel's request; in which *Echard* counsel served discovery to Wells Fargo, on August 10, 2021, requesting only two categories of discovery; (a) information Wells Fargo produced to Consolidated Counsel in formal discovery and (b) information Wells Fargo produced to Consolidated Counsel in connection with our confidential mediation with Bob Meyer. *See Echard* Dkt. 29: **972.7 hours**.

16. **September 15, 2021 through April 25, 2022:** *Echard* counsel demands a fixed percentage share of the fees for this litigation; following the impasse in mediation with Consolidated Counsel, Wells Fargo and *Echard* agree to transfer *Echard* to S.D. Ohio, and upon transferring, immediately agree to engage in mediated settlement negotiations; *Echard* counsel refuses to permit our involvement; Consolidated Counsel file their first motion to intervene in *Echard* in S.D. Ohio, seeking to transfer or stay the *Echard* case in order to prevent *Echard* counsel from negotiating an inferior "reverse auction" settlement with Wells Fargo; unsuccessful attempts to negotiate with *Echard* counsel to allow us to participate in mediated settlement negotiations; so, we continued to litigate our case, pursuing discovery and litigating contested dispositive motions; de-consolidating *Harlow* from *Forsburg*, amending *Forsburg* complaint a third time, and again moving to transfer *Forsburg* to N.D. California; propounding and responding to voluminous formal discovery and conducting several contentious meet-and-confer conferences with counsel for Wells Fargo regarding disputed discovery issues:**1,045.5 hours.**

17. **April 26, 2022 through September 8, 2022:** Successful transfer of *Forsburg* to N.D. California; consolidation of *Forsburg* with Consolidated Counsel's California cases; preparation and filing of third amended consolidated complaint in N.D. California; taking three 30(b)(6) depositions of Wells Fargo corporate representatives: **430.9 hours.**

18. **September 9, 2022 through July 26, 2023:** *Echard* plaintiffs and Wells Fargo announce settlement; Consolidated Counsel file renewed motion to intervene and substantial briefing and research related thereto; we take another 30(b)(6) deposition of Wells Fargo; prepare for and argue at intervention hearing in Columbus, Ohio; S.D. Ohio stays *Echard* in favor of our first-filed cases; *Echard* files motion for reconsideration of stay order, withdraws that motion, and then files a motion for S.D. Ohio to transfer *Echard* to N.D. California or authorize appeal of the stay order to the Sixth Circuit (including misrepresentations of holdings in Judge Urbanski's motion to dismiss opinion in *Harlow* and disparaging the merits of Consolidated Plaintiffs' (and their own) claims); we take two Wells Fargo fact witness depositions and assist co-counsel with preparation for two additional depositions, for a total of four depositions of fact witnesses; engage in continued voluminous document review and analysis of voice recordings for 100 accounts produced by Wells Fargo: **1,313.3 hours.**

19. **July 27, 2023 through November 7, 2023:** Wells Fargo consents to mediation with Hon. Layn Phillips (ret.); extensive preparation of mediation statements for both Wells Fargo and Echard counsel, who also attends; two days of mediation with Judge Phillips, which results in mediator's proposal conveyed by Judge Phillips to Wells Fargo and Consolidated Plaintiffs, which is accepted by both and subsequently assented to by Echard counsel – the proposal resulted in a vastly superior $185 million settlement for a substantially larger class that we are able to identify based on objective criteria (instead of relying on Wells Fargo to self-identify members of the class): **526.8 hours.**

20. **November 8, 2023 through February 9, 2024:** Term sheet negotiations to memorialize the $185 million settlement; *Echard* counsel refuses to sign term sheet until after Wells Fargo and Consolidated Plaintiffs file notices in N.D. California and S.D. Ohio indicating our intent to seek

approval of the $185 million settlement in N.D. California without *Echard*: **140.6 hours.**

21. **February 10, 2024 through October 10, 2024:** *Echard* counsel finally signs the term sheet; drafting settlement agreement; drafting allocation plan; drafting claim forms and settlement notices; preparing notice plan; preparing motion for preliminary approval; Echard Counsel and Consolidated Counsel filing contested Rule 23(g) motions for appointment of class counsel; motions practice related to violations of mediation privilege by *Echard* counsel; amending settlement agreement and preliminary approval motion to address concerns of the Court with respect to treatment of intervenors in *Stoff* litigation; selecting claims administrator; responding to voluminous class member inquiries about claims submission process and other issues related to the settlement: **523.5 hours.**

B. Narrative Discussion of Work Performed by Kellett & Bartholow in This Litigation

22. The complaint in the *Forsburg v. Wells Fargo, et al.* case, which I drafted, and my firm filed in the U.S. District Court for the Western District of Virginia on July 23, 2020, was the first filed non-bankruptcy[4] class action case in a series of five initial non-bankruptcy class action lawsuits filed by Consolidated Plaintiffs' Counsel against Wells Fargo related to Wells Fargo's practice of placing mortgage borrowers' loans into forbearance without their informed consent.[5]

23. In addition to serving as putative Class Counsel in the Consolidated Plaintiffs' case, I am

[4] *See Harlow v. Wells Fargo*, Adv. No. 20-ap-7028 (Bankr. W.D. Va. filed June 26, 2020) (class action asserting claims and seeking remedies against Wells Fargo based primarily on the impact Wells Fargo's unauthorized forbearance practices had on the administration of class members' Chapter 13 bankruptcies).

[5] *Forsburg v. Wells Fargo*, No. 5:20-cv-0046 (W.D. Va. filed July 23, 2020) (first filed nationwide, non-bankruptcy putative class action); *Green v. Wells Fargo*, No. 3:20-cv-5296 (N.D. Cal. filed July 31, 2020) (initially seeking certification of Georgia and New York state-wide classes); *Healy v. Wells Fargo Bank N.A.,* No. 3:20-cv-1838 (S.D. Cal. filed August 11, 2020) (removed from state court, complaint, seeking certification of California state-wide proposed class); *Delpapa v. Wells Fargo*, No. 3:20-cv-6009 (N.D. Cal. filed August 26, 2020) (seeking certification of nationwide and California classes); *Urista v. Wells Fargo & Co.*, No. 3:20-1689 (S.D. Cal. filed August 29, 2020) (seeking certification of nationwide and California classes).

lead counsel in the *Harlow v. Wells Fargo* case, which my firm filed (together with our co-counsel in that case) on June 26, 2020, in the United States Bankruptcy Court for the Western District of Virginia.[6]

24. After filing the *Harlow* case, I expanded my investigation of Wells Fargo's forbearance practices to identify and develop non-bankruptcy theories of liability and damages/recovery in anticipation of filing a second class action lawsuit against Wells Fargo on behalf of borrowers who were not in bankruptcy when Wells Fargo placed their mortgage loan(s) into forbearance without their informed consent.

25. After filing the *Harlow* complaint, Pulitzer Prize winning journalist, Gretchen Morgenson at NBC News expressed interest in our *Harlow* case and the underlying issue of Wells Fargo placing borrowers' loans into unauthorized COVID forbearances.

26. Ms. Morgenson and I discussed the *Harlow* case and, among other things, the potential that Wells Fargo's COVID forbearance practices were not limited to debtors in bankruptcy, in depth, over the course of several phone calls. As a result of these discussions, NBCNews.com ran a lengthy online news story by Ms. Morgenson, which described our *Harlow* case and the experiences of two of our clients in that case, Troy Harlow and Kimberly Fewell, both of whom Ms. Morgenson interviewed for the story.[7]

27. In connection with Ms. Morgenson's written news story, NBCNews also sent a reporter and camera crew to interview Mr. Harlow in person at his home in rural Virginia, and Ms. Morgenson also interviewed and quoted another *Harlow* class representative, Kimberly Fewell,

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[6] The District Court for the Western District of Virginia entered final approval of a separately negotiated proposed class settlement of the bankruptcy-related claims asserted by the plaintiffs in the *Harlow* case on October 11, 2024.

[7] Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him,* NBCNEWS, July 16, 2020, https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.

via telephone regarding her experience with an unauthorized Wells Fargo COVID forbearance. Additionally, at my suggestion, NBC News interviewed National Consumer Law Center credit reporting expert, Chi Chi Wu (by Zoom) for that story, regarding the credit consequences for borrowers with loans in forbearance.[8]

28. Following publication of the NBC News story and video about our bankruptcy clients' unauthorized forbearances, my firm and our co-counsel in *Harlow* immediately began receiving a significant volume of unsolicited telephone calls from Wells Fargo customers who were not in bankruptcy but who were complaining that Wells Fargo had placed their mortgage loans in forbearance without their consent. Prior to filing the initial complaint in the *Forsburg* case, and continuing principally throughout the end of July, August, and into September of 2020, my team and I personally interviewed several dozen of these non-bankruptcy borrowers, including borrowers in Georgia, California, Texas, New Jersey, New York, Florida, Connecticut, New Jersey, Ohio, and New Hampshire, who told us they had mortgage loans Wells Fargo had placed in forbearance without their informed consent.

29. Among the many borrowers who contacted us about unauthorized Wells Fargo forbearances were proposed class representatives Jenna Anderson Doctor, Luis and Marisol Castro, and Barbara Prado. I personally interviewed each of them at length, and because the Castros and I live in Dallas, Texas, I met with them in person to discuss their experience with the Wells Fargo forbearances.

30. As part of my investigation of Wells Fargo's unauthorized forbearance practices, I researched and compared several years of Wells Fargo's annual and quarterly financial reporting with the SEC to identify outlier trends in Wells Fargo's accounting for its mortgage loan servicing

[8] Interview with Troy Harlow and Chi Chi Wu, NBCNEWS, https://www.nbcnews.com/video/wells-fargo-paused-mortgage-payments-for-some-customers-without-asking-87834181676 (July 16, 2020).

business. I also listened to Wells Fargo's quarterly earnings calls during this period, and I subscribed to and studied reporting regarding the mortgage servicing industry's and Wells Fargo's COVID forbearance practices in multiple relatively obscure mortgage servicing industry and banking industry trade publications, among other sources.

31. As a result of this in-depth background research, I began developing a theory of unjust enrichment based on Wells Fargo's volume of mortgage loans in forbearance being dramatically higher, as a percentage of their portfolio, than that of other major mortgage loan servicing companies whose information was publicly available. In particular, I studied Wells Fargo's unprecedented use of the so-called "early pool buy out" (EPBO) option available to servicers of Ginnie Mae (FHA, USDA, VA) loans, which, in the context of Wells Fargo's extraordinarily high-volume COVID forbearance practices, appeared, based on my research, to be a potential source of substantial profits for the bank.

32. Meanwhile, shortly after NBC News's online publication of Ms. Morgenson's original story about our *Harlow* (bankruptcy) class case, Ms. Morgenson informed me that she too was receiving a significant volume of unsolicited communications from non-bankruptcy Wells Fargo customers who were complaining that Wells Fargo had placed their loans into forbearance without their consent. As a result of these additional calls, Ms. Morgenson penned a second article about Wells Fargo's forbearance practices, which was published by NBCNews.com on July 22, 2020.[9]

33. Also on July 22, 2020, NBC's flagship nationwide nightly news program, "NBC Nightly News with Lester Holt," aired a nationally-broadcast story about Wells Fargo's unauthorized

[9] Gretchen Morgenson, *More Wells Fargo customers say the bank decided to pause their mortgage payments without asking*, NBCNEWS, July 22, 2020, https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610.

forbearances.[10] We filed the original *Forsburg* complaint the next day, on July 23, 2020.

34. In response to these NBC News stories, U.S. Senators Warren (MA) and Schatz (HI), began to investigate Wells Fargo's forbearance practices, sending Wells Fargo CEO Charlie Scharf a letter dated July 29, 2020, citing Ms. Morgenson's July 16 and July 22, 2020 articles regarding Wells Frago's unauthorized forbearance practices.[11]

35. The Senators' July 29, 2020 letter to Wells Fargo resulted in Wells Fargo making early public written admissions regarding its unauthorized forbearance practices, in letters Wells Fargo sent in response to the Senators dated August 12, 2020 and September 4, 2020.[12]

36. Wells Fargo's early admissions in its August and September 2020 letters responding to Senators Warren and Schatz's inquiries represented a watershed moment in this litigation. This is because, in those letters, the first of which Wells Fargo sent less than 30 days after we filed *Forsburg*, Wells Fargo confirmed (among other material admissions) that (a) Wells Fargo had placed in excess of 964,000 mortgage loans in COVID forbearance, and (b) it placed some borrowers' mortgage loans into COVID forbearances without their authorization.

37. As a result of these early admissions, the principal issues remaining to be addressed through this litigation and/or in subsequent settlement negotiations were already narrowed down to (i) how to determine the number of borrowers' loans that Wells Fargo placed into forbearance without the borrower's informed consent, (ii) whether Wells Fargo could be held legally liable for

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[10] NBC Nightly News, NBC News Investigates (July 22, 2020) https://www.nbcnews.com/nightly-news-netcast/video/nightly-news-full-broadcast-july-22nd-88158277601 (last visited April 6, 2024).

[11] A copy of Senators Schatz and Warren's July 29, 2020 letter to Wells Fargo is attached hereto as **Exhibit C**. *See also* Gretchen Morgenson, *Two senators demand answers from Wells Fargo following NBC News reports*, NBCNews, July 30, 2020, https://www.nbcnews.com/business/economy/two-senators-demand-answers-wells-fargo-following-nbc-news-reports-n1235276.

[12] Wells Fargo's August 12, 2020 and September 4, 2020 letters responding to Senators Schatz and Warren's inquiries are attached hereto as **Exhibit D**.

placing the loans into forbearance without the borrower's authorization, and if so, (iii) how to determine and quantify appropriate remedies for impacted borrowers on a class-wide basis.

38. And yet, as set forth herein and in the other Consolidated Plaintiffs' Counsels' supporting declarations, Consolidated Plaintiffs' Counsel have now spent nearly four years working on this case, despite our best efforts to settle the case at our first mediation with Wells Fargo in 2021.

39. On September 1, 2020, my *Forsburg* team and I filed our First Amended Complaint, adding Florida (Jenna Doctor) and Texas (Luis and Marisol Castro) class representatives and related state law causes of action, and expanding upon our original complaint's allegations with respect to how Wells Fargo profited as a result of its unauthorized forbearance practices. *Forsburg*, Dkt. 19. The First Amended *Forsburg* Complaint also added a cause of action against Wells Fargo for violation of §1681s-2(b) of the Fair Credit Reporting Act (FCRA), based on Wells Fargo's alleged failure to correct its inaccurate reporting of the unauthorized forbearance in response to a written dispute Ms. Doctor submitted to the Credit Reporting Agencies. *Id.*[13]

40. On September 14, 2020, citing the Senators' letter to Wells Fargo, my team and I filed a motion for preliminary injunction in *Forsburg*, which sought to compel Wells Fargo to cease its practice of placing borrowers into forbearance without their informed consent, on a nationwide basis, and to provide temporary foreclosure protections to borrowers whose loans were placed in involuntary forbearances. Wells Fargo consented to a stipulated preliminary injunction resolving the motion, which prohibited Wells Fargo, on a nationwide basis, from placing borrowers' loans into forbearance unless the customer specifically requests the forbearance.[14] *Forsburg*, Dkt. 54

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[13] The complaints in *Echard* do not allege that any of their plaintiffs submitted a dispute to the Credit Reporting Agencies, a required element of a viable claim under §1681s-2(b) of the FCRA. *See Echard* Dkt. Nos. 1, 14, 116.

[14] Wells Fargo cited entry of the stipulated preliminary injunction in *Forsburg* in support of its motion filed in the *Delpapa* case (then pending in N.D. Cal.) seeking clarification of the Court's prior order summarily denying Wells Fargo's motion to stay or transfer *Delpapa* to the Western District of Virginia. See *Delpapa*, Dkt. 36 (Nov. 3, 2020) ("In fact, in the *Forsburg* case, Wells Fargo Bank has already voluntarily entered into a stipulated preliminary

(Nov. 2, 2020).

41. I also negotiated an agreed protective order with counsel for Wells Fargo so that the parties could begin the process of exchanging information and documents, which was entered by the Court on September 15, 2020. *Forsburg*, Dkt. 24 (Agreed Protective Order, entered Sept. 15, 2020).

42. On September 25, 2020, we filed our Second Amended Complaint in *Forsburg*, adding our California plaintiff, Barbara Prado, and adding California statutory causes of action.

43. At my urging, counsel for Wells Fargo and I conferred at length to craft a unique joint Rule 26(f) Report and Case Management Plan that provided for the parties to agree upon and exchange detailed Rule 26(a)(1)(A)(i-iii) disclosures prior to initiating formal discovery, with disagreements to be submitted to the Court for resolution. *See Forsburg*, Dkt. 45 (Oct. 21, 2020). As counsel for Wells Fargo acknowledged at a hearing in *Forsburg* on December 10, 2020, the parties' informal information exchange was an efficient way to manage and come to agreement on exchanging a substantial volume of information for this case for both the merits and class certification. *Forsburg*, Dkt. 68, p. 32, 33 (Transcript of hearing held Dec. 10, 2020). A copy of the initial document and information requests we provided to Wells Fargo on November 9, 2020, in *Forsburg* is attached hereto as Exhibit B.

44. My prior knowledge and extensive experience with mortgage servicing litigation generally, and against Wells Fargo specifically, was extremely useful in crafting our initial information requests to Wells Fargo in connection with our Rule 26(a) information exchange plan, including extracting information from Wells Fargo's loan level database in its MSP mortgage servicing

injunction, with nationwide effects, in which it has agreed not to place customers' mortgage accounts into forbearance unless the customer specifically requests a forbearance - …").

platform.[15]

45. I have developed an understanding of mortgage servicers' loan level reporting obligations to investors, including investors in the government-backed loan pools serviced by Wells Fargo and other mortgage servicing companies. This experience allowed me to limit debate over what was and was not possible for Wells Fargo to produce, and also allowed us to better evaluate the financial profits to Wells Fargo of its COVID mortgage forbearances.

46. My *Forsburg* team and I also identified and interviewed industry experts, which Consolidated Plaintiffs subsequently retained to provide consulting expert services, including a comparative analysis of mortgage servicing business metrics for Wells Fargo and those of other mortgage servicers. This corroborated our theory of unjust enrichment with respect to the profits we alleged Wells Fargo was able to generate by exercising its EPBO options for loans in unauthorized forbearances.

47. Our *Forsburg* document and information requests served as the foundation for Consolidated Plaintiffs' Counsel's subsequent requests for information and documents in this case, including the information and document requests that Consolidated Plaintiffs' Counsel made to Wells Fargo in connection with our preparation for the first mediation in this case, in 2021, as well as our subsequent formal discovery requests to Wells Fargo.

48. On December 3, 2020, at the initial case management conference in the *Delpapa* and *Green* cases, Judge Donato ordered the parties in those cases to mediation. *Delpapa*, Dkt. 65 p.16 (Transcript of Status Conference Hearing on December 3, 2020); Dkt. 61.

49. In light of this development, our *Forsburg* team and counsel for the plaintiffs in the then-pending related cases in California quickly agreed to work collaboratively in this litigation in order

[15] *See* **Exhibit E**, Curriculum Vitae of Theodore O. Bartholow, III.

to maximize efficiency, and entered into a formal joint prosecution agreement, which divides leadership equally between the K&B, KLG, and KR firms and allocates fee recovery in this case among the seven firms that represented the plaintiffs in the consolidated *Forsburg, Green, Healy, Delpapa,* and *Urista* cases.

50. After Judge Urbanski (WDVA) consolidated *Forsburg* and *Harlow,*[16] my team and the plaintiffs in the *Urista* and *Healy* cases pending in the Southern District of California moved to transfer our cases to the Northern District of California so that they could be consolidated with the already-consolidated *Delpapa* and *Green* cases.[17] *Forsburg*, Dkt. 80 (Motion to Transfer, filed Jan. 8, 2021). Wells Fargo vigorously opposed all of these motions.

51. In January of 2021, Consolidated Plaintiffs' Counsel and Wells Fargo agreed upon a proposed mediator and reported that to the Court on January 21, 2021. *Delpapa*, Dkt. 79.

52. One week later, on January 28, 2021, the *Echard* case was filed in the Western District of Washington. The original *Echard* complaint outright copied and otherwise paraphrased vast portions of the complaints in *Forsburg* and *Delpapa*, as detailed in my declaration and that of my co-counsel, Matt Preusch, filed in connection with Consolidated Plaintiffs' renewed motion to intervene in the *Echard* case following the announcement of their now-mooted $94 million dollar proposed settlement. *Echard*, Dkt. 124, 125.

53. Consolidated Plaintiffs' Counsel spent considerable time engaging in meet-and-confer calls with counsel for Wells Fargo prior to mediation in 2021, during which time we negotiated the details of the information and documents that we would require from Wells Fargo to properly

[16] *Forsburg*, Dkt. 79 (Order Consolidating Cases, entered Jan. 6, 2021).

[17] Because Judge Donato had already denied Wells Fargo's motion to stay or transfer *Delpapa* and *Green* to the Western District of Virginia, we determined that the Northern District of California was the most practical venue in which to prosecute our cases jointly.

evaluate and propose settlement terms in this case.

54. Consolidated Plaintiffs' Counsel obtained a significant number of documents and information related to Wells Fargo's COVID forbearance practices prior to mediation. Our review of that production allowed us to identify who we believed should and should not be included in this putative settlement class and evaluate a reasonable settlement value for the case.

55. By reviewing the evolution of Wells Fargo's customer service scripts, customer letters, and online disclosures regarding COVID forbearances, I determined that Wells Fargo's communications to its borrowers initially failed to disclose important negative consequences of having a mortgage loan in forbearance. Largely due to Mr. Gussin's excellent work in reviewing the massive volume of account level data Wells Fargo provided to us, Consolidated Plaintiffs' Counsel were able to identify the population of Wells Fargo loans that entered forbearance before Wells Fargo modified its disclosures to more appropriately inform/warn borrowers of the serious negative consequences associated with having a mortgage loan in forbearance.

56. We mediated with Wells Fargo for three days in July and August of 2021. These were extremely tough negotiations that ultimately reached impasse, resulting in expiration of the litigation stays in the *Delpapa* and *Forsburg* cases on September 10, 2021.

57. Shortly after the litigation stays in *Delpapa* and *Forsburg* expired, on October 1, 2021, *Echard* counsel and Wells Fargo agreed to transfer *Echard* to Ohio from the Northern District of California, despite *Echard's* prior request to the District Court for the Western District of Washington that *Echard* be transferred to the Northern District of California and despite the fact that, even following *Echard's* transfer to the Northern District of California, *Echard* counsel had previously insisted on his client's preference to be in that district. *Echard*, Dkt. Nos. 32, 46, 53.

58. Consolidated Plaintiffs moved to intervene promptly after *Echard* was transferred to Ohio,

and although our first motion to intervene ultimately was denied, it allowed us to begin familiarizing the Court with the situation we were facing: the prospect of an inadequate settlement of our putative class claims against Wells Fargo by *Echard* Counsel.[18]

59. After the 2021 mediation reached an impasse and the litigation stays in Consolidated Plaintiffs' cases expired, Consolidated Plaintiffs' Counsel continued to litigate their cases. Both prior to and after consolidation in the Northern District of California on August 19, 2022, Consolidated Plaintiffs' Counsel filed multiple complaints and extensive briefing in opposition to Wells Fargo's numerous motions to dismiss, *See, e.g., Forsburg,* Dkt. Nos. 29 (Second Amended Complaint), 44 (motion to dismiss SAC), 76 (response to motion to dismiss SAC), 118 (TAC), 121 and 122 (motion to dismiss), 132 (plaintiffs' response), 139 (reply); *In re Wells Fargo Forbearance Litigation*, Dkt. Nos. 162 (Consolidated Plaintiffs' TAC), 172 and 173 (motion to dismiss), 179 (plaintiffs' response), 180 (reply), 192 (Consolidated Plaintiffs' FAC), 197 (motion to dismiss), 199 (plaintiffs' response), 200 (reply).

60. Consolidated Plaintiffs' Counsel prepared and served formal discovery to Wells Fargo in both *Forsburg* and *Delpapa* in early January of 2022, largely based on the original document and information requests that my team and I prepared in *Forsburg.* Wells Fargo ultimately propounded over 145,000 pages of responsive documents, as well as dozens of fields of relevant electronic data from its MSP system of record for each of the 964,000+ loans Wells Fargo placed in COVID forbearance.

61. Consolidated Plaintiffs' Counsel also took eight depositions in this case: Four Rule 30(b)(6) depositions of Wells Fargo corporate representatives and four fact witness depositions.

62. Wells Fargo's Rule 30(b)(6) corporate representative deponents were: (1) Carmen Bell,

[18] A copy of my Declaration filed in support of the Consolidated Plaintiffs' Motion to Intervene is attached hereto as **Exhibit F**.

who was deposed on July 20, 2022 (deposition taken by video prior to consolidation of *Forsburg* with the *Delpapa*/*Green*/*Healy*/*Urista* cases, by both Zack Gussin and me) and was offered by Wells Fargo to provide corporate representative testimony on its behalf with respect to the subjects of (a) "Wells Fargo's decisions or actions regarding placing borrowers into mortgage forbearance plans without an affirmative request for such relief, including any role that profitability projections or Servicing and Capital Markets desk had on those decisions, and Wells Fargo's modification of its policies and practices with respect to placing borrowers' mortgage loans into forbearance" and (b) "Wells Fargo's attempts, efforts, or plans to confirm whether borrowers whose loans had been placed into forbearance status had requested such status, and the results of any such survey or borrower outreach, including Wells Fargo's attempts to confirm whether borrowers placed into forbearance as a result of their utilization of an IVR system, an online request, a secure e-mail, or a telephonic conversation with a Wells Fargo representative intended to request to be placed into a forbearance;" (2) Peter Strawser, on August 11, 2022 (deposition taken by video prior to consolidation by me, with Zack Gussin assisting), who was offered by Wells Fargo to testify regarding: "Wells Fargo's practices and procedures regarding the refinancing of loans that had been placed into forbearance, opening new lines of consumer credit for borrowers whose mortgage loan had been placed into forbearance, or treatment of a forbearance as a negative or derogatory mark on creditworthiness;" (3) Steve Hagler, on November 18, 2022 (deposition taken by video by Karen Kellett, with Zack Gussin assisting), who was designated by Wells Fargo in response to Plaintiffs' request that Wells Fargo provide a corporate representative to testify with respect to: "Wells Fargo's projections, estimates, assessments, analysis, valuation, and reporting of the economic effect of Wells Fargo's COVID-19 Mortgage Forbearance Program on Wells Fargo, including Wells Fargo's decision about whether, when and how to purchase COVID-19 Mortgage

Forbearance loans from loan securitizations pools, and the identity and role of the personnel responsible for the design and preparation of same;" and, (4) Erica Socorro on December 2, 2022 (deposition taken by video by Zack Gussin, with my assistance), who was offered by Wells Fargo to provide testimony on the following subject: "Wells Fargo's attempts, efforts, or plans to confirm whether borrowers whose loans had been placed into forbearance status had requested such status, and the results of any such survey or borrower outreach."

63. The four Wells Fargo fact witnesses whose depositions we took were (1) John Heyse, in an in-person deposition taken by me on June 15, 2023, in Wilmington, Delaware, who testified regarding his knowledge of Wells Fargo's IVR telephone system, how that system interacts with Wells Fargo's servicing system of record (MSP), and Wells Fargo's automation of processes in the MSP servicing system of record based on customer inputs via IVR, including with respect to mortgage loan forbearances and automatic cancellation of scheduled automatic payments once a borrower's loan is placed in forbearance status; (2) John Buzzoni, an in-person deposition I took, with Abbas Kazerounian assisting, on June 22, 2023 in Colorado Springs, Colorado, in which Mr. Buzzoni provided testimony regarding key participants in Wells Fargo's COVID forbearance scheme, including identification of high level Wells Fargo executives who were involved in the planning and implementation of Wells Fargo's forbearance strategy, testimony regarding the involvement of Black Knight personnel in implementation of the automation and other processes related to placement of borrower loans in forbearance, as well as testimony regarding Wells Fargo's tracking of forbearance volumes, and Wells Fargo's awareness of consumer complaints pertaining to the undisclosed credit impacts of having a loan in forbearance. Mr. Buzzoni also confirmed that Wells Fargo's capital markets personnel were involved in planning Wells Fargo's COVID forbearance strategy from the outset. This admission was significant because Wells Fargo's capital

markets business group is responsible for Wells Fargo's decision making with respect to whether to exercise EPBO options for Ginnie Mae loans, which was a key aspect of Consolidated Plaintiffs' theory of unjust enrichment in this case; (3) Kari Tekolste, in an in-person deposition taken by Abbas Kazerounian, assisted by Gil Melili, on July 13, 2023, in Des Moines, Iowa, wherein Ms. Tekolste testified regarding the language Wells Fargo decided to include in online customer disclosures and other correspondence Wells Fargo sent to customers with loans in COVID forbearance, including with respect to decisions Wells Fargo made regarding language related to known credit impacts to customers of having a loan in forbearance; and (4) Cristelo Garza, an in-person deposition taken by Jason Ibey on July 19, 2023 in San Antonio, Texas, in which Mr. Garza provided testimony regarding the evolution of the language Wells Fargo used in its letters to customers regarding the credit impacts and other consequences for consumers of having a loan in forbearance.

64. While Consolidated Plaintiffs' Counsel continued to press forward with discovery, once we became aware of the putative *Echard* settlement, we renewed our motion to intervene and worked extensively to research and develop the arguments and supporting declarations that we filed in connection with that renewed motion.[19] The KR team consulted with Professor Clopton, a legal ethics expert, who agreed to provide an expert declaration in support of our renewed motion to intervene. With substantial assistance from the other members of our Consolidated Plaintiffs'

[19] A copy of my Declaration filed in support of the Consolidated Plaintiffs' Renewed Motion to Intervene is attached hereto as **Exhibit G**, outlining my November 9, 2021 and November 12, 2021 calls with counsel for the *Echard* plaintiffs, Knoll Lowney, including Mr. Lowney's admission that K&B "did all the work" (¶ 2), Mr. Lowney's comment that he was going to mediation to settle the "entire case" without the involvement of Consolidated Plaintiffs or their counsel (¶ 6) despite his lack of understanding of the case's settlement value (¶ 7), Mr. Lowney's reference to the HBO television series "Succession," presumably as a statement that he views this case as a cut-throat game to see who, among the various putative class plaintiffs and their counsel could out-maneuver the other putative class plaintiffs in order to come away with the "prize" of securing a settlement with Wells Fargo (¶ 9), and Mr. Lowney's statement that "we will settle the case and the case will be ours" (¶ 12), among numerous other statements and subsequent communications in which Mr. Lowney made it clear that his primary interest lay not with what was best for the class, but rather what was best for his chances to recover fees in this case.

Counsel team, including especially Gretchen Freeman-Cappio (KR) and Abbas Kazerounian (KLG), as well as my partner Karen Kellett, I prepared for and argued on behalf of Consolidated Plaintiffs at the status conference the Court conducted in *Echard* on January 11, 2023. Subsequently, this Court stayed the *Echard* case to allow the litigation in our first-filed cases to develop.

65. On June 30, 2023, Consolidated Plaintiffs' Counsel and Wells Fargo's counsel began discussing and ultimately agreed to another mediation, this time agreeing to use the Hon. Layn Phillips to mediate this dispute, on two days of mediation in October 2023.

66. Despite agreeing to return to mediation with Judge Phillips, Wells Fargo initially declined Consolidated Plaintiffs' request for a litigation stay in the Consolidated Plaintiffs' case pending in the Northern District of California. So, on Friday July 31, 2023, I informed Wells Fargo that Consolidated Plaintiffs' intended to take depositions of two former Wells Fargo employees who were extensively involved in the planning and implementation of Wells Fargo's COVID forbearance strategy. The following Monday August 3, 2023, Wells Fargo agreed to a stay of litigation in the Consolidated Plaintiffs' case.

67. Since that time, we prepared extensively for the two full day mediations in October 2023 with Judge Phillips. Following the conclusion of those mediations, Judge Phillips made a mediator's proposal to Consolidated Plaintiffs and Wells Fargo, which proposed to settle the class that Consolidated Plaintiffs and Wells Fargo negotiated for $185 million. Both Consolidated Plaintiffs and Wells Fargo accepted the proposal, and *Echard* Counsel subsequently assented to the settlement.

68. I have read the declaration filed by my co-counsel, Derek Loeser, of the Keller Rohrback firm, regarding the events that followed our acceptance of the mediator's proposal and *Echard*

counsel's subsequent assent to that proposal. It accurately reflects my recollection of those events. Together with the other members of the Consolidated Leadership Team, Kellett & Bartholow (Ms. Kellett and myself) were actively involved in our team's efforts to negotiate a resolution of the impasse regarding getting *Echard* counsel to agree to sign the settlement term sheet.

69. In terms of Kellett & Bartholow's role in finalizing the settlement after the term sheet was finally signed, we were heavily involved in negotiating disputed language in the settlement agreement. I also collaborated with Zack Gussin in preparing the settlement's plan of allocation, in order to ensure that it addressed the need to provide additional compensation for co-borrowers, since the default allocation in the *Echard* settlement would have distributed automatic payments solely on a loan-by-loan basis, meaning individual class members with no co-borrowers on their loans would have effectively recovered twice as much as class members who had a co-borrower on their loan, including many married couples, such as our class representative clients, Marisol and Luis Castro. As a result of these efforts, under the settlement, the automatic payments for loans with two co-borrowers will include approximately $166.66 in additional funds (i.e. approximately $83.33 per co-borrower).

70. Kellett & Bartholow also assisted in the selection of the claims administrator and preparation of the claims forms and notice forms, as well as development of the notice plan.

71. After preliminary approval was granted and notice went out to the class members, my partner Karen Kellett and I have been active in responding to class members' inquiries about the settlement and claims process.

72. Assuming the court grants final approval of the settlement, Kellett & Bartholow anticipates spending at least hundreds of additional hours of attorney time responding to class member inquiries and working with the settlement administrator to address issues regarding the claims

process. We are ready, willing, and able to take on this task.

73. In my opinion, the fee request Consolidated Counsel has made, including the multiplier resulting from a lodestar cross check and the percentage of fund recovery we seek – not less than 20% of the settlement fund, is fair and reasonable and should therefore be approved.

74. I also believe, for the reasons set forth in our fee petition, in this declaration, and in the other supporting declarations filed by Consolidated Counsel in connection with our fee petition, that the Court should deny all, or substantially all of the compensation that *Echard* counsel request, as they have contributed only net-negative value to the resolution of this case, and their conduct has been opportunistic and self-serving, such that rewarding them with meaningful compensation would improperly encourage other copy-cat last minute filings by unscrupulous attorneys hoping to secure a financial windfall at the expense of the hard work of diligent attorneys who originated, developed, and litigated the class's claims in the first instance.

C. Kellett & Bartholow's Assignment and Time-Keeping Practices

75. Kellett & Bartholow litigated this case on a purely contingent basis, foregoing other work in order to handle this complex matter, with no guarantee of recovery. We are therefore seeking compensation, together with the other Consolidated Counsel, as a percentage of the common fund. However, for the Court's reference, we offer the following summary of our firm's time and hourly rates (and the resulting lodestar), as well as our expenses incurred in this litigation on behalf of the class.

76. Kellett & Bartholow requires our attorneys and support staff to contemporaneously record work performed and to document time entries in tenths of an hour increments. My staff and I audited the accuracy of our time records for purposes of this fee application. We removed time exclusively attributable to individual claims on behalf of one of the original class representatives,

who is not a part of this settlement. We have exercised billing judgment to remove time that would not properly be billed to a client paying on an hourly basis. For travel time, we billed at half the professional's applicable hourly rate.

77. Kellett & Bartholow, prior to December of 2020, worked exclusively with our original co-counsel, Malissa and Tracy Giles of the Giles & Lambert firm, and Abe Limon of the Limon Law Firm, to maximize efficiency. We divided work among our firms to prevent duplication of effort, and we delegated work to more junior members of our team, with lower hourly rates, whenever practicable. We also delegated those tasks that could be competently accomplished by paralegals or support staff whenever possible.

78. Together with the other members of the Consolidated Leadership Team, we took care to avoid duplication of effort among members of Consolidated Plaintiffs' Counsel to the greatest extent possible and worked collaboratively in support of one-another's cases. To that end, we coordinated and worked jointly on mediation discovery and information exchange negotiations. We also developed theories of damages and settlement strategies, prepared for and participated in the mediated settlement negotiations. We reached collective agreement among members of the Consolidated Leadership Team on employment of experts and mediators, scheduling of depositions, and coordinated formal discovery requests and discovery dispute meetings with Wells Fargo's counsel to maximize efficiency.

D. Kellett & Bartholow's Experience

79. A true and correct copy of my *curriculum vitae* is attached hereto as Exhibit E. As described therein, I have substantial experience litigating individual and class action consumer claims, including especially consumer claims against mortgage servicers, often in cases involving borrowers in or formerly in bankruptcy. Ms. Kellett, my law partner, has been litigating mortgage

servicing issues for thirty years.[20]

80. I was appointed as class counsel for the $15,000,000 settlement in the nationwide class action styled *Harlow, et al. v. Wells Fargo, et al.*, Adv. P. No. 20-07028 (Bankr. WDVA). *See* Dkt. No. 126. The case alleges that Wells Fargo placed borrowers in bankruptcy into forbearances that they did not request or without their informed consent. After removal to federal district court, the district court granted final approval of the settlement on October 11, 2024. *See* Case No. 7:24-cv-00424 (WDVA), Dkt. No. 18.

81. In addition to my representation of the class plaintiffs in the instant case, I have represented class plaintiffs in several class actions, including *Rodriguez v. Countrywide*, 432 B.R. 671 (Bankr. S.D. Tex. 2010), affirmed by *Rodriguez v. Countrywide Home Loans, Inc. (In re Rordriguez*), 695 F.3d 360 (5th Cir. 2012) (consumer class of former Chapter 13 debtors certified after contested three-day evidentiary class certification hearing, certification upheld on appeal to the Fifth Circuit); *Cano v. GMAC Mortg. Corp. (In re Cano*), 410 B.R. 506 (Bankr. S.D. Tex. 2009), Case No. 02-70359 (SDTX)(certifying nationwide settlement class against GMAC)*; Cotton v. Wells Fargo & Co*., Case No. 3:18-cv-00499-RJC, 2019 U.S. Dist. LEXIS 42145 (W.D. N.C. Mar. 15, 2019) (certifying nationwide settlement class against Wells Fargo for filing false Rule 3002.1 notices regarding unauthorized mortgage modifications); *Jones v. Atlas Acquisitions, LLC*, Adv. No. 4:16-ap-3235 (Bankr. S.D. Tex.); Case No. 18-01194 (certifying nationwide settlement class) .*Inscho et al. v. Think Finance,* Adv No. 17-03117 (N.D. Tex. 2017) (resulting in confirmed Chapter 11 bankruptcy plan that certified nationwide settlement class against internet lender alleged to have provided millions of usurious short term high interest consumer loans via the internet).

[20] *See Curriculum Vitae* of Karen L. Kellett, attached hereto as **Exhibit H**.

82. I also represented consumers with mortgage loans in *Martinez v. Ditech*, Adv. No. 19-01235 (JLG) (S.D. N.Y. filed June 3, 2019). We filed this class action adversary proceeding in the Chapter 11 bankruptcy of a mortgage servicer on behalf of former Chapter 13 debtors alleging that the mortgage servicer corporate debtor had a practice of collecting undisclosed postpetition pre-discharge mortgage fees and charges from discharged former Chapter 13 debtors. Our participation resulted in the establishment of a consumer creditors' committee (we served as committee chair), which successfully opposed confirmation of the debtor's Chapter 11 plan. That plan would have ratified the debtor's illegal charges on consumers' mortgage accounts through a proposed plan sale of the debtor's mortgage servicing rights "free and clear" of consumer claims. We subsequently negotiated confirmation of a consensual Chapter 11 plan that resulted in the appointment of a consumer claims representative and correction of consumers' overstated mortgage accounts, preserved consumers' rights against successors in interest of the debtor, and provided for a $10 million consumer claims fund that was separate and apart from much the smaller general unsecured creditors' pool authorized in the plan, among other relief.

83. My firm and I also represent consumer class plaintiffs in the following currently-pending class action litigation: *Patterson v. Wells Fargo,* No. 3:26-cv-03858-TLT (N.D. Cal. filed Aug. 1, 2023) (currently seeking class certification based on claims against Wells Fargo Bank N.A. and others for allegedly engaging in a practice known as synthetic identity fraud to open unauthorized consumer bank accounts in the names of consumers who otherwise had no business relationship with Wells Fargo - and related alleged wrongdoing); *Jordan v. Wells Fargo*, No. 4:24-cv-01964-DMR (N.D. Cal. filed Mar. 29, 2024) (class action complaint alleging Wells Fargo defrauded customers by charging them for services they did not request and without their knowledge)(now consolidated under *In re Wells Fargo Unauthorized Products*, Case No. 3:24-cv-01223-TLT

(NDCA); *Prado v. Wells Fargo & Co. et al.*, No. 24-cv-05105–MMC (NDCA)(class action alleging Wells Fargo miscalculated the class members' mortgage modifications); *Brown, et al. v. Goldman Sachs Bank USA*, Adv. P. No. 24-07009 (Bankr. WDVA), a case alleging that Goldman Sachs violated the automatic stay across the nation. We recently defeated the Defendant's motion to compel arbitration. *See Brown, et al. v. Goldman Sachs Bank USA* 2024 Bankr. LEXIS 1630, 2024 WL 3419085 (on appeal).

84. In particular, I have substantial experience litigating mortgage servicing issues, having successfully litigated numerous cases asserting claims for violation of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and their implementing regulations, Regulations Z and X respectively, as well as claims for violation of the Fair Credit Reporting Act (FCRA) and the Fair Debt Collection Practices Act (FDCPA), and substantial consumer bankruptcy-related mortgage litigation involving alleged violations of the automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), and Bankruptcy Rule 3002.1, as well as claims for abuse of process and violation of confirmed Chapter 13 bankruptcy plans seeking remedies under the Court's inherent authority and § 105(a) of the Bankruptcy Code. The billing rates for attorneys and paralegals charged by Kellett & Bartholow in this fee petition range from $100 to $985 per hour and fall within the range of market rates charged by paralegals and attorneys of equivalent experience, skill, and expertise in large complex consumer class actions such as this one. Kellett & Bartholow's rates are our 2024 billing rates, unless the attorney or support staff no longer works for Kellett & Bartholow, in which case we have used the former employee's applicable rate at the time of their departure from our firm.

E. Kellett & Bartholow's Billing Rates and Lodestar

85. Kellett & Bartholow's billing rates are subject to annual review by Ms. Kellett and myself,

and they are set based on our review of the firm's overhead, prevailing rates of comparable consumer class action plaintiffs' firms, rates approved by courts in comparable cases, and other market indicia.

86. Kellett & Bartholow's rates are consistent with local market rates for consumer class action firms in our area, and they are lower than the market rates of comparable attorneys practicing in the Northern District of California, where the majority of the litigation in this case took place, including the rates of the other members of the Consolidated Leadership Team.

87. District courts around the country have granted final approval and awarded fees to comparable class counsel at substantially higher rates than those charged by Kellett & Bartholow in this case, in numerous other consumer class action cases, including in this jurisdiction. *See*, *e.g.*, Order Granting Final Approval of Class Action Settlement and Awarding Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards Unopposed Motion for Final Approval of Class Action Settlement at 4, *Ryder v. Wells Fargo Bank N.A.*, No. 19-cv-638 (S.D. Ohio Jan. 25, 2022), ECF No. 57 (awarding attorneys' fees at then-current attorneys' rates between $525 and $1,035); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2672, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (finding a lodestar cross-check supports the reasonableness of Class Counsel's requested fees and approving partner billing rates ranging from $275 to $1,600); *In Re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 18-md-02843-VC (N.D. Cal. Oct. 10, 2023) (awarding attorneys' fees at rates between $295 and $1,320). *Andrews v. Plains All American Pipeline L.P.*, No. 15-cv-04113-PSG-JEMx (C.D. Cal. Sept. 21, 2022) ECF No. 977 (awarding fees based on rates between $90 and $1,200); *Rollins v. Dignity Health, et al.*, No. 13-cv-01450 (N.D. Cal. July 15, 2022) ECF No. 320 (approving attorneys' hourly rates between $625 and $1060); Order and Judgment Granting Final

Approval of Class Action Settlement and Award of Attorneys' Fees, Costs, Expenses and Representative Service Awards at 6, *Stringer v. Nissan North America, Inc., et al.*, No. 21-cv-00099 (M.D. Tenn. Mar. 23, 2022), ECF No. 126 (approving hourly rates between $550 and $1200); *Beach v. JPMorgan Chase Bank, et al.*, No. 17-cv-00563 (S.D.N.Y. Oct. 7, 2020), ECF No. 232 (awarding attorneys' fees at hourly rates between $400 and $1,035); and Order & Final Judgment ¶ 20, *Holcomb v. Hospital Sisters Health Sys.*, No. 16-cv-03282, ECF No. 67 (C.D. Ill. Feb. 25, 2019) (awarding attorneys' fees at hourly rates between $565 and $1,035).

88. Attached as **Exhibit I** is a summary lodestar chart for timekeepers at my firm who have billed for work on this matter. It lists their name, title/position, number of hours worked on this matter through October 8, 2024, their current billing rate (or their applicable rate at the time of their departure from the firm), and their lodestar. As reflected in Exhibit I, Kellett & Bartholow's attorneys and paralegal staff have expended 6,467.7 hours on this litigation through October 10, 2024, which produces a total lodestar of $4,916,794.25.

F. Kellett & Bartholow's Original Co-Counsel's Contributions to This Case and Lodestar

89. Malissa Lambert Giles and Tracy A. Giles, attorneys with the Giles & Lambert P.C. firm in Roanoke, Virginia, have made major contributions to this litigation. First, they were the first attorneys to raise issues with Wells Fargo's unauthorized forbearance practices, which came to light when Wells Fargo filed several inaccurate notices of forbearance in the Giles' Chapter 13 bankruptcy clients' cases. The Giles joined forces with K&B to pursue the *Harlow* bankruptcy class action. As a result of the media attention *Harlow* attracted and the resulting volume of calls we received from non-bankruptcy Wells Fargo customers, the Giles and our other co-counsel, Abe Limon, provided substantial assistance in interviewing and vetting many of these callers as potential class representatives. Prior to consolidation of *Forsburg* with the California cases, the

Giles actively assisted in the preparation and filing of the original and amended complaints and several motions and other filings in the case. The Giles also participated in discovery meet-and-confer conferences with counsel for Wells Fargo and attended and assisted with my preparation for numerous hearings on various contested motions in the *Forsburg* case. Since consolidation of *Forsburg* with the California cases, the Giles have continued to participate actively in this litigation, attending weekly team meetings and offering valuable insights on strategy and legal arguments. Attached hereto as **Exhibit J** is the Declaration of Malissa Lambert Giles in Support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Awards, outlining Giles & Lambert's contributions to this litigation, as well as the fees and expenses incurred in connection herewith.

90. Like the Giles, Abelardo Limon of the Limon Law Office has been actively involved in this case from the outset. Mr. Limon has provided valuable strategic advice on issues related to consolidation and transfer of *Forsburg* to California, and he has assisted in my preparation for several hearings on contested motions and has attended numerous hearings in *Forsburg* prior to its transfer to California (and, subsequently, Ohio). Mr. Limon has attended weekly team meetings and has, like the Giles, continued to provide his wisdom and guidance in our efforts to pursue a fair and appropriate outcome for the class. Attached hereto as **Exhibit K** is the Declaration of Abelardo Limon in Support of Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Awards, outlining the Limon Law Office's contributions to this litigation, as well as the fees and expenses incurred in connection herewith.

91. Also attached are the following Client/Class Representative declarations: **Exhibit L** – Declaration of Barbara Prado; **Exhibit M** – Declaration of Jenna Anderson Doctor; **Exhibit N** – Declaration of Luis Castro; and **Exhibit O** – Declaration of Marisol Castro. In each of these

declarations, the Client/Class Representative states his or her support for the settlement reached in this case, the proposed service award, and the award of attorneys' fees and expenses sought in the Consolidated Plaintiffs' motion for attorneys' fees and litigation expenses.

G. Kellett & Bartholow's Expenses

92. From July 2020 through October 8, 2024, Kellett & Bartholow expended $165,053.05 in costs, expenses and charges in the course of investigating, prosecuting, and settling this action against the nation's largest national bank mortgage servicer, Wells Fargo, while also preventing approval of an inferior settlement of many of our clients' class claims by the *Echard* plaintiffs.

93. Our firm's expenses include computer research expenses; high-volume litigation document management/machine learning database systems; court costs and filing fees; mail and express delivery expenses; travel expenses (transportation, meals, and lodging) for client meetings, depositions, court appearances, and mediation sessions; mediator's fees, and contributions to the common fund managed by our co-counsel at Keller Rohrback for this litigation.

94. All of the expenses for which Kellett & Bartholow seeks reimbursement were reasonable and necessary expenses that attorneys routinely bill to paying clients. Kellett & Bartholow has appropriate documentation of all of these expenses in our firm's books and records, which are prepared from receipts, check records, credit card statements, and other source materials that accurately reflect the expenses actually incurred.

95. Kellett & Bartholow's expenses are in line with expenses incurred in other similar litigation and those incurred by our co-counsel in this litigation, as well as expenses our firm has incurred in other class litigation against Wells Fargo that we successfully prosecuted. In addition to summarizing our lodestar for the case, Exhibit I also summarizes Kellett & Bartholow's reasonable and necessary expenses incurred in this case.

H. Consolidated Plaintiffs' Joint Prosecution Agreement Fee Allocation Structure

96. Consolidated Plaintiffs' fee allocation under the joint prosecution agreement is divided among K&B, KLG, KR, Giles & Lambert PC, Limon Law Office P.C., BLC Law Center APC, and Semnar & Hartman, LLP, as follows: (1) K&B receives a net of 28.67% of the fee recovery, calculated as 30.67% minus 2%, which is allocated to the Limon law firm. (2) KLG receives an estimated net of 18.17% of the fee recovery, calculated as 30.67% minus an estimated 12.5%. An estimated 10% of this reduction to KLG's share is allocated to BLC Law Center APC (this amount is estimated based on a subsequent agreement between KLG and BLC, which clarifies that the amount of BLC's recovery will depend on the total amount of fees awarded by the Court), and the other 2.5% is allocated to Semnar & Hartman, LLP. (3) KR receives a net of 28.16% of the fee recovery, calculated as 30.66% minus 2.5%, which is allocated to Semnar. (4) Giles & Lambert, PC receives a net of 6.5% of the fee recovery, calculated as 8% minus 1.5%, which is allocated to Limon Law Office P.C. (5) Limon Law Office P.C. thus receives 3.5% of the fee recovery, calculated by adding the 2% allocated to Limon by KB and the 1.5% allocated to Limon by Giles & Lambert. (6) As noted above, BLC receives an estimated 10% from KLG; (7) Finally, Semnar receives a net of 5% of the fee recovery, which is calculated by adding 2.5% allocated by KLG and 2.5% from KR.

Firm	**Percentage of Whole (net)**	**Percentage Allocated (to)/from another**
KELLETT & BARTHOLOW PLLC	30.67% (28.67%)	(2%) to Limon
KAZEROUNI LAW GROUP, APC	30.67% (18.17% (estimated))	(10% (estimated)) to BLC, (2.5%) to Semnar
KELLER ROHRBACK, LLP	30.66% (28.16%)	(2.5%) to Semnar

GILES & LAMBERT, PC	8.00% (6.5%)	(1.5%) to Limon
LIMON LAW OFFICE PC		3.5% (2% from KB + 1.5% from Giles)
BLC LAW CENTER APC		10% (estimated – amount varies depending on total amount awarded by the court)
SEMNAR & HARTMAN, LLP		5% (2.5% from KLG + 2.5% from KR)
TOTAL	**100%** **(81.5%)**	**18.5% allocated from others**

I. Summary of Exhibits

97. The following is a list of exhibits to this Declaration:

a. Attached hereto as **Exhibit A** is a true and correct copy of a chart showing the factual allegations from the *Forsburg* Second Amended Complaint that were copied verbatim in the *Echard* amended complaint.

b. Attached hereto as **Exhibit B** is a true and correct copy of the initial document and information request by K&B to Wells Fargo on November 9, 2020.

c. Attached hereto as **Exhibit C** is a true and correct copy of Senators Schatz and Warren's July 29, 2020 letter to Wells Fargo.

d. Attached hereto as composite **Exhibit D** are true and correct copies of Wells Fargo's August 12, 2020 and September 4, 2020 letters responding to Senators Schatz and Warren's inquiries.

e. Attached hereto as **Exhibit E** is a true and correct copy of the *Curriculum Vitae* of Theodore O. Bartholow, III.

f. Attached hereto as **Exhibit F** is a true and correct copy of the Declaration of Theodore O. Bartholow, III, originally submitted in Support of Consolidated Counsel's Motion to Intervene, dated November 5, 2021.

g. Attached hereto as **Exhibit G** is a true and correct copy of the Declaration of Theodore O. Bartholow, III, originally submitted in Support of Consolidated Counsel's Renewed Motion to Intervene, dated October 3, 2022.

h. Attached hereto as **Exhibit H** is a true and correct copy of the *Curriculum Vitae* of Karen L. Kellett.

i. Attached hereto as **Exhibit I** is a true and correct copy of Kellett & Bartholow's Lodestar and Expense Breakdown in connection with Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Awards.

j. Attached hereto as **Exhibit J** is a true and correct copy of Declaration of Malissa L. Giles in Support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Awards.

k. Attached hereto as **Exhibit K** is a true and correct copy of the Declaration of Abelardo Limon in Support of Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Awards.

l. Attached hereto as **Exhibit L** is a true and correct copy of the Declaration of Barbara Prado, a Class Representative.

m. Attached hereto as **Exhibit M** is a true and correct copy of the Declaration of Jenna Anderson Doctor, a Class Representative

n. Attached hereto as **Exhibit N** is a true and correct copy of the Declaration of Luis Castro, a Class Representative.

o. Attached hereto as **Exhibit O** is a true and correct copy of the Declaration of Marisol Castro, a Class Representative.

Conclusion

98. I believe that Kellett & Bartholow's knowledge, experience, and work in identifying the issues, developing the theories of liability and of recovery, drafting the first-filed complaints, requesting, obtaining, and reviewing voluminous amounts of relevant document production and electronic information/account data Wells Fargo produced through formal and informal discovery, identifying fact witnesses with knowledge of Wells Fargo's COVID forbearance practices and taking their depositions, taking depositions of Wells Fargo's corporate representatives, assisting co-counsel with preparation to take fact witness and corporate representative depositions, obtaining an early nationwide preliminary injunction, briefing contested dispositive and other important motions, attending and arguing at hearings and status conferences, and collaboratively developing settlement strategies and engaging in settlement negotiations with co-counsel, together with the excellent work, extraordinary experience and expertise of our co-counsel that have been displayed in this case supports Consolidated Plaintiffs' motion for attorneys' fees, litigation expenses, and class representative service awards.

RESPECTFULLY SUBMITTED this 28th day of October, 2024.

KELLETT & BARTHOLOW PLLC

By: _____

Theodore O. Bartholow III, Esq.

EXHIBIT A

***Forsburg* Second Amended Complaint, filed Sept. 25, 2020**	***Echard* First Amended Complaint, filed May 3, 2021**
¶30 "For every Fannie Mae and Freddie Mac mortgage loan Wells Fargo places into forbearance, Wells Fargo stands to receive a minimum of $500 and up to $1,000 in incentive payments, depending which workout option Wells Fargo's borrower accepts at the conclusion of the forbearance term."	¶57 "For every Fannie Mae and Freddie Mac mortgage loan Wells Fargo places into forbearance, Wells Fargo stands to receive a minimum of $500 and up to $1,000 in incentive payments, depending on which workout option Wells Fargo's borrower accepts at the conclusion of the forbearance term.
¶31 "With respect to Ginnie Mae loans Wells Fargo places into forbearance, Wells Fargo also is entitled to receive incentive compensation for post-forbearance loan workouts, although the structure for calculating the amount of these incentive payments and the available workout options are different (in immaterial ways) for Ginnie Mae loans, depending on whether the loan was originated by the VA, the USDA, or the FHA."	¶58 "For Ginnie Mae Loans Wells Fargo places into forbearance, Wells Fargo is also entitled to receive incentive compensation for post-forbearance loan workouts, although the structure for calculating the amount of these incentive payments and the available workout options are different (in immaterial ways) for Ginnie Mae loans, depending on whether the loan was originated by the VA, the USDA, or the FHA."
¶39 "According to the Consumer Financial Protection Bureau ("CFPB"), before a bank servicing a loan can grant forbearance, it must receive a request for such relief and an attestation of a COVID-19-related financial hardship from the borrower….	¶59 "Per the Consumer Financial Protection Bureau ("CFPB"), before a bank servicing a loan can grant forbearance, it must receive a request for such relief and an attestation of a COVID-19-related financial hardship from the borrower…
¶40 "So long as Fannie Mae and Freddie Mac loans are placed into a CARES Act forbearance, Wells Fargo is not required to repurchase delinquent Fannie Mae and Freddie Mac loans in order to be allowed to cease making principal and interest advances. Instead, after Wells Fargo makes advances for four monthly principal and interest payments missed by the borrower on a loan that Wells Fargo has placed in a CARES Act forbearance, under applicable Fannie Mae and Freddie Mac servicing guidelines, Wells Fargo no longer has any further obligation to advance principal and interest payments on the loan."	¶60 "So long as Fannie Mae and Freddie Mac loans are placed into a CARES Act forbearance, Wells Fargo is not required to repurchase delinquent Fannie Mae and Freddie Mac loans in order to be allowed to cease making principal and interest advances. Instead, after Wells Fargo makes advances for four monthly principal and interest payments missed by the borrower on a loan that Wells Fargo has placed in a CARES Act forbearance, under applicable Fannie Mae and Freddie Mac servicing guidelines, Wells Fargo no longer has any further obligation to advance principal and interest payments on the loan."
¶41 "Therefore, regardless of whether a loan is backed by Ginnie Mae, Fannie Mae, or Freddie Mac, Wells Fargo benefits from placing loans into CARES Act forbearances by limiting its	¶61 "Therefore, regardless of whether a loan is backed by Ginnie Mae, Fannie Mae, or Freddie Mac, Wells Fargo benefits from placing loans into CARES Act forbearances by limiting its exposure to principal

***Forsburg* Second Amended Complaint, filed Sept. 25, 2020**	***Echard* First Amended Complaint, filed May 3, 2021**
exposure to principal and interest advance obligations in the event of future defaults."	and interest advance obligations in the event of future defaults.
¶259 "Wells Fargo made material omissions of fact in failing to disclose to Plaintiffs that it had placed their loans into forbearance without their consent."	¶122 "Wells Fargo made material omissions of fact in failing to disclose to Plaintiff and Class Members that it had placed their loans into forbearance without their informed and legal consent."
¶260 "Plaintiffs detrimentally relied upon Wells Fargo's material omissions of fact when they did not inform Plaintiffs promptly that their accounts had been placed in forbearance and Plaintiff Forsburg did not challenge the forbearance to preserve his modification. Moreover, Plaintiffs Doctor and Castro and other class members continued to make their monthly mortgage payments with the understanding and expectation that doing so would result in their loans being serviced in the ordinary course of business without the consequences associated with having a loan characterized as being in forbearance status."	¶125 "Plaintiff and Class Members detrimentally relied upon Wells Fargo's material omissions of fact and the misrepresentations and purposefully misleading statements contained in form letters when Wells Fargo did not inform Plaintiff and Class Members promptly that their accounts had been placed in forbearance and Plaintiff and Class Members did not challenge the forbearance. Where Wells Fargo did inform Plaintiff and Class Members after the fact that accounts had been placed into forbearance, that notice was insufficient to actually place these customers on notice. Moreover, when Plaintiff and Class Members continued to make monthly mortgage payments after learning of the forbearance status, they did so with the understanding and expectation that doing so would result in these loans being serviced in the ordinary course of business."
¶261 "Plaintiffs' reliance on Wells Fargo's material omissions of fact was justified and reasonable, as Plaintiffs were performing under their mortgage loans and had no basis to assume and were not on notice that Wells Fargo would defraud them by placing their loans into forbearance status without authorization, and no common law, statute, or other agreement among Plaintiffs and their mortgage lender and/or Wells Fargo authorized Wells Fargo to place borrowers' loans into forbearance without their consent."	¶126 "Plaintiff's and Class Member's reliance on Wells Fargo's material omissions of fact and the misleading and false statements made in form letters sent to Plaintiff and Class Members were justified and reasonable, as Plaintiff and Class Members had no basis to assume and were not on notice that Wells Fargo would defraud them by placing their loans into forbearance status without authorization or informed consent. Further, no common law, statute, or other agreement among Plaintiff and Class Members and their mortgage lender and/or Wells Fargo authorized Wells Fargo to place these borrowers' loans into forbearance without their informed consent."
¶262 "Plaintiffs were injured by Wells Fargo's material omissions of fact and fraudulent placement of their loans into forbearance status,	¶127 "Plaintiff and Class Members were injured by Wells Fargo's material omissions of fact, misleading and false statements, and fraudulent placement of

***Forsburg* Second Amended Complaint, filed Sept. 25, 2020**	***Echard* First Amended Complaint, filed May 3, 2021**
experiencing cancellation of Plaintiff Forsburg's mortgage modification, denial of Plaintiff Doctor's home equity line of credit application, denial of Mr. and Mrs. Castro's refinancing application, credit damage, loss of access to new credit and existing credit cards and home equity lines of credit, reputational damage, frustration, outrage, and various out-of-pocket costs and other pecuniary damages and general damages."	their loans into forbearance status, experiencing credit damage, and inability to refinance at historically low rates, loss of access to new credit and existing credit cards and home equity lines of credit, reputational damage, frustration, and various out-of-pocket costs and other pecuniary damages and general damages."
¶277 "Wells Fargo willfully violated 15 U.S.C. § 1681s-2(b) by failing to adequately investigate and correct inaccurate credit reporting information with the Credit Reporting Agencies following Plaintiff Jenna Doctor's formal reinvestigation requests with the Credit Reporting Agencies under 15 U.S.C. § 1681i."	¶151 "Wells Fargo willfully violated 15 U.S.C. § 168ls-2 by informing credit agencies that Plaintiff's and Class Members' mortgage accounts were in forbearance when those consumers did not make affirmative, legal, or informed requests to be placed into forbearance." ¶152 "Wells Fargo also willfully violated 15 U.S.C. § 168ls-2 by failing to adequately investigate and correct inaccurate credit reporting information with the credit reporting agencies after Plaintiff made appropriate complaints."
¶280 "Wells Fargo knew, or should have known, that Plaintiffs and the class members did not request or affirmatively consent to the mortgage loan forbearances that Wells Fargo reported to the Credit Reporting Agencies."	¶153 "Wells Fargo knew, or should have known, that Plaintiff and the Class Members did not request or affirmatively and legally consent to the mortgage loan forbearances that Wells Fargo reported to the credit reporting agencies."
¶282 "The forbearance notation on the class members' credit reports clearly indicates to potential creditors or other third parties that the class members experienced some sort of financial hardship. These forbearance notations adversely affect class members' ability to obtain credit."	¶155 "The forbearance notation on the Class Members' credit reports clearly indicates to potential creditors or other third parties that the class members experienced some sort of financial hardship. These forbearance notations adversely affect class members' ability to obtain credit."
¶283 "Wells Fargo knew that the presence of the forbearance notations in the class members' credit reports would damage the class members' ability to obtain new credit, which may be essential to a consumer's daily life."	¶158 "Wells Fargo knew that the presence of the forbearance notations in the Class Members' credit reports would damage the Class Members' ability to obtain new credit, which may be essential to a consumer's daily life."

***Forsburg* Second Amended Complaint, filed Sept. 25, 2020**	***Echard* First Amended Complaint, filed May 3, 2021**
¶277 "Wells Fargo willfully violated 15 U.S.C. § 1681s-2(b) by failing to adequately investigate and correct inaccurate credit reporting information with the Credit Reporting Agencies following Plaintiff Jenna Doctor's formal reinvestigation requests with the Credit Reporting Agencies under 15 U.S.C. § 1681i."	¶157 "Wells Fargo has breached its duties as set forth in 15 U.S.C. § 1681s-2 by failing to adequately investigate and fully correct inaccurate credit reporting information with the credit reporting agencies following Plaintiff's dispute of the credit reporting errors or Plaintiff's informing Wells Fargo of the fraudulent placement of the account in forbearance."
¶284 "Wells Fargo's failure to report its receipt of payments made by Plaintiffs and the class members during the period in which Wells Fargo improperly furnished information to the Credit Reporting Agencies indicating that their loans were in forbearance status also adversely affects Plaintiffs' and the class members' ability to obtain credit, including but not limited to preventing and/or significantly impeding borrowers' ability to refinance their home mortgage loans and/or to borrower against the equity in their homes, as experienced by Ms. Doctor and Mr. and Mrs. Castro."	¶159 "Wells Fargo's failure to report its receipt of payments made by Plaintiff and the Class Members during the period in which Wells Fargo improperly furnished information to the Credit Reporting Agencies indicating that their loans were in forbearance status also adversely affects Plaintiff's and the Class Members' ability to obtain credit, including but not limited to preventing and/or significantly impeding borrowers' ability to refinance their home mortgage loans and/or to borrow against the equity in their homes."
¶294 "Wells Fargo failed to promptly delete, modify, or block reporting of inaccurate, incomplete, or unverifiable information in response to each dispute raised by Ms. Doctor."	¶160 "Wells Fargo failed to promptly delete, modify, or block reporting of inaccurate, incomplete, or unverifiable information in response to each complaint raised by Plaintiff and the Class Members."
¶295 "Wells Fargo failed to fully correct the information it supplied to the Credit Reporting Agencies regarding Ms. Doctor's account."	¶161 "Wells Fargo failed to fully correct the information it supplied to the Credit Reporting Agencies regarding Plaintiff's and the Class Member's accounts."
¶299 "Based on Wells Fargo's violations of 15 U.S.C. § 1681s-2(b), Plaintiffs and the class members are entitled to actual damages, costs, and attorneys' fees pursuant to 15 U.S.C. § 1681o."	¶163 "Based on Wells Fargo's violations of 15 U.S.C. § 1681s-2, Plaintiff and the Class Members are entitled to actual damages, costs, and attorneys' fees pursuant to 15 U.S.C. § 1681o."
¶298 "Ms. Doctor has incurred actual damages and has suffered physically, mentally, and emotionally as a result of Wells Fargo's willful violations of the Fair Credit Reporting Act."	¶162 "Plaintiff and the Class Members have incurred actual damages and have suffered physically, mentally, and emotionally as a result of Wells Fargo's willful violations of the FCRA."
¶300 "Moreover, as a result of each and every negligent violation of the FCRA, Plaintiffs and	¶164 "Moreover, as a result of each and every negligent violation of the FCRA, Plaintiff and the

***Forsburg* Second Amended Complaint, filed Sept. 25, 2020**	***Echard* First Amended Complaint, filed May 3, 2021**
the class are entitled to statutory damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1681o."	Class Members are entitled to statutory damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1681o."
¶301 "Plaintiffs and the class members are also entitled to statutory damages, punitive damages, and reasonable attorneys' fees for each and every of Wells Fargo's willful violation of the FCRA pursuant to 15 U.S.C. § 1681n(a)."	¶165 "Plaintiff and the Class Members are also entitled to statutory damages, punitive damages, and reasonable attorneys' fees for each of Wells Fargo's willful violation of the FCRA pursuant to 15 U.S.C. § 1681n(a)."

EXHIBIT B

KELLETT & BARTHOLOW PLLC
KAREN L. KELLETT
THEODORE O. BARTHOLOW, III ("THAD")
CAITLYN N. WELLS
O. MAX GARDNER III, *Of Counsel*
CLAUDE D. SMITH, *Of Counsel*
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November 9, 2020

William C. Mayberry
Amy P. Williams
Troutman Pepper Hamilton Sanders LLP
301 S. College Street, Suite 3400
Charlotte, NC 28202

Re: Forsburg et al. v. Wells Fargo & Co. et al. (No. 5:20-cv-00046)

Dear Counsel:

In accordance with the joint Rule 26 case management plan the parties have submitted to the Court in the above-referenced matter, Plaintiffs provide the following proposal regarding documents and information Plaintiffs seek from Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A.:

I. Documents and Information Related to the Scale and Scope of Wells Fargo's COVID-19 Forbearance Program:

1. Total number of loans serviced by Wells Fargo that are secured by the borrower's principal residence (including purchase money, second mortgages, home equity, home equity lines of credit, etc.)

2. Total number of loans Wells Fargo has placed in COVID-19 forbearance status

3. Total balance of loans Wells Fargo has placed in COVID-19 forbearance status

4. Of the total number of loans Wells Fargo has placed in COVID-19 forbearance status, how many of those loans has Wells Fargo repurchased?

5. Total balance of loans Wells Fargo repurchased after loan was placed in COVID-19 forbearance status.

6. Total price paid by Wells Fargo to repurchase loans placed in COVID-19 forbearance status.

7. Total balance of COVID-19 forbearance loans repurchased still owned by Wells Fargo as of November 1, 2020.

8. Total balance of COVID-19 forbearance loans repurchased that have been re-securitized by Wells Fargo as of November 1, 2020.

9. Total number of Fannie Mae loans serviced by Wells Fargo as of April 1, 2020.

10. Total balance of Fannie Mae loans serviced by Wells Fargo as of April 1, 2020.

11. Of the total number of Fannie Mae loans serviced by Wells Fargo as of April 1, 2020, how many of those loans has Wells Fargo repurchased?

12. Total balance of Fannie Mae loans serviced by Wells Fargo as of April 1, 2020, that Wells Fargo has repurchased.

13. Total price paid by Wells Fargo to repurchase Fannie Mae loans placed in COVID-19 forbearance status.

14. Total number of Freddie Mac loans serviced by Wells Fargo as of April 1, 2020.

15. Total balance of Freddie Mac loans serviced by Wells Fargo as of April 1, 2020.

16. Of the total number of Freddie Mac loans serviced by Wells Fargo as of April 1, 2020, how many of those loans has Wells Fargo repurchased?

17. Total balance of Freddie Mac loans serviced by Wells Fargo as of April 1, 2020, that Wells Fargo has repurchased.

18. Total price paid by Wells Fargo to repurchase Freddie Mac loans placed in COVID-19 forbearance status.

19. Total number of FHA loans serviced by Wells Fargo as of April 1, 2020.

20. Total balance of FHA loans serviced by Wells Fargo as of April 1, 2020.

21. Of the total number of FHA loans serviced by Wells Fargo as of April 1, 2020, how many of those loans has Wells Fargo repurchased?

22. Total balance of FHA loans serviced by Wells Fargo as of April 1, 2020, that Wells Fargo has repurchased.

23. Total price paid by Wells Fargo to repurchase FHA loans placed in COVID-19 forbearance status.

24. Total number of VA loans serviced by Wells Fargo as of April 1, 2020.

25. Total balance of VA loans serviced by Wells Fargo as of April 1, 2020.

26. Of the total number of VA loans serviced by Wells Fargo as of April 1, 2020, how many of those loans has Wells Fargo repurchased?

27. Total balance of VA loans serviced by Wells Fargo as of April 1, 2020, that Wells Fargo has repurchased.

28. Total price paid by Wells Fargo to repurchase VA loans placed in COVID-19 forbearance status.

29. Total number of USDA loans serviced by Wells Fargo as of April 1, 2020.

30. Total balance of USDA loans serviced by Wells Fargo as of April 1, 2020.

31. Of the total number of USDA loans serviced by Wells Fargo as of April 1, 2020, how many of those loans has Wells Fargo repurchased?

32. Total balance of USDA loans serviced by Wells Fargo as of April 1, 2020, that Wells Fargo has repurchased.

33. Total price paid by Wells Fargo to repurchase USDA loans placed in COVID-19 forbearance status.

II. Loan level / borrower information for Wells Fargo serviced loans of borrowers currently or previously in COVID-19 related forbearance:

1. Borrower 1 (B1) Last Name

2. B1 First Name

3. B1 Race/ethnicity/national origin

4. B1 credit score prior to forbearance

5. B1 credit score at end of forbearance

6. Borrower 2 (B2) Last Name

7. B2 First Name

8. B2 Race/ethnicity/national origin

9. B2 credit score prior to forbearance

10. B2 credit score at end of forbearance

11. Account No.

12. Street Address of property securing repayment of loan

13. City

14. State

15. Zip

16. Census tract

17. Loan type (Conventional, FHA, VA, USDA, Home Equity, Home Equity Line of Credit, other)

18. Loan term (15, 20, 30, 40 year)

19. Effective date of forbearance

20. Loan interest rate: fixed or adjustable?

21. Loan interest rate as of effective date of forbearance

22. Loan origination date or date of most recent pre-COVID modification

23. PBAL at loan origination or most recent pre-COVID modification

24. PBAL at effective date of forbearance

25. PBAL as of first payment due after forbearance

26. Property value as of effective date of forbearance

27. Property value as of 11/1/2020

28. Owner of loan as of effective date of forbearance

29. Was loan repurchased by Wells Fargo after being placed into forbearance?

30. Reason Wells Fargo determined loan was eligible for repurchase

31. Date Wells Fargo repurchased loan

32. PBAL at time of repurchase

33. Repurchase price Wells Fargo paid for loan

34. Has Wells Fargo re-securitized loan after repurchase

35. Original forbearance term

36. Was original forbearance term extended by the borrower?

37. Was original forbearance term extended by Wells Fargo?

38. Number of payments received during forbearance term

39. Total amount of payments received during forbearance term

40. Loan due date as of effective date of forbearance

41. Loan delinquency status as of effective date of forbearance current/30/60/90/120/180+)

42. Date last payment received prior to effective date of forbearance

43. Amount of last payment received prior to effective date of forbearance

44. Total monthly payment amount as of effective date of forbearance

45. P&I portion of monthly payment amount as of effective date of forbearance

46. Escrow portion of monthly payment amount as of effective date of forbearance

47. Mechanism through which Wells Fargo placed account into forbearance (Website/App "button", Borrower request by telephone call, IVR, Borrower written request, Borrower inquiry by telephone, Borrower had pending / "in flight" modification application, Borrower requested forbearance for a related loan, no documented borrower request or inquiry regarding COVID related Relief

or forbearance, other [Wells Fargo to provide its description of its reason for placing account into forbearance])

48. Has borrower disputed Wells Fargo's placement of loan into forbearance status?

49. Has borrower requested that Wells Fargo remove forbearance status from loan reporting?

50. Has Wells Fargo received notification from a credit reporting agency on or after April 1, 2020 indicating that the borrower disputes Wells Fargo's credit reporting?

51. Has Wells Fargo modified its credit reporting for the borrower's loan after receiving notice of a dispute related to the loan being in forbearance status?

52. How/in what way has Wells Fargo modified its credit reporting for the borrower's loan after receiving notice of a dispute related to the loan being in forbearance status?

53. Does Wells Fargo contend that borrower knowingly requested forbearance for this loan? Yes/No/Unknown

54. If applicable, date Wells Fargo contends borrower requested forbearance for this loan

55. Did borrower have a pending loan modification application or an approved but not yet implemented loan modification that was suspended, denied, or cancelled as a result of forbearance?

56. Did borrower (B1 or B2) have any other loan(s) related to or associated with this loan that Wells Fargo also placed into forbearance status?

57. Did borrower (B1 or B2) request forbearance with respect to any related or associated loan?

58. Did B1 have other open credit accounts with Wells Fargo immediately prior to effective date of forbearance?

59. Amount of available credit on B1's open credit accounts with Wells Fargo immediately prior to effective date of forbearance

60. Amount of unavailable (already borrowed) credit on B1's open credit accounts with Wells Fargo immediately prior to effective date of forbearance

61. Number of open credit card accounts B1 had with Wells Fargo immediately prior to effective date of forbearance

62. Number of home equity lines of credit B1 had with Wells Fargo immediately prior to effective date of forbearance

63. Number of unsecured lines of credit B1 had with Wells Fargo immediately prior to effective date of forbearance

64. Number of other lines of credit B1 had with Wells Fargo immediately prior to effective date of forbearance

65. Did B2 have other open credit accounts with Wells Fargo immediately prior to effective date of forbearance?

66. Amount of available credit on B2's open credit accounts with Wells Fargo immediately prior to effective date of forbearance

67. Amount of unavailable (already borrowed) credit on B2's open credit accounts with Wells Fargo immediately prior to effective date of forbearance

68. Number of open credit card accounts B2 had with Wells Fargo immediately prior to effective date of forbearance

69. Number of home equity lines of credit B2 had with Wells Fargo immediately prior to effective date of forbearance

70. Number of unsecured lines of credit B2 had with Wells Fargo immediately prior to effective date of forbearance

71. Number of other lines of credit B2 had with Wells Fargo immediately prior to effective date of forbearance

72. Has servicing been transferred from Wells Fargo to another servicer subsequent to the effective date of the forbearance?

73. Current servicer of the loan, if not Wells Fargo.

III. Documents and information related to the genesis / development of Wells Fargo's COVID-19 forbearance strategy, processes, and/or practices:

1. Relevant draft/proposed/final legislation, governmental agency or interagency guidance, reports, proposals that Wells Fargo considered when developing its COVID-19 forbearance strategy, processes, and/or practices.

2. Documents reflecting Wells Fargo's evaluations and interpretations of proposed legislation, governmental agency or interagency guidance regarding or related to Wells Fargo's COVID-19 forbearance strategy, processes, and/or practices.

3. Documents and information reflecting and/or used to prepare Wells Fargo's estimates, processes, projections, evaluations, risk assessment, and methodology for accounting for loans in COVID-19 forbearance status.

4. Documents and information reflecting and/or used to prepare Wells Fargo's estimates, processes, projections, evaluations, risk assessment, and methodology for implementing its COVID-19 forbearance strategy into its loan servicing operations with respect to:

    a. credit reporting

    b. customer impact

    c. loan repurchases

    d. securitization

    e. investor reporting

        i. Regarding Wells Fargo & Co. (including preparation of financial reports, presentations, announcements, press releases, government filings (including but not limited to reports filed with the Securities and Exchange Commission)

        ii. By Wells Fargo Bank NA, including reporting and disclosures to investors and governmental entities regarding Fannie Mae, Freddie Mac, Ginnie Mae trusts with respect to loans in COVID-19 forbearance status.

    f. relationship management with Freddie Mac, Fannie Mae, Ginnie Mae, FHA, VA, and/or USDA as it pertains to loans impacted by Wells Fargo's COVID-19 forbearance process and practices.

    g. Analyses of loan portfolios

5. Proposals, presentations, diagrams, charts, tables, decision trees, minutes, emails, text messages, social media, and other forms of electronic communications, regarding or related to the following aspects of servicing as applicable to loans in COVID-19 forbearance status:

    a. Accounting

    b. loan servicing operations

    c. credit reporting

    d. customer impact

    e. loan repurchases

    f. securitization

    g. investor reporting

        i. Regarding Wells Fargo & Co. (including preparation of financial reports, presentations, announcements, press releases, government filings (including but not limited to reports filed with the Securities and Exchange Commission)

        ii. By Wells Fargo Bank NA, including reporting and disclosures to investors in Fannie Mae, Freddie Mac, Ginnie Mae trusts regarding loans in forbearance status

    h. relationship management with Freddie Mac, Fannie Mae, Ginnie Mae, FHA, VA, and/or USDA as it pertains to loans impacted by Wells Fargo's COVID-19 forbearance process and practices.

    i. evaluation of risks to other lines of business and opportunities

6. Analyses of loan portfolios containing loans in COVID-19 related forbearance

7. Drafts and final versions of applicable policies, procedures, guides, matrices,

8. Wells Fargo personnel, business lines, legal entities responsible for

    a. Estimating, anticipating, valuing, assessing, monitoring, and/or projecting effects of

i. the COVID-19 pandemic on WFC and its business lines and legal entities with respect to its mortgage servicing business

ii. the COVID-19 pandemic on WFC and its business lines and legal entities with respect to management of the the asset cap established in its consent order with the Board of Governors of the Federal Reserve System.

iii. accounting impacts of mortgage loan forbearances related to the COVID-19 pandemic on WFC and its business lines and legal entities.

b. Evaluating and approving Wells Fargo's COVID-19 forbearance strategy, policies, procedures, metrics, execution, methods, accounting, and practices.

c. Managing Wells Fargo personnel with respect to the implementation, analysis, monitoring, development, assessment, accounting, communications, and customer interactions.

d. Promoting, public relations, strategic messaging, explaining, persuading, describing Wells Fargo's COVID-19 strategy, accounting, policies, practices, methods, results, and intentions.

IV. Documents and information related to involvement of third parties (consultants, advisors, accountants, attorneys, auditors, vendors, etc.) in the development, analysis, and/or implementation of Wells Fargo's COVID-19 forbearance policies, procedures, practices, assessment, evaluation, etc. including applicable statements of work, memoranda of understanding, invoices, estimates, instructions, correspondence, reports, forms, proposals, presentations, contracts, agreements, correspondence, etc. including but not limited to:

1. Credit reporting agencies

2. Mail Vendors

3. Attorneys

4. Black Knight

5. Albertelli Law Firm (aka ALAW)

6. InfoEx LLC

7. Systems engineers

8. Analytics professsionals

9. Third party accounting services

10. Process management

11. Insurers

12. Consultants

13. Technical services / Information technology professionals and engineers

14. Auditors

15. Monitors

V. Documents and Information Related to Wells Fargo's Accounting Strategies, Methods, Results, Descriptions, and Calculations with Respect to or Resulting from Wells Fargo's COVID-19 Related Forbearance Program.

1. Effects of characterizing loans as being in COVID-19 related forbearance status on calculation of the asset cap established in the consent order with the Board of Governors of the Federal Reserve System.

2. Wells Fargo's interpretation of and response to the *Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus* dated March 22, 2020.

3. Wells Fargo's interpretation of and response to the *Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus* dated April 7, 2020.

4. Accounting effects of Wells Fargo's COVID-19 forbearance practices on operations and finances of:

    a. Wells Fargo & Company

    b. Wells Fargo Bank

    c. Other Wells Fargo business lines and legal entities

VI. Implementation of Wells Fargo's COVID-19 Forbearance Program

1. Incentive payments Wells Fargo has received for loan workouts for loans following COVID-19 related forbearance.

2. Procedures related to COVID-19 forbearance (all versions and drafts thereof created on or after March 1, 2020).

3. Form letters to mortgage customers regarding COVID-19 forbearance programs (all versions and drafts thereof created on or after March 1, 2020).

4. Training memoranda, scripts, matrices, tools, guides, process descriptions, manuals, and other like materials provided to Wells Fargo employees regarding Wells Fargo's COVID-19 forbearance program (all versions and drafts thereof created on or after March 1, 2020).

5. Risk assessment, cost-benefit analyses, recommendations

6. Projections, audits, assessments, evaluation, analysis

7. Accounting strategies, methods, considerations

8. Presentations

9. Regulatory reporting and compliance

10. Communications from Wells Fargo's employees and/or agents regarding any problems, issues, recurring customer complaints, etc. related to Wells Fargo's COVID-19 forbearance program.

11. Management personnel responsible for Wells Fargo's COVID-19 forbearance program from the Executive/Business level (WFC), to the Line of Business (Wells Fargo Bank), and including management personnel overseeing credit reporting, loan-level servicing, portfolio-level reporting and analysis, customer communications, and risk management.

VII. Wells Fargo's Government Lobbying Efforts Related to Wells Fargo's COVID-19 Forbearance Program.

1. Regarding CARES Act forbearance provisions

2. Regarding CARES Act accounting provisions impacted by or related to loans in COVID-19 forbearance

3. Regarding Wells Fargo's practice of placing borrower accounts into forbearance status without their consent.

4. All Wells Fargo personnel and agents involved in Wells Fargo's lobbying strategy and operations regarding Wells Fargo's COVID-19 Forbearance Program.

5. All third parties consulted regarding, assisting with, or participating in Wells Fargo's lobbying strategy and operations regarding Wells Fargo's COVID-19 Forbearance Program.

VIII. Documents and information related to Wells Fargo's responses to Sens. Warren and Schatz's inquiries and any other governmental and/or regulatory inquiries regarding Wells Fargo's COVID-19 forbearance practices:

1. All inquiries received and responses thereto.

2. All documents and information provided to the senators, including all bates labeled documents attached to any response Wells Fargo provided to each of the senators.

3. All documents and information Wells Fargo reviewed in connection with its responses to the senators' inquiries.

4. Information regarding personnel involved in the preparation of the materials and correspondence Wells Fargo sent the senators and their staffs in response to their inquiries regarding Wells Fargo's COVID-19 forbearance practices.

IX. Specific to Plaintiffs:

1. All MSP system data, notes, and/or "screens" for each Plaintiff's account.

2. All "Global Event Management" aka GEM events, processes, tasks, and communications for each Plaintiff's account.

3. All credit reporting information sent or received or modified regarding each Plaintiff's account.

4. All correspondence, call recordings, notes, email, "inmail" or other internal or externally exchanged electronic messaging, correspondence, or communications

regarding, related to, or received from each Plaintiff and/or their mortgage loan account(s).

5. All correspondence sent to each Plaintiff since March 1, 2020.

6. Identification of all Wells Fargo personnel who performed work on each Plaintiff's account since March 1, 2020.

X. Borrower Disputes

1. All written and/or recorded borrower disputes regarding Wells Fargo's COVID-19 forbearance program.

2. All assessments, analyses, statistical summaries, reports, presentations, memoranda, descriptions, valuations, etc. related to borrower disputes regarding Wells Fargo's COVID-19 forbearance program.

XI. Wells Fargo's Remediation Efforts, Findings, Results, and Process

1. Credit reporting

2. Accounting

3. All assessments, analyses, statistical summaries, reports, presentations, memoranda, descriptions, valuations, evaluations, etc. related to customer/account remediation required as a result of Wells Fargo's COVID-19 forbearance program.

4. All personnel involved in creating, analyzing, identifying, and executing Wells Fargo's remediation plans.

Very truly yours,

Theodore O. Bartholow III

cc: K. Kellett, M. Gardner, M. McKee, M. Giles, T. Giles, A. Limon, A. Atkins

EXHIBIT C

United States Senate
WASHINGTON, DC 20510

July 29, 2020

Charles W. Scharf
Chief Executive Officer and President
Wells Fargo & Company
420 Montgomery Street
San Francisco, CA 94104

Dear Mr. Scharf:

We write to request more information about recent reports that Wells Fargo has been placing borrowers who are not delinquent on their loans in mortgage forbearance programs without their consent and putting consumers at risk of greater financial hardship amidst one of the worst economic downturns in our country's history. This includes reports of misrepresentations to bankruptcy courts about borrowers' requests for forbearance. These reports are highly disturbing given Wells Fargo's recent history of illegal behavior and inappropriate treatment of customers, including over a dozen scandals involving the creation of millions of fake customer accounts, illegal repossession of servicemembers' cars, wrongful foreclosure on hundreds of homes, illegal add-on charges to customers' accounts, and much, much more.[1]

This scandal-ridden history reveals a broken culture at Wells Fargo, and a bank that appears to be incapable of self-governance. The new reports raise even more questions about the inability of Wells Fargo and its leadership team to comply with the law and the needs of its customers.

In response to the recession caused by the spread of coronavirus disease 2019 (COVID-19), Wells Fargo provided a forbearance option that allows borrowers experiencing financial hardship to delay payments on their mortgages for up to six months.[2] Depending on the borrower's circumstances and whether or not the mortgage is federally-backed, he or she may have the option to extend the forbearance period for up to a total of 12 months as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.[3]

But in recent weeks, a report revealed that bankruptcy attorneys have identified multiple cases "where Wells Fargo has wrongly claimed that borrowers asked to pause their mortgage payments in forbearance plans," and "that the bank put through secondary requests for forbearance on behalf of homeowners who had asked to participate in the program initially but who no longer

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[1] Yahoo! Finance, "Every Wells Fargo consumer scandal since 2015: A timeline," Ethan Wolff-Mann, August 8, 2018, https://finance.yahoo.com/news/every-wells-fargo-consumer-scandal-since-2015-timeline-194946222.html.
[2] Wells Fargo, "Answers to frequently asked Mortgage and Home Equity questions," https://update.wf.com/coronavirus/home-lending/?_ga=2.139940467.1576605720.1595353706-997203864.1594742087.
[3] *Id.*

wanted to."[4] Borrowers only learned of Wells Fargo's actions from their lawyers rather than from the bank itself.[5]

These forbearance filings that were based on nonexistent requests from customers "in Chapter 13 bankruptcy cases can put borrowers' homes at risk of foreclosure and represent a fraud against the bankruptcy court," in addition to harming their credit.[6] Moreover, because of the way loan servicers are compensated for forbearance, it is possible that Wells Fargo was able to profit on each forbearance filing.[7]

Another report found that the practice extended to a broader group of customers, and that borrowers in at least 14 states who were not delinquent on their loans had their mortgages wrongly put into forbearance without their knowledge or consent merely because they sought information on Wells Fargo's programs to help consumers having trouble paying their bills because of COVID-19-related economic difficulties.[8] These consumers were hurt in several ways by this practice: they did not receive credit for several months of payments, their credit reports may have been damaged, and they may have lost the opportunity to modify or refinance their mortgages while interest rates were at record lows.[9] Wells Fargo admitted to these practices in a statement, claiming that "we may have misinterpreted customers' intentions in a small number of cases."[10]

To be clear, we support mortgage servicers taking actions to help distressed borrowers during this pandemic, including providing forbearance to those who are in delinquency, and if Wells Fargo's actions are indeed isolated to a limited number of instances where there were errors, it is not our intent with this letter to discourage Wells Fargo from providing assistance to borrowers who need and request it. However, Wells Fargo's history of taking actions without the consent of consumers is cause for serious concern that this is another systemic failure at the bank.

Indeed, if these reports are true, they represent one more addition to a long list of inexcusable actions by Wells Fargo at customers' expense. The practices described in these reports are eerily similar to previous Wells Fargo scandals. The numerous instances of the bank's swindling of consumers ultimately resulted in the Federal Reserve Board of Governors placing an

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[4] NBC News, "Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him," Gretchen Morgenson, July 16, 2020, https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] NBC News, "More Wells Fargo customers say the bank decided to pause their mortgage payments without asking," Gretchen Morgenson, July 22, 2020, https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610.
[9] *Id.*
[10] *Id.*

unprecedented asset cap on Wells Fargo[11] and multiple consent orders issued by the Consumer Financial Protection Bureau (CFPB) and Office of the Comptroller of the Currency (OCC).

- Between January 2012 and July 2016, "[m]ore than 800,000 people who took out car loans from Wells Fargo were charged for auto insurance they did not need … push[ing] roughly 274,000 Wells Fargo customers into delinquency and result[ing] in almost 25,000 wrongful vehicle repossessions." Active-duty service members were among those harmed.[12] Wells Fargo signed settlements with 50 states and Washington, D.C.,[13] the OCC and the CFPB[14] to resolve those claims.

- Even after they were caught, Wells Fargo failed to refund money owed to customers who had paid off their car loans early. "Tens of thousands of customers" may have been denied proper refunds.[15] A spokesperson for the bank admitted that the failure stemmed from "a lack of oversight and controls."[16]

- For years, Wells Fargo "charged monthly fees to customers for dozens of products they didn't understand or know how to use."[17] These add-on charges were particularly egregious because the bank had entered into a consent order with the OCC about similar improper charges.[18]

- In 2015, the OCC found deficiencies in Wells Fargo's internal controls related to the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) rules in the Wholesale Banking Group. The consent order noted that "the Bank has failed to make acceptable substantial progress toward correcting previously identified BSA/AML problems that were previously brought to its attention."[19]

- Between January 2008 and July 2015, Wells Fargo repossessed vehicles belonging to 450 members of the military in violation of the Servicemembers Civil Relief Act

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[11] *In the matter of Wells Fargo & Company*, Docket No. 18-007-B-HC, "Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended," https://www.federalreserve.gov/newsevents/pressreleases/files/enf20180202a1.pdf.
[12] New York Times, "Wells Fargo Forced Unwanted Auto Insurance on Borrowers," Gretchen Morgenson, July 27, 2017, https://www.nytimes.com/2017/07/27/business/wells-fargo-unwanted-auto-insurance.html.
[13] American Banker, "Wells Fargo to pay state regulators $575M over phony accounts, other scandals," Rachel Witkowski, December 28, 2018, https://www.americanbanker.com/news/wells-fargo-to-pay-state-regulators-575m-over-phony-accounts-other-scandals.
[14] CNN Business, "Wells Fargo fined $1 billion for insurance and mortgage abuses,"Donna Borak, April 20, 2018, https://money.cnn.com/2018/04/20/news/companies/wells-fargo-regulators-auto-lending-fine/index.html.
[15] New York Times, "Wells Fargo, Awash in Scandal, Faces Violations Over Car Insurance Refunds," Gretchen Morgenson, August 7, 2017, https://www.nytimes.com/2017/08/07/business/wells-fargo-insurance.html.
[16] *Id.*
[17] Wall Street Journal, "Wells Fargo's Latest Challenge: Refunds for Pet Insurance, Legal Services," Emily Glazer, July 19, 2018, https://www.wsj.com/articles/wells-fargos-latest-challenge-refunds-for-pet-insurance-legal-services-1532009933.
[18] Comptroller of the Currency, In the Matter of Wells Fargo Bank, National Association, Sioux Falls, South Dakota, AA-EC-2015-79, https://www.occ.gov/static/enforcement-actions/ea2015-125.pdf.
[19] *Id.*

(SCRA).[20] And a second set of different SCRA violations came to light in a September 2016 settlement with the Department of Justice (DOJ) that brought the total number of servicemembers eligible for relief to 860.[21]

- Between April 2010 and October 2015, Wells Fargo made "calculation error[s]" that denied loan modifications to hundreds of eligible homeowners, leading to approximately 400 wrongful foreclosures.[22]

- Between March 2013 and August 2017, Wells Fargo failed to properly compensate certain lower-level employees for legally required break periods. A federal judge ordered the bank to pay more than $97 million in damages.[23]

- Wells Fargo disclosed in March 2018 that federal agencies were looking into the bank's wealth management business.[24] The federal agencies were examining "whether there have been inappropriate referrals or recommendations, including with respect to rollovers for 401(k) plan participants, certain alternative investments, or referrals of brokerage customers to the company's investment and fiduciary services business."[25]

- Wells Fargo employees in the bank's Wholesale Banking Group reportedly changed information on business customers' documents without authorization,[26] and the DOJ is investigating whether "there is a pattern of unethical and potentially fraudulent employee behavior tied to management pressure."[27]

- Wells Fargo has struggled to effectively remediate customers who were harmed by the company's misdeeds. It sent out 38,000 "erroneous communications to customers

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[20] Department of Justice, "Justice Department Obtains $5.4 Million in Additional Relief to Compensate Servicemembers for Unlawful Repossessions by Wells Fargo Dealer Services," press release, November 14, 2017, https://www.justice.gov/opa/pr/justice-department-obtains-54-million-additional-relief-compensate-servicemembers-unlawful.

[21] *Id.*

[22] Securities and Exchange Commission, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 30, 2018, Wells Fargo & Company, https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/second-quarter-10q.pdf.

[23] CNN Business, "Wells Fargo owes $97 million to California workers," Matt Egan, May 10, 2018, https://money.cnn.com/2018/05/10/news/companies/wells-fargo-worker-lawsuit-97-million/index.html.

[24] Securities and Exchange Commission, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended May 31, 2018, Wells Fargo & Company, https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/first-quarter-10q.pdf.

[25] *Id.*

[26] Wall Street Journal, "Wells Fargo Employees Altered Information on Business Customers' Documents," Emily Glazer, May 17, 2018, https://www.wsj.com/articles/wells-fargo-employees-altered-information-on-business-customers-documents-1526564170.

[27] Wall Street Journal, "Justice Department Probing Wells Fargo's Wholesale Banking Unit," Emily Glazer, September 6, 2018, https://www.wsj.com/articles/justice-department-probing-wells-fargos-wholesale-banking-unit-1536244490.

that it forced to buy unneeded auto insurance."[28] It "sent refunds to people who weren't the bank's customers; notified those who were harmed of incorrect amounts to be paid; and told people of coming refunds even though they had never gotten the insurance."[29] It did not promptly provide refunds to "as many as 110,000 customers who were charged improper fees to extend interest-rate commitments they received from Wells Fargo on their mortgages."[30] And it planned to create a refund request process that required customers "to agree to a refund through the mail before sending them money," despite its own estimates that "half or fewer" of affected customers would take the necessary steps to secure a refund.[31] In September 2018, the OCC rejected Wells Fargo's plan for remediating customers pushed into unneeded auto insurance, finding that the bank was not doing enough "to ensure it has found and compensated every affected driver."[32]

- In a February 2018 report, the CFPB found that Wells Fargo charged students three times more than its competitors for financial products marketed to them through agreements with their colleges.[33] The CFPB analysis examined bank fees at 573 colleges and found that the students at the 30 colleges with Wells Fargo products paid more in total bank fees than the students at the other 543 schools served by other banks combined.[34]

- A February 2019 report revealed that employees in the Wholesale Banking division of Wells Fargo "routinely falsified clients' signatures and otherwise doctored paperwork" in order to comply with a legal settlement with the OCC related to violations of anti-money laundering laws.[35]

- In August 2019, reports identified multiple instances of Wells Fargo closing their customers' accounts without authorization and subsequently charging overdraft fees.[36]

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[28] Wall Street Journal, "Wells Fargo Fumbles Efforts to Repay Aggrieved Customers," Gretchen Morgenson and Emily Glazer, February 10, 2018, https://www.wsj.com/articles/wells-fargo-struggles-to-repay-aggrieved-customers-1518295023.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] Reuters, "Exclusive: U.S. regulators reject Wells Fargo's plan to repay customers - sources," Patrick Rucker, September 11, 2018, https://www.reuters.com/article/us-wells-fargo-insurance-exclusive/exclusive-u-s-regulators-reject-wells-fargos-plan-to-repay-customers-sources-idUSKCN1LR2LG.
[33] Letter from Consumer Financial Protection Bureau to the Department of Education regarding Bureau's Office for Students and Young Consumers college-sponsored deposit and prepaid accounts analysis, February 5, 2018, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_foia_letter-to-department-education_record_2018-02.pdf.
[34] *Id.*
[35] The Capitol Forum, "Wells Fargo: Employees Doctored Signatures, Raising Possibility of Federal Penalties," February 14, 2019. https://thecapitolforum.com/wp-content/uploads/2019/02/Wells-Fargo-2019.02.14.pdf.
[36] New York Times, "Wells Fargo Closed Their Accounts, but the Fees Continued to Mount," Emily Flitter, August 16, 2019, https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html.

You were appointed nearly ten months ago after your two predecessors were dismissed for their incompetence and inability to institute meaningful reforms at the bank.[37] We had hoped that you would bring the needed change to Wells Fargo's culture following years of false promises and continued scandals, and we were initially encouraged by press reports that indicate that you were undergoing an "intense review" of the bank's operations and meeting with executives, "grilling them about the ways they do business."[38] But this recent reporting highlights the broken culture at the bank, and the need for Wells Fargo to remain under intense regulatory scrutiny until it is clear that the necessary changes have been made to ensure that the bank is truly committed to its consumers.[39]

Given our ongoing concerns about the bank's ability to comply with the law and treat its customers fairly, we ask that you provide the following information no later than August 12, 2020.

1. Please provide a description and written copies of Wells Fargo's policies with respect to:
    a. The use of court documents to determine whether to file for forbearance on behalf of a customer during COVID-19;
    b. Any other circumstances under which Wells Fargo would enter a consumer who is not delinquent on their loan into forbearance without a customer's explicit request;
    c. The steps Wells Fargo takes to notify consumers that their loan has been placed into forbearance, including the text of any letter that goes out with the notification of forbearance as well as the time that elapses between a consumer being placed into forbearance and the consumer receiving that letter;
    d. The communications with bankruptcy trustees after Wells Fargo places a loan in forbearance;
    e. What information Wells Fargo furnishes to credit bureaus for consumers who have been placed into forbearance, including all special comment codes;
    f. How Wells Fargo manages requests from customers who initially indicated they wanted to participate in forbearance programs, but after receiving information about the program, no longer want it.

2. For how many mortgage borrowers has Wells Fargo provided forbearance since March 18, 2020? Of that number, how many of those borrowers were current on their loan and did not explicitly request and provide appropriate consent for their loans to be placed in forbearance? Of that number, how many of those loans were government-backed?
    a. What actions has the bank taken to identify these cases and remunerate borrowers for any damage caused by Wells Fargo's actions?

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[37] Wells Fargo, "Wells Fargo Names Charles W. Scharf Chief Executive Officer and President," press release, September 27, 2019, https://newsroom.wf.com/press-release/corporate-and-financial/wells-fargo-names-charles-w-scharf-chief-executive-officer.

[38] Bloomberg, "Wells Fargo's Poker-Faced CEO Sows Unease While Considering Change," Hannah Levitt, December 27, 2019, https://www.bloomberg.com/news/articles/2019-12-27/wells-fargo-s-poker-faced-scharf-sows-angst-while-mulling-change.

[39] *Id.*

3. Has Wells Fargo identified circumstances under which the bank has filed official court documents that indicate a borrower has requested forbearance when they have not explicitly requested it and provided appropriate consent?
    a. If so, how many instances has this occurred and what remediation efforts are underway?

4. Has Wells Fargo been compensated for forbearance filings not requested by the borrower? If so, how much has Wells Fargo been compensated?

5. How does Wells Fargo handle funds received from borrowers who continue making full or partial payments while their loan is in forbearance, including any loan that was current but has been placed in forbearance without a request from the borrower?

6. For current borrowers whose loans Wells Fargo has placed into forbearance without the borrower's request, what special comment codes has Wells Fargo furnished to credit reporting agencies, such as a disaster code, or any other special comment code, even if the loan is reported as current? If so, has the bank taken any steps to correct the information with the credit reporting agencies?

Sincerely,

Elizabeth Warren
United States Senator

Brian Schatz
United States Senator

EXHIBIT D

WELLS FARGO

Wells Fargo Home Lending
MAC F2401-064
One Home Campus
West Des Moines, Iowa 50266

CONFIDENTIAL TREATMENT REQUESTED

August 12, 2020

The Honorable Elizabeth Warren
The Honorable Brian Schatz
United States Senate
Washington, DC 20510

Dear Senators Warren and Schatz:

I am writing in response to your July 29, 2020 inquiry into Wells Fargo's provision of mortgage forbearances to customers facing COVID-19-related hardships.

On March 9, 2020—before the passage of the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act")—Wells Fargo began offering its mortgage customers payment assistance, including 90-day forbearances, even if they were previously behind on their payments. We sought to make it as easy as possible for our customers to obtain relief and have provided over 964,000 mortgage forbearances. By the end of March, however, as more customers began to experience the unprecedented economic effects of the global pandemic, we received a significantly higher than usual volume of inquiries regarding mortgage payment assistance. At its peak, the call volume was roughly 2.5 times greater than the average daily volume in February. Although we shifted resources to attempt to address the increased volume, the sudden, soaring demand for mortgage forbearances, other payment assistance, and information made it difficult to make contact with all of our customers. In an attempt to ensure that all customers received the payment relief they needed, we made a decision to provide mortgage forbearances to certain customers who had made an inquiry or expressed hardship but had not explicitly requested a forbearance.

As we have stated publicly, we undertook a customer-focused approach to ensure that every customer who needed a forbearance would receive one without unnecessary delay. Our actions were not motivated by any financial benefit to Wells Fargo. We do not receive, nor do we pay our employees, any incentive fees or other compensation for placing customers in forbearance; to the contrary, we benefit most when customers make their payments and remain current on their loans.

We sincerely apologize to any customer who received a forbearance and did not expressly request one, and are actively working to assist each customer who was negatively affected. We have made changes to our practices to require an affirmative request from a customer before providing a forbearance. We also are proactively reaching out to our customers to identify cases in which we provided an unrequested forbearance to verify that our customers are receiving only the assistance they need and want. For every customer who received an unwanted forbearance, we are removing the forbearance, adjusting credit reporting, and working to make the customer whole.

I. Customers to Whom We Provided Forbearances Without an Explicit Request

We have identified to date the following circumstances in which we provided mortgage and home equity forbearance relief to customers who did not explicitly request it.[1] In early March, Wells Fargo began providing forbearances to customers in active bankruptcy proceedings if we identified a court filing indicating that the customer may have been suffering a COVID-19-related hardship. In response to concerns expressed by customers and their bankruptcy attorneys after Wells Fargo filed notices of forbearance in the bankruptcy court proceeding, in May we began to communicate with customers' bankruptcy attorneys (or with customers directly if they were unrepresented) to confirm prior to filing a forbearance notice with the court that customers wanted to remain in forbearance. We have since ceased this practice entirely.

From late March until early April, we automatically provided forbearances to customers who sent a secure email or contacted us by phone regarding a COVID-19-related hardship, as well as to customers who requested a fee waiver, even when the customers' communications did not specifically request a forbearance. We subsequently changed our practices to ensure that customer service representatives expressly confirmed a customer's intent before providing a forbearance.[2] In addition, in response to the significantly increased call volumes in March, Wells Fargo implemented two new means by which customers could request payment assistance: a form available through Wells Fargo secure online banking and an interactive voice response ("IVR") unit, both of which included updated explanations and acknowledgement of customer intent.

In late March, Wells Fargo also granted forbearances to eligible Home Preservation customers (including some customers in active bankruptcy proceedings) who at the time: (i) were in the loan modification application process; or (ii) had been denied a forbearance before the pandemic. These are customers who often are already in default and had reached out to Wells Fargo to modify their loan because they were no longer able to make their payments. We provided these forbearances at one time for all customers in those two categories and have not done so again.

Finally, in late March and early April, when a customer requested forbearance on one of the customer's mortgage or home equity accounts, we extended the forbearance to that customer's mortgage-linked accounts. We have ceased this practice.

II. Notification to Customers Who Received COVID-19-Related Forbearances and Handling of Payments

Wells Fargo sends a forbearance confirmation letter to all customers placed in a COVID-19-related forbearance. On April 10, 2020, we began sending confirmation emails in addition to the letters. Customers' statements also reflect when they have received a forbearance.[3] These communications generally note that short-term payment relief provides the customer with assistance right away, other payment assistance options may be available, and the customer can contact Wells Fargo if a forbearance is not right for him or her.

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[1] Production numbers WF-00000001–WF-00000042 include a sample of policies and customer service call scripts relevant to these efforts. All documents described in this letter have been shared via a link under separate cover.

[2] *See, e.g.*, WF-00000001.

[3] Production numbers WF-00000043–WF-00000070 include a sample of forbearance confirmation communications from March through July 2020.

In addition, before the expiration of an initial 90-day forbearance period, we attempt to contact customers to notify them if an extension is available and ask if they need an extension. If a customer does not respond to our efforts to contact them, Wells Fargo automatically extends the forbearances for another 90-day period and notifies the customer of the extension. We continue to do this to ensure that customers receive the payment relief available under the CARES Act.

Wells Fargo's policy is to apply full payments made during a forbearance period toward payment of the loan principal, interest, and escrow as per normally applicable processes. If we receive less than a full payment (subject to certain thresholds), the funds are held (without charging late fees or other fees) until a full payment is received and is then applied. For accounts in bankruptcy, payments are applied per the bankruptcy plan.

III. Steps to Assist Customers Who Wish to Remove Forbearances

We are committed to identifying customers who received a forbearance and did not want it and making things right for any customer who tells us he or she received an unwanted or unneeded forbearance.[4] This includes customers we identify through the processes described below in Section III. The steps we may take to assist customers include:

- **Removal of forbearance**: When a customer asks to remove a forbearance, we remove it. Customers can request to remove a forbearance at any time by phone, online, or through the IVR.

- **Adjustment of credit reporting**:

    - In response to your question, for Home Lending customers who were placed in forbearance because of a COVID-19-related hardship, our credit reporting is consistent with the requirements of the CARES Act and Consumer Financial Protection Bureau and Consumer Data Industry Association guidelines. If the borrower is "Current" (0-29 days past due) at the time that assistance is provided, we place the borrower on a forbearance and report the account as "Current" and in forbearance using an "on forbearance" comment code. If the borrower is "Delinquent" (30+ days past due) at the time that assistance is provided, we suppress credit reporting of any additional delinquency, so the customer is not reported any worse than they had been prior to entering into the forbearance. Finally, if a delinquent borrower brings himself or herself to zero days past due, we begin to report the borrower as "Current" and in forbearance.[5] If one or more customers on an account is in bankruptcy, we suppress credit reporting, so we do not report a forbearance to the credit bureaus for these accounts.

    - If a customer asks to remove a forbearance that was not requested and unwanted, for all customers who made each payment and did not go 30 days past due during the forbearance, we will remove the forbearance comment code for credit bureau reports and adjust the payment history to reflect a status of "current." It is our policy to submit those

[4] Production numbers WF-00000108–WF-00000122 include a sample of policies related to the forbearance removal process.

[5] Production numbers WF-00000091–WF-00000107 include a sample of policies and customer service call scripts related to the credit reporting of customers in forbearance.

adjustments to credit bureaus within two business days of the customer's request to exit forbearance.

- **Withdrawal of bankruptcy filing of notice of forbearance**: If a customer in bankruptcy proceedings does not want a forbearance, we remove it and no notice will be filed in bankruptcy court. If a notice has been filed, we withdraw, or seek permission to withdraw, it and determine the possible impact to the customer if a bankruptcy trustee withheld disbursement as a result of the forbearance. If we identify such an impact, we work with the customer to correct it.

- **Refinancing and line of credit**: If a customer did not utilize a forbearance, once the forbearance is removed, we will allow for immediate refinancing if the customer is eligible. If a customer's Wells Fargo line of credit was restricted as a result of a forbearance caused by an error by Wells Fargo, we will reinstate the line of credit.

- **Review of loan modification decisions**: For any customer who sought a loan modification that was declined, we will review the declination to ensure that it did not result from the customer's forbearance plan. For any customer who was placed in forbearance and was approved for a loan modification instead of a forbearance, we will review the approval to ensure that the interest rate and payment are less than or equal to what they would have been without the forbearance. We will also review all loans that were transferred to another servicer to ensure correct information was transferred.

IV. Efforts to Identify Customers Placed in Forbearance Without an Explicit Request

We are working to identify customers who have received a forbearance they did not request and do not want. As described below, we are addressing all complaints to that effect received from our customers, and we are affirmatively reaching out to customers where we do not have evidence of a clear request for a forbearance.

a. Outreach to Customers to Verify Desire for Forbearance

In the majority of cases, we have a high degree of confidence that the forbearances we provided were requested by customers because they were requested through the online or IVR channels that required acknowledgement of customer intent, or we otherwise have a documented customer request or acknowledgement that the forbearance was wanted.

We are actively conducting outreach to customers for whom we do not have a clear customer request or acknowledgement that the forbearance was wanted. As part of this process, we will work with the customers to verify that the customers are receiving the payment relief they need and want, and to assist them as described in Section II if they do not want the forbearance we provided.

b. Quality Assurance of Customers Who Have Asked to Remove Forbearances:

In addition, we will conduct a quality assurance review of our records of a sample of customers who were provided a forbearance and have since asked for it to be removed to ensure that the process is effective, and the customer's request for forbearance assistance removal and required account adjustments were correctly completed. If this sampling reveals any issues, we will undertake further reviews and act to ensure that the removal process was properly handled.

c. Addressing Customer Complaints About Unwanted Forbearances

Since March 9, 2020, we have provided over 964,000 mortgage forbearances, over 821,000 of which are in connection with federally-backed loans. To date, we have received and reviewed approximately 1,600 complaints from customers telling us that they did not request a forbearance. We have sought to assist each and every customer who has been affected by an unwanted forbearance, and we resolved these complaints on average in 14 days based on the customer's preference—for example by removing the forbearance, placing the account back into a traditional loan modification review, and adjusting credit reports. We will address any additional complaints about unwanted forbearances as they are received.

V. Lack of Compensation to Wells Fargo for Forbearances Not Requested by a Customer

Wells Fargo does not receive incentive fees or other compensation for placing customers in forbearance, and we benefit from helping customers stay current on payments, which is how mortgage servicers earn revenue. This revenue is delayed or cut off entirely if customers are not making payments. Indeed, it is significantly more expensive to service a loan in a forbearance plan than to service performing loans.

Some government-sponsored enterprises pay incentive fees if customers enter into and comply with certain *post*-forbearance Home Preservation alternatives such as repayment plans, modifications, or other liquidation options. If a customer immediately pays all missed payments at the end of the forbearance, or if the customer goes into foreclosure, there is no incentive payment at all. These incentive fees are significantly less than the costs of servicing loans in forbearance.

In addition, customer service representatives in the Consumer Lending Group's Servicing Group do not receive any incentive compensation for placing customers in forbearance. They are not incentive or bonus-eligible, including in connection with the handling of, responding to, receiving, and processing of customer requests for assistance.

* * *

From the start of the pandemic, Wells Fargo has made it a top priority to help our customers receive the assistance they need. We regret that we provided some customers mortgage forbearances they did not want. We are working with our customers to ensure that they are receiving only the payment relief that they want and need, and we will address any adverse consequences that resulted from our actions.

* * *

The information in this letter and in the enclosed production includes confidential business and financial information that Wells Fargo considers proprietary and competitively sensitive, and that Wells Fargo actually and customarily treats as private. Disclosure of such information would harm Wells Fargo and undermine the competitive financial marketplace. These materials are labeled as "Confidential," and Wells Fargo respectfully requests that these materials be treated as confidential under all applicable rules. If you should nonetheless consider the public release of such materials, Wells Fargo respectfully requests that it be given advance notice and an opportunity to discuss the matter with you, so that Wells Fargo may explain the basis for objecting to public release of the materials.

Additionally, this information and Wells Fargo's productions may contain material nonpublic information. Pursuant to the Stop Trading on Congressional Knowledge Act of 2012 ("STOCK Act"), Pub. L. 112-105, 126 Stat. 291, non-public information derived from a person's position as a Member of Congress or employee of Congress

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By the provision of such documents and information, Wells Fargo does not intend to waive and has not waived the attorney-client privilege or any other protections.

Sincerely,

Kristy Fercho
Executive Vice President
Head of Home Lending

Home Lending Portal

Home Policies **Procedures** Forms Team Member Manager

Procedures: Default Collections And Customer Contact

Handling Calls for COVID-19 Impacted Customers - DCCOL97180

[redacted]

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[redacted]

[redacted]

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Suggested Inbound and Outbound Opening Scripts

The following are some suggested scripts for opening an inbound or outbound call:

Outbound:

"Good Morning/Afternoon, my name is [team member name], I'm calling from Wells Fargo and this call may be monitored or recorded. May I speak with ____?

Thank you for taking my call Mr./Ms. _____. I hope you and your family are safe. We appreciate you taking the time to speak with us. Have you or anyone in your family been impacted as we may have options available to assist you? [State Mini-Miranda (if required)]."

Inbound:

"Welcome to Wells Fargo, I'm [team member name], [Recording Disclosure]. I look forward to assisting you. Who do I have the pleasure of speaking with today? I hope you and your family are safe. We appreciate your patience at this time. We are here to assist you during this unprecedented time, we have options available for payment relief if you have time to discuss them now – have you been impacted by the recent events?"

COVID-19 Impact Calls from Customer or Authorized Third Party

1. The call recording disclosure is required to be read to all inbound callers and any parties entering the conversation during any portion of the call. Refer to the **Universal Greeting Scripts - Account Resolution** procedure for further information.

2. Verify the caller by referring to the **Authentication Exhibit** for further information.

3. If attorney representation is present on the account, do not continue discussing the account with the customer. Refer to the Customer Inbound Call with Attorney Representation Present section of the **Attorney Representation - Specialty Call Team** procedure for more information on handling the call.

4. Determine if right party contact (RPC) is made:

If The Caller Is A	Then
Borrower, co-borrower, authorized third party or a confirmed successor in interest and an RPC is made	a. Refer to the **Reading the Mini-Miranda, Recording, and Bankruptcy Disclosures** procedure for further information b. Proceed to the next step.
Unauthorized third party or a potential successor in interest or an RPC is not made	Refer to the **Handling Unauthorized Third Party Requests** procedure for further information. End of the process.

Note: If a call is received from an unauthorized third party, the team member takes the call and lets the unauthorized third party know the COVID-19 relief benefits that are available. The team member can discuss the COVID-19 relief benefits, but accepting or declining the relief needs to come from a borrower or authorized third party (A3P).

- Authenticate the caller by obtaining the information below:
  - First name or common nickname, last name of the customer as it appears on the system (as well as the suffix, for example: Jr., Sr., I, II, III).
  - The full name of the caller.
  - Account number.
  - If the caller cannot verify the account number, he or she may verify one the following:
    - The last four digits of the customer's Social Security Number (SSN).
    - The property or mailing address.
- Always attempt to verify the caller's name, the customer's name, and the account number before moving onto the optional items. If an unauthorized third party is unable to authenticate, escalate to the manager to transfer the call.
- If a call is received by a borrower or authorized party reporting the death of a borrower as a result of the pandemic, educate and update the relief and refer to the **Notifications of a Deceased Customer** procedure for the next steps.

5. At the start of every call, express empathy for the customer's circumstance when impacted by the pandemic. Be empathetic and show compassion and kindness immediately and throughout every

Note: Total amount due is not required to be quoted to customers on active COVID-19 forbearance loans as the intent is not a collect a debt. It is okay to discuss payment details if the customer asks.

Examples:

- *"We realize this can be a challenging time due to the pandemic but want you to know that Wells Fargo does have some options that we may be able to offer to help you during this difficult time."*
- *"Wells Fargo cares about you as our customer and we are here to help you during this difficult time. We would like to discuss possible options Wells Fargo may have to help you through this."*
- *"Thank you for calling us. I am sorry to hear that you have been impacted, but I am here to help. Our thoughts are with you and your loved ones during this challenging time. Your safety is the most important thing. Please know that we are here to help you through this difficult time."*

Spanish Translation:

- *"Nos damos cuenta que estos son momentos desafiantes debido a la pandemia, pero queremos que sepa que Wells Fargo ofrece algunas opciones para ayudarlo durante estos momentos difíciles."*
- *"Wells Fargo se preocupa por usted como cliente y estamos a su disposición para ayudarle durante este momento difícil. Nos gustaría analizar las posibles opciones que Wells Fargo puede tener para ayudarle a atravesar esta situación"*
- *"Gracias por llamarnos. Lamento mucho escuchar que ha resultado afectado, pero estoy aquí para ayudarle. Nuestros pensamientos están con usted y sus seres queridos durante este momento difícil. Su seguridad es lo más importante. Sepa que estamos aquí para ayudarle a atravesar este momento difícil".*

Initial COVID-19 Impact Inquiries - WFHM

Use this section when having an initial conversation with customers about their impact related to COVID-19 and to process disaster assistance.

1. Advise the customer that we are suppressing late charges for the months of March, April and May, 2020.

   Suggested Scripting:

   "We are here to assist you through this challenging time. At this time, we are proactively suppressing and waiving late charges for March, April and May. Are you currently facing, or do anticipate having payment challenges?"

   Spanish Translation: *"Estamos aquí para ayudarle a atravesar estos momentos difíciles. En este momento, estamos eliminando y eximiendo el pago de cargos por pago atrasado de manera proactiva para Marzo, Abril y Mayo. Enfrenta actualmente dificultades con los pagos, o anticipa tenerlas?"*

   Note: There will not be late charge stops on the account. The suppression is happening behind the scenes via a transaction.

2. Does the customer anticipate payment challenges requiring additional assistance outside of the late fee suppression?

If	Then
The customer anticipates payment challenges and requiring additional assistance	Proceed to the next step.
The customer **does not** anticipate payment challenges requiring additional assistance outside the late fee suppression.	[redacted] d. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."*

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	Spanish Translation: *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"*

e. End of process

3. Use the following script to communicate how Wells Fargo can assist:

"We can provide you with the following short-term relief for a period of 3 months:

- *Payment suspension*
- *We will not charge late fees or report additional missed payments to the credit bureaus*
- *If the account is past-due, we won't refer the account to foreclosure at this time.*

We encourage you to make payments if you can, we understand you may not be able to during the initial suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

While you are protected under the payment suspension, if you have a Wells Fargo Home Equity account your line of credit will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing.

If you have an escrow account, Wells Fargo will continue to pay escrowed items as we normally would. Any missed payments may create a shortage in your escrow account the next time your escrow account is analyzed. Past due payments may impact your eligibility to delete your escrow and/or mortgage insurance; if applicable to your account.

If the mortgage was modified under the Home Affordable Modification Program (HAMP) or Second Lien Modification Program (2MP) and you don't make a payment during this time, you could lose the pay-for-performance incentives. This is because you must remain in good standing with HAMP and 2MP.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer term financial changes that may impact your ability to keep up with your monthly payments."

Spanish Translation:

"Podemos brindarle el siguiente alivio a corto plazo para un periodo de tres meses:

- *Suspension de los pagos.*
- *No cobraremos cargos por pago atrasado ni reportaremos pagos omitidos adicionales a las agencias de informacion crediticia.*
- *Si la cuenta esta atrasada, no la remitiremos a ejecucion hipotecaria en este momento.*

Le recomendamos que realice pagos si puede; comprendemos que es posible que no pueda realizarlos durante el período inicial de suspensión. Los pagos omitidos serán atendidos conforme a las pautas expuestas por el inversionista del préstamo.

Mientras esté protegido bajo la suspensión de pago, si tiene una cuenta sobre el valor neto de la vivienda con Wells Fargo, su línea de crédito estará restringida a nuevos adelantos y no tendrá acceso a los fondos de esta cuenta. Cuando finalice la suspensión de pago y cuando haya reanudado los pagos regulares, comuníquese con nosotros para solicitar el restablecimiento de la cuenta. Se le proporcionara por escrito información adicional.

Si usted tiene una cuenta de deposito en garantia, Wells Fargo continuara pagando los el fideicomiso garantizados como lo hariamos normalmente. Los pagos omitidos podrian generar un deficit en su cuenta de deposito en garantia la proxima vez que se analice su cuenta de deposito en garantia. Los pagos atrasados podrian afectar su elegibilidad para eliminar su deposito de garantia y/o seguro hipotecario, segun corresponda a su cuenta.

Si el préstamo hipotecario se modificó en virtud del Programa de Modificaciones para Viviendas Asequibles (HAMP, por sus siglas en inglés) o del Programa de Modificación de Hipotecas de Segundo Grado (2MP, por sus siglas en inglés) y usted no realiza un pago durante este período, podría perder los incentivos de pago por desempeño. Esto es así porque usted debe mantener un buen historial con HAMP y 2MP.

Si necesita asistencia adicional mas alla de la suspension inicial de tres meses, tendremos opciones adicionales disponibles para usted. Esas opciones podrian incluir una continuacion de la suspension del pago, mover los pagos atrasados al final del prestamo o una modificacion para abordar los cambios financieros a mas largo plazo que pueden afectar su capacidad de

Bankuptcy Wording:

"This temporary relief does not forgive any payments, however at the end of the relief period the account can be reviewed for longer term options in coordination with your Bankruptcy Attorney and the Bankruptcy Court. The approval letter you will receive will provide additional details. Would you like to begin the process?"

***Spanish Translation**: "Este alivio temporario no perdona ningun pago, sin embargo, en el fin del periodo de alivio la cuenta puede ser revisada pora opciones mas a largo plazo en coordinacion con su abogado de la bancarrota y la corte de bancarrota. La carta de aprobacion que usted recibira le proveera con detalles adicionales. Quisiera usted comenzar el proceso?".*

4. Determine if the account is due for the current month

If The Account Is	Then Provide The Following Suggested Scripting
Due for the current month	*"If your account is current at the time assistance is requested, we won't provide a past-due status for this account to the consumer reporting agencies. The account will continue to report for the duration of the payment suspension. We will also update the credit report with a comment code that says the account is in a forbearance plan."* **Important:** If the customer asks how this will impact their credit or credit score, refer to the **Forbearance and Credit Bureau Talking Points** section of this procedure prior to proceeding.
Due for more than the current month	*"If your account is past due at the time assistance is requested"* • *We will suppress negative credit reporting during the payment suspension. However, the account will continue to show the delinquency status it was in prior to the payment suspension. Once the account is brought current, we will report the account current on the next credit report.* • *We won't refer the account to foreclosure at this time. "*

5. Did the customer ask about refinance impacts?

If	Then
The customer did inquire about refinance impacts	a. Advise the customer that their situation will need to be resolved by providing the following script: *"If applying with Wells Fargo to refinance your current mortgage loan or obtain a new mortgage loan, the hardship forbearance plan must be resolved prior to closing."* ***Spanish Translation:** "Si solicita a Wells Fargo refinanciar su préstamo hipotecario actual u obtener un nuevo préstamo hipotecario, el plan de aplazamiento de pagos por dificultades debe resolverse antes del cierre".* b. Proceed to the next step
The customer **did not** inquire about refinance impacts	Proceed to the next step.

6. Did the customer specifically inquire about a new home equity loan?

If	Then
The customer did not inquire about a new home equity loan	Proceed to the next step.
The customer did inquire about a new home equity loan	a. Use the following suggested scripting: *"After careful consideration, Wells Fargo has temporarily suspended all originations of home equity products after 5/1/20 until market conditions allow us to responsibly resume home equity originations."* ***Spanish Translation:** "Después de haberlo considerado detenidamente, Wells Fargo ha suspendido temporalmente todas las emisiones de productos sobre el valor neto de la vivienda después del 1 de mayo de 2020, hasta que las condiciones del mercado nos permitan reanudar de manera responsable las emisiones sobre el valor neto de la vivienda".* b. Proceed to the next step

an application that was submitted prior to 5/1/2020	process prior to 5/1/20 will be worked to completion ***Spanish Translation***: Todas las solicitudes sobre el valor neto de la vivienda que estén en proceso antes de 5/1/20 se trabajaran hasta su finalidad. Todas las solicitudes sobre el valor neto de la vivienda en proceso antes del 1 de mayo de 2020 se gestionarán hasta su finalización. b. Proceed to the next step
The customer asks when Wells Fargo stopped accepting new Home Equity applications	a. Advise the customer that Wells Fargo temporarily stopped accepting applications for all new Home Equity Lines of Credit (HELOCs) after April 30, 2020. ***Spanish Translation:*** Wells Fargo dejo temporalmente de aceptar solicitudes para todas las nuevas líneas de crédito sobre el valor neto de la vivienda después del 30 de abril. b. Proceed to the next step

7. Did the customer accept the short-term relief?

If	Then
The customer accepts the short term relief	[redacted] f. Use the suggested scripting to provide the customer with the following information: *"We have processed your request for relief. You will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period. We will contact you and work with you directly to understand your circumstances and identify the best way to help you going forward. If you would like more information, please visit WellsFargo.com for the most up to date information. Thank you for reaching out and keeping us informed during this difficult time."* ***Spanish Translation:*** *"Hemos procesado su solicitud de asistencia. Usted recibirá documentación en el transcurso de 7 a 10 días laborables, que incluye el plazo del período de suspensión de los pagos. Nos pondremos en contacto y colaboraremos con usted directamente para comprender sus*

	en adelante. Si desea más información, visite wellsfargo.com/es para obtener la información más actualizada. Gracias por comunicarse con nosotros y mantenernos informados en este momento difícil". g. Proceed to the next step
The customer **does not** accept the short term relief	[redacted] d. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"* e. End of process

8. Determine if the customer is enrolled in recurring withdrawal:

If	Then
The customer is enrolled	a. Advise the customer that accepting the short-term relief requires cancellation of their recurring withdrawal and they will need to re-enroll at the end of the relief period b. Proceed to the next step.
The customer is not enrolled	No further steps required, end of process.

9. Determine when the next recurring withdrawal is scheduled to draft:

If	Then
The recurring withdrawal is scheduled to draft over 2 business days out.	a. Advise the customer their recurring withdrawal will be automatically cancelled due to the approved forbearance plan b. End of Process
[redacted]	[redacted]

	[redacted]
The recurring withdrawal is scheduled to draft today OR It is scheduled to draft the next day and is after 7:00 pm Central Time.	a. Advise the customer it is too late to stop the next withdrawal and the draft will occur, but future drafts have been cancelled. Note: The customer's next draft will occur, but future drafts will be automatically cancelled in approximately 2 business days. b. Proceed to the next step

10. Determine if the customer has agreed to the draft occurring:

If The Customer Is	Then
Agreed to the draft occurring	No further steps required.
Not agreed to the draft occurring and the draft will be returned as NSF	Advise the customer they should contact their banking institution to request a stop payment on the next draft.
Not agreed to the draft occurring and will need it refunded	[redacted] c. Provide the customer with the time frame for completion of the GEM. ▪ For Wells Fargo bank accounts: Approximately 24 hours after payment drafted ▪ For Non-Wells Fargo bank accounts: Approximately 48 hours after payment drafted

Initial COVID-19 Impact Inquiries - HEQ

Use this section when having an initial conversation with customers about their impact related to COVID-19 and to process disaster assistance.

1. Advise the customer that we are suppressing late charges for the months of March, April and May, 2020.

   Suggested Scripting:

   "We are here to assist you through this challenging time. At this time, we are proactively suppressing and waiving late charges for March, April and May. Are you currently facing, or do anticipate having payment challenges?"

   Spanish Translation: *"Estamos aquí para ayudarle a atravesar estos momentos difíciles. En este momento, estamos eliminando y eximiendo el pago de cargos por pago atrasado de manera proactiva para Marzo, Abril y Mayo. Enfrenta actualmente dificultades con los pagos, o anticipa tenerlas?"*

   Note: There will not be late charge stops on the account. The suppression is happening behind the scenes via a transaction.

2. Does the customer anticipate payment challenges requiring additional assistance outside of the late fee suppression?

If	Then

payment challenges and requiring additional assistance	
The customer **does not** anticipate payment challenges requiring additional assistance outside the late fee suppression.	a. Clearly notate the account that the customer is not wanting any additional COVID assistance at this time **Note:** Do not log any actions for non FEMA or COVID on the account. b. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** "Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com" End of process.

3. Use the following script to communicate how we can assist:

"We can provide you with the following short-term relief for a period of 3 months:

- *Payment suspension*
- *We will not charge late fees or report additional missed payments to the credit bureaus*
- *If the account is past-due, we won't refer the account to foreclosure at this time.*

We encourage you to make payments if you can, we understand you may not be able to during the initial suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments."

Spanish Translation:

"Podemos brindarle el siguiente alivio a corto plazo para un periodo de tres meses:

- *Suspension de los pagos.*
- *No cobraremos cargos por pago atrasado ni reportaremos pagos omitidos adicionales a las agencias de informacion crediticia.*
- *Si la cuenta esta atrasada, no la remitiremos a ejecucion hipotecaria en este momento.*

Le recomendamos que realice pagos si puede; comprendemos que es posible que no pueda realizarlos durante el periodo inicial de suspensión. Los pagos omitidos serán atendidos conforme a las pautas expuestas por el inversionista del préstamo. Si necesita asistencia adicional mas alla de la suspension inicial de tres meses, tendremos opciones adicionales disponibles para usted. Esas opciones podrian incluir una continuacion de la suspension del pago, mover los pagos atrasados al final del prestamo o una modificacion para abordar los cambios financieros a mas largo plazo que pueden afectar su capacidad de mantenerse al dia con sus pagos mensuales."

BK Wording:

"This temporary relief does not forgive any payments, however at the end of the relief period the account can be reviewed for longer term options in coordination with your Bankruptcy Attorney and the Bankruptcy Court. The approval letter you will receive will provide additional details. Would you like to begin the process?"

Spanish Translation: *"Este alivio temporario no perdona ningun pago, sin embargo, en el fin del periodo de alivio la cuenta puede ser revisada para opciones mas a largo plazo en coordinacion con su abogado de la bancarrota y la corte de bancarrota. La carta de aprobacion que usted recibira le proveera con detalles adicionales. Quisiera usted comenzar el proceso?"*

4. Advise the customer that accepting the short-term relief on their Home Equity account will place a restriction on that account.

"While you are protected under the payment suspension, your Wells Fargo Home Equity account will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing."

Spanish Translation: *"Mientras esté protegido por la suspensión de los pagos, su cuenta sobre el valor neto de la vivienda de Wells Fargo quedará restringida para nuevos adelantos y usted no tendrá acceso a los fondos de esta cuenta. Cuando finalice la suspensión de los pagos y cuando haya reanudado los pagos regulares, comuníquese con nosotros para solicitar un restablecimiento de la cuenta. Se proporcionará información adicional por escrito".*

5. Did the customer ask about refinance impacts?

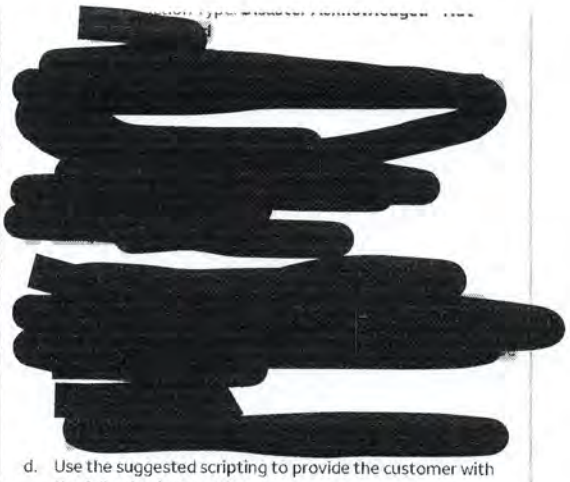
If	Then
The customer did inquire about refinance impacts	a. Advise the customer that their situation will need to be resolved by providing the following script: *"If applying with Wells Fargo to refinance your current mortgage loan or obtain a new mortgage loan, the hardship forbearance plan must be resolved prior to closing."* ***Spanish Translation:*** *"Si solicita a Wells Fargo refinanciar su préstamo hipotecario actual u obtener un nuevo préstamo hipotecario, el plan de aplazamiento de pagos por dificultades debe resolverse antes del cierre".* b. Proceed to the next step
The customer **did not** inquire about refinance impacts	Proceed to the next step.

6. Did the customer specifically inquire about a new home equity loan?

If	Then
The customer did not inquire about a new home equity loan	Proceed to the next step.
The customer did inquire about a new home equity loan	a. Use the following suggested scripting: *"After careful consideration, Wells Fargo has temporarily suspended all originations of home equity products after 5/1/20 until market conditions allow us to responsibly resume home equity originations."* ***Spanish Translation:*** *"Después de haberlo considerado detenidamente, Wells Fargo ha suspendido temporalmente todas las emisiones de productos sobre el valor neto de la vivienda después del 1 de mayo de 2020, hasta que las condiciones del mercado nos permitan reanudar de manera responsable las emisiones sobre el valor neto de la vivienda".* b. Proceed to the next step
The customer asks about an application that was submitted prior to 5/1/2020	a. Advise the customer that all Home Equity applications in process prior to 5/1/20 will be worked to completion ***Spanish Translation***: Todas las solicitudes sobre el valor neto de la vivienda en proceso antes del 1 de mayo de 2020 se gestionarán hasta su finalización. b. Proceed to the next step
The customer asks when Wells Fargo stopped accepting new Home Equity applications	a. Advise the customer that Wells Fargo temporarily stopped accepting applications for all new Home Equity Lines of Credit (HELOCs) after April 30. ***Spanish Translation:*** Wells Fargo dejo temporalmente de aceptar solicitudes para todas las nuevas líneas de crédito sobre el valor neto de la vivienda después del 30 de abril. b. Proceed to the next step

7. Did the customer accept the short-term relief?

If	Then
The customer accepts the short term relief	[redacted]



d. Use the suggested scripting to provide the customer with the following information:

"We have processed your request for relief. You will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period. We will contact you and work with you directly to understand your circumstances and identify the best way to help you going forward. If you would like more information, please visit WellsFargo.com for the most up to date information. Thank you for reaching out and keeping us informed during this difficult time."

Spanish Translation: *"Hemos procesado su solicitud de asistencia. Usted recibirá documentación en el transcurso de 7 a 10 días laborables, que incluye el plazo del período de suspensión de los pagos. Nos pondremos en contacto y colaboraremos con usted directamente para comprender sus circunstancias e identificar la mejor manera de ayudarle de aquí en adelante. Si desea más información, visite wellsfargo.com/es para obtener la información más actualizada. Gracias por comunicarse con nosotros y mantenernos informados en este momento difícil".*

e. Proceed to the next step

The customer **does not** accept the short term relief	a. Clearly notate the account that the customer is not wanting any additional COVID assistance at this time.  b. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"* End of process.

8. Determine if the customer is enrolled in ACH.

If	Then
The customer is not enrolled	No further steps required. End of process.
The customer is enrolled	a. Advise the customer that accepting the short-term relief requires cancellation of their ACH and they will need to re-enroll at the end of the relief period 

[redacted]

9. Determine when the next recurring withdrawal is scheduled to draft:

If	Then
There **is** a recurring withdrawal scheduled to draft for the current day	Proceed to the next step
There **is not** a recurring withdrawal scheduled to draft for the current day	No further steps required as the request in step 2 will remove the ACH during nightly processing.

10. Determine if the customer agrees to the draft occurring:

If The Customer	Then
Approcves the draft occurring	No further steps required.
Does not approve the draft occurring and the draft will be returned as NSF	Advise the customer they should contact their banking institution to request a stop payment on the next draft.
Does not approve the draft occurring and will need it refunded	a. Advise the customer that we will have to wait until the funds are cleared and posted on the account to issue the refund. b. [redacted]

Opt Out Inquiries

If the customer previously accepted the short-term forbearance relief but now no longer wants the relief and is requesting to opt out, complete the steps within this section.

1. Advise the customer of the following:

   "Once the payment suspension is removed, you will need to ensure all payments are made. Additionally, credit reporting will resume as normal and any late payments will be reported as such to the credit reporting agencies. Once late fees resume, you will be charged late fees for any late payments."

   Spanish Translation: *"Una vez que se elimine la suspension del pago, debera asegurarse de que se realicen todos los pagos. Ademas, los informes de credito se reanudaran de manera normal y cualquier pago atrasado se informara como tal a las agencias de informes de credito. Una vez que se reanuden los cargos por pagos atrasados, se le cobraran cargos por pagos atrasados."*

   - **If Active Bankruptcy:** *"Once the payment suspension is removed, the payments will come due on the account. Late charges will continue to be suppressed and credit reporting will remain in accordance with bankruptcy guidelines."*

     Spanish Translation: *"Una vez que se elimina la suspension del pago, los pagos se venceran en la cuenta. Los cargos por demora continuaran siendo suprimidos y los informes de credito permaneceran de acuerdo con las pautas de bancarrota."*

come due on the account. Late charges and credit reporting will remain suppressed."

Spanish Translation: *"Una vez que se elimina la suspension del pago, los pagos se venceran en la cuenta. Los cargos por demora continuaran siendo suprimidos."*

2. Determine the opt out steps based on the applicable scenario.

If	Then
The customer wants to opt-out of forbearance and doesn't want any assistance.	a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]
The customer wants to opt-out of forbearance and wants to pursue a long-term Home Preservation option instead.	a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]
The customer wants to opt-out of forbearance and the customer wants the deferral(s) reversed **Note:** This is only applicable to Wells Owned and Home Equity accounts	**If Wells Owned loan:** a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted] **If Home Equity account:** a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]

Payment Refund Requests from Impacted Customers

Customers impacted by COVID-19 may request to have payments returned. Below are examples of customer inquiries and applicable talking points:

- If the refund will cause the customer's account to become due for more than 1 payment:

A: *We are not able to refund payments that will cause your account to become past due.*

Example: Refunding March's payment in April.

- If the refund will not cause the customer's account to become due for more than 1 payment:

A: *We can refund payments that will not cause your account to become past due (due for a previous calendar month).*

Example: Refunding April's payment in April.

Q: ***You drafted my payment after I told you I needed assistance. I need that money back.***

A: *I apologize that happened. I can request a refund of that payment for you.*

WFHM

[redacted]

HEQ

[redacted]

Talking Points on an Approved COVID-19 Forbearance

The following talking points should be used once the customer has been approved for the COVID-19 related forbearance.

1. If the customer has questions on their forbearance terms, use suggested scripting:
   - *You will get a forbearance approval letter in the mail that will outline terms that include:*
     - *Suspension of payments for 3 months.*
     - *We won't charge late fees or report additional missed payments to the credit bureaus.*
     - *If the account is past due, we won't refer the account to foreclosure at this time.*
       Note for Home Equity Line of Credit accounts: While you are protected under the payment suspension, your Wells Fargo Home Equity account will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing.

At the end of the initial forbearance period, if you are still experiencing a hardship due to COVID-19, depending on your loan type, you may be eligible for a forbearance extension. This option would extend the payment relief for an additional three months.

- *If you escrow, we'll continue to make your tax and insurance payments during the forbearance period. At your next escrow analysis, you may have a shortage because ongoing funds are not coming in. If you receive additional assistance at the end of the forbearance period, we may be able to spread the shortage amount over 60 months or provide other options.*
- *If you do not escrow, those payments will continue to be your responsibility during the forbearance period.*

2. If the customer would like more information on post forbearance options that may be available determine the investor and delinquency to use the talking points below. If the customer doesn't need additional information proceed to the next step.

Note: Delinquency date and definition of current may differ depending on investor.

If	Then
Wells Owned / Home Equity • Excludes active and suspended foreclosure accounts with a first legal date • Excludes active bankruptcy	• After being approved for the initial relief period as monthly payments are missed, they will be moved to the end of the loan. The movement of payments will defer the interest and the principal portion will be moved to the end of the loan. This will happen in the middle of each month during the relief period. • The term of your loan will be extended by the number of payments missed during the relief period. • The process is automated and no further action will be required from you as long as you are ready to resume your normal monthly payments when the forbearance period ends. • If there is still an ongoing hardship after the approved forbearance comes to an end, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Bank and Private • Excludes active and suspended foreclosure accounts with a first legal date • Excludes active bankruptcy	• Any payments that become/became due during the relief period and are still unpaid at the end of the forbearance will be moved to the end of your loan. We will send a confirmation letter to you when the payments have been moved. The process is automated and no further action will be required from you as long as you are ready to resume your normal monthly payments when the forbearance period ends. • If there is still an ongoing hardship after processing the deferral of missed payments, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were current as of March 1.	• Any payments that became due during the relief period and are still unpaid may be moved to the end of the loan through our home assistance options available at that time. There will be minimal effort required on your part to complete this process, but we will need to work together when you are ready to resume your normal monthly payments. • The review will not require that you submit any documentation. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were delinquent as of March 1. **Includes Wells Owned/Bank and Private/Home Equity in the following statuses:** Active or suspended foreclosure accounts with a first legal date	• At the end of the relief period, all payments missed during the relief and any that were due prior will be due at that time. • We know this may be difficult, so please know we have options to assist you if you are not able to pay these missed payments. Those options may include bringing the account current on your own, a repayment plan to assist you in bringing the account current, or a modification review to determine eligibility. • Modification options may include a short-term increase in your contractual payment, a modification that moves your missed payments to the end of the loan, or a modification that adds your missed payments to your balance while extending your maturity date to provide a lower payment. • It's important that we determine the best option for you based on your financial needs when the forbearance comes to an end. • We will need to collect financial documentation as part of our modification review process.

the call.

3. Address any additional questions or concerns that the customer has.

   Note: You can direct the customer to check **https://update.wf.com/coronavirus/home-lending/** on a regular basis. This site will be updated as more information becomes available.

4. Advise the customer to call back during the last month of their forbearance (initial relief) if their impact has been resolved or if more assistance is needed and they are unable to bring the account current.

Talking Points on an Approved COVID-19 Forbearance - Active Bankruptcy

The talking points below are specific to customers with a loan in active bankruptcy. The talking points should be used once the customer has been approved for the COVID-19 related forbearance.

1. If the customer has questions on their forbearance terms, use suggested scripting:
   - *You will get a forbearance approval letter in the mail that will outline terms that include:*
     - *Suspension of payments for three months*
     - *We won't charge late fees or report additional missed payments to the credit bureaus*
     - *If the account is past due, we won't refer the account to foreclosure at this time*
   - *At the end of the initial forbearance period, if you are still experiencing a hardship due to COVID-19, depending on your loan type, you may be eligible for a forbearance extension. This option would extend the payment relief for an additional three months.*
   - *If you escrow, we'll continue to make your tax and insurance payments during the forbearance period. At the next escrow analysis, there may be a shortage because ongoing funds are not coming in. If you receive additional assistance at the end of the forbearance period, we may be able to spread the shortage amount over 60 months or provide other options.*
   - *If you do not escrow, those payments will continue to be your responsibility during the forbearance period.*

2. If the customer would like more information on post forbearance options that may be available:
   - You may have the ability to amend your Bankruptcy plan and you can work with your bankruptcy attorney to explore that option.

     Note: Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan.
   - Determine the Investor, BK Chapter and delinquency to use the talking points below.

     Notes:
     - If the customer doesn't need additional information proceed to the next step.
     - Delinquency date and definition of current may differ depending on investor.

If	Then
Wells Owned and **Active CH 7 BK** and **Account was current at the time the DISVIR log code was added**	• After being approved for the initial relief period as monthly payments are missed, they will be moved to the end of the loan. The movement of payments will defer the interest and the principal portion will be moved to the end of the loan. This will happen in the middle of each month during the payment relief period. • The term of the loan will be extended by the number of payments missed during the payment relief period. • The process is automated and no further action will be required from you as long as normal monthly payments are resumed when the forbearance period ends. • If there is still an ongoing hardship after the approved forbearance comes to an end, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Bank and Private and **Active CH 7 BK** and	• Any payments that become/became due during the payment relief period and are still outstanding at the end of the forbearance will be moved to the end of the loan. We will send a confirmation letter to you when the payments have been moved. The process is automated and no further action will be required from you as long as

the time the DISVIR log code was added	forbearance period ends. • If there is still an ongoing hardship after processing the deferral of missed payments, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were current as of March 1st and **Active bankruptcy** OR **Wells Owned/Bank and Private in the following scenarios:** • Active CH 7 BK, delinquent at the time the DISVIR log code was added, not in foreclosure (active or suspended with a first legal date) • Active CH 11, 12 and 13, not in foreclosure (active or suspended with a first legal date)	• As we discussed, you do have the ability to amend the bankruptcy plan and you can work with your attorney to do so. **Note:** Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan. • Any payments that became due during the relief period and are still outstanding may be moved to the end of the loan through our home assistance options available at that time. We will need to work together when normal monthly payments are ready to be resumed. • If eligible, a motion must be filed to obtain court consent. If court consent is obtained, we would be able to move forward with this option. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were delinquent as of March 1st and **Active bankruptcy** OR **Wells Owned/Bank and Private in the following scenarios:** • Active CH 7 BK that are in active or suspended foreclosure with a first legal date • Active CH 11, 12 and 13; that are in active or suspended foreclosure with a first legal date	• As we discussed, you do have the ability to amend the bankruptcy plan and you can work with your attorney to do so. **Note:** Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan. • If you are not able to amend your bankruptcy plan, then you will have the option to request a traditional Loss Mitigation review. That review will follow the normal process, which may include obtaining court consent. Proceed to the next step to answer additional questions and close the call.

3. Address any additional questions or concerns that the customer has.

   Note: Advise the customer to check **https://update.wf.com/coronavirus/home-lending/** on a regular basis. This site will be updated as more information becomes available.

4. Advise the customer to call back during the last month of their forbearance (initial relief) if their impact has been resolved or if more assistance is needed and they are unable to bring the account current.

Wells Fargo Deferral Talking Points

Wells Owned customers will receive monthly deferral of payments. Odd due dates are being processed on a monthly basis. Bi-weekly loans also have their payments added to the end of the loan after the payment grace period for up to three months worth of payments. We will NOT discourage customers from making payments if they are able, but we will present them with the facts and let them make the decision.

Important: If a customer asks about their total amount due, it is important to know that the total amount due in MSP & ERC will be impacted due to the interest portion of the deferred payment on Wells Owned loans.

[redacted]

- This deferred interest is not due as part of their monthly payment [redacted]

[redacted]

1. For customers who choose to make payments during the forbearance and have questions on whether or not their forbearance payments will be deferred, use the table below to provide them guidance:

If	Then
The account was **current** when the forbearance started And The customer does not make a payment or makes a partial payment	All contractual payments and interest will be deferred
The account was **current** when the forbearance started And The customer makes a full contractual payment	Nothing will be deferred for the month the payment was made. Payments made during forbearance will not automatically extend the forbearance
The account was **delinquent** when the forbearance started And The customer does not make a payment or makes a partial payment	Payments due during the forbearance will be deferred but outstanding delinquency will still be due. Customer can work with home preservation for payment assistance options.
The account was **delinquent** when the forbearance started And The customer makes a full contractual payment	Due date will moved forward and payments missed during forbearance will be deferred. Customer would have the missed payments deferred. If they paid the full amount owed prior to the forbearance, no further action would be needed. If there is any outstanding delinquency remaining after the forbearance the customer would need to work with home preservation for to cure the outstanding delinquency. Payments made during the forbearance will not automatically extend forbearance. **Example:** if customer was past due 2 months when they accepted the forbearance. If they made 1 contractual payment during the forbearance, they would still be 1 month past due at the end of the forbearance.

2. Customers may have questions regarding how the deferral amounts show on their online accounts or monthly statements. Once the first monthly payment is moved to the end of the loan the customer can view the deferred interest online and in their monthly statement. You can advise the customer:

   - The interest portion of the payment is placed in deferred interest.
   - The Activity section of the statement will display the interest and it will start with Fee Assessed. It is not a fee, this is the interest that was moved and you can review the Other column on your statement and you will see Deferred Interest and the amount that was deferred.
   - You can also see the Deferred Interest Balance under the Account Summary section.
   - The principal portion of the payment was moved to the Unpaid second principal balance.
   - You can see the total principal amount that was moved in the Unpaid second principal balance under the Account Summary on your statement.

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This shows the principal coming out of your normal principal balance and being added to the second principal balance.

- These adjustments ensure that you are not charged any additional interest on the principal portion of the payment.
- The customer may also see the deferred interest online as a fee and you can assure them that it is the interest portion of the monthly payment that was moved.

Additional Questions The Customer May Have:

Q: Why was I charged a fee?

Answer: You were not charged a fee. We apologize the statement (or online) may be a bit confusing. Please refer to the Deferred Interest shown under the Other column in the Activity section of the statement.

Q: I thought these payments were being moved to the end of the loan. When do I have to pay these?

Answer: The payments have been moved to the end of the loan. We have extended your maturity date by one/two/three month(s). When you reach your original maturity date, the interest bearing principal balance, shown as Unpaid Principal Balance under the Account Summary will have been paid off. Then you will make one/two/three more payment(s), which will be allocated to the Deferred Interest Balance and the Unpaid second principal balance. Those additional payments will fully pay off the loan.

Q: If the customers pays in full, prior to the maturity date (refinance or sale), will the deferred interest and the 2nd UPB be due and payable at payoff?

Answer: Yes, the deferred interest and deferred principal (2nd UPB) will be required to be paid at payoff.

Forbearance and Credit Bureau Talking Points

When assisting customers who have questions related to their credit bureau report, refer to the following CBR talking points.

General CBR Talking Points:

We understand that you may not be able to make your regular payments during this difficult time. To help:

- We won't provide a past-due status for this account to the consumer reporting agencies.
- If current at the time of requesting assistance, the account will continue to report as current on your credit report during the payment suspension plan. We will also provide the credit bureaus with a comment code that says the account is in a forbearance plan.

If customer asks: How this will impact my credit?

- Your FICO score will not be impacted, and that this meets the requirements within the CARES Act. FICO is the credit score which is used by Wells Fargo for underwriting new credit/refinancing and also used by most lending companies. The credit bureaus may have independent credit score models. We cannot speculate how any of their proprietary models account for this; however, we do know, generally, those are not used for underwriting of credit.
- If you apply for credit while on a forbearance plan the lender will see the "account in forbearance" on your credit report. That may impact your ability to qualify for new credit or refinance.
- If delinquent at the time of requesting assistance, we will suppress credit bureau reporting during the payment suspension plan. Negative reporting is suppressed throughout the duration of the forbearance plan. However, your account will continue to show the delinquency status it was in prior to the forbearance plan. Once you bring your account current, we will report the account current on the next credit bureau report.

For those calling in with credit bureau questions or concerns:

FAQ to further assist:

Q. My credit score changed and you said it wouldn't? (Customer was current at time of request)

A. We provided information to the credit bureaus that the account was current with a comment code that it is in a forbearance. We have confirmed that your FICO score will not be impacted and that this meets the requirements within the CARES Act. FICO is the credit score which is used by Wells Fargo for underwriting new credit/refinancing and also used by most lending companies. The credit bureaus may have independent models which is what is showing up as a change. We cannot speculate how any of their proprietary models account for this, however we do know, generally those are not used for underwriting of credit. If you would like to review your FICO score, you can visit **www.myfico.com**. We want you to know that the consumer reporting agencies may be able to assist you with issues about your credit reporting. You may contact them at:

- Equifax Information Services, LLC
  PO Box 740256
  Atlanta, GA 30374-0256
  1-866-349-5191

PO Box 4500
Allen, TX 75013
1-866-200-6020

- TransUnion LLC
  Consumer Dispute Center
  PO Box 2000
  Chester, PA 19016
  1-800-916-8800
- Innovis Customer Assistance
  PO Box 1640
  Pittsburgh, PA 15230-1640
  1-800-540-2505

Q. If Wells Fargo did not report special comment code that indicates the account is in forbearance, would my score have dropped?

A. The comment code does not impact your FICO score. The credit bureaus may have independent credit score models. We cannot speculate how any of their proprietary models account for this, however, we do know, generally, those are not used for underwriting of credit.

Q. That isn't acceptable, I want to escalate:

A. Refer customer to ECMO (complaints) per escalation policy, warm transfer whenever possible. Confirm the customer wants to remain on the forbearance plan (see next point if they say no).

Note: Refer to the following announcement for additional information on how to escalate a call: **Call Escalation - Express Communication**

Q. If the customer wants to be removed from forbearance, bring account current, and have comment code removed:

A. Review with the customer the total amount due to bring the account current. In most cases this will be one of, or a combination of April and May payments.

- We want to make sure that you are ok to resume making monthly payments and that you are making an informed decision. Once we remove the account from the forbearance plan, payments will be due on time, late fees will be charged normally, and any past due payments will be reported to the credit reporting agencies each month.
- Would you like to make the payment now to bring the account current? If not, we need to receive the April payment within 3 days. We will update the credit reporting to reflect that you are and were paying normally. This will remove the special comment code of "account in forbearance" and report the normal monthly payment which will be retroactively applied to the first month of your plan. You will need to resume your normal monthly payments moving forward, as indicated on your billing statement. I see your next payment due date is (May xx, 2020).

Q. How long will it be before I can see the updates on my credit bureau?

A. Wells Fargo will submit updates to the credit bureaus within 2-3 business days. When they will appear in your credit report, however, depends on how much time it takes for the credit bureaus to process the updates, which may vary by credit bureau and may take longer than 2-3 business days.

- [Ensure the customer understands the payment needs to be received]
- Follow the opt out steps within the procedure to fully remove the forbearance

Making Payments During the Relief Period - WFHM

Customers who are covered under COVID-19 protections and wish to continue to make payments may be limited in their payment options.

At this time, payment options may include:

- **Check by Phone**: Follow your standard procedures for setting up a payment through Easy Pay Plus.

  Notes:

  - When using Easy Pay Plus to process a payment from a customer on an active COVID-19 forbearance plan with $0 payments and the installments are kept, team members may receive an error message that reads:
  - The system has encountered an error in processing your request. If you were adding a payment, click the Detail tab to refresh the system. If you were modifying a payment, click the Clear button to refresh the system.
  - When receiving this error message team members should allocate the payment to the Suspense field in Easy Pay Plus. Once the payment is allocated to suspense, Easy Pay Plus will allow the transaction to submit.
- **Mail Payments**: Customers can continue to mail their payments to the address on their monthly statement.

- Visit the **Payment Address Website** for additional details on where payments can be mailed.
- **Online Bill Pay**: Use the information below to assist customers who inquire about making their payments using either the Wells Fargo Bill Pay service or a Third Party Bill Pay Service provider.
  - Customer has a Wells Fargo checking or savings account
    - You may use the Bill Pay functionality on Wellsfargo.com using a Wells Fargo Checking or Savings account.
    - If you have a Wells Fargo checking or savings account and do not currently use Wells Fargo Bill Pay, search Bill Pay on Wellsfargo.com for additional information and help with paying your bill.
    - If you currently use Wells Fargo Bill Pay, you will be able to add a payee for your mortgage account and schedule your payment. If you need additional instruction, search Bill Pay on Wellsfargo.com.
  - Customer does NOT have a Wells Fargo checking or savings account
    - You may use your preferred bill pay service provider to make your payment from a non-Wells Fargo checking or savings account.

      Attn. Team Member: Provide the customer with the appropriate payee information based on their Client number.

708	936
Wells Fargo Home Mortgage P.O. Box 51120 Los Angeles, CA 90051-5420 1-800-357-6675	Wells Fargo Home Mortgage P.O. Box 51162 Los Angeles, CA 90051-5462 1-800-357-6675

Note: The customer will also need their account number.

- **IVR**: Customers may have questions about the availability of making their contractual payments through the Interactive Voice Response (IVR) system.
  - Customers will be able to use the IVR systems for making their contractual payment during their forbearance. This will include customers on a repayment plan (RPP) or a forbearance plan.
  - Regular Customers less than 30 days past due will be able to pay 1 Contractual payment through IVR. They will not be required to pay outstanding fees.
  - Customers can make payments through IVR even if on recurring ACH

  Note: IVR options will not be available for active bankruptcy customers on a forbearance.
- **Online Banking:** Customers may have questions about the availability of their contractual payment through their online banking options.
  - Customers will be able to use the online banking for making their contractual payment during their forbearance. This will include customers on a repayment plan (RPP) or a forbearance plan.

Promise to Pays on Active COVID-19 Forbearance Plans:

- When a customer is on an active COVID 19 Forbearance plan a promise to pay should not be set up on the account. These accounts need to be treated the same as an Active Account Resolution Repayment Plan as entering a promise in DLQ1 will delete the current COVID 19 Forbearance plan.
- To validate a COVID 19 Forbearance plan has been set up on the account, review DLQ2.
  - Plan type will be 90,
  - Plan indicator (PI) will display an F.
  - Payment amounts for the three month plan will show as $0.00.
- The customer can set up a payment using Easy Pay but team members should not note the Forbearance date or amount in DLQ1 or use the Informal Plan Review (IPR) screen in ERC.

  Note: When the customer is on an active plan and does want to make a payment, add a long line comment noting their intentions but do not be enter an actual promise in ERC or manually in DLQ1.

Payment Acceptance on Foreclosure Loans:

Account Resolution and Foreclosure Call Center handling for payment acceptance on Foreclosure loans that are impacted by COVID-19.

All AR TMs:

- Loans with a FC workstation status of A or S that are under activated COVID-19 protection may appear as eligible to make payments within the EZ Pay system.
- Ensure these calls are warm transferred to the Foreclosure Call Center at 1-800-868-0043.

FC Call Center TMs:

should take place if the loan is not in active COVID-19 protection.

- If it is a COVID-19 related forbearance, then the call center would not accept a payment.
- Refer to the **Account Resolutions Payment Guidelines** procedure.

Determining Forbearance Approval Plans Dates

Utilize this section to help determine which months are included in the customer's forbearance.

Review DLQ2 to validate if the customer is already on an established forbearance plan. If so, utilize the DLQ2 screen to review what payments are included within the forbearance plan.

If the customer is not on a COVID-19 forbearance plan yet (no DLQ2 plan established) and is asking about what payments will be included in the forbearance plan, use the following table:

Date COVID-19 Coding Added (DISVIR Log Code/Disaster Virus Action Type)	Next Due Date	Payments Included Under The Forbearance Plan	Date Regular Payments Resume
April	April 1, 2020	April/May/June	Next payment due on July 1
May	May 1, 2020	May/June/July	Next payment due on August 1
May	June 1, 2020	June/July/August	Next payment due on September 1
June	June 1, 2020	June/July/August	Next payment due on September 1
June	July 1, 2020	July/August/September	Next payment due on October 1

Note: Loans that are paid ahead more than 1 month will not receive the forbearance automatically. If the customer determines they need additional payment assistance at a later date, we will have options available to assist them.

Frequently Asked Questions

Account Impacts:

Q: How does the short-term payment suspension (forbearance) affect my escrow account?

A: We'll continue to make your tax and insurance payments during the payment suspension period if you have an escrow account. However, the suspension of payments may result in a shortage in your escrow because it isn't receiving ongoing funds.

Attn. Team member: In some cases, the customer's shortage may be spread over a period of greater than 12 months. This is dependent on guidelines set forth by the investor.

Q: I saw on the news that interest rates are now 0%. How do I get 0% on my mortgage?

A: The Federal Reserve announced late Sunday that it was cutting its benchmark federal funds rate by 1% to a range of 0% to 0.25%. However, this does not directly equate to mortgage rates moving to 0%. If you'd like further information about rates for refinancing or purchasing a home, you can find details on Wellsfargo.com.

Q: Will I lose my HAMP incentives during the short-term relief period?

A: If the mortgage was modified under the Home Affordable Modification Program (HAMP) or Second Lien Modification Program (2MP) and you don't make a payment during this time, you could lose the pay-for-performance incentives. This is because you must remain in good standing with HAMP and 2MP.

Q: Will accepting the short-term relief have an impact on future ability to delete PMI?

A: If you are unable to make payments during the short-term relief period, your eligibility to delete mortgage insurance may be impacted.

Q: Will accepting the short-term relief have an impact on future ability to delete Escrow?

A: If you are unable to make payments during the short-term relief period, your eligibility to delete escrow may be impacted.

Q: Will the short-term relief have an impact on my ability to refinance my mortgage?

A: Use the responses below based on the customer's situation:

- Impact during short-term relief: If you would like to refinance your current mortgage loan or obtain a new mortgage loan, the forbearance plan must be resolved in advance.
- Impact outside short-term relief: If you would like more information about refinance or purchase options, you can find that online at wellsfargo.com or on the Wells Fargo mobile app.

A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Relief And Payment Assistance:

Q: Can I submit a request for assistance online?

A: Yes, you can sign into wellsfargo.com and begin the request process by selecting the link in the banner that is displayed on both the Account Summary and Account Details screens.

Notes:

- The link to the form is accessible from a banner on both the Account Summary and Account Details screens once the customer signs into their secure Wells Fargo Online session.
- Once the customer completes the form, their request for relief will be processed. They will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period.
- It may take 2-3 days to fully process the online requests.

Q: What does the short-term relief protection include?

A: Short-term relief includes the following:

- Payment suspension for 3 months.

  Note: Due to specifics related to each customer's account (such as the due date at the time relief was added), the 3 months that are suspended may not be the same for each customer. The exact time frame for each customer will be included in the documentation they receive. Additionally, once imaged, the letter is available in ICMP.
- We won't charge late fees or report additional missed payments to the credit bureaus.
- If the account is past-due, we won't refer the account to foreclosure at this time.

We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: Do I have to continue to make payments during the relief period?

A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor. If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: What happens if I don't, or can't, make my payments by the end of the relief period?

A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor. If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: Where can I find general information about payment options Wells Fargo has available?

A: We have general information available on WellsFargo.com/assist.

Q: Do I, or all borrowers, on the loan have to sign paperwork and send it back to receive to the relief?

A: No, it is not necessary to sign and return the Home Preservation Agreement.

Other Wells Fargo Businesses:

Q: I saw/read that Wells Fargo is changing their refinance/purchase guidelines. What's changing?

A: Due to unprecedented market conditions, we are temporarily changing some of our refinance/purchase guidelines. If you'd like more information about refinance or purchase options, you

someone I can connect you with our refinance experts.

Note: If the customer would like to speak with someone, cold transfer them to Centralized Retail at 1-800-443-3429. Make sure they are aware that they may experience longer than normal hold times.

Q: I saw/read information about assistance for small businesses. How do I get that assistance?

A: There is information regarding assistance that may be available to small businesses on Wellsfargo.com. You can click on the Learn more link in the Alert message for COVID-19 assistance and services. You can also click here to review additional talking points.

Note: This may be referred to as the Paycheck Protection Program (PPP).

Wells Fargo Work Accommodations:

Q: Are you working from home?

- If the employee is working from home:
  - I can assure you that we are very focused on continuing to serve our customers, maintaining the security of our systems, and keeping our team safe. While the majority of our contact center jobs cannot be done from home, where possible, Wells Fargo has been reducing in-office staffing. That means ensuring we have technology and equipment in place to provide the service and security that's required.
  - These are unprecedented times, and Wells Fargo is coming up with creative solutions to address today's environment.
- If the employee is working in a contact center:
  - No, I am in a contact center. Certain critical functions can be operated only in a secure office environment. Since the majority of our contact center jobs cannot be done from home, significant measures have been put in place to ensure our safety, including adhering to CDC's social distancing guidelines, staggering staff and shifts, and implementing an enhanced cleaning program.
  - These are unprecedented times, and Wells Fargo has taken – and will continue to take – steps to keep our team safe.

[redacted]

04/17/19 Component created

[redacted]



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Call Handling and Talking Points Related to COVID-19

This temporary document contains the most up-to-date information related to temporary call handling and talking points regarding COVID-19.

Important: Temporary processes related to COVID-19 will **not** be updated in existing *my work* procedures.

CUSTOMER INQUIRIES

Follow the below guidelines to respond to customer inquiries related to the current environment:

- Always respond with empathy. This situation is continuously evolving and our customers may be impacted on multiple fronts (work, school closings, child care closings, etc.).
- Keep the conversation focused on the customer's needs: It is important to keep the conversation focused on the customer's needs issue(s) and not get into details regarding specific impacts to Wells Fargo as a company.
- Use the following suggested scripting when needed:

  "We appreciate your patience as we handle your requests over the next few weeks. Like many other businesses, we are experiencing impacts to our staffing as employees are dealing with school closings and higher levels of absences due to the corona virus. Rest assured our focus is to provide the highest level of service as we work through these ever changing times."

- Refer to the Questions and Answers section of this document for specific talking points.

[redacted]

This section was updated 3/19/20 At 1:35 p.m. CT

DISASTER AND PAYMENT ASSISTANCE PROCESSING

[redacted]

This section was updated 3/20/20 at 3:20 p.m. CT

Use the steps below to process disaster assistance for customers.

Note: You may also refer to the COVID-19 Disaster Processing Exhibit for these steps.

1. Use the following script to communicate how we will assist:

   "Options are continuing to evolve and we are here to assist you through this challenging time. At this time, I can create an application for Home Assistance Options, which will place you on a temporary suspension of payments.

   During this short-term relief period, you may choose to pay a portion of your payment or nothing at all. That choice is yours. You will have credit bureau protection, late fee suppression, as well as additional protections that will be detailed in the letter you receive.

   Are you ok with me creating this application and starting the process?"

   Note: This provides immediate protection from late fees, negative credit reporting, and aging delinquencies.

2. If the customer accepts, process the impact in the Disaster Tool.

[redacted]

4. Provide the customer with the following information.

   - You will receive a letter/loss mitigation package within 7-10 business days.
   - If you need assistance beyond 3 months, we will work with you to determine available options.
   - At the end of 3 months any missed payments will be cared for based on guidelines set forth by the investor on your loan. This could range from extending the loan term by the number of missed payments, capitalizing the missed payments into the loan balance, or other modification options.
   - We will suppress negative credit reporting.

5. If the customer is enrolled in recurring withdrawal, be sure to discuss with them and update, suspend, or cancel as appropriate.
6. Confirm that we have a valid email address on record for the customer. This will allow them to log into and utilize **Your Loan Tracker** once they are in active Loss Mitigation.

FORECLOSURE SALES AND EVICTIONS

This section was added 3/18/20

On Monday, March 16th, all foreclosure sales and evictions were postponed through April 17th. We are awaiting formal guidance from HUD, FNMA, FHLMC, etc. on anything further than sales at this point and will keep you updated as decisions are made.

GEM / WORK REQUEST TURN TIMES

This section was updated on 3/20/20 at 2:30 p.m.

[redacted]

When customers, please ensure they are aware that there could be delays in getting them the information they are requesting.

Suggested Scripting:

"We appreciate your patience as we handle your requests over the next few weeks. Like many other businesses, we are experiencing impacts to our staffing as employees are dealing with school closings and higher levels of absences due to the corona virus. Rest assured our focus is to provide the highest level of service as we work through these ever changing times."

LATE CHARGE SUPPRESSION / WAIVER

This section was updated

Late charges will automatically be suppressed (or waived if already assessed before suppression can be added) for all customer accounts for the months of **March** – **April**.

This section was updated 3/17/20

This section was updated 3/17/20

QUESTIONS AND ANSWERS

Q: Does Wells Fargo report me to the credit bureaus if I make a late payment?

This question was updated 3/19/20 at 12:30 p.m. CT

A: If you are protected under short-term relief, you will have protection from negative credit bureau reporting during the short-term relief period.

> Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Q: What happens if I'm not able to make my payment by the end of the month?

This question was added 3/17/20

A: If you will not be able to make your payment by the last day of the month, we have options available to help. You can visit wellsfargo.com/assist if you have general questions, or we can refer you to our Home Preservation department.

> Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Q: What happens if I don't make my payments by the end of the relief period?

This question was added 3/20/20 At 3:20 p.m.

A: At the end of the relief period (3 months) any missed payments will be cared for based on guidelines set forth by the investor on your loan. This could range from extending the loan term by the number of missed payments, capitalizing the missed payments into the loan balance, or other modification options. If you need assistance beyond 3 months, we will work with you to determine available options at that time.

Q: I saw on the news that interest rates are now 0%. How do I get 0% on my mortgage?

This question was added 3/18/20

A: The Federal Reserve announced late Sunday that it was cutting its benchmark federal funds rate by 1% to a range of 0% to 0.25%. However, this does not directly equate to mortgage rates moving to 0%. If you'd like further information about rates for refinancing or purchasing a home, you can find details on Wellsfargo.com.

> **Attn Team Members:** If the customer would like to speak with an HMC, please follow standard procedures for connecting to Centralized Retail.
>
> Note: Hold times may be longer than normal due to current volumes.

Q: I saw on the news that mortgage payments should be suspended / deferred? How do I get a suspension/deferral?

This question was updated 3/19/20 at 12:30 p.m. CT

A: Options are continuing to evolve and we are here to assist you through this challenging time. At this time, I can create an application for Home Assistance Options, which will place you on a temporary suspension of payments. During this short-term relief period, you may choose to pay a portion of your payment or nothing at all. That choice is yours. You will have credit bureau protection, late fee suppression, as well as additional protections that will be detailed in the letter you receive. Are you ok with me creating this application and starting the process?

Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Attn Team Members: As soon as, or if, information becomes available regarding this topic, we will communicate any changes that may need to occur.

Q: Where can I find information about payment options Wells Fargo has available?

This question was added 3/19/20 at 12:30 p.m. CT

A: We general information available on WellsFargo.com/assist.

Attn Team Members: If the customer indicates they are impacted and need assistance, refer to the Disaster and Payment Assistance Processing section of this document.

Q: What does the short-term relief protection include?

This question was added 3/19/20 at 12:30 p.m. CT

A: Short-term relief includes the following:

- Late charge suppression
- Negative credit reporting suppression
- Aging delinquencies

[redacted]

This section was added 3/20/20 at 11:40 a.m. CT

WELLS FARGO

Kristy Fercho
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CONFIDENTIAL TREATMENT REQUESTED

September 4, 2020

The Honorable Elizabeth Warren
The Honorable Brian Schatz
United States Senate
Washington, DC 20510

Dear Senators Warren and Schatz:

I am writing in further response to your July 29, 2020 inquiry and the August 13, 2020 email from your staff regarding Wells Fargo's provision of mortgage forbearances to customers facing COVID-19-related hardships.

As noted in our August 12, 2020 response, since March 9, 2020, Wells Fargo has provided its customers more than 964,000 mortgage forbearances, over 821,000 of which are in connection with federally-backed loans. We previously identified the circumstances in which we provided mortgage and home equity forbearance relief to customers who did not explicitly request it. These actions were taken to ensure that, in these unprecedented economic conditions, and at a time when we were experiencing significantly increased volumes of customer inquiries, every customer who needed a forbearance received one. As we wrote in our August 12 response, we sincerely apologize to any customer who received a forbearance that he or she did not want. We are actively reaching out to our customers and will help any customer who was negatively affected by an unwanted forbearance, including by removing forbearances when requested, adjusting credit reporting, allowing for immediate refinancing, and reinstating lines of credit for eligible customers who received a forbearance that was not utilized.

In response to questions no. 2 and 3 of your July 29 letter:

Wells Fargo has identified 904 accounts (as of August 31) held by customers in active bankruptcy proceedings to whom we provided forbearance relief that was not affirmatively requested by the customer. First, Wells Fargo provided forbearances for 426 customer accounts in active bankruptcy proceedings for whom we identified a court filing indicating that the customer may have been suffering a COVID-19-related hardship. Second, Wells Fargo provided forbearances for 478 customer accounts in active bankruptcy proceedings who were in the loss mitigation application process as of March 25. We have ceased placing customers in bankruptcy proceedings in forbearance without an affirmative request from the customer. We are working with customers who hold the 904 accounts to confirm whether the forbearances we provided were wanted. If a customer informs us they do not want the forbearance, we will remove it and, if a notice has been filed in bankruptcy court, we will withdraw, or seek permission to withdraw, it.

Of the 904 customer accounts in active bankruptcy proceedings:

- 736 accounts are associated with federally-backed loans; and
- 179 accounts were current on their mortgage payments when we provided the forbearance.

As part of our outreach efforts related to the 904 customer accounts:

- For 355 accounts, the customers have confirmed that they wanted the forbearance assistance.
- For 205 accounts, we are continuing to reach out to the customers to determine if each customer wanted the forbearance assistance.
- For 344 accounts, the customers have confirmed that they did not want the forbearance assistance. We filed 223 notices of forbearance or similar filings with the bankruptcy court in connection with these accounts. We are working with these customers to withdraw, or seek permission to withdraw, these filings and determine the possible impact to the customer if a bankruptcy trustee withheld disbursement as a result of the forbearance. To date, we have withdrawn 200 notices.

We are continuing to conduct customer outreach to confirm whether forbearances were wanted by certain other customers, including customers who received a forbearance because:

(1) as of March 25, the customer was in the loss mitigation application process. This includes the 478 accounts in active bankruptcy proceedings discussed above. The customers in the loss mitigation application process often are already in default and many of them had reached out to Wells Fargo to modify their loan because they were no longer able to make their payments.

(2) in the early weeks of the pandemic, the customer sent a secure email or contacted us by phone regarding a COVID-19-related hardship, or to request a fee waiver, even if the customer did not specifically request a forbearance. We subsequently changed our practices to ensure that customer service representatives expressly confirmed a customer's intent before providing a forbearance. In addition, we implemented a forbearance request form through Wells Fargo secure online banking and an interactive voice response unit with updated explanations and acknowledgement of customer intent.

(3) in late March and early April, the customer requested forbearance on a mortgage or home equity account, and we extended the forbearance to his or her mortgage-linked accounts.

As described in our August 12 response, we are working to identify customers, including in the populations described above, for whom we do not have a documented customer request or acknowledgement that a forbearance was wanted. Regardless of the channel through which a customer requested or received a forbearance, we are contacting by phone and email all customers whose initial 90-day forbearance period is expiring, or whose forbearance we automatically extended for another 90 days because they did not respond to our efforts to contact them. We are contacting these customers to ensure that we have confirmed that each customer has received only assistance that is wanted and needed, and that customers are aware of other Home Preservation solutions if they are interested in them. We are also contacting customers who asked to remove or opt out of a forbearance to ensure that the removal process is effective, and the customer's request for forbearance assistance removal and required account adjustments were completed correctly.

We remain committed to make things right for any customer who tells us that he or she received an unwanted or unneeded forbearance. We will remove a forbearance if requested by the customer, adjust credit reporting, allow for immediate refinancing, and reinstate lines of credit for eligible customers who received a

forbearance that was not utilized. We will work to make whole any customer who received an unwanted forbearance.

* * *

The information in this letter and in the enclosed production includes confidential business and financial information that Wells Fargo considers proprietary and competitively sensitive, and that Wells Fargo actually and customarily treats as private. Disclosure of such information would harm Wells Fargo and undermine the competitive financial marketplace. These materials are labeled as "Confidential," and Wells Fargo respectfully requests that these materials be treated as confidential under all applicable rules. If you should nonetheless consider the public release of such materials, Wells Fargo respectfully requests that it be given advance notice and an opportunity to discuss the matter with you, so that Wells Fargo may explain the basis for objecting to public release of the materials.

Additionally, this information and Wells Fargo's productions may contain material nonpublic information. Pursuant to the Stop Trading on Congressional Knowledge Act of 2012 ("STOCK Act"), Pub. L. 112-105, 126 Stat. 291, non-public information derived from a person's position as a Member of Congress or employee of Congress or gained from the performance of such person's official responsibilities may not be used as a means for making a private profit. Misuse of such information, including unauthorized disclosures to third parties outside of the Congress, may also give rise to liability under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

By the provision of such documents and information, Wells Fargo does not intend to waive and has not waived the attorney-client privilege or any other protections.

Sincerely,



Kristy Fercho
EVP – Head of Home Lending

WELLS FARGO

Wells Fargo Home Lending
MAC F2401-064
One Home Campus
West Des Moines, Iowa 50266

CONFIDENTIAL TREATMENT REQUESTED

August 12, 2020

The Honorable Elizabeth Warren
The Honorable Brian Schatz
United States Senate
Washington, DC 20510

Dear Senators Warren and Schatz:

I am writing in response to your July 29, 2020 inquiry into Wells Fargo's provision of mortgage forbearances to customers facing COVID-19-related hardships.

On March 9, 2020—before the passage of the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act")—Wells Fargo began offering its mortgage customers payment assistance, including 90-day forbearances, even if they were previously behind on their payments. We sought to make it as easy as possible for our customers to obtain relief and have provided over 964,000 mortgage forbearances. By the end of March, however, as more customers began to experience the unprecedented economic effects of the global pandemic, we received a significantly higher than usual volume of inquiries regarding mortgage payment assistance. At its peak, the call volume was roughly 2.5 times greater than the average daily volume in February. Although we shifted resources to attempt to address the increased volume, the sudden, soaring demand for mortgage forbearances, other payment assistance, and information made it difficult to make contact with all of our customers. In an attempt to ensure that all customers received the payment relief they needed, we made a decision to provide mortgage forbearances to certain customers who had made an inquiry or expressed hardship but had not explicitly requested a forbearance.

As we have stated publicly, we undertook a customer-focused approach to ensure that every customer who needed a forbearance would receive one without unnecessary delay. Our actions were not motivated by any financial benefit to Wells Fargo. We do not receive, nor do we pay our employees, any incentive fees or other compensation for placing customers in forbearance; to the contrary, we benefit most when customers make their payments and remain current on their loans.

We sincerely apologize to any customer who received a forbearance and did not expressly request one, and are actively working to assist each customer who was negatively affected. We have made changes to our practices to require an affirmative request from a customer before providing a forbearance. We also are proactively reaching out to our customers to identify cases in which we provided an unrequested forbearance to verify that our customers are receiving only the assistance they need and want. For every customer who received an unwanted forbearance, we are removing the forbearance, adjusting credit reporting, and working to make the customer whole.

I. Customers to Whom We Provided Forbearances Without an Explicit Request

We have identified to date the following circumstances in which we provided mortgage and home equity forbearance relief to customers who did not explicitly request it.[1] In early March, Wells Fargo began providing forbearances to customers in active bankruptcy proceedings if we identified a court filing indicating that the customer may have been suffering a COVID-19-related hardship. In response to concerns expressed by customers and their bankruptcy attorneys after Wells Fargo filed notices of forbearance in the bankruptcy court proceeding, in May we began to communicate with customers' bankruptcy attorneys (or with customers directly if they were unrepresented) to confirm prior to filing a forbearance notice with the court that customers wanted to remain in forbearance. We have since ceased this practice entirely.

From late March until early April, we automatically provided forbearances to customers who sent a secure email or contacted us by phone regarding a COVID-19-related hardship, as well as to customers who requested a fee waiver, even when the customers' communications did not specifically request a forbearance. We subsequently changed our practices to ensure that customer service representatives expressly confirmed a customer's intent before providing a forbearance.[2] In addition, in response to the significantly increased call volumes in March, Wells Fargo implemented two new means by which customers could request payment assistance: a form available through Wells Fargo secure online banking and an interactive voice response ("IVR") unit, both of which included updated explanations and acknowledgement of customer intent.

In late March, Wells Fargo also granted forbearances to eligible Home Preservation customers (including some customers in active bankruptcy proceedings) who at the time: (i) were in the loan modification application process; or (ii) had been denied a forbearance before the pandemic. These are customers who often are already in default and had reached out to Wells Fargo to modify their loan because they were no longer able to make their payments. We provided these forbearances at one time for all customers in those two categories and have not done so again.

Finally, in late March and early April, when a customer requested forbearance on one of the customer's mortgage or home equity accounts, we extended the forbearance to that customer's mortgage-linked accounts. We have ceased this practice.

II. Notification to Customers Who Received COVID-19-Related Forbearances and Handling of Payments

Wells Fargo sends a forbearance confirmation letter to all customers placed in a COVID-19-related forbearance. On April 10, 2020, we began sending confirmation emails in addition to the letters. Customers' statements also reflect when they have received a forbearance.[3] These communications generally note that short-term payment relief provides the customer with assistance right away, other payment assistance options may be available, and the customer can contact Wells Fargo if a forbearance is not right for him or her.

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[1] Production numbers WF-00000001–WF-00000042 include a sample of policies and customer service call scripts relevant to these efforts. All documents described in this letter have been shared via a link under separate cover.

[2] *See, e.g.*, WF-00000001.

[3] Production numbers WF-00000043–WF-00000070 include a sample of forbearance confirmation communications from March through July 2020.

In addition, before the expiration of an initial 90-day forbearance period, we attempt to contact customers to notify them if an extension is available and ask if they need an extension. If a customer does not respond to our efforts to contact them, Wells Fargo automatically extends the forbearances for another 90-day period and notifies the customer of the extension. We continue to do this to ensure that customers receive the payment relief available under the CARES Act.

Wells Fargo's policy is to apply full payments made during a forbearance period toward payment of the loan principal, interest, and escrow as per normally applicable processes. If we receive less than a full payment (subject to certain thresholds), the funds are held (without charging late fees or other fees) until a full payment is received and is then applied. For accounts in bankruptcy, payments are applied per the bankruptcy plan.

III. Steps to Assist Customers Who Wish to Remove Forbearances

We are committed to identifying customers who received a forbearance and did not want it and making things right for any customer who tells us he or she received an unwanted or unneeded forbearance.[4] This includes customers we identify through the processes described below in Section III. The steps we may take to assist customers include:

- **Removal of forbearance**: When a customer asks to remove a forbearance, we remove it. Customers can request to remove a forbearance at any time by phone, online, or through the IVR.

- **Adjustment of credit reporting**:

    - In response to your question, for Home Lending customers who were placed in forbearance because of a COVID-19-related hardship, our credit reporting is consistent with the requirements of the CARES Act and Consumer Financial Protection Bureau and Consumer Data Industry Association guidelines. If the borrower is "Current" (0-29 days past due) at the time that assistance is provided, we place the borrower on a forbearance and report the account as "Current" and in forbearance using an "on forbearance" comment code. If the borrower is "Delinquent" (30+ days past due) at the time that assistance is provided, we suppress credit reporting of any additional delinquency, so the customer is not reported any worse than they had been prior to entering into the forbearance. Finally, if a delinquent borrower brings himself or herself to zero days past due, we begin to report the borrower as "Current" and in forbearance.[5] If one or more customers on an account is in bankruptcy, we suppress credit reporting, so we do not report a forbearance to the credit bureaus for these accounts.

    - If a customer asks to remove a forbearance that was not requested and unwanted, for all customers who made each payment and did not go 30 days past due during the forbearance, we will remove the forbearance comment code for credit bureau reports and adjust the payment history to reflect a status of "current." It is our policy to submit those

[4] Production numbers WF-00000108–WF-00000122 include a sample of policies related to the forbearance removal process.

[5] Production numbers WF-00000091–WF-00000107 include a sample of policies and customer service call scripts related to the credit reporting of customers in forbearance.

adjustments to credit bureaus within two business days of the customer's request to exit forbearance.

- **Withdrawal of bankruptcy filing of notice of forbearance**: If a customer in bankruptcy proceedings does not want a forbearance, we remove it and no notice will be filed in bankruptcy court. If a notice has been filed, we withdraw, or seek permission to withdraw, it and determine the possible impact to the customer if a bankruptcy trustee withheld disbursement as a result of the forbearance. If we identify such an impact, we work with the customer to correct it.

- **Refinancing and line of credit**: If a customer did not utilize a forbearance, once the forbearance is removed, we will allow for immediate refinancing if the customer is eligible. If a customer's Wells Fargo line of credit was restricted as a result of a forbearance caused by an error by Wells Fargo, we will reinstate the line of credit.

- **Review of loan modification decisions**: For any customer who sought a loan modification that was declined, we will review the declination to ensure that it did not result from the customer's forbearance plan. For any customer who was placed in forbearance and was approved for a loan modification instead of a forbearance, we will review the approval to ensure that the interest rate and payment are less than or equal to what they would have been without the forbearance. We will also review all loans that were transferred to another servicer to ensure correct information was transferred.

IV. Efforts to Identify Customers Placed in Forbearance Without an Explicit Request

We are working to identify customers who have received a forbearance they did not request and do not want. As described below, we are addressing all complaints to that effect received from our customers, and we are affirmatively reaching out to customers where we do not have evidence of a clear request for a forbearance.

a. Outreach to Customers to Verify Desire for Forbearance

In the majority of cases, we have a high degree of confidence that the forbearances we provided were requested by customers because they were requested through the online or IVR channels that required acknowledgement of customer intent, or we otherwise have a documented customer request or acknowledgement that the forbearance was wanted.

We are actively conducting outreach to customers for whom we do not have a clear customer request or acknowledgement that the forbearance was wanted. As part of this process, we will work with the customers to verify that the customers are receiving the payment relief they need and want, and to assist them as described in Section II if they do not want the forbearance we provided.

b. Quality Assurance of Customers Who Have Asked to Remove Forbearances:

In addition, we will conduct a quality assurance review of our records of a sample of customers who were provided a forbearance and have since asked for it to be removed to ensure that the process is effective, and the customer's request for forbearance assistance removal and required account adjustments were correctly completed. If this sampling reveals any issues, we will undertake further reviews and act to ensure that the removal process was properly handled.

c. Addressing Customer Complaints About Unwanted Forbearances

Since March 9, 2020, we have provided over 964,000 mortgage forbearances, over 821,000 of which are in connection with federally-backed loans. To date, we have received and reviewed approximately 1,600 complaints from customers telling us that they did not request a forbearance. We have sought to assist each and every customer who has been affected by an unwanted forbearance, and we resolved these complaints on average in 14 days based on the customer's preference—for example by removing the forbearance, placing the account back into a traditional loan modification review, and adjusting credit reports. We will address any additional complaints about unwanted forbearances as they are received.

V. Lack of Compensation to Wells Fargo for Forbearances Not Requested by a Customer

Wells Fargo does not receive incentive fees or other compensation for placing customers in forbearance, and we benefit from helping customers stay current on payments, which is how mortgage servicers earn revenue. This revenue is delayed or cut off entirely if customers are not making payments. Indeed, it is significantly more expensive to service a loan in a forbearance plan than to service performing loans.

Some government-sponsored enterprises pay incentive fees if customers enter into and comply with certain *post*-forbearance Home Preservation alternatives such as repayment plans, modifications, or other liquidation options. If a customer immediately pays all missed payments at the end of the forbearance, or if the customer goes into foreclosure, there is no incentive payment at all. These incentive fees are significantly less than the costs of servicing loans in forbearance.

In addition, customer service representatives in the Consumer Lending Group's Servicing Group do not receive any incentive compensation for placing customers in forbearance. They are not incentive or bonus-eligible, including in connection with the handling of, responding to, receiving, and processing of customer requests for assistance.

* * *

From the start of the pandemic, Wells Fargo has made it a top priority to help our customers receive the assistance they need. We regret that we provided some customers mortgage forbearances they did not want. We are working with our customers to ensure that they are receiving only the payment relief that they want and need, and we will address any adverse consequences that resulted from our actions.

* * *

The information in this letter and in the enclosed production includes confidential business and financial information that Wells Fargo considers proprietary and competitively sensitive, and that Wells Fargo actually and customarily treats as private. Disclosure of such information would harm Wells Fargo and undermine the competitive financial marketplace. These materials are labeled as "Confidential," and Wells Fargo respectfully requests that these materials be treated as confidential under all applicable rules. If you should nonetheless consider the public release of such materials, Wells Fargo respectfully requests that it be given advance notice and an opportunity to discuss the matter with you, so that Wells Fargo may explain the basis for objecting to public release of the materials.

Additionally, this information and Wells Fargo's productions may contain material nonpublic information. Pursuant to the Stop Trading on Congressional Knowledge Act of 2012 ("STOCK Act"), Pub. L. 112-105, 126 Stat. 291, non-public information derived from a person's position as a Member of Congress or employee of Congress

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By the provision of such documents and information, Wells Fargo does not intend to waive and has not waived the attorney-client privilege or any other protections.

Sincerely,

Kristy Fercho
Executive Vice President
Head of Home Lending

Home Lending Portal

Home Policies **Procedures** Forms Team Member Manager

Procedures: Default Collections And Customer Contact

Handling Calls for COVID-19 Impacted Customers - DCCOL97180

[redacted]

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[redacted]

[redacted]

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For Internal Use

Suggested Inbound and Outbound Opening Scripts

The following are some suggested scripts for opening an inbound or outbound call:

Outbound:

"Good Morning/Afternoon, my name is [team member name], I'm calling from Wells Fargo and this call may be monitored or recorded. May I speak with ____?

Thank you for taking my call Mr./Ms. _____. I hope you and your family are safe. We appreciate you taking the time to speak with us. Have you or anyone in your family been impacted as we may have options available to assist you? [State Mini-Miranda (if required)]."

Inbound:

"Welcome to Wells Fargo, I'm [team member name], [Recording Disclosure]. I look forward to assisting you. Who do I have the pleasure of speaking with today? I hope you and your family are safe. We appreciate your patience at this time. We are here to assist you during this unprecedented time, we have options available for payment relief if you have time to discuss them now – have you been impacted by the recent events?"

COVID-19 Impact Calls from Customer or Authorized Third Party

1. The call recording disclosure is required to be read to all inbound callers and any parties entering the conversation during any portion of the call. Refer to the **Universal Greeting Scripts - Account Resolution** procedure for further information.

2. Verify the caller by referring to the **Authentication Exhibit** for further information.

3. If attorney representation is present on the account, do not continue discussing the account with the customer. Refer to the Customer Inbound Call with Attorney Representation Present section of the **Attorney Representation - Specialty Call Team** procedure for more information on handling the call.

4. Determine if right party contact (RPC) is made:

If The Caller Is A	Then
Borrower, co-borrower, authorized third party or a confirmed successor in interest and an RPC is made	a. Refer to the **Reading the Mini-Miranda, Recording, and Bankruptcy Disclosures** procedure for further information b. Proceed to the next step.
Unauthorized third party or a potential successor in interest or an RPC is not made	Refer to the **Handling Unauthorized Third Party Requests** procedure for further information. End of the process.

Note: If a call is received from an unauthorized third party, the team member takes the call and lets the unauthorized third party know the COVID-19 relief benefits that are available. The team member can discuss the COVID-19 relief benefits, but accepting or declining the relief needs to come from a borrower or authorized third party (A3P).

- Authenticate the caller by obtaining the information below:
  - First name or common nickname, last name of the customer as it appears on the system (as well as the suffix, for example: Jr., Sr., I, II, III).
  - The full name of the caller.
  - Account number.
  - If the caller cannot verify the account number, he or she may verify one the following:
    - The last four digits of the customer's Social Security Number (SSN).
    - The property or mailing address.
- Always attempt to verify the caller's name, the customer's name, and the account number before moving onto the optional items. If an unauthorized third party is unable to authenticate, escalate to the manager to transfer the call.
- If a call is received by a borrower or authorized party reporting the death of a borrower as a result of the pandemic, educate and update the relief and refer to the **Notifications of a Deceased Customer** procedure for the next steps.

5. At the start of every call, express empathy for the customer's circumstance when impacted by the pandemic. Be empathetic and show compassion and kindness immediately and throughout every

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Note: Total amount due is not required to be quoted to customers on active COVID-19 forbearance loans as the intent is not a collect a debt. It is okay to discuss payment details if the customer asks.

Examples:

- *"We realize this can be a challenging time due to the pandemic but want you to know that Wells Fargo does have some options that we may be able to offer to help you during this difficult time."*
- *"Wells Fargo cares about you as our customer and we are here to help you during this difficult time. We would like to discuss possible options Wells Fargo may have to help you through this."*
- *"Thank you for calling us. I am sorry to hear that you have been impacted, but I am here to help. Our thoughts are with you and your loved ones during this challenging time. Your safety is the most important thing. Please know that we are here to help you through this difficult time."*

Spanish Translation:

- *"Nos damos cuenta que estos son momentos desafiantes debido a la pandemia, pero queremos que sepa que Wells Fargo ofrece algunas opciones para ayudarlo durante estos momentos difíciles."*
- *"Wells Fargo se preocupa por usted como cliente y estamos a su disposición para ayudarle durante este momento difícil. Nos gustaría analizar las posibles opciones que Wells Fargo puede tener para ayudarle a atravesar esta situación"*
- *"Gracias por llamarnos. Lamento mucho escuchar que ha resultado afectado, pero estoy aquí para ayudarle. Nuestros pensamientos están con usted y sus seres queridos durante este momento difícil. Su seguridad es lo más importante. Sepa que estamos aquí para ayudarle a atravesar este momento difícil".*

Initial COVID-19 Impact Inquiries - WFHM

Use this section when having an initial conversation with customers about their impact related to COVID-19 and to process disaster assistance.

1. Advise the customer that we are suppressing late charges for the months of March, April and May, 2020.

   Suggested Scripting:

   "We are here to assist you through this challenging time. At this time, we are proactively suppressing and waiving late charges for March, April and May. Are you currently facing, or do anticipate having payment challenges?"

   Spanish Translation: *"Estamos aquí para ayudarle a atravesar estos momentos difíciles. En este momento, estamos eliminando y eximiendo el pago de cargos por pago atrasado de manera proactiva para Marzo, Abril y Mayo. Enfrenta actualmente dificultades con los pagos, o anticipa tenerlas?"*

   Note: There will not be late charge stops on the account. The suppression is happening behind the scenes via a transaction.

2. Does the customer anticipate payment challenges requiring additional assistance outside of the late fee suppression?

If	Then
The customer anticipates payment challenges and requiring additional assistance	Proceed to the next step.
The customer **does not** anticipate payment challenges requiring additional assistance outside the late fee suppression.	[redacted] d. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."*

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	Spanish Translation: *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"*

e. End of process

3. Use the following script to communicate how Wells Fargo can assist:

"We can provide you with the following short-term relief for a period of 3 months:

- *Payment suspension*
- *We will not charge late fees or report additional missed payments to the credit bureaus*
- *If the account is past-due, we won't refer the account to foreclosure at this time.*

We encourage you to make payments if you can, we understand you may not be able to during the initial suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

While you are protected under the payment suspension, if you have a Wells Fargo Home Equity account your line of credit will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing.

If you have an escrow account, Wells Fargo will continue to pay escrowed items as we normally would. Any missed payments may create a shortage in your escrow account the next time your escrow account is analyzed. Past due payments may impact your eligibility to delete your escrow and/or mortgage insurance; if applicable to your account.

If the mortgage was modified under the Home Affordable Modification Program (HAMP) or Second Lien Modification Program (2MP) and you don't make a payment during this time, you could lose the pay-for-performance incentives. This is because you must remain in good standing with HAMP and 2MP.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer term financial changes that may impact your ability to keep up with your monthly payments."

Spanish Translation:

"Podemos brindarle el siguiente alivio a corto plazo para un periodo de tres meses:

- *Suspension de los pagos.*
- *No cobraremos cargos por pago atrasado ni reportaremos pagos omitidos adicionales a las agencias de informacion crediticia.*
- *Si la cuenta esta atrasada, no la remitiremos a ejecucion hipotecaria en este momento.*

Le recomendamos que realice pagos si puede; comprendemos que es posible que no pueda realizarlos durante el período inicial de suspensión. Los pagos omitidos serán atendidos conforme a las pautas expuestas por el inversionista del préstamo.

Mientras esté protegido bajo la suspensión de pago, si tiene una cuenta sobre el valor neto de la vivienda con Wells Fargo, su línea de crédito estará restringida a nuevos adelantos y no tendrá acceso a los fondos de esta cuenta. Cuando finalice la suspensión de pago y cuando haya reanudado los pagos regulares, comuníquese con nosotros para solicitar el restablecimiento de la cuenta. Se le proporcionara por escrito información adicional.

Si usted tiene una cuenta de deposito en garantia, Wells Fargo continuara pagando los el fideicomiso garantizados como lo hariamos normalmente. Los pagos omitidos podrian generar un deficit en su cuenta de deposito en garantia la proxima vez que se analice su cuenta de deposito en garantia. Los pagos atrasados podrian afectar su elegibilidad para eliminar su deposito de garantia y/o seguro hipotecario, segun corresponda a su cuenta.

Si el préstamo hipotecario se modificó en virtud del Programa de Modificaciones para Viviendas Asequibles (HAMP, por sus siglas en inglés) o del Programa de Modificación de Hipotecas de Segundo Grado (2MP, por sus siglas en inglés) y usted no realiza un pago durante este período, podría perder los incentivos de pago por desempeño. Esto es así porque usted debe mantener un buen historial con HAMP y 2MP.

Si necesita asistencia adicional mas alla de la suspension inicial de tres meses, tendremos opciones adicionales disponibles para usted. Esas opciones podrian incluir una continuacion de la suspension del pago, mover los pagos atrasados al final del prestamo o una modificacion para abordar los cambios financieros a mas largo plazo que pueden afectar su capacidad de

Bankuptcy Wording:

"This temporary relief does not forgive any payments, however at the end of the relief period the account can be reviewed for longer term options in coordination with your Bankruptcy Attorney and the Bankruptcy Court. The approval letter you will receive will provide additional details. Would you like to begin the process?"

***Spanish Translation**: "Este alivio temporario no perdona ningun pago, sin embargo, en el fin del periodo de alivio la cuenta puede ser revisada pora opciones mas a largo plazo en coordinacion con su abogado de la bancarrota y la corte de bancarrota. La carta de aprobacion que usted recibira le proveera con detalles adicionales. Quisiera usted comenzar el proceso?".*

4. Determine if the account is due for the current month

If The Account Is	Then Provide The Following Suggested Scripting
Due for the current month	*"If your account is current at the time assistance is requested, we won't provide a past-due status for this account to the consumer reporting agencies. The account will continue to report for the duration of the payment suspension. We will also update the credit report with a comment code that says the account is in a forbearance plan."* **Important:** If the customer asks how this will impact their credit or credit score, refer to the **Forbearance and Credit Bureau Talking Points** section of this procedure prior to proceeding.
Due for more than the current month	*"If your account is past due at the time assistance is requested"* • *We will suppress negative credit reporting during the payment suspension. However, the account will continue to show the delinquency status it was in prior to the payment suspension. Once the account is brought current, we will report the account current on the next credit report.* • *We won't refer the account to foreclosure at this time. "*

5. Did the customer ask about refinance impacts?

If	Then
The customer did inquire about refinance impacts	a. Advise the customer that their situation will need to be resolved by providing the following script: *"If applying with Wells Fargo to refinance your current mortgage loan or obtain a new mortgage loan, the hardship forbearance plan must be resolved prior to closing."* ***Spanish Translation:** "Si solicita a Wells Fargo refinanciar su préstamo hipotecario actual u obtener un nuevo préstamo hipotecario, el plan de aplazamiento de pagos por dificultades debe resolverse antes del cierre".* b. Proceed to the next step
The customer **did not** inquire about refinance impacts	Proceed to the next step.

6. Did the customer specifically inquire about a new home equity loan?

If	Then
The customer did not inquire about a new home equity loan	Proceed to the next step.
The customer did inquire about a new home equity loan	a. Use the following suggested scripting: *"After careful consideration, Wells Fargo has temporarily suspended all originations of home equity products after 5/1/20 until market conditions allow us to responsibly resume home equity originations."* ***Spanish Translation:** "Después de haberlo considerado detenidamente, Wells Fargo ha suspendido temporalmente todas las emisiones de productos sobre el valor neto de la vivienda después del 1 de mayo de 2020, hasta que las condiciones del mercado nos permitan reanudar de manera responsable las emisiones sobre el valor neto de la vivienda".* b. Proceed to the next step

an application that was submitted prior to 5/1/2020	process prior to 5/1/20 will be worked to completion ***Spanish Translation***: Todas las solicitudes sobre el valor neto de la vivienda que estén en proceso antes de 5/1/20 se trabajaran hasta su finalidad. Todas las solicitudes sobre el valor neto de la vivienda en proceso antes del 1 de mayo de 2020 se gestionarán hasta su finalización. b. Proceed to the next step
The customer asks when Wells Fargo stopped accepting new Home Equity applications	a. Advise the customer that Wells Fargo temporarily stopped accepting applications for all new Home Equity Lines of Credit (HELOCs) after April 30, 2020. ***Spanish Translation:*** Wells Fargo dejo temporalmente de aceptar solicitudes para todas las nuevas líneas de crédito sobre el valor neto de la vivienda después del 30 de abril. b. Proceed to the next step

7. Did the customer accept the short-term relief?

If	Then
The customer accepts the short term relief	[redacted] f. Use the suggested scripting to provide the customer with the following information: *"We have processed your request for relief. You will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period. We will contact you and work with you directly to understand your circumstances and identify the best way to help you going forward. If you would like more information, please visit WellsFargo.com for the most up to date information. Thank you for reaching out and keeping us informed during this difficult time."* ***Spanish Translation:*** *"Hemos procesado su solicitud de asistencia. Usted recibirá documentación en el transcurso de 7 a 10 días laborables, que incluye el plazo del período de suspensión de los pagos. Nos pondremos en contacto y colaboraremos con usted directamente para comprender sus*

	en adelante. Si desea más información, visite wellsfargo.com/es para obtener la información más actualizada. Gracias por comunicarse con nosotros y mantenernos informados en este momento difícil". g. Proceed to the next step
The customer **does not** accept the short term relief	[redacted] d. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"* e. End of process

8. Determine if the customer is enrolled in recurring withdrawal:

If	Then
The customer is enrolled	a. Advise the customer that accepting the short-term relief requires cancellation of their recurring withdrawal and they will need to re-enroll at the end of the relief period b. Proceed to the next step.
The customer is not enrolled	No further steps required, end of process.

9. Determine when the next recurring withdrawal is scheduled to draft:

If	Then
The recurring withdrawal is scheduled to draft over 2 business days out.	a. Advise the customer their recurring withdrawal will be automatically cancelled due to the approved forbearance plan b. End of Process
[redacted]	[redacted]

	[redacted]
The recurring withdrawal is scheduled to draft today OR It is scheduled to draft the next day and is after 7:00 pm Central Time.	a. Advise the customer it is too late to stop the next withdrawal and the draft will occur, but future drafts have been cancelled. Note: The customer's next draft will occur, but future drafts will be automatically cancelled in approximately 2 business days. b. Proceed to the next step

10. Determine if the customer has agreed to the draft occurring:

If The Customer Is	Then
Agreed to the draft occurring	No further steps required.
Not agreed to the draft occurring and the draft will be returned as NSF	Advise the customer they should contact their banking institution to request a stop payment on the next draft.
Not agreed to the draft occurring and will need it refunded	[redacted] c. Provide the customer with the time frame for completion of the GEM. ▪ For Wells Fargo bank accounts: Approximately 24 hours after payment drafted ▪ For Non-Wells Fargo bank accounts: Approximately 48 hours after payment drafted

Initial COVID-19 Impact Inquiries - HEQ

Use this section when having an initial conversation with customers about their impact related to COVID-19 and to process disaster assistance.

1. Advise the customer that we are suppressing late charges for the months of March, April and May, 2020.

   Suggested Scripting:

   "We are here to assist you through this challenging time. At this time, we are proactively suppressing and waiving late charges for March, April and May. Are you currently facing, or do anticipate having payment challenges?"

   Spanish Translation: *"Estamos aquí para ayudarle a atravesar estos momentos difíciles. En este momento, estamos eliminando y eximiendo el pago de cargos por pago atrasado de manera proactiva para Marzo, Abril y Mayo. Enfrenta actualmente dificultades con los pagos, o anticipa tenerlas?"*

   Note: There will not be late charge stops on the account. The suppression is happening behind the scenes via a transaction.

2. Does the customer anticipate payment challenges requiring additional assistance outside of the late fee suppression?

If	Then

payment challenges and requiring additional assistance	
The customer **does not** anticipate payment challenges requiring additional assistance outside the late fee suppression.	a. Clearly notate the account that the customer is not wanting any additional COVID assistance at this time **Note:** Do not log any actions for non FEMA or COVID on the account. b. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** "Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com" End of process.

3. Use the following script to communicate how we can assist:

"We can provide you with the following short-term relief for a period of 3 months:

- *Payment suspension*
- *We will not charge late fees or report additional missed payments to the credit bureaus*
- *If the account is past-due, we won't refer the account to foreclosure at this time.*

We encourage you to make payments if you can, we understand you may not be able to during the initial suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments."

Spanish Translation:

"Podemos brindarle el siguiente alivio a corto plazo para un periodo de tres meses:

- *Suspension de los pagos.*
- *No cobraremos cargos por pago atrasado ni reportaremos pagos omitidos adicionales a las agencias de informacion crediticia.*
- *Si la cuenta esta atrasada, no la remitiremos a ejecucion hipotecaria en este momento.*

Le recomendamos que realice pagos si puede; comprendemos que es posible que no pueda realizarlos durante el periodo inicial de suspensión. Los pagos omitidos serán atendidos conforme a las pautas expuestas por el inversionista del préstamo. Si necesita asistencia adicional mas alla de la suspension inicial de tres meses, tendremos opciones adicionales disponibles para usted. Esas opciones podrian incluir una continuacion de la suspension del pago, mover los pagos atrasados al final del prestamo o una modificacion para abordar los cambios financieros a mas largo plazo que pueden afectar su capacidad de mantenerse al dia con sus pagos mensuales."

BK Wording:

"This temporary relief does not forgive any payments, however at the end of the relief period the account can be reviewed for longer term options in coordination with your Bankruptcy Attorney and the Bankruptcy Court. The approval letter you will receive will provide additional details. Would you like to begin the process?"

Spanish Translation: *"Este alivio temporario no perdona ningun pago, sin embargo, en el fin del periodo de alivio la cuenta puede ser revisada para opciones mas a largo plazo en coordinacion con su abogado de la bancarrota y la corte de bancarrota. La carta de aprobacion que usted recibira le proveera con detalles adicionales. Quisiera usted comenzar el proceso?"*

4. Advise the customer that accepting the short-term relief on their Home Equity account will place a restriction on that account.

"While you are protected under the payment suspension, your Wells Fargo Home Equity account will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing."

Spanish Translation: *"Mientras esté protegido por la suspensión de los pagos, su cuenta sobre el valor neto de la vivienda de Wells Fargo quedará restringida para nuevos adelantos y usted no tendrá acceso a los fondos de esta cuenta. Cuando finalice la suspensión de los pagos y cuando haya reanudado los pagos regulares, comuníquese con nosotros para solicitar un restablecimiento de la cuenta. Se proporcionará información adicional por escrito".*

5. Did the customer ask about refinance impacts?

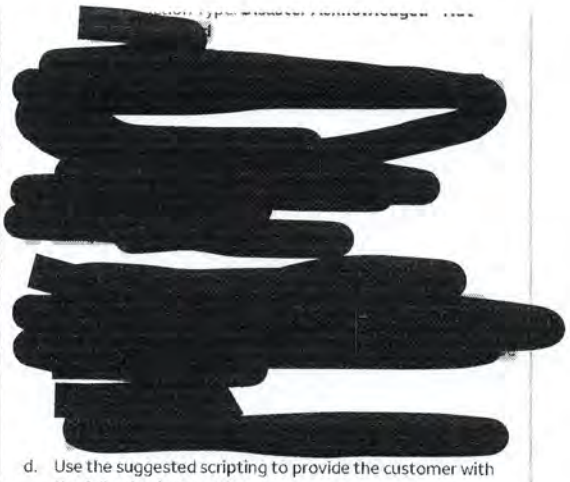
If	Then
The customer did inquire about refinance impacts	a. Advise the customer that their situation will need to be resolved by providing the following script: *"If applying with Wells Fargo to refinance your current mortgage loan or obtain a new mortgage loan, the hardship forbearance plan must be resolved prior to closing."* ***Spanish Translation:*** *"Si solicita a Wells Fargo refinanciar su préstamo hipotecario actual u obtener un nuevo préstamo hipotecario, el plan de aplazamiento de pagos por dificultades debe resolverse antes del cierre".* b. Proceed to the next step
The customer **did not** inquire about refinance impacts	Proceed to the next step.

6. Did the customer specifically inquire about a new home equity loan?

If	Then
The customer did not inquire about a new home equity loan	Proceed to the next step.
The customer did inquire about a new home equity loan	a. Use the following suggested scripting: *"After careful consideration, Wells Fargo has temporarily suspended all originations of home equity products after 5/1/20 until market conditions allow us to responsibly resume home equity originations."* ***Spanish Translation:*** *"Después de haberlo considerado detenidamente, Wells Fargo ha suspendido temporalmente todas las emisiones de productos sobre el valor neto de la vivienda después del 1 de mayo de 2020, hasta que las condiciones del mercado nos permitan reanudar de manera responsable las emisiones sobre el valor neto de la vivienda".* b. Proceed to the next step
The customer asks about an application that was submitted prior to 5/1/2020	a. Advise the customer that all Home Equity applications in process prior to 5/1/20 will be worked to completion ***Spanish Translation***: Todas las solicitudes sobre el valor neto de la vivienda en proceso antes del 1 de mayo de 2020 se gestionarán hasta su finalización. b. Proceed to the next step
The customer asks when Wells Fargo stopped accepting new Home Equity applications	a. Advise the customer that Wells Fargo temporarily stopped accepting applications for all new Home Equity Lines of Credit (HELOCs) after April 30. ***Spanish Translation:*** Wells Fargo dejo temporalmente de aceptar solicitudes para todas las nuevas líneas de crédito sobre el valor neto de la vivienda después del 30 de abril. b. Proceed to the next step

7. Did the customer accept the short-term relief?

If	Then
The customer accepts the short term relief	[redacted]



d. Use the suggested scripting to provide the customer with the following information:

"We have processed your request for relief. You will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period. We will contact you and work with you directly to understand your circumstances and identify the best way to help you going forward. If you would like more information, please visit WellsFargo.com for the most up to date information. Thank you for reaching out and keeping us informed during this difficult time."

Spanish Translation: *"Hemos procesado su solicitud de asistencia. Usted recibirá documentación en el transcurso de 7 a 10 días laborables, que incluye el plazo del período de suspensión de los pagos. Nos pondremos en contacto y colaboraremos con usted directamente para comprender sus circunstancias e identificar la mejor manera de ayudarle de aquí en adelante. Si desea más información, visite wellsfargo.com/es para obtener la información más actualizada. Gracias por comunicarse con nosotros y mantenernos informados en este momento difícil".*

e. Proceed to the next step

The customer **does not** accept the short term relief	a. Clearly notate the account that the customer is not wanting any additional COVID assistance at this time.  b. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"* End of process.

8. Determine if the customer is enrolled in ACH.

If	Then
The customer is not enrolled	No further steps required. End of process.
The customer is enrolled	a. Advise the customer that accepting the short-term relief requires cancellation of their ACH and they will need to re-enroll at the end of the relief period 



9. Determine when the next recurring withdrawal is scheduled to draft:

If	Then
There **is** a recurring withdrawal scheduled to draft for the current day	Proceed to the next step
There **is not** a recurring withdrawal scheduled to draft for the current day	No further steps required as the request in step 2 will remove the ACH during nightly processing.

10. Determine if the customer agrees to the draft occurring:

If The Customer	Then
Approcves the draft occurring	No further steps required.
Does not approve the draft occurring and the draft will be returned as NSF	Advise the customer they should contact their banking institution to request a stop payment on the next draft.
Does not approve the draft occurring and will need it refunded	a. Advise the customer that we will have to wait until the funds are cleared and posted on the account to issue the refund. b. [redacted]

Opt Out Inquiries

If the customer previously accepted the short-term forbearance relief but now no longer wants the relief and is requesting to opt out, complete the steps within this section.

1. Advise the customer of the following:

   "Once the payment suspension is removed, you will need to ensure all payments are made. Additionally, credit reporting will resume as normal and any late payments will be reported as such to the credit reporting agencies. Once late fees resume, you will be charged late fees for any late payments."

   Spanish Translation: *"Una vez que se elimine la suspension del pago, debera asegurarse de que se realicen todos los pagos. Ademas, los informes de credito se reanudaran de manera normal y cualquier pago atrasado se informara como tal a las agencias de informes de credito. Una vez que se reanuden los cargos por pagos atrasados, se le cobraran cargos por pagos atrasados."*

   - **If Active Bankruptcy:** *"Once the payment suspension is removed, the payments will come due on the account. Late charges will continue to be suppressed and credit reporting will remain in accordance with bankruptcy guidelines."*

     Spanish Translation: *"Una vez que se elimina la suspension del pago, los pagos se venceran en la cuenta. Los cargos por demora continuaran siendo suprimidos y los informes de credito permaneceran de acuerdo con las pautas de bancarrota."*

come due on the account. Late charges and credit reporting will remain suppressed."

Spanish Translation: *"Una vez que se elimina la suspension del pago, los pagos se venceran en la cuenta. Los cargos por demora continuaran siendo suprimidos."*

2. Determine the opt out steps based on the applicable scenario.

If	Then
The customer wants to opt-out of forbearance and doesn't want any assistance.	a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]
The customer wants to opt-out of forbearance and wants to pursue a long-term Home Preservation option instead.	a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]
The customer wants to opt-out of forbearance and the customer wants the deferral(s) reversed **Note:** This is only applicable to Wells Owned and Home Equity accounts	**If Wells Owned loan:** a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted] **If Home Equity account:** a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]

Payment Refund Requests from Impacted Customers

Customers impacted by COVID-19 may request to have payments returned. Below are examples of customer inquiries and applicable talking points:

- If the refund will cause the customer's account to become due for more than 1 payment:

A: *We are not able to refund payments that will cause your account to become past due.*

Example: Refunding March's payment in April.

- If the refund will not cause the customer's account to become due for more than 1 payment:

A: *We can refund payments that will not cause your account to become past due (due for a previous calendar month).*

Example: Refunding April's payment in April.

Q: ***You drafted my payment after I told you I needed assistance. I need that money back.***

A: *I apologize that happened. I can request a refund of that payment for you.*

WFHM

[redacted]

HEQ

[redacted]

Talking Points on an Approved COVID-19 Forbearance

The following talking points should be used once the customer has been approved for the COVID-19 related forbearance.

1. If the customer has questions on their forbearance terms, use suggested scripting:
   - *You will get a forbearance approval letter in the mail that will outline terms that include:*
     - *Suspension of payments for 3 months.*
     - *We won't charge late fees or report additional missed payments to the credit bureaus.*
     - *If the account is past due, we won't refer the account to foreclosure at this time.*
       Note for Home Equity Line of Credit accounts: While you are protected under the payment suspension, your Wells Fargo Home Equity account will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing.

At the end of the initial forbearance period, if you are still experiencing a hardship due to COVID-19, depending on your loan type, you may be eligible for a forbearance extension. This option would extend the payment relief for an additional three months.

- *If you escrow, we'll continue to make your tax and insurance payments during the forbearance period. At your next escrow analysis, you may have a shortage because ongoing funds are not coming in. If you receive additional assistance at the end of the forbearance period, we may be able to spread the shortage amount over 60 months or provide other options.*
- *If you do not escrow, those payments will continue to be your responsibility during the forbearance period.*

2. If the customer would like more information on post forbearance options that may be available determine the investor and delinquency to use the talking points below. If the customer doesn't need additional information proceed to the next step.

Note: Delinquency date and definition of current may differ depending on investor.

If	Then
Wells Owned / Home Equity • Excludes active and suspended foreclosure accounts with a first legal date • Excludes active bankruptcy	• After being approved for the initial relief period as monthly payments are missed, they will be moved to the end of the loan. The movement of payments will defer the interest and the principal portion will be moved to the end of the loan. This will happen in the middle of each month during the relief period. • The term of your loan will be extended by the number of payments missed during the relief period. • The process is automated and no further action will be required from you as long as you are ready to resume your normal monthly payments when the forbearance period ends. • If there is still an ongoing hardship after the approved forbearance comes to an end, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Bank and Private • Excludes active and suspended foreclosure accounts with a first legal date • Excludes active bankruptcy	• Any payments that become/became due during the relief period and are still unpaid at the end of the forbearance will be moved to the end of your loan. We will send a confirmation letter to you when the payments have been moved. The process is automated and no further action will be required from you as long as you are ready to resume your normal monthly payments when the forbearance period ends. • If there is still an ongoing hardship after processing the deferral of missed payments, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were current as of March 1.	• Any payments that became due during the relief period and are still unpaid may be moved to the end of the loan through our home assistance options available at that time. There will be minimal effort required on your part to complete this process, but we will need to work together when you are ready to resume your normal monthly payments. • The review will not require that you submit any documentation. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were delinquent as of March 1. **Includes Wells Owned/Bank and Private/Home Equity in the following statuses:** Active or suspended foreclosure accounts with a first legal date	• At the end of the relief period, all payments missed during the relief and any that were due prior will be due at that time. • We know this may be difficult, so please know we have options to assist you if you are not able to pay these missed payments. Those options may include bringing the account current on your own, a repayment plan to assist you in bringing the account current, or a modification review to determine eligibility. • Modification options may include a short-term increase in your contractual payment, a modification that moves your missed payments to the end of the loan, or a modification that adds your missed payments to your balance while extending your maturity date to provide a lower payment. • It's important that we determine the best option for you based on your financial needs when the forbearance comes to an end. • We will need to collect financial documentation as part of our modification review process.

the call.

3. Address any additional questions or concerns that the customer has.

   Note: You can direct the customer to check **https://update.wf.com/coronavirus/home-lending/** on a regular basis. This site will be updated as more information becomes available.

4. Advise the customer to call back during the last month of their forbearance (initial relief) if their impact has been resolved or if more assistance is needed and they are unable to bring the account current.

Talking Points on an Approved COVID-19 Forbearance - Active Bankruptcy

The talking points below are specific to customers with a loan in active bankruptcy. The talking points should be used once the customer has been approved for the COVID-19 related forbearance.

1. If the customer has questions on their forbearance terms, use suggested scripting:
   - *You will get a forbearance approval letter in the mail that will outline terms that include:*
     - *Suspension of payments for three months*
     - *We won't charge late fees or report additional missed payments to the credit bureaus*
     - *If the account is past due, we won't refer the account to foreclosure at this time*
   - *At the end of the initial forbearance period, if you are still experiencing a hardship due to COVID-19, depending on your loan type, you may be eligible for a forbearance extension. This option would extend the payment relief for an additional three months.*
   - *If you escrow, we'll continue to make your tax and insurance payments during the forbearance period. At the next escrow analysis, there may be a shortage because ongoing funds are not coming in. If you receive additional assistance at the end of the forbearance period, we may be able to spread the shortage amount over 60 months or provide other options.*
   - *If you do not escrow, those payments will continue to be your responsibility during the forbearance period.*

2. If the customer would like more information on post forbearance options that may be available:
   - You may have the ability to amend your Bankruptcy plan and you can work with your bankruptcy attorney to explore that option.

     Note: Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan.
   - Determine the Investor, BK Chapter and delinquency to use the talking points below.

     Notes:
     - If the customer doesn't need additional information proceed to the next step.
     - Delinquency date and definition of current may differ depending on investor.

If	Then
Wells Owned and **Active CH 7 BK** and **Account was current at the time the DISVIR log code was added**	• After being approved for the initial relief period as monthly payments are missed, they will be moved to the end of the loan. The movement of payments will defer the interest and the principal portion will be moved to the end of the loan. This will happen in the middle of each month during the payment relief period. • The term of the loan will be extended by the number of payments missed during the payment relief period. • The process is automated and no further action will be required from you as long as normal monthly payments are resumed when the forbearance period ends. • If there is still an ongoing hardship after the approved forbearance comes to an end, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Bank and Private and **Active CH 7 BK** and	• Any payments that become/became due during the payment relief period and are still outstanding at the end of the forbearance will be moved to the end of the loan. We will send a confirmation letter to you when the payments have been moved. The process is automated and no further action will be required from you as long as

the time the DISVIR log code was added	forbearance period ends. • If there is still an ongoing hardship after processing the deferral of missed payments, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were current as of March 1st and **Active bankruptcy** OR **Wells Owned/Bank and Private in the following scenarios:** • Active CH 7 BK, delinquent at the time the DISVIR log code was added, not in foreclosure (active or suspended with a first legal date) • Active CH 11, 12 and 13, not in foreclosure (active or suspended with a first legal date)	• As we discussed, you do have the ability to amend the bankruptcy plan and you can work with your attorney to do so. **Note:** Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan. • Any payments that became due during the relief period and are still outstanding may be moved to the end of the loan through our home assistance options available at that time. We will need to work together when normal monthly payments are ready to be resumed. • If eligible, a motion must be filed to obtain court consent. If court consent is obtained, we would be able to move forward with this option. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were delinquent as of March 1st and **Active bankruptcy** OR **Wells Owned/Bank and Private in the following scenarios:** • Active CH 7 BK that are in active or suspended foreclosure with a first legal date • Active CH 11, 12 and 13; that are in active or suspended foreclosure with a first legal date	• As we discussed, you do have the ability to amend the bankruptcy plan and you can work with your attorney to do so. **Note:** Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan. • If you are not able to amend your bankruptcy plan, then you will have the option to request a traditional Loss Mitigation review. That review will follow the normal process, which may include obtaining court consent. Proceed to the next step to answer additional questions and close the call.

3. Address any additional questions or concerns that the customer has.

   Note: Advise the customer to check **https://update.wf.com/coronavirus/home-lending/** on a regular basis. This site will be updated as more information becomes available.

4. Advise the customer to call back during the last month of their forbearance (initial relief) if their impact has been resolved or if more assistance is needed and they are unable to bring the account current.

Wells Fargo Deferral Talking Points

Wells Owned customers will receive monthly deferral of payments. Odd due dates are being processed on a monthly basis. Bi-weekly loans also have their payments added to the end of the loan after the payment grace period for up to three months worth of payments. We will NOT discourage customers from making payments if they are able, but we will present them with the facts and let them make the decision.

Important: If a customer asks about their total amount due, it is important to know that the total amount due in MSP & ERC will be impacted due to the interest portion of the deferred payment on Wells Owned loans.

[redacted]

- This deferred interest is not due as part of their monthly payment [redacted]

[redacted]

1. For customers who choose to make payments during the forbearance and have questions on whether or not their forbearance payments will be deferred, use the table below to provide them guidance:

If	Then
The account was **current** when the forbearance started And The customer does not make a payment or makes a partial payment	All contractual payments and interest will be deferred
The account was **current** when the forbearance started And The customer makes a full contractual payment	Nothing will be deferred for the month the payment was made. Payments made during forbearance will not automatically extend the forbearance
The account was **delinquent** when the forbearance started And The customer does not make a payment or makes a partial payment	Payments due during the forbearance will be deferred but outstanding delinquency will still be due. Customer can work with home preservation for payment assistance options.
The account was **delinquent** when the forbearance started And The customer makes a full contractual payment	Due date will moved forward and payments missed during forbearance will be deferred. Customer would have the missed payments deferred. If they paid the full amount owed prior to the forbearance, no further action would be needed. If there is any outstanding delinquency remaining after the forbearance the customer would need to work with home preservation for to cure the outstanding delinquency. Payments made during the forbearance will not automatically extend forbearance. **Example:** if customer was past due 2 months when they accepted the forbearance. If they made 1 contractual payment during the forbearance, they would still be 1 month past due at the end of the forbearance.

2. Customers may have questions regarding how the deferral amounts show on their online accounts or monthly statements. Once the first monthly payment is moved to the end of the loan the customer can view the deferred interest online and in their monthly statement. You can advise the customer:

   - The interest portion of the payment is placed in deferred interest.
   - The Activity section of the statement will display the interest and it will start with Fee Assessed. It is not a fee, this is the interest that was moved and you can review the Other column on your statement and you will see Deferred Interest and the amount that was deferred.
   - You can also see the Deferred Interest Balance under the Account Summary section.
   - The principal portion of the payment was moved to the Unpaid second principal balance.
   - You can see the total principal amount that was moved in the Unpaid second principal balance under the Account Summary on your statement.

This shows the principal coming out of your normal principal balance and being added to the second principal balance.

- These adjustments ensure that you are not charged any additional interest on the principal portion of the payment.
- The customer may also see the deferred interest online as a fee and you can assure them that it is the interest portion of the monthly payment that was moved.

Additional Questions The Customer May Have:

Q: Why was I charged a fee?

Answer: You were not charged a fee. We apologize the statement (or online) may be a bit confusing. Please refer to the Deferred Interest shown under the Other column in the Activity section of the statement.

Q: I thought these payments were being moved to the end of the loan. When do I have to pay these?

Answer: The payments have been moved to the end of the loan. We have extended your maturity date by one/two/three month(s). When you reach your original maturity date, the interest bearing principal balance, shown as Unpaid Principal Balance under the Account Summary will have been paid off. Then you will make one/two/three more payment(s), which will be allocated to the Deferred Interest Balance and the Unpaid second principal balance. Those additional payments will fully pay off the loan.

Q: If the customers pays in full, prior to the maturity date (refinance or sale), will the deferred interest and the 2nd UPB be due and payable at payoff?

Answer: Yes, the deferred interest and deferred principal (2nd UPB) will be required to be paid at payoff.

Forbearance and Credit Bureau Talking Points

When assisting customers who have questions related to their credit bureau report, refer to the following CBR talking points.

General CBR Talking Points:

We understand that you may not be able to make your regular payments during this difficult time. To help:

- We won't provide a past-due status for this account to the consumer reporting agencies.
- If current at the time of requesting assistance, the account will continue to report as current on your credit report during the payment suspension plan. We will also provide the credit bureaus with a comment code that says the account is in a forbearance plan.

If customer asks: How this will impact my credit?

- Your FICO score will not be impacted, and that this meets the requirements within the CARES Act. FICO is the credit score which is used by Wells Fargo for underwriting new credit/refinancing and also used by most lending companies. The credit bureaus may have independent credit score models. We cannot speculate how any of their proprietary models account for this; however, we do know, generally, those are not used for underwriting of credit.
- If you apply for credit while on a forbearance plan the lender will see the "account in forbearance" on your credit report. That may impact your ability to qualify for new credit or refinance.
- If delinquent at the time of requesting assistance, we will suppress credit bureau reporting during the payment suspension plan. Negative reporting is suppressed throughout the duration of the forbearance plan. However, your account will continue to show the delinquency status it was in prior to the forbearance plan. Once you bring your account current, we will report the account current on the next credit bureau report.

For those calling in with credit bureau questions or concerns:

FAQ to further assist:

Q. My credit score changed and you said it wouldn't? (Customer was current at time of request)

A. We provided information to the credit bureaus that the account was current with a comment code that it is in a forbearance. We have confirmed that your FICO score will not be impacted and that this meets the requirements within the CARES Act. FICO is the credit score which is used by Wells Fargo for underwriting new credit/refinancing and also used by most lending companies. The credit bureaus may have independent models which is what is showing up as a change. We cannot speculate how any of their proprietary models account for this, however we do know, generally those are not used for underwriting of credit. If you would like to review your FICO score, you can visit **www.myfico.com**. We want you to know that the consumer reporting agencies may be able to assist you with issues about your credit reporting. You may contact them at:

- Equifax Information Services, LLC
  PO Box 740256
  Atlanta, GA 30374-0256
  1-866-349-5191

PO Box 4500
Allen, TX 75013
1-866-200-6020

- TransUnion LLC
  Consumer Dispute Center
  PO Box 2000
  Chester, PA 19016
  1-800-916-8800
- Innovis Customer Assistance
  PO Box 1640
  Pittsburgh, PA 15230-1640
  1-800-540-2505

Q. If Wells Fargo did not report special comment code that indicates the account is in forbearance, would my score have dropped?

A. The comment code does not impact your FICO score. The credit bureaus may have independent credit score models. We cannot speculate how any of their proprietary models account for this, however, we do know, generally, those are not used for underwriting of credit.

Q. That isn't acceptable, I want to escalate:

A. Refer customer to ECMO (complaints) per escalation policy, warm transfer whenever possible. Confirm the customer wants to remain on the forbearance plan (see next point if they say no).

Note: Refer to the following announcement for additional information on how to escalate a call: **Call Escalation - Express Communication**

Q. If the customer wants to be removed from forbearance, bring account current, and have comment code removed:

A. Review with the customer the total amount due to bring the account current. In most cases this will be one of, or a combination of April and May payments.

- We want to make sure that you are ok to resume making monthly payments and that you are making an informed decision. Once we remove the account from the forbearance plan, payments will be due on time, late fees will be charged normally, and any past due payments will be reported to the credit reporting agencies each month.
- Would you like to make the payment now to bring the account current? If not, we need to receive the April payment within 3 days. We will update the credit reporting to reflect that you are and were paying normally. This will remove the special comment code of "account in forbearance" and report the normal monthly payment which will be retroactively applied to the first month of your plan. You will need to resume your normal monthly payments moving forward, as indicated on your billing statement. I see your next payment due date is (May xx, 2020).

Q. How long will it be before I can see the updates on my credit bureau?

A. Wells Fargo will submit updates to the credit bureaus within 2-3 business days. When they will appear in your credit report, however, depends on how much time it takes for the credit bureaus to process the updates, which may vary by credit bureau and may take longer than 2-3 business days.

- [Ensure the customer understands the payment needs to be received]
- Follow the opt out steps within the procedure to fully remove the forbearance

Making Payments During the Relief Period - WFHM

Customers who are covered under COVID-19 protections and wish to continue to make payments may be limited in their payment options.

At this time, payment options may include:

- **Check by Phone**: Follow your standard procedures for setting up a payment through Easy Pay Plus.

  Notes:

  - When using Easy Pay Plus to process a payment from a customer on an active COVID-19 forbearance plan with $0 payments and the installments are kept, team members may receive an error message that reads:
  - The system has encountered an error in processing your request. If you were adding a payment, click the Detail tab to refresh the system. If you were modifying a payment, click the Clear button to refresh the system.
  - When receiving this error message team members should allocate the payment to the Suspense field in Easy Pay Plus. Once the payment is allocated to suspense, Easy Pay Plus will allow the transaction to submit.
- **Mail Payments**: Customers can continue to mail their payments to the address on their monthly statement.

- Visit the **Payment Address Website** for additional details on where payments can be mailed.

- **Online Bill Pay**: Use the information below to assist customers who inquire about making their payments using either the Wells Fargo Bill Pay service or a Third Party Bill Pay Service provider.
  - Customer has a Wells Fargo checking or savings account
    - You may use the Bill Pay functionality on Wellsfargo.com using a Wells Fargo Checking or Savings account.
    - If you have a Wells Fargo checking or savings account and do not currently use Wells Fargo Bill Pay, search Bill Pay on Wellsfargo.com for additional information and help with paying your bill.
    - If you currently use Wells Fargo Bill Pay, you will be able to add a payee for your mortgage account and schedule your payment. If you need additional instruction, search Bill Pay on Wellsfargo.com.
  - Customer does NOT have a Wells Fargo checking or savings account
    - You may use your preferred bill pay service provider to make your payment from a non-Wells Fargo checking or savings account.

      Attn. Team Member: Provide the customer with the appropriate payee information based on their Client number.

708 Wells Fargo Home Mortgage P.O. Box 51120 Los Angeles, CA 90051-5420 1-800-357-6675	**936** Wells Fargo Home Mortgage P.O. Box 51162 Los Angeles, CA 90051-5462 1-800-357-6675

Note: The customer will also need their account number.

- **IVR**: Customers may have questions about the availability of making their contractual payments through the Interactive Voice Response (IVR) system.
  - Customers will be able to use the IVR systems for making their contractual payment during their forbearance. This will include customers on a repayment plan (RPP) or a forbearance plan.
  - Regular Customers less than 30 days past due will be able to pay 1 Contractual payment through IVR. They will not be required to pay outstanding fees.
  - Customers can make payments through IVR even if on recurring ACH

  Note: IVR options will not be available for active bankruptcy customers on a forbearance.
- **Online Banking:** Customers may have questions about the availability of their contractual payment through their online banking options.
  - Customers will be able to use the online banking for making their contractual payment during their forbearance. This will include customers on a repayment plan (RPP) or a forbearance plan.

Promise to Pays on Active COVID-19 Forbearance Plans:

- When a customer is on an active COVID 19 Forbearance plan a promise to pay should not be set up on the account. These accounts need to be treated the same as an Active Account Resolution Repayment Plan as entering a promise in DLQ1 will delete the current COVID 19 Forbearance plan.
- To validate a COVID 19 Forbearance plan has been set up on the account, review DLQ2.
  - Plan type will be 90,
  - Plan indicator (PI) will display an F.
  - Payment amounts for the three month plan will show as $0.00.
- The customer can set up a payment using Easy Pay but team members should not note the Forbearance date or amount in DLQ1 or use the Informal Plan Review (IPR) screen in ERC.

  Note: When the customer is on an active plan and does want to make a payment, add a long line comment noting their intentions but do not be enter an actual promise in ERC or manually in DLQ1.

Payment Acceptance on Foreclosure Loans:

Account Resolution and Foreclosure Call Center handling for payment acceptance on Foreclosure loans that are impacted by COVID-19.

All AR TMs:

- Loans with a FC workstation status of A or S that are under activated COVID-19 protection may appear as eligible to make payments within the EZ Pay system.
- Ensure these calls are warm transferred to the Foreclosure Call Center at 1-800-868-0043.

FC Call Center TMs:

should take place if the loan is not in active COVID-19 protection.

- If it is a COVID-19 related forbearance, then the call center would not accept a payment.
- Refer to the **Account Resolutions Payment Guidelines** procedure.

Determining Forbearance Approval Plans Dates

Utilize this section to help determine which months are included in the customer's forbearance.

Review DLQ2 to validate if the customer is already on an established forbearance plan. If so, utilize the DLQ2 screen to review what payments are included within the forbearance plan.

If the customer is not on a COVID-19 forbearance plan yet (no DLQ2 plan established) and is asking about what payments will be included in the forbearance plan, use the following table:

Date COVID-19 Coding Added (DISVIR Log Code/Disaster Virus Action Type)	Next Due Date	Payments Included Under The Forbearance Plan	Date Regular Payments Resume
April	April 1, 2020	April/May/June	Next payment due on July 1
May	May 1, 2020	May/June/July	Next payment due on August 1
May	June 1, 2020	June/July/August	Next payment due on September 1
June	June 1, 2020	June/July/August	Next payment due on September 1
June	July 1, 2020	July/August/September	Next payment due on October 1

Note: Loans that are paid ahead more than 1 month will not receive the forbearance automatically. If the customer determines they need additional payment assistance at a later date, we will have options available to assist them.

Frequently Asked Questions

Account Impacts:

Q: How does the short-term payment suspension (forbearance) affect my escrow account?

A: We'll continue to make your tax and insurance payments during the payment suspension period if you have an escrow account. However, the suspension of payments may result in a shortage in your escrow because it isn't receiving ongoing funds.

Attn. Team member: In some cases, the customer's shortage may be spread over a period of greater than 12 months. This is dependent on guidelines set forth by the investor.

Q: I saw on the news that interest rates are now 0%. How do I get 0% on my mortgage?

A: The Federal Reserve announced late Sunday that it was cutting its benchmark federal funds rate by 1% to a range of 0% to 0.25%. However, this does not directly equate to mortgage rates moving to 0%. If you'd like further information about rates for refinancing or purchasing a home, you can find details on Wellsfargo.com.

Q: Will I lose my HAMP incentives during the short-term relief period?

A: If the mortgage was modified under the Home Affordable Modification Program (HAMP) or Second Lien Modification Program (2MP) and you don't make a payment during this time, you could lose the pay-for-performance incentives. This is because you must remain in good standing with HAMP and 2MP.

Q: Will accepting the short-term relief have an impact on future ability to delete PMI?

A: If you are unable to make payments during the short-term relief period, your eligibility to delete mortgage insurance may be impacted.

Q: Will accepting the short-term relief have an impact on future ability to delete Escrow?

A: If you are unable to make payments during the short-term relief period, your eligibility to delete escrow may be impacted.

Q: Will the short-term relief have an impact on my ability to refinance my mortgage?

A: Use the responses below based on the customer's situation:

- Impact during short-term relief: If you would like to refinance your current mortgage loan or obtain a new mortgage loan, the forbearance plan must be resolved in advance.
- Impact outside short-term relief: If you would like more information about refinance or purchase options, you can find that online at wellsfargo.com or on the Wells Fargo mobile app.

A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Relief And Payment Assistance:

Q: Can I submit a request for assistance online?

A: Yes, you can sign into wellsfargo.com and begin the request process by selecting the link in the banner that is displayed on both the Account Summary and Account Details screens.

Notes:

- The link to the form is accessible from a banner on both the Account Summary and Account Details screens once the customer signs into their secure Wells Fargo Online session.
- Once the customer completes the form, their request for relief will be processed. They will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period.
- It may take 2-3 days to fully process the online requests.

Q: What does the short-term relief protection include?

A: Short-term relief includes the following:

- Payment suspension for 3 months.

  Note: Due to specifics related to each customer's account (such as the due date at the time relief was added), the 3 months that are suspended may not be the same for each customer. The exact time frame for each customer will be included in the documentation they receive. Additionally, once imaged, the letter is available in ICMP.
- We won't charge late fees or report additional missed payments to the credit bureaus.
- If the account is past-due, we won't refer the account to foreclosure at this time.

We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: Do I have to continue to make payments during the relief period?

A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor. If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: What happens if I don't, or can't, make my payments by the end of the relief period?

A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor. If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: Where can I find general information about payment options Wells Fargo has available?

A: We have general information available on WellsFargo.com/assist.

Q: Do I, or all borrowers, on the loan have to sign paperwork and send it back to receive to the relief?

A: No, it is not necessary to sign and return the Home Preservation Agreement.

Other Wells Fargo Businesses:

Q: I saw/read that Wells Fargo is changing their refinance/purchase guidelines. What's changing?

A: Due to unprecedented market conditions, we are temporarily changing some of our refinance/purchase guidelines. If you'd like more information about refinance or purchase options, you

someone I can connect you with our refinance experts.

Note: If the customer would like to speak with someone, cold transfer them to Centralized Retail at 1-800-443-3429. Make sure they are aware that they may experience longer than normal hold times.

Q: I saw/read information about assistance for small businesses. How do I get that assistance?

A: There is information regarding assistance that may be available to small businesses on Wellsfargo.com. You can click on the Learn more link in the Alert message for COVID-19 assistance and services. You can also click here to review additional talking points.

Note: This may be referred to as the Paycheck Protection Program (PPP).

Wells Fargo Work Accommodations:

Q: Are you working from home?

- If the employee is working from home:
  - I can assure you that we are very focused on continuing to serve our customers, maintaining the security of our systems, and keeping our team safe. While the majority of our contact center jobs cannot be done from home, where possible, Wells Fargo has been reducing in-office staffing. That means ensuring we have technology and equipment in place to provide the service and security that's required.
  - These are unprecedented times, and Wells Fargo is coming up with creative solutions to address today's environment.
- If the employee is working in a contact center:
  - No, I am in a contact center. Certain critical functions can be operated only in a secure office environment. Since the majority of our contact center jobs cannot be done from home, significant measures have been put in place to ensure our safety, including adhering to CDC's social distancing guidelines, staggering staff and shifts, and implementing an enhanced cleaning program.
  - These are unprecedented times, and Wells Fargo has taken – and will continue to take – steps to keep our team safe.

[redacted]

04/17/19 Component created

[redacted]



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Call Handling and Talking Points Related to COVID-19

This temporary document contains the most up-to-date information related to temporary call handling and talking points regarding COVID-19.

Important: Temporary processes related to COVID-19 will **not** be updated in existing *my work* procedures.

CUSTOMER INQUIRIES

Follow the below guidelines to respond to customer inquiries related to the current environment:

- Always respond with empathy. This situation is continuously evolving and our customers may be impacted on multiple fronts (work, school closings, child care closings, etc.).
- Keep the conversation focused on the customer's needs: It is important to keep the conversation focused on the customer's needs issue(s) and not get into details regarding specific impacts to Wells Fargo as a company.
- Use the following suggested scripting when needed:

  "We appreciate your patience as we handle your requests over the next few weeks. Like many other businesses, we are experiencing impacts to our staffing as employees are dealing with school closings and higher levels of absences due to the corona virus. Rest assured our focus is to provide the highest level of service as we work through these ever changing times."

- Refer to the Questions and Answers section of this document for specific talking points.

[redacted]

This section was updated 3/19/20 At 1:35 p.m. CT

DISASTER AND PAYMENT ASSISTANCE PROCESSING

[redacted]

This section was updated 3/20/20 at 3:20 p.m. CT

Use the steps below to process disaster assistance for customers.

Note: You may also refer to the COVID-19 Disaster Processing Exhibit for these steps.

1. Use the following script to communicate how we will assist:

   "Options are continuing to evolve and we are here to assist you through this challenging time. At this time, I can create an application for Home Assistance Options, which will place you on a temporary suspension of payments.

   During this short-term relief period, you may choose to pay a portion of your payment or nothing at all. That choice is yours. You will have credit bureau protection, late fee suppression, as well as additional protections that will be detailed in the letter you receive.

   Are you ok with me creating this application and starting the process?"

   Note: This provides immediate protection from late fees, negative credit reporting, and aging delinquencies.

2. If the customer accepts, process the impact in the Disaster Tool.

[redacted]

4. Provide the customer with the following information.

   - You will receive a letter/loss mitigation package within 7-10 business days.
   - If you need assistance beyond 3 months, we will work with you to determine available options.
   - At the end of 3 months any missed payments will be cared for based on guidelines set forth by the investor on your loan. This could range from extending the loan term by the number of missed payments, capitalizing the missed payments into the loan balance, or other modification options.
   - We will suppress negative credit reporting.

5. If the customer is enrolled in recurring withdrawal, be sure to discuss with them and update, suspend, or cancel as appropriate.
6. Confirm that we have a valid email address on record for the customer. This will allow them to log into and utilize **Your Loan Tracker** once they are in active Loss Mitigation.

FORECLOSURE SALES AND EVICTIONS

This section was added 3/18/20

On Monday, March 16th, all foreclosure sales and evictions were postponed through April 17th. We are awaiting formal guidance from HUD, FNMA, FHLMC, etc. on anything further than sales at this point and will keep you updated as decisions are made.

GEM / WORK REQUEST TURN TIMES

This section was updated on 3/20/20 at 2:30 p.m.

[redacted]

When customers, please ensure they are aware that there could be delays in getting them the information they are requesting.

Suggested Scripting:

"We appreciate your patience as we handle your requests over the next few weeks. Like many other businesses, we are experiencing impacts to our staffing as employees are dealing with school closings and higher levels of absences due to the corona virus. Rest assured our focus is to provide the highest level of service as we work through these ever changing times."

LATE CHARGE SUPPRESSION / WAIVER

This section was updated

Late charges will automatically be suppressed (or waived if already assessed before suppression can be added) for all customer accounts for the months of **March** – **April**.

This section was updated 3/17/20

This section was updated 3/17/20

[redacted]

QUESTIONS AND ANSWERS

Q: Does Wells Fargo report me to the credit bureaus if I make a late payment?

This question was updated 3/19/20 at 12:30 p.m. CT

A: If you are protected under short-term relief, you will have protection from negative credit bureau reporting during the short-term relief period.

Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Q: What happens if I'm not able to make my payment by the end of the month?

This question was added 3/17/20

A: If you will not be able to make your payment by the last day of the month, we have options available to help. You can visit wellsfargo.com/assist if you have general questions, or we can refer you to our Home Preservation department.

Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Q: What happens if I don't make my payments by the end of the relief period?

This question was added 3/20/20 At 3:20 p.m.

A: At the end of the relief period (3 months) any missed payments will be cared for based on guidelines set forth by the investor on your loan. This could range from extending the loan term by the number of missed payments, capitalizing the missed payments into the loan balance, or other modification options. If you need assistance beyond 3 months, we will work with you to determine available options at that time.

Q: I saw on the news that interest rates are now 0%. How do I get 0% on my mortgage?

This question was added 3/18/20

A: The Federal Reserve announced late Sunday that it was cutting its benchmark federal funds rate by 1% to a range of 0% to 0.25%. However, this does not directly equate to mortgage rates moving to 0%. If you'd like further information about rates for refinancing or purchasing a home, you can find details on Wellsfargo.com.

Attn Team Members: If the customer would like to speak with an HMC, please follow standard procedures for connecting to Centralized Retail.

Note: Hold times may be longer than normal due to current volumes.

Q: I saw on the news that mortgage payments should be suspended / deferred? How do I get a suspension/deferral?

This question was updated 3/19/20 at 12:30 p.m. CT

A: Options are continuing to evolve and we are here to assist you through this challenging time. At this time, I can create an application for Home Assistance Options, which will place you on a temporary suspension of payments. During this short-term relief period, you may choose to pay a portion of your payment or nothing at all. That choice is yours. You will have credit bureau protection, late fee suppression, as well as additional protections that will be detailed in the letter you receive. Are you ok with me creating this application and starting the process?

Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Attn Team Members: As soon as, or if, information becomes available regarding this topic, we will communicate any changes that may need to occur.

Q: Where can I find information about payment options Wells Fargo has available?

This question was added 3/19/20 at 12:30 p.m. CT

A: We general information available on WellsFargo.com/assist.

Attn Team Members: If the customer indicates they are impacted and need assistance, refer to the Disaster and Payment Assistance Processing section of this document.

Q: What does the short-term relief protection include?

This question was added 3/19/20 at 12:30 p.m. CT

A: Short-term relief includes the following:

- Late charge suppression
- Negative credit reporting suppression
- Aging delinquencies

[redacted]

This section was added 3/20/20 at 11:40 a.m. CT

EXHIBIT E

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

BAR ADMISSIONS:

State: New York and Texas

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

EDUCATION:

BENJAMIN N. CARDOZO SCHOOL OF LAW, J.D. 2002, New York, New York
- Cardozo Mediation Clinic
- Executive Editor, Cardozo Journal of International and Comparative Law
- Runner-up "Best Oralist" Jessup International Law Moot Court Competition (regional)

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

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

PROFESSIONAL ASSOCIATIONS & COMMUNITY INVOLVEMENT:

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

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

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

American Red Cross, Disaster Volunteer (2007-Present)

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

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

NOTEWORTHY DECISIONS:

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

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

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



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NOTEWORTHY DECISIONS (CONT.):

Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2015 WL 5438850 (Bankr. S.D. Tex. Sept. 24, 2015)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2015 WL 7572097 (Bankr. S.D. Tex. Nov. 24, 2015)(slip copy) leave to appeal denied by *Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2016 WL 4546884 (S.D. Tex. Sept. 1, 2016)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2017 WL 3382099 (Bankr. S.D. Tex. Mar. 20, 2017)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC, 2017 WL 3336086 (S.D. Tex. Aug. 4, 2017)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 576 B.R. 84 (Bankr. S.D. Tex. Sept. 28, 2017).

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

Haynes v. Wells Fargo Bank, N.A., 2014 WL 2761260 (E.D. Tex. 2014).
Haynes v. Wells Fargo Bank, N.A., 2015 WL 6746256 (E.D. Tex. 2015).

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

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

In re Rodriguez (Rodriguez v. Countrywide Home Loans, Inc. et al), 695 F.3d 360 (5th Cir. 2012).
In re Rodriguez (Rodriguez v. Countrywide Home Loans, Inc. et al), 517 B.R. 724 (Bankr. S.D. Tex. 2014).

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

In re Pastran, Slip Copy, 2010 WL 2773243 (Bankr. N.D.Tex. 2010).
In re Pastran, 462 B.R. 201 (Bankr. N.D. Tex. 2011).

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

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

PUBLICATIONS & HONORS:

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

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

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



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SPEAKING ENGAGEMENTS:

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

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

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

National Conference of Bankruptcy Judges Annual Conference, October 2017

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

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

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

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

National Consumer Law Center - TCPA Webinar, 2016

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

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

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

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

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

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

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

Oklahoma Bar Association 26th Annual Advanced Bankruptcy Seminar, 2011

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

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

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

MEDIA COVERAGE:

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

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MEDIA COVERAGE (CONT.):

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

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

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

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

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

LEGAL EMPLOYMENT HISTORY:

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

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

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

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

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

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

ARTWORK/ EXHIBITIONS:

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

Dallas Public Library, Dallas, Texas (2009)

Online portfolio: www.thadbartholow.com

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRIAN ECHARD, Plaintiff,	§	Case No. 2:21-cv-05080-SDM-KAJ
v.	§	
WELLS FARGO BANK, N.A.,	§	Judge Sarah D. Morrison
Defendant.	§	Magistrate Judge Kimberly A. Jolson

DECLARATION OF THEODORE O. BARTHOLOW, III
IN SUPPORT OF MOTION TO INTERVENE

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. My name is Theodore O. Bartholow, III. I am over the age of eighteen years, am of sound mind, and am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct.

2. A true and correct copy of my *curriculum vitae* is attached hereto as Exhibit A. As described therein, I have substantial experience litigating individual and class action consumer claims, including especially consumer claims against mortgage servicers, often in cases involving borrowers in or formerly in bankruptcy.

3. I am a longstanding member of the National Association of Consumer Advocates, the National Association of Consumer Bankruptcy Attorneys (having received NACBA's "Distinguished Service Award" for 2016), the American Bankruptcy Institute, and I was recently invited to join the John C. Ford American Inn of Court.

4. I have been a frequent speaker on consumer litigation-related topics at national conventions for the National Consumer Law Center, NACBA, the American Bankruptcy Institute, and other organizations.

5. Troy Harlow (WDVA-BK), Mark Estes (WDVA-BK), Kimberly Fewell (WDNC-BK), Beatriz Villegas-Rodriguez and Rodolfo Rodriguez (SDTX-BK) are named plaintiffs in the first-filed case (originally filed in bankruptcy court for the Western District of Virginia): *Harlow et al v. Wells Fargo & Co. and Wells Fargo Bank, N.A.*, Adversary Proceeding No. 20-07028 ("Harlow"). The District Court for the Western District of Virginia subsequently withdrew the referral of Harlow to the bankruptcy court in that district and then consolidated Harlow with the second-filed case, *Forsburg et al. v. Wells Fargo Bank, N.A. et al.*, Case No. 5:20-cv-00046 ("Forsburg").[1] Forsburg Docket No. 79.

6. Plaintiffs in the consolidated Forsburg case join in and support the instant motion to intervene.

7. Prior to agreeing to stay litigation in the Virginia cases in order to pursue mediated settlement efforts, the Forsburg plaintiffs had filed a motion to transfer venue of that case to the Northern District of California. Forsburg Docket No. 80. That motion was revived upon expiration of the stay in the Forsburg case, and it is now set to be heard by the District Court for the Western District of Virginia on December 14, 2021. Forsburg Docket No. 99. In the event the Forsburg plaintiffs' transfer motion is granted, the Forsburg plaintiffs and the other proposed Intervenors have agreed to seek consolidation of Forsburg with the other related cases pending in the Northern District of California upon transfer.

[1] Except where otherwise noted, references herein to the Forsburg case include the consolidated Harlow and Forsburg cases.

Origins of this Case

8. I first learned that Wells Fargo was placing borrowers' mortgage loan accounts into forbearance without their consent from an email list-serve post by my co-counsel, Malissa Giles, regarding Wells Fargo's filing of notices in several of her consumer bankruptcy clients' Chapter 13 bankruptcy cases, which notices falsely stated that her clients had requested forbearance for their mortgage loans even though her clients had made no such request.

9. After communicating with Ms. Giles and her partner (and husband) Tracy Giles (together, the "Giles"), along with my law partner, Karen L. Kellett, and O. Max Gardner III, an attorney based in North Carolina who works with our firm in an 'of counsel' capacity, we determined that Wells Fargo's filing of false forbearance notices for borrowers in Chapter 13 bankruptcy was a practice that warranted further investigation.

10. Ms. Giles was able to identify at least six of her firm's Chapter 13 bankruptcy clients with Wells Fargo serviced mortgage loans that had been the subject of false forbearance notice filings in the Bankruptcy Court for the Western District of Virginia. Among those clients were Troy Harlow and Mark Estes, who agreed to serve and were subsequently named as proposed class representatives in the first-filed class action adversary proceeding that our team filed in the Bankruptcy Court for the Western District of Virginia.

11. Based on Ms. Giles's identification of these practices by Wells Fargo, my firm and I conducted our own investigation of dozens of bankruptcy court dockets across the nation. As a result of this investigation, we were able to identify numerous additional instances of Wells Fargo filing false forbearance notices in bankruptcy courts in several states around the nation.

12. With the assistance of one of our other co-counsel in the Forsburg case, Abelardo

Limon, an attorney practicing in the Brownsville and McAllen Divisions of the Southern District of Texas, we identified Mr. Limon's bankruptcy clients, Chapter 13 debtors Beatriz Villegas-Rodriguez and Rodolfo Rodriguez, as additional victims of Wells Fargo's unauthorized forbearance scheme. Mr. Limon and I consulted with Mr. and Mrs. (Villegas-)Rodriguez, and they also agreed to serve as class representatives in the Harlow bankruptcy class action.

13. Similarly, Mr. Gardner and his colleague, Matthew McKee were able to identify borrowers in the Western District of North Carolina with loans that had been placed into forbearance without their consent, including Chapter 13 debtor Kimberly Fewell, a client of the Crow Law Firm residing in the Charlotte, North Carolina area. Mr. Gardner, the Crows, and I consulted with Ms. Fewell at length by telephone and Zoom conference regarding her situation, and she, too, agreed to serve as a class representative in the Harlow bankruptcy class action.

14. Over the course of more than a month after learning of Wells Fargo's practices, my team and I devoted significant time and resources in the early days of the COVID-19 pandemic researching and developing legal theories, confirming factual contentions, conferring regarding how to preserve our clients' claims, drafting our original class complaint, and preparing our strategy for the class action adversary proceeding that our team first filed in the U.S. Bankruptcy Court for the Western District of Virginia.

The Harlow Bankruptcy Adversary Proceeding Generated National Media Attention

15. Once the Harlow complaint was filed, my team and I prepared a press-release regarding our case and Wells Fargo's alleged unauthorized forbearance practices regarding Chapter 13 debtors. I provided our press-release to Pulitzer Prize winning journalist, Gretchen Morgenson (formerly of the New York Times and Wall Street Journal, currently with NBC News).

16. Ms. Morgenson expressed immediate interest in the story presented by our lawsuit. Ms. Morgenson interviewed our clients, Mr. Harlow and Ms. Fewell, and me regarding the issues presented by Wells Fargo's improper forbearance practices and associated false bankruptcy court filings. Based on her interview with Mr. Harlow, Ms. Morgenson arranged for an NBC News crew to film an interview of Mr. Harlow at his home in rural western Virginia.

17. On July 16, 2020, NBC News ran an online news story written by Ms. Morgenson and featuring the video interview of Mr. Harlow regarding Wells Fargo's unauthorized forbearance practices with respect to Chapter 13 bankruptcy debtors.[2] Ms. Morgenson's story quoted Mr. Harlow, Ms. Fewell, and me regarding our take on Wells Fargo's unauthorized forbearance practices and the false bankruptcy court filings described in our class action complaint.

18. After the NBC News story broke regarding our bankruptcy class action (Harlow), our office began receiving numerous calls from borrowers around the nation, including primarily borrowers with Wells Fargo-serviced mortgage loans who were not in bankruptcy but who were complaining that they, too, had had their loans placed into forbearance without their consent by Wells Fargo, causing them various harms.

19. Our team, including my colleagues at my firm, our co-counsel (the Giles and Mr. Limon), and myself, proceeded to interview the dozens of borrowers who contacted us regarding their experiences with Wells Fargo's unauthorized forbearance practices. Our interviews of these individuals confirmed our growing suspicion that Wells Fargo's practices were not limited to borrowers in Chapter 13 bankruptcy and that Wells Fargo was engaging in these practices for a

[2] Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him.* NBCNews, July 16, 2020, Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him. (nbcnews.com).

broad array of borrowers around the country.

20. Through our interviews, we identified several common elements of Wells Fargo's unauthorized forbearance scheme, including the placement of borrowers' 'linked' accounts into forbearance without their knowledge, placement of accounts of borrowers with pending loss mitigation applications seeking modifications and other work-out options into forbearance without their knowledge, automatic placement of borrowers' accounts into forbearance as a result of online and telephone inquiries (even when the borrowers did not request forbearance, including when borrowers specifically declined forbearance), among other practices that resulted in Wells Fargo placing borrowers' loans into unauthorized forbearance. We also identified numerous instances of Wells Fargo failing to remove loans from forbearance at borrowers' request and/or its refusal to correct prior credit reporting indicating that borrowers' loans were in forbearance when the forbearance was never authorized by the borrower.

21. Similarly, our interviews of the many people who called us after reading the NBC News article about our bankruptcy class representatives' experiences revealed that Wells Fargo's non-bankruptcy customers experienced an array of additional harms that were not applicable to our bankruptcy clients. These harms included derogatory credit reporting, reduced credit scores, loss of access to credit, inability to refinance existing mortgage loans, termination of existing lines of credit, and termination of automatic mortgage payment arrangements by Wells Fargo without warning, among other harms.

22. We also noted that the vast majority of the Wells Fargo customers who contacted us about their experiences with Wells Fargo's unauthorized forbearance practices reported having federally backed loans, including loans backed by Fannie Mae, Freddie Mac, and various Ginnie

Mae-affiliated entities, including the FHA, VA, and USDA. Based on these reports, I researched the publicly available servicing guidelines applicable to each type of loan in order to better understand Wells Fargo's potential motivations for placement of borrowers' loans into unauthorized forbearances. This research revealed that there was a COVID-specific loan workout servicer incentive structure established for Fannie Mae and Freddie Mac loans following a COVID forbearance, as well as unique COVID specific post-forbearance loan workout incentives for the FHA, VA, and the USDA.

23. I also learned, as a result of my research, that Wells Fargo could benefit in other ways from its placement of loans into COVID-related forbearance, including by having COVID-specific limitations on its obligation to advance principal and interest on Fannie Mae and Freddie Mac loans that had been subject of a COVID forbearance, and by having a right to purchase Ginnie Mae (FHA, VA, USDA) loans in COVID forbearance from the Ginnie Mae pools that owned those loans, at prices that were below-market value. Once purchased, Wells Fargo could either hold and collect the principal and (significantly above-market) interest payments on these loans, or it could re-pool and securitize these loans, profiting from the sale of the resulting securities, while retaining the servicing rights and the associated servicing revenue stream.

24. Based on my findings about these additional incentives/benefits that would accrue to Wells Fargo as a consequence of its COVID forbearance practices, I researched mortgage industry trade publications and the SEC filings and other reporting and statements by Wells Fargo and other major mortgage loan servicers to see whether I could identify any trends related to Wells Fargo's COVID forbearance practices. This research revealed that Wells Fargo appeared to be placing borrower loans into COVID forbearance at a pace that was many multiples greater than the

industry average and many multiples greater than every other individual servicer I investigated.

25. I also consulted with a well-respected credit reporting expert at the National Consumer Law Center, Chi Chi Wu, regarding the credit consequences that consumers would suffer as a result of having their mortgage loan accounts placed into forbearance without their consent.

The Second NBC News Story Results in U.S. Senators Contacting Wells Fargo

26. Ms. Morgenson at NBC News continued to express interest in the developing story regarding Wells Fargo's unauthorized forbearance practices, and she notified me that she was preparing a second story regarding Wells Fargo's unauthorized forbearance practices regarding non-bankruptcy borrowers. In connection with that second story, I put Ms. Morgenson in touch with Ms. Wu, and Ms. Morgenson interviewed our client, Gerald Forsburg, who had agreed to serve as a class representative in our forthcoming non-bankruptcy class action.

27. On July 22, 2020, a video report (including portions of NBC's interview with Ms. Wu) was aired by NBC News's flagship television broadcast, "NBC Nightly News with Lester Holt," which reaches millions of viewers across the United States each evening, along with a second online NBC News written story by Ms. Morgenson, further detailing Wells Fargo's unauthorized forbearance practices.[3]

28. Following the NBC Nightly News report and associated online reporting, Senators Elizabeth Warren (MA) and Brian Schatz (HI) sent the attached letter to Wells Fargo's CEO, dated July 29, 2020, in which the senators demanded that Wells Fargo investigate, explain and

[3] Gretchen Morgenson, *More Wells Fargo customers say the bank decided to pause their mortgage payments without asking*, NBC News, July 22, 2020, More Wells Fargo customers say the bank decided to pause their mortgage payments without asking (nbcnews.com); NBC Nightly News, NBC News Investigates (July 22, 2020) Nightly News Full Broadcast (July 22nd) (nbcnews.com).

correct its unauthorized forbearance practices. The July 29, 2020 Letter from Senators Warren and Schatz is attached hereto as Exhibit B.

29. Wells Fargo sent the attached two written responses to the senators' letter, on August 12, 2020 and September 4, 2020, in which Wells Fargo admitted (a) systematically placing borrowers' accounts into forbearance without being requested to do so and (b) that its unauthorized forbearance practices result in a variety of harms and potential harms for its customers. Wells Fargo's August 12 and September 4, 2020 letters responding to Senators Warren and Schatz are attached hereto as Exhibit C.

30. As a result of the additional NBC News online reporting and the NBC Nightly News television report, we received more calls from borrowers from around the country who reported that they were also affected by Wells Fargo's unauthorized forbearance practices. My team and I continued to interview these individuals, and we identified several additional potential class representatives and collected and documented their experiences over the course of multiple interviews.

31. Although the original Forsburg complaint (filed the day after the NBC Nightly News story broke) named only one class representative, Mr. Forsburg, it also described (with their permission) California residents Jorge Goytisolo and his wife's experiences and harms that resulted from Wells Fargo's placement of their mortgage loan account into an unauthorized forbearance. We subsequently amended our class complaint twice, adding additional causes of action and claims on behalf of additional class representatives, including Texas Plaintiffs Luis and Marisol Castro, Florida Plaintiff Jenna (Anderson) Doctor, and California Plaintiff Barbara Prado.

32. The current versions of the Harlow and Forsburg complaints are attached hereto as

Exhibits D and E.

The Harlow and Forsburg Cases Progress

33. On August 6, 2020, we filed a motion for preliminary injunction in the Harlow adversary proceeding pending in the Bankruptcy Court for the Western District of Virginia. Harlow Docket No. 26. That motion was resolved by agreement, with Wells Fargo consenting to entry of a nationwide preliminary injunction regarding its unauthorized forbearance practices with respect to borrowers in Chapter 13 bankruptcy. The Harlow (bankruptcy) court entered the agreed order establishing the attached nationwide preliminary injunction in the Harlow case on September 22, 2020. Harlow Docket No. 40, order on preliminary injunction attached hereto as Exhibit F.

34. On September 8, 2020, we entered into a stipulated protective order with Wells Fargo in the Harlow case, so that the parties could begin to exchange confidential discovery materials in connection with that matter. Harlow Docket No. 35.

35. On September 10, 2020, we entered into a stipulated protective order with Wells Fargo in the Forsburg case, so that the parties could begin to exchange confidential discovery materials in connection with that matter. Forsburg Docket No. 21.

36. On September 14, 2020, we filed a motion for a nationwide preliminary injunction in the Forsburg case, which sought to prevent Wells Fargo from continuing to engage in its unauthorized forbearance practices. Forsburg Docket No. 23. That motion was resolved by agreement, with Wells Fargo consenting to entry of the attached nationwide preliminary injunction regarding its unauthorized forbearance practices, and the Forsburg court entered the agreed order establishing the nationwide (non-bankruptcy) preliminary injunction on November 2, 2020. Forsburg Docket No. 54, order on motion for preliminary injunction is attached as Exhibit G.

37. On behalf of and with the assistance of the Forsburg team, I also worked with counsel for Wells Fargo to develop a discovery plan for the Forsburg case. In connection with those efforts, I negotiated an agreement with counsel for Wells Fargo regarding a process for exchanging detailed Rule 26 disclosures, including proposals for extensive early voluntary exchange of information and documents by the parties to aid in good faith early settlement efforts.

Virginia and California Counsel Unite

38. As noted in the motion to intervene, while we were prosecuting our case in Virginia, Wells Fargo was seeking to transfer the four related California cases to our venue in the Western District of Virginia. When Wells Fargo's motions were all denied by the district courts in California, it became apparent to our (Forsburg) team that the California cases were going to proceed in California.

39. Recognizing the importance of consistent rulings, competent representation of the classes, and efficient administration of the cases, we quickly reached agreement with the attorneys for the plaintiffs in the California cases (Green, Delpapa, Healy, Urista) to collaborate and coordinate on discovery, litigation strategy, and settlement efforts.

40. Collectively, since our (Forsburg) team has joined with counsel in the California cases, we have worked together effectively and efficiently, sharing expenses, distributing but not duplicating effort to the greatest extent possible, and otherwise working as a team toward our shared goal of obtaining a just, efficient, and appropriate outcome for the classes we seek to represent.

41. Meanwhile, counsel for Echard did not contact me or anyone on my team prior to filing their complaint in late January 2021. The first time anyone on the Echard team reached out

to me (or anyone else on the Forsburg team) was September 21, 2021 – after Echard's counsel discovered that our early mediation efforts with Wells Fargo had ended in impasse.

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

Dated: November 5, 2021

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

EXHIBIT A

Bartholow Ex. A

THEODORE O. BARTHOLOW, III ("THAD")
11300 N. CENTRAL EXPWY. SUITE 301 DALLAS, TEXAS 75243
TEL.: 214.696.9000 FAX: 214.696.9001 EMAIL: THAD@KBLAWTX.COM

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

BAR ADMISSIONS:

State: New York and Texas

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

EDUCATION:

BENJAMIN N. CARDOZO SCHOOL OF LAW, J.D. 2002, New York, New York
- Cardozo Mediation Clinic
- Executive Editor, Cardozo Journal of International and Comparative Law
- Runner-up "Best Oralist" Jessup International Law Moot Court Competition (regional)

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

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

PROFESSIONAL ASSOCIATIONS & COMMUNITY INVOLVEMENT:

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

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

Member, American Bankruptcy Institute (2016-Present)

Member, National Association of Consumer Attorneys (2014-Present)

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

American Red Cross, Disaster Volunteer (2007-Present)

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

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

NOTEWORTHY CASES:

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

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



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NOTEWORTHY CASES (CONT.):

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

Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2015 WL 1207012 (Bankr. S.D. Tex. Mar. 12, 2015)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2015 WL 5438850 (Bankr. S.D. Tex. Sept. 24, 2015)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2015 WL 7572097 (Bankr. S.D. Tex. Nov. 24, 2015)(slip copy) leave to appeal denied by *Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2016 WL 4546884 (S.D. Tex. Sept. 1, 2016)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2017 WL 3382099 (Bankr. S.D. Tex. Mar. 20, 2017)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2017 WL 3336086 (S.D. Tex. Aug. 4, 2017)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 576 B.R. 84 (Bankr. S.D. Tex. 2017).

In re Garza (Garza v. CMM Enterprises d/b/a Car Mart Motors #2), 605 B.R. 817 (Bankr. S.D. Tex. 2019).
In re Garza (Garza v. CMM Enterprises d/b/a Car Mart Motors #2), 2020 WL 718444 (Bankr. S.D. Tex. Feb 12, 2020).

In re Trevino (Trevino v. HSBC Mortgage Services, Inc., et al), 535 B.R. 110 (Bankr. S.D. Tex. 2015).
In re Trevino (Trevino v. HSBC Mortgage Services, Inc., et al), 615 B.R. 108 (Bankr. S.D. Tex. 2020).

Haynes v. Wells Fargo Bank, N.A., 2014 WL 2761260 (E.D. Tex. 2014).
Haynes v. Wells Fargo Bank, N.A., 2015 WL 6746256 (E.D. Tex. 2015).

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

In re Rodriguez (Rodriguez v. Countrywide Home Loans, Inc., et al), 517 B.R. 724 (Bankr. S.D. Tex. 2014).
In re Rodriguez (Rodriguez v. Countrywide Home Loans, Inc., et al), 695 F.3d 360 (5th Cir. 2012).

In re Think Finance, LLC, 2019 WL 8272638 (Bankr. N.D. Tex. Dec. 2, 2019).

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

In re Pastran, Slip Copy, 2010 WL 2773243 (Bankr. N.D.Tex. 2010).
In re Pastran, 462 B.R. 201 (Bankr. N.D. Tex. 2011).

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

In re Gulley (Gulley v. Countrywide), 436 B.R. 878, 2010 WL 3342193 (Bankr. N.D.Tex., August 23, 2010) (No. 07-33271-SGJ-13, ADV 08-03467).

In re Guevara (Guevara v. Wells Fargo), (unpublished) Opinion and Order on Motion for Summary Judgment (J. Hale) TXNB Adv. Proc. No. 08-03191 Docket No. 68 (2009), affirmed on appeal by TXND: *In re*



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Guevara (Guevara v. Wells Fargo), (J. Ferguson) Civil Action No. 3:10-cv-0547-F Docket No. 13 (8/18/2010).

Alexander v. Convergent Outsourcing, Inc., Cause No. 16-3318, filed in the United States District Court for the Southern District of Texas, Houston Division.

Jones v. Atlas Acquisitions, LLC, et al, Cause No. 16-03235, filed in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, reference withdrawn Jones v. Atlas Acquisitions, LLC, et al, Cause No. 18-01194, filed in the United States District Court for the Southern District of Texas, Houston Division.

PUBLICATIONS & HONORS:

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

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

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

SPEAKING ENGAGEMENTS:

Max Gardner's Litigating Rule 3002.1 Claims Boot Camp, July 2018

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

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

National Conference of Bankruptcy Judges Annual Conference – The Wolf (at the door) of Wall Street, October 2017

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

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

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

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

National Consumer Law Center - TCPA Webinar, 2016

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

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

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

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



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

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

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

Oklahoma Bar Association 26th Annual Advanced Bankruptcy Seminar, 2011

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

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

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

MEDIA COVERAGE:

Anna Hrushka, *Wells Fargo says it 'misinterpreted customers' intentions' in some forbearance cases*, Banking Dive, July 24, 2020, https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/.

Gretchen Morgenson, *Two senators demand answers from Wells Fargo following NBC News reports*, NBCNews, July 30, 2020, https://www.nbcnews.com/business/economy/two-senators-demand-answers-wells-fargo-following-nbc-news-reports-n1235276

NBC Nightly News, NBC News Investigates (July 22, 2020) https://www.nbcnews.com/nightly-news-netcast/video/nightly-news-full-broadcast-july-22nd-88158277601 (last visited July 31, 2020)

Gretchen Morgenson, *More Wells Fargo customers say the bank decided to pause their mortgage payments without asking*, NBC News, July 22, 2020, https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610

Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him.* NBCNews, July 16, 2020, https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.

NBCNews.com, *Wells Fargo paused mortgage payments for some customers without asking* (July 16, 2020), https://www.nbcnews.com/video/wells-fargo-paused-mortgage-payments-for-some-customers-without-asking-87834181676 (last visited July 31, 2020).

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

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LEGAL EMPLOYMENT HISTORY:

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

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

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

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

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

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

ARTWORK/ EXHIBITIONS:

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

Dallas Public Library, Dallas, Texas (2009)

Online portfolio: www.thadbartholow.com

EXHIBIT B

United States Senate
WASHINGTON, DC 20510

Bartholow Ex. B

July 29, 2020

Charles W. Scharf
Chief Executive Officer and President
Wells Fargo & Company
420 Montgomery Street
San Francisco, CA 94104

Dear Mr. Scharf:

We write to request more information about recent reports that Wells Fargo has been placing borrowers who are not delinquent on their loans in mortgage forbearance programs without their consent and putting consumers at risk of greater financial hardship amidst one of the worst economic downturns in our country's history. This includes reports of misrepresentations to bankruptcy courts about borrowers' requests for forbearance. These reports are highly disturbing given Wells Fargo's recent history of illegal behavior and inappropriate treatment of customers, including over a dozen scandals involving the creation of millions of fake customer accounts, illegal repossession of servicemembers' cars, wrongful foreclosure on hundreds of homes, illegal add-on charges to customers' accounts, and much, much more.[1]

This scandal-ridden history reveals a broken culture at Wells Fargo, and a bank that appears to be incapable of self-governance. The new reports raise even more questions about the inability of Wells Fargo and its leadership team to comply with the law and the needs of its customers.

In response to the recession caused by the spread of coronavirus disease 2019 (COVID-19), Wells Fargo provided a forbearance option that allows borrowers experiencing financial hardship to delay payments on their mortgages for up to six months.[2] Depending on the borrower's circumstances and whether or not the mortgage is federally-backed, he or she may have the option to extend the forbearance period for up to a total of 12 months as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.[3]

But in recent weeks, a report revealed that bankruptcy attorneys have identified multiple cases "where Wells Fargo has wrongly claimed that borrowers asked to pause their mortgage payments in forbearance plans," and "that the bank put through secondary requests for forbearance on behalf of homeowners who had asked to participate in the program initially but who no longer

[1] Yahoo! Finance, "Every Wells Fargo consumer scandal since 2015: A timeline," Ethan Wolff-Mann, August 8, 2018, https://finance.yahoo.com/news/every-wells-fargo-consumer-scandal-since-2015-timeline-194946222.html.
[2] Wells Fargo, "Answers to frequently asked Mortgage and Home Equity questions," https://update.wf.com/coronavirus/home-lending/?_ga=2.139940467.1576605720.1595353706-997203864.1594742087.
[3] *Id.*

wanted to."[4] Borrowers only learned of Wells Fargo's actions from their lawyers rather than from the bank itself.[5]

These forbearance filings that were based on nonexistent requests from customers "in Chapter 13 bankruptcy cases can put borrowers' homes at risk of foreclosure and represent a fraud against the bankruptcy court," in addition to harming their credit.[6] Moreover, because of the way loan servicers are compensated for forbearance, it is possible that Wells Fargo was able to profit on each forbearance filing.[7]

Another report found that the practice extended to a broader group of customers, and that borrowers in at least 14 states who were not delinquent on their loans had their mortgages wrongly put into forbearance without their knowledge or consent merely because they sought information on Wells Fargo's programs to help consumers having trouble paying their bills because of COVID-19-related economic difficulties.[8] These consumers were hurt in several ways by this practice: they did not receive credit for several months of payments, their credit reports may have been damaged, and they may have lost the opportunity to modify or refinance their mortgages while interest rates were at record lows.[9] Wells Fargo admitted to these practices in a statement, claiming that "we may have misinterpreted customers' intentions in a small number of cases."[10]

To be clear, we support mortgage servicers taking actions to help distressed borrowers during this pandemic, including providing forbearance to those who are in delinquency, and if Wells Fargo's actions are indeed isolated to a limited number of instances where there were errors, it is not our intent with this letter to discourage Wells Fargo from providing assistance to borrowers who need and request it. However, Wells Fargo's history of taking actions without the consent of consumers is cause for serious concern that this is another systemic failure at the bank.

Indeed, if these reports are true, they represent one more addition to a long list of inexcusable actions by Wells Fargo at customers' expense. The practices described in these reports are eerily similar to previous Wells Fargo scandals. The numerous instances of the bank's swindling of consumers ultimately resulted in the Federal Reserve Board of Governors placing an

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[4] NBC News, "Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him," Gretchen Morgenson, July 16, 2020, https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] NBC News, "More Wells Fargo customers say the bank decided to pause their mortgage payments without asking," Gretchen Morgenson, July 22, 2020, https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610.
[9] *Id.*
[10] *Id.*

unprecedented asset cap on Wells Fargo[11] and multiple consent orders issued by the Consumer Financial Protection Bureau (CFPB) and Office of the Comptroller of the Currency (OCC).

- Between January 2012 and July 2016, "[m]ore than 800,000 people who took out car loans from Wells Fargo were charged for auto insurance they did not need … push[ing] roughly 274,000 Wells Fargo customers into delinquency and result[ing] in almost 25,000 wrongful vehicle repossessions." Active-duty service members were among those harmed.[12] Wells Fargo signed settlements with 50 states and Washington, D.C.,[13] the OCC and the CFPB[14] to resolve those claims.

- Even after they were caught, Wells Fargo failed to refund money owed to customers who had paid off their car loans early. "Tens of thousands of customers" may have been denied proper refunds.[15] A spokesperson for the bank admitted that the failure stemmed from "a lack of oversight and controls."[16]

- For years, Wells Fargo "charged monthly fees to customers for dozens of products they didn't understand or know how to use."[17] These add-on charges were particularly egregious because the bank had entered into a consent order with the OCC about similar improper charges.[18]

- In 2015, the OCC found deficiencies in Wells Fargo's internal controls related to the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) rules in the Wholesale Banking Group. The consent order noted that "the Bank has failed to make acceptable substantial progress toward correcting previously identified BSA/AML problems that were previously brought to its attention."[19]

- Between January 2008 and July 2015, Wells Fargo repossessed vehicles belonging to 450 members of the military in violation of the Servicemembers Civil Relief Act

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[11] *In the matter of Wells Fargo & Company*, Docket No. 18-007-B-HC, "Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended," https://www.federalreserve.gov/newsevents/pressreleases/files/enf20180202a1.pdf.
[12] New York Times, "Wells Fargo Forced Unwanted Auto Insurance on Borrowers," Gretchen Morgenson, July 27, 2017, https://www.nytimes.com/2017/07/27/business/wells-fargo-unwanted-auto-insurance.html.
[13] American Banker, "Wells Fargo to pay state regulators $575M over phony accounts, other scandals," Rachel Witkowski, December 28, 2018, https://www.americanbanker.com/news/wells-fargo-to-pay-state-regulators-575m-over-phony-accounts-other-scandals.
[14] CNN Business, "Wells Fargo fined $1 billion for insurance and mortgage abuses,"Donna Borak, April 20, 2018, https://money.cnn.com/2018/04/20/news/companies/wells-fargo-regulators-auto-lending-fine/index.html.
[15] New York Times, "Wells Fargo, Awash in Scandal, Faces Violations Over Car Insurance Refunds," Gretchen Morgenson, August 7, 2017, https://www.nytimes.com/2017/08/07/business/wells-fargo-insurance.html.
[16] *Id.*
[17] Wall Street Journal, "Wells Fargo's Latest Challenge: Refunds for Pet Insurance, Legal Services," Emily Glazer, July 19, 2018, https://www.wsj.com/articles/wells-fargos-latest-challenge-refunds-for-pet-insurance-legal-services-1532009933.
[18] Comptroller of the Currency, In the Matter of Wells Fargo Bank, National Association, Sioux Falls, South Dakota, AA-EC-2015-79, https://www.occ.gov/static/enforcement-actions/ea2015-125.pdf.
[19] *Id.*

(SCRA).[20] And a second set of different SCRA violations came to light in a September 2016 settlement with the Department of Justice (DOJ) that brought the total number of servicemembers eligible for relief to 860.[21]

- Between April 2010 and October 2015, Wells Fargo made "calculation error[s]" that denied loan modifications to hundreds of eligible homeowners, leading to approximately 400 wrongful foreclosures.[22]

- Between March 2013 and August 2017, Wells Fargo failed to properly compensate certain lower-level employees for legally required break periods. A federal judge ordered the bank to pay more than $97 million in damages.[23]

- Wells Fargo disclosed in March 2018 that federal agencies were looking into the bank's wealth management business.[24] The federal agencies were examining "whether there have been inappropriate referrals or recommendations, including with respect to rollovers for 401(k) plan participants, certain alternative investments, or referrals of brokerage customers to the company's investment and fiduciary services business."[25]

- Wells Fargo employees in the bank's Wholesale Banking Group reportedly changed information on business customers' documents without authorization,[26] and the DOJ is investigating whether "there is a pattern of unethical and potentially fraudulent employee behavior tied to management pressure."[27]

- Wells Fargo has struggled to effectively remediate customers who were harmed by the company's misdeeds. It sent out 38,000 "erroneous communications to customers

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[20] Department of Justice, "Justice Department Obtains $5.4 Million in Additional Relief to Compensate Servicemembers for Unlawful Repossessions by Wells Fargo Dealer Services," press release, November 14, 2017, https://www.justice.gov/opa/pr/justice-department-obtains-54-million-additional-relief-compensate-servicemembers-unlawful.

[21] *Id.*

[22] Securities and Exchange Commission, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 30, 2018, Wells Fargo & Company, https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/second-quarter-10q.pdf.

[23] CNN Business, "Wells Fargo owes $97 million to California workers," Matt Egan, May 10, 2018, https://money.cnn.com/2018/05/10/news/companies/wells-fargo-worker-lawsuit-97-million/index.html.

[24] Securities and Exchange Commission, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended May 31, 2018, Wells Fargo & Company, https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/first-quarter-10q.pdf.

[25] *Id.*

[26] Wall Street Journal, "Wells Fargo Employees Altered Information on Business Customers' Documents," Emily Glazer, May 17, 2018, https://www.wsj.com/articles/wells-fargo-employees-altered-information-on-business-customers-documents-1526564170.

[27] Wall Street Journal, "Justice Department Probing Wells Fargo's Wholesale Banking Unit," Emily Glazer, September 6, 2018, https://www.wsj.com/articles/justice-department-probing-wells-fargos-wholesale-banking-unit-1536244490.

that it forced to buy unneeded auto insurance."[28] It "sent refunds to people who weren't the bank's customers; notified those who were harmed of incorrect amounts to be paid; and told people of coming refunds even though they had never gotten the insurance."[29] It did not promptly provide refunds to "as many as 110,000 customers who were charged improper fees to extend interest-rate commitments they received from Wells Fargo on their mortgages."[30] And it planned to create a refund request process that required customers "to agree to a refund through the mail before sending them money," despite its own estimates that "half or fewer" of affected customers would take the necessary steps to secure a refund.[31] In September 2018, the OCC rejected Wells Fargo's plan for remediating customers pushed into unneeded auto insurance, finding that the bank was not doing enough "to ensure it has found and compensated every affected driver."[32]

- In a February 2018 report, the CFPB found that Wells Fargo charged students three times more than its competitors for financial products marketed to them through agreements with their colleges.[33] The CFPB analysis examined bank fees at 573 colleges and found that the students at the 30 colleges with Wells Fargo products paid more in total bank fees than the students at the other 543 schools served by other banks combined.[34]

- A February 2019 report revealed that employees in the Wholesale Banking division of Wells Fargo "routinely falsified clients' signatures and otherwise doctored paperwork" in order to comply with a legal settlement with the OCC related to violations of anti-money laundering laws.[35]

- In August 2019, reports identified multiple instances of Wells Fargo closing their customers' accounts without authorization and subsequently charging overdraft fees.[36]

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[28] Wall Street Journal, "Wells Fargo Fumbles Efforts to Repay Aggrieved Customers," Gretchen Morgenson and Emily Glazer, February 10, 2018, https://www.wsj.com/articles/wells-fargo-struggles-to-repay-aggrieved-customers-1518295023.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] Reuters, "Exclusive: U.S. regulators reject Wells Fargo's plan to repay customers - sources," Patrick Rucker, September 11, 2018, https://www.reuters.com/article/us-wells-fargo-insurance-exclusive/exclusive-u-s-regulators-reject-wells-fargos-plan-to-repay-customers-sources-idUSKCN1LR2LG.
[33] Letter from Consumer Financial Protection Bureau to the Department of Education regarding Bureau's Office for Students and Young Consumers college-sponsored deposit and prepaid accounts analysis, February 5, 2018, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_foia_letter-to-department-education_record_2018-02.pdf.
[34] *Id.*
[35] The Capitol Forum, "Wells Fargo: Employees Doctored Signatures, Raising Possibility of Federal Penalties," February 14, 2019. https://thecapitolforum.com/wp-content/uploads/2019/02/Wells-Fargo-2019.02.14.pdf.
[36] New York Times, "Wells Fargo Closed Their Accounts, but the Fees Continued to Mount," Emily Flitter, August 16, 2019, https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html.

You were appointed nearly ten months ago after your two predecessors were dismissed for their incompetence and inability to institute meaningful reforms at the bank.[37] We had hoped that you would bring the needed change to Wells Fargo's culture following years of false promises and continued scandals, and we were initially encouraged by press reports that indicate that you were undergoing an "intense review" of the bank's operations and meeting with executives, "grilling them about the ways they do business."[38] But this recent reporting highlights the broken culture at the bank, and the need for Wells Fargo to remain under intense regulatory scrutiny until it is clear that the necessary changes have been made to ensure that the bank is truly committed to its consumers.[39]

Given our ongoing concerns about the bank's ability to comply with the law and treat its customers fairly, we ask that you provide the following information no later than August 12, 2020.

1. Please provide a description and written copies of Wells Fargo's policies with respect to:
    a. The use of court documents to determine whether to file for forbearance on behalf of a customer during COVID-19;
    b. Any other circumstances under which Wells Fargo would enter a consumer who is not delinquent on their loan into forbearance without a customer's explicit request;
    c. The steps Wells Fargo takes to notify consumers that their loan has been placed into forbearance, including the text of any letter that goes out with the notification of forbearance as well as the time that elapses between a consumer being placed into forbearance and the consumer receiving that letter;
    d. The communications with bankruptcy trustees after Wells Fargo places a loan in forbearance;
    e. What information Wells Fargo furnishes to credit bureaus for consumers who have been placed into forbearance, including all special comment codes;
    f. How Wells Fargo manages requests from customers who initially indicated they wanted to participate in forbearance programs, but after receiving information about the program, no longer want it.

2. For how many mortgage borrowers has Wells Fargo provided forbearance since March 18, 2020? Of that number, how many of those borrowers were current on their loan and did not explicitly request and provide appropriate consent for their loans to be placed in forbearance? Of that number, how many of those loans were government-backed?
    a. What actions has the bank taken to identify these cases and remunerate borrowers for any damage caused by Wells Fargo's actions?

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[37] Wells Fargo, "Wells Fargo Names Charles W. Scharf Chief Executive Officer and President," press release, September 27, 2019, https://newsroom.wf.com/press-release/corporate-and-financial/wells-fargo-names-charles-w-scharf-chief-executive-officer.

[38] Bloomberg, "Wells Fargo's Poker-Faced CEO Sows Unease While Considering Change," Hannah Levitt, December 27, 2019, https://www.bloomberg.com/news/articles/2019-12-27/wells-fargo-s-poker-faced-scharf-sows-angst-while-mulling-change.

[39] *Id.*

3. Has Wells Fargo identified circumstances under which the bank has filed official court documents that indicate a borrower has requested forbearance when they have not explicitly requested it and provided appropriate consent?
    a. If so, how many instances has this occurred and what remediation efforts are underway?

4. Has Wells Fargo been compensated for forbearance filings not requested by the borrower? If so, how much has Wells Fargo been compensated?

5. How does Wells Fargo handle funds received from borrowers who continue making full or partial payments while their loan is in forbearance, including any loan that was current but has been placed in forbearance without a request from the borrower?

6. For current borrowers whose loans Wells Fargo has placed into forbearance without the borrower's request, what special comment codes has Wells Fargo furnished to credit reporting agencies, such as a disaster code, or any other special comment code, even if the loan is reported as current? If so, has the bank taken any steps to correct the information with the credit reporting agencies?

Sincerely,

Elizabeth Warren
United States Senator

Brian Schatz
United States Senator

EXHIBIT C

WELLS FARGO

Bartholow Ex. C

Wells Fargo Home Lending
MAC F2401-064
One Home Campus
West Des Moines, Iowa 50266

CONFIDENTIAL TREATMENT REQUESTED

August 12, 2020

The Honorable Elizabeth Warren
The Honorable Brian Schatz
United States Senate
Washington, DC 20510

Dear Senators Warren and Schatz:

I am writing in response to your July 29, 2020 inquiry into Wells Fargo's provision of mortgage forbearances to customers facing COVID-19-related hardships.

On March 9, 2020—before the passage of the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act")—Wells Fargo began offering its mortgage customers payment assistance, including 90-day forbearances, even if they were previously behind on their payments. We sought to make it as easy as possible for our customers to obtain relief and have provided over 964,000 mortgage forbearances. By the end of March, however, as more customers began to experience the unprecedented economic effects of the global pandemic, we received a significantly higher than usual volume of inquiries regarding mortgage payment assistance. At its peak, the call volume was roughly 2.5 times greater than the average daily volume in February. Although we shifted resources to attempt to address the increased volume, the sudden, soaring demand for mortgage forbearances, other payment assistance, and information made it difficult to make contact with all of our customers. In an attempt to ensure that all customers received the payment relief they needed, we made a decision to provide mortgage forbearances to certain customers who had made an inquiry or expressed hardship but had not explicitly requested a forbearance.

As we have stated publicly, we undertook a customer-focused approach to ensure that every customer who needed a forbearance would receive one without unnecessary delay. Our actions were not motivated by any financial benefit to Wells Fargo. We do not receive, nor do we pay our employees, any incentive fees or other compensation for placing customers in forbearance; to the contrary, we benefit most when customers make their payments and remain current on their loans.

We sincerely apologize to any customer who received a forbearance and did not expressly request one, and are actively working to assist each customer who was negatively affected. We have made changes to our practices to require an affirmative request from a customer before providing a forbearance. We also are proactively reaching out to our customers to identify cases in which we provided an unrequested forbearance to verify that our customers are receiving only the assistance they need and want. For every customer who received an unwanted forbearance, we are removing the forbearance, adjusting credit reporting, and working to make the customer whole.

I. Customers to Whom We Provided Forbearances Without an Explicit Request

We have identified to date the following circumstances in which we provided mortgage and home equity forbearance relief to customers who did not explicitly request it.[1] In early March, Wells Fargo began providing forbearances to customers in active bankruptcy proceedings if we identified a court filing indicating that the customer may have been suffering a COVID-19-related hardship. In response to concerns expressed by customers and their bankruptcy attorneys after Wells Fargo filed notices of forbearance in the bankruptcy court proceeding, in May we began to communicate with customers' bankruptcy attorneys (or with customers directly if they were unrepresented) to confirm prior to filing a forbearance notice with the court that customers wanted to remain in forbearance. We have since ceased this practice entirely.

From late March until early April, we automatically provided forbearances to customers who sent a secure email or contacted us by phone regarding a COVID-19-related hardship, as well as to customers who requested a fee waiver, even when the customers' communications did not specifically request a forbearance. We subsequently changed our practices to ensure that customer service representatives expressly confirmed a customer's intent before providing a forbearance.[2] In addition, in response to the significantly increased call volumes in March, Wells Fargo implemented two new means by which customers could request payment assistance: a form available through Wells Fargo secure online banking and an interactive voice response ("IVR") unit, both of which included updated explanations and acknowledgement of customer intent.

In late March, Wells Fargo also granted forbearances to eligible Home Preservation customers (including some customers in active bankruptcy proceedings) who at the time: (i) were in the loan modification application process; or (ii) had been denied a forbearance before the pandemic. These are customers who often are already in default and had reached out to Wells Fargo to modify their loan because they were no longer able to make their payments. We provided these forbearances at one time for all customers in those two categories and have not done so again.

Finally, in late March and early April, when a customer requested forbearance on one of the customer's mortgage or home equity accounts, we extended the forbearance to that customer's mortgage-linked accounts. We have ceased this practice.

II. Notification to Customers Who Received COVID-19-Related Forbearances and Handling of Payments

Wells Fargo sends a forbearance confirmation letter to all customers placed in a COVID-19-related forbearance. On April 10, 2020, we began sending confirmation emails in addition to the letters. Customers' statements also reflect when they have received a forbearance.[3] These communications generally note that short-term payment relief provides the customer with assistance right away, other payment assistance options may be available, and the customer can contact Wells Fargo if a forbearance is not right for him or her.

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[1] Production numbers WF-00000001–WF-00000042 include a sample of policies and customer service call scripts relevant to these efforts. All documents described in this letter have been shared via a link under separate cover.

[2] *See, e.g.*, WF-00000001.

[3] Production numbers WF-00000043–WF-00000070 include a sample of forbearance confirmation communications from March through July 2020.

In addition, before the expiration of an initial 90-day forbearance period, we attempt to contact customers to notify them if an extension is available and ask if they need an extension. If a customer does not respond to our efforts to contact them, Wells Fargo automatically extends the forbearances for another 90-day period and notifies the customer of the extension. We continue to do this to ensure that customers receive the payment relief available under the CARES Act.

Wells Fargo's policy is to apply full payments made during a forbearance period toward payment of the loan principal, interest, and escrow as per normally applicable processes. If we receive less than a full payment (subject to certain thresholds), the funds are held (without charging late fees or other fees) until a full payment is received and is then applied. For accounts in bankruptcy, payments are applied per the bankruptcy plan.

III. Steps to Assist Customers Who Wish to Remove Forbearances

We are committed to identifying customers who received a forbearance and did not want it and making things right for any customer who tells us he or she received an unwanted or unneeded forbearance.[4] This includes customers we identify through the processes described below in Section III. The steps we may take to assist customers include:

- **Removal of forbearance**: When a customer asks to remove a forbearance, we remove it. Customers can request to remove a forbearance at any time by phone, online, or through the IVR.

- **Adjustment of credit reporting**:

    - In response to your question, for Home Lending customers who were placed in forbearance because of a COVID-19-related hardship, our credit reporting is consistent with the requirements of the CARES Act and Consumer Financial Protection Bureau and Consumer Data Industry Association guidelines. If the borrower is "Current" (0-29 days past due) at the time that assistance is provided, we place the borrower on a forbearance and report the account as "Current" and in forbearance using an "on forbearance" comment code. If the borrower is "Delinquent" (30+ days past due) at the time that assistance is provided, we suppress credit reporting of any additional delinquency, so the customer is not reported any worse than they had been prior to entering into the forbearance. Finally, if a delinquent borrower brings himself or herself to zero days past due, we begin to report the borrower as "Current" and in forbearance.[5] If one or more customers on an account is in bankruptcy, we suppress credit reporting, so we do not report a forbearance to the credit bureaus for these accounts.

    - If a customer asks to remove a forbearance that was not requested and unwanted, for all customers who made each payment and did not go 30 days past due during the forbearance, we will remove the forbearance comment code for credit bureau reports and adjust the payment history to reflect a status of "current." It is our policy to submit those

[4] Production numbers WF-00000108–WF-00000122 include a sample of policies related to the forbearance removal process.

[5] Production numbers WF-00000091–WF-00000107 include a sample of policies and customer service call scripts related to the credit reporting of customers in forbearance.

adjustments to credit bureaus within two business days of the customer's request to exit forbearance.

- **Withdrawal of bankruptcy filing of notice of forbearance**: If a customer in bankruptcy proceedings does not want a forbearance, we remove it and no notice will be filed in bankruptcy court. If a notice has been filed, we withdraw, or seek permission to withdraw, it and determine the possible impact to the customer if a bankruptcy trustee withheld disbursement as a result of the forbearance. If we identify such an impact, we work with the customer to correct it.

- **Refinancing and line of credit**: If a customer did not utilize a forbearance, once the forbearance is removed, we will allow for immediate refinancing if the customer is eligible. If a customer's Wells Fargo line of credit was restricted as a result of a forbearance caused by an error by Wells Fargo, we will reinstate the line of credit.

- **Review of loan modification decisions**: For any customer who sought a loan modification that was declined, we will review the declination to ensure that it did not result from the customer's forbearance plan. For any customer who was placed in forbearance and was approved for a loan modification instead of a forbearance, we will review the approval to ensure that the interest rate and payment are less than or equal to what they would have been without the forbearance. We will also review all loans that were transferred to another servicer to ensure correct information was transferred.

IV. Efforts to Identify Customers Placed in Forbearance Without an Explicit Request

We are working to identify customers who have received a forbearance they did not request and do not want. As described below, we are addressing all complaints to that effect received from our customers, and we are affirmatively reaching out to customers where we do not have evidence of a clear request for a forbearance.

a. Outreach to Customers to Verify Desire for Forbearance

In the majority of cases, we have a high degree of confidence that the forbearances we provided were requested by customers because they were requested through the online or IVR channels that required acknowledgement of customer intent, or we otherwise have a documented customer request or acknowledgement that the forbearance was wanted.

We are actively conducting outreach to customers for whom we do not have a clear customer request or acknowledgement that the forbearance was wanted. As part of this process, we will work with the customers to verify that the customers are receiving the payment relief they need and want, and to assist them as described in Section II if they do not want the forbearance we provided.

b. Quality Assurance of Customers Who Have Asked to Remove Forbearances:

In addition, we will conduct a quality assurance review of our records of a sample of customers who were provided a forbearance and have since asked for it to be removed to ensure that the process is effective, and the customer's request for forbearance assistance removal and required account adjustments were correctly completed. If this sampling reveals any issues, we will undertake further reviews and act to ensure that the removal process was properly handled.

c. Addressing Customer Complaints About Unwanted Forbearances

Since March 9, 2020, we have provided over 964,000 mortgage forbearances, over 821,000 of which are in connection with federally-backed loans. To date, we have received and reviewed approximately 1,600 complaints from customers telling us that they did not request a forbearance. We have sought to assist each and every customer who has been affected by an unwanted forbearance, and we resolved these complaints on average in 14 days based on the customer's preference—for example by removing the forbearance, placing the account back into a traditional loan modification review, and adjusting credit reports. We will address any additional complaints about unwanted forbearances as they are received.

V. Lack of Compensation to Wells Fargo for Forbearances Not Requested by a Customer

Wells Fargo does not receive incentive fees or other compensation for placing customers in forbearance, and we benefit from helping customers stay current on payments, which is how mortgage servicers earn revenue. This revenue is delayed or cut off entirely if customers are not making payments. Indeed, it is significantly more expensive to service a loan in a forbearance plan than to service performing loans.

Some government-sponsored enterprises pay incentive fees if customers enter into and comply with certain *post*-forbearance Home Preservation alternatives such as repayment plans, modifications, or other liquidation options. If a customer immediately pays all missed payments at the end of the forbearance, or if the customer goes into foreclosure, there is no incentive payment at all. These incentive fees are significantly less than the costs of servicing loans in forbearance.

In addition, customer service representatives in the Consumer Lending Group's Servicing Group do not receive any incentive compensation for placing customers in forbearance. They are not incentive or bonus-eligible, including in connection with the handling of, responding to, receiving, and processing of customer requests for assistance.

* * *

From the start of the pandemic, Wells Fargo has made it a top priority to help our customers receive the assistance they need. We regret that we provided some customers mortgage forbearances they did not want. We are working with our customers to ensure that they are receiving only the payment relief that they want and need, and we will address any adverse consequences that resulted from our actions.

* * *

The information in this letter and in the enclosed production includes confidential business and financial information that Wells Fargo considers proprietary and competitively sensitive, and that Wells Fargo actually and customarily treats as private. Disclosure of such information would harm Wells Fargo and undermine the competitive financial marketplace. These materials are labeled as "Confidential," and Wells Fargo respectfully requests that these materials be treated as confidential under all applicable rules. If you should nonetheless consider the public release of such materials, Wells Fargo respectfully requests that it be given advance notice and an opportunity to discuss the matter with you, so that Wells Fargo may explain the basis for objecting to public release of the materials.

Additionally, this information and Wells Fargo's productions may contain material nonpublic information. Pursuant to the Stop Trading on Congressional Knowledge Act of 2012 ("STOCK Act"), Pub. L. 112-105, 126 Stat. 291, non-public information derived from a person's position as a Member of Congress or employee of Congress

or gained from the performance of such person's official responsibilities may not be used as a means for making a private profit. Misuse of such information, including unauthorized disclosures to third parties outside of the Congress, may also give rise to liability under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

By the provision of such documents and information, Wells Fargo does not intend to waive and has not waived the attorney-client privilege or any other protections.

Sincerely,

Kristy Fercho
Executive Vice President
Head of Home Lending

Home Lending Portal

Home Policies **Procedures** Forms Team Member Manager

Procedures: Default Collections And Customer Contact

Handling Calls for COVID-19 Impacted Customers - DCCOL97180

[redacted]

[redacted]

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For internal Use

Suggested Inbound and Outbound Opening Scripts

The following are some suggested scripts for opening an inbound or outbound call:

Outbound:

"Good Morning/Afternoon, my name is [team member name], I'm calling from Wells Fargo and this call may be monitored or recorded. May I speak with ____?

Thank you for taking my call Mr./Ms. _____. I hope you and your family are safe. We appreciate you taking the time to speak with us. Have you or anyone in your family been impacted as we may have options available to assist you? [State Mini-Miranda (if required)]."

Inbound:

"Welcome to Wells Fargo, I'm [team member name], [Recording Disclosure]. I look forward to assisting you. Who do I have the pleasure of speaking with today? I hope you and your family are safe. We appreciate your patience at this time. We are here to assist you during this unprecedented time, we have options available for payment relief if you have time to discuss them now – have you been impacted by the recent events?"

COVID-19 Impact Calls from Customer or Authorized Third Party

1. The call recording disclosure is required to be read to all inbound callers and any parties entering the conversation during any portion of the call. Refer to the **Universal Greeting Scripts - Account Resolution** procedure for further information.

2. Verify the caller by referring to the **Authentication Exhibit** for further information.

3. If attorney representation is present on the account, do not continue discussing the account with the customer. Refer to the Customer Inbound Call with Attorney Representation Present section of the **Attorney Representation - Specialty Call Team** procedure for more information on handling the call.

4. Determine if right party contact (RPC) is made:

If The Caller Is A	Then
Borrower, co-borrower, authorized third party or a confirmed successor in interest and an RPC is made	a. Refer to the **Reading the Mini-Miranda, Recording, and Bankruptcy Disclosures** procedure for further information b. Proceed to the next step.
Unauthorized third party or a potential successor in interest or an RPC is not made	Refer to the **Handling Unauthorized Third Party Requests** procedure for further information End of the process.

Note: If a call is received from an unauthorized third party, the team member takes the call and lets the unauthorized third party know the COVID-19 relief benefits that are available. The team member can discuss the COVID-19 relief benefits, but accepting or declining the relief needs to come from a borrower or authorized third party (A3P).

- Authenticate the caller by obtaining the information below:
  - First name or common nickname, last name of the customer as it appears on the system (as well as the suffix, for example: Jr., Sr., I, II, III).
  - The full name of the caller.
  - Account number.
  - If the caller cannot verify the account number, he or she may verify one the following:
    - The last four digits of the customer's Social Security Number (SSN).
    - The property or mailing address.
- Always attempt to verify the caller's name, the customer's name, and the account number before moving onto the optional items. If an unauthorized third party is unable to authenticate, escalate to the manager to transfer the call.
- If a call is received by a borrower or authorized party reporting the death of a borrower as a result of the pandemic, educate and update the relief and refer to the **Notifications of a Deceased Customer** procedure for the next steps.

5. At the start of every call, express empathy for the customer's circumstance when impacted by the pandemic. Be empathetic and show compassion and kindness immediately and throughout every

Note: Total amount due is not required to be quoted to customers on active COVID-19 forbearance loans as the intent is not a collect a debt. It is okay to discuss payment details if the customer asks.

Examples:

- *"We realize this can be a challenging time due to the pandemic but want you to know that Wells Fargo does have some options that we may be able to offer to help you during this difficult time."*
- *"Wells Fargo cares about you as our customer and we are here to help you during this difficult time. We would like to discuss possible options Wells Fargo may have to help you through this."*
- *"Thank you for calling us. I am sorry to hear that you have been impacted, but I am here to help. Our thoughts are with you and your loved ones during this challenging time. Your safety is the most important thing. Please know that we are here to help you through this difficult time."*

Spanish Translation:

- *"Nos damos cuenta que estos son momentos desafiantes debido a la pandemia, pero queremos que sepa que Wells Fargo ofrece algunas opciones para ayudarlo durante estos momentos difíciles."*
- *"Wells Fargo se preocupa por usted como cliente y estamos a su disposición para ayudarle durante este momento difícil. Nos gustaría analizar las posibles opciones que Wells Fargo puede tener para ayudarle a atravesar esta situación"*
- *"Gracias por llamarnos. Lamento mucho escuchar que ha resultado afectado, pero estoy aquí para ayudarle. Nuestros pensamientos están con usted y sus seres queridos durante este momento difícil. Su seguridad es lo más importante. Sepa que estamos aquí para ayudarle a atravesar este momento difícil".*

Initial COVID-19 Impact Inquiries - WFHM

Use this section when having an initial conversation with customers about their impact related to COVID-19 and to process disaster assistance.

1. Advise the customer that we are suppressing late charges for the months of March, April and May, 2020.

   Suggested Scripting:

   "We are here to assist you through this challenging time. At this time, we are proactively suppressing and waiving late charges for March, April and May. Are you currently facing, or do anticipate having payment challenges?"

   Spanish Translation: *"Estamos aquí para ayudarle a atravesar estos momentos difíciles. En este momento, estamos eliminando y eximiendo el pago de cargos por pago atrasado de manera proactiva para Marzo, Abril y Mayo. Enfrenta actualmente dificultades con los pagos, o anticipa tenerlas?"*

   Note: There will not be late charge stops on the account. The suppression is happening behind the scenes via a transaction.

2. Does the customer anticipate payment challenges requiring additional assistance outside of the late fee suppression?

If	Then
The customer anticipates payment challenges and requiring additional assistance	Proceed to the next step.
The customer **does not** anticipate payment challenges requiring additional assistance outside the late fee suppression.	[redacted] b. [redacted] d. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."*

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Spanish Translation: *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"*

e. End of process

3. Use the following script to communicate how Wells Fargo can assist:

"We can provide you with the following short-term relief for a period of 3 months:

- *Payment suspension*
- *We will not charge late fees or report additional missed payments to the credit bureaus*
- *If the account is past-due, we won't refer the account to foreclosure at this time.*

We encourage you to make payments if you can, we understand you may not be able to during the initial suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

While you are protected under the payment suspension, if you have a Wells Fargo Home Equity account your line of credit will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing.

If you have an escrow account, Wells Fargo will continue to pay escrowed items as we normally would. Any missed payments may create a shortage in your escrow account the next time your escrow account is analyzed. Past due payments may impact your eligibility to delete your escrow and/or mortgage insurance, if applicable to your account.

If the mortgage was modified under the Home Affordable Modification Program (HAMP) or Second Lien Modification Program (2MP) and you don't make a payment during this time, you could lose the pay-for-performance incentives. This is because you must remain in good standing with HAMP and 2MP.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer term financial changes that may impact your ability to keep up with your monthly payments."

Spanish Translation:

"Podemos brindarle el siguiente alivio a corto plazo para un periodo de tres meses:

- *Suspension de los pagos.*
- *No cobraremos cargos por pago atrasado ni reportaremos pagos omitidos adicionales a las agencias de informacion crediticia.*
- *Si la cuenta esta atrasada, no la remitiremos a ejecucion hipotecaria en este momento.*

Le recomendamos que realice pagos si puede; comprendemos que es posible que no pueda realizarlos durante el período inicial de suspensión. Los pagos omitidos serán atendidos conforme a las pautas expuestas por el inversionista del préstamo.

Mientras esté protegido bajo la suspensión de pago, si tiene una cuenta sobre el valor neto de la vivienda con Wells Fargo, su línea de crédito estará restringida a nuevos adelantos y no tendrá acceso a los fondos de esta cuenta. Cuando finalice la suspensión de pago y cuando haya reanudado los pagos regulares, comuníquese con nosotros para solicitar el restablecimiento de la cuenta. Se le proporcionara por escrito información adicional.

Si usted tiene una cuenta de deposito en garantía, Wells Fargo continuara pagando los el fideicomiso garantizados como lo haríamos normalmente. Los pagos omitidos podrían generar un deficit en su cuenta de deposito en garantía la proxima vez que se analice su cuenta de deposito en garantía. Los pagos atrasados podrían afectar su elegibilidad para eliminar su deposito de garantía y/o seguro hipotecario, segun corresponda a su cuenta.

Si el préstamo hipotecario se modificó en virtud del Programa de Modificaciones para Viviendas Asequibles (HAMP, por sus siglas en inglés) o del Programa de Modificación de Hipotecas de Segundo Grado (2MP, por sus siglas en inglés) y usted no realiza un pago durante este período, podría perder los incentivos de pago por desempeño. Esto es así porque usted debe mantener un buen historial con HAMP y 2MP.

Si necesita asistencia adicional mas allá de la suspension inicial de tres meses, tendremos opciones adicionales disponibles para usted. Esas opciones podrían incluir una continuacion de la suspension del pago, mover los pagos atrasados al final del prestamo o una modificacion para abordar los cambios financieros a mas largo plazo que pueden afectar su capacidad de

Bankuptcy Wording:

"This temporary relief does not forgive any payments, however at the end of the relief period the account can be reviewed for longer term options in coordination with your Bankruptcy Attorney and the Bankruptcy Court. The approval letter you will receive will provide additional details. Would you like to begin the process?"

***Spanish Translation**: "Este alivio temporario no perdona ningun pago, sin embargo, en el fin del periodo de alivio la cuenta puede ser revisada para opciones mas a largo plazo en coordinacion con su abogado de la bancarrota y la corte de bancarrota. La carta de aprobacion que usted recibira le proveera con detalles adicionales. Quisiera usted comenzar el proceso?".*

4. Determine if the account is due for the current month

If The Account Is	Then Provide The Following Suggested Scripting
Due for the current month	*"If your account is current at the time assistance is requested, we won't provide a past-due status for this account to the consumer reporting agencies. The account will continue to report for the duration of the payment suspension. We will also update the credit report with a comment code that says the account is in a forbearance plan."* **Important:** If the customer asks how this will impact their credit or credit score, refer to the **Forbearance and Credit Bureau Talking Points** section of this procedure prior to proceeding.
Due for more than the current month	*"If your account is past due at the time assistance is requested"* • *We will suppress negative credit reporting during the payment suspension. However, the account will continue to show the delinquency status it was in prior to the payment suspension. Once the account is brought current, we will report the account current on the next credit report.* • *We won't refer the account to foreclosure at this time."*

5. Did the customer ask about refinance impacts?

If	Then
The customer did inquire about refinance impacts	a. Advise the customer that their situation will need to be resolved by providing the following script: *"If applying with Wells Fargo to refinance your current mortgage loan or obtain a new mortgage loan, the hardship forbearance plan must be resolved prior to closing."* ***Spanish Translation:** "Si solicita a Wells Fargo refinanciar su préstamo hipotecario actual u obtener un nuevo préstamo hipotecario, el plan de aplazamiento de pagos por dificultades debe resolverse antes del cierre".* b. Proceed to the next step
The customer **did not** inquire about refinance impacts	Proceed to the next step.

6. Did the customer specifically inquire about a new home equity loan?

If	Then
The customer did not inquire about a new home equity loan	Proceed to the next step.
The customer did inquire about a new home equity loan	a. Use the following suggested scripting: *"After careful consideration, Wells Fargo has temporarily suspended all originations of home equity products after 5/1/20 until market conditions allow us to responsibly resume home equity originations."* ***Spanish Translation:** "Después de haberlo considerado detenidamente, Wells Fargo ha suspendido temporalmente todas las emisiones de productos sobre el valor neto de la vivienda después del 1 de mayo de 2020, hasta que las condiciones del mercado nos permitan reanudar de manera responsable las emisiones sobre el valor neto de la vivienda".* b. Proceed to the next step

an application that was submitted prior to 5/1/2020	process prior to 5/1/20 will be worked to completion ***Spanish Translation***: Todas las solicitudes sobre el valor neto de la vivienda que estén en proceso antes de 5/1/20 se trabajaran hasta su finalidad. Todas las solicitudes sobre el valor neto de la vivienda en proceso antes del 1 de mayo de 2020 se gestionarán hasta su finalización. b. Proceed to the next step
The customer asks when Wells Fargo stopped accepting new Home Equity applications	a. Advise the customer that Wells Fargo temporarily stopped accepting applications for all new Home Equity Lines of Credit (HELOCs) after April 30, 2020. ***Spanish Translation:*** Wells Fargo dejo temporalmente de aceptar solicitudes para todas las nuevas líneas de crédito sobre el valor neto de la vivienda después del 30 de abril. b. Proceed to the next step

7. Did the customer accept the short-term relief?

If	Then
The customer accepts the short term relief	[redacted] f. Use the suggested scripting to provide the customer with the following information: *"We have processed your request for relief. You will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period. We will contact you and work with you directly to understand your circumstances and identify the best way to help you going forward. If you would like more information, please visit WellsFargo.com for the most up to date information. Thank you for reaching out and keeping us informed during this difficult time."* ***Spanish Translation:*** *"Hemos procesado su solicitud de asistencia. Usted recibirá documentación en el transcurso de 7 a 10 días laborables, que incluye el plazo del período de suspensión de los pagos. Nos pondremos en contacto y colaboraremos con usted directamente para comprender sus*

	en adelante. Si desea más información, visite wellsfargo.com/es para obtener la información más actualizada. Gracias por comunicarse con nosotros y mantenernos informados en este momento difícil". g. Proceed to the next step
The customer **does not** accept the short term relief	[redacted] d. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"* e. End of process

8. Determine if the customer is enrolled in recurring withdrawal:

If	Then
The customer is enrolled	a. Advise the customer that accepting the short-term relief requires cancellation of their recurring withdrawal and they will need to re-enroll at the end of the relief period b. Proceed to the next step.
The customer is not enrolled	No further steps required, end of process.

9. Determine when the next recurring withdrawal is scheduled to draft:

If	Then
The recurring withdrawal is scheduled to draft over 2 business days out.	a. Advise the customer their recurring withdrawal will be automatically cancelled due to the approved forbearance plan b. End of Process
[redacted]	[redacted]

	[redacted]
The recurring withdrawal is scheduled to draft today OR It is scheduled to draft the next day and is after 7:00 pm Central Time.	a. Advise the customer it is too late to stop the next withdrawal and the draft will occur, but future drafts have been cancelled. Note: The customer's next draft will occur, but future drafts will be automatically cancelled in approximately 2 business days. b. Proceed to the next step

10. Determine if the customer has agreed to the draft occurring:

If The Customer Is	Then
Agreed to the draft occurring	No further steps required.
Not agreed to the draft occurring and the draft will be returned as NSF	Advise the customer they should contact their banking institution to request a stop payment on the next draft.
Not agreed to the draft occurring and will need it refunded	[redacted] c. Provide the customer with the time frame for completion of the GEM. ▪ For Wells Fargo bank accounts: Approximately 24 hours after payment drafted ▪ For Non-Wells Fargo bank accounts: Approximately 48 hours after payment drafted

Initial COVID-19 Impact Inquiries - HEQ

Use this section when having an initial conversation with customers about their impact related to COVID-19 and to process disaster assistance.

1. Advise the customer that we are suppressing late charges for the months of March, April and May, 2020.

   Suggested Scripting:

   "We are here to assist you through this challenging time. At this time, we are proactively suppressing and waiving late charges for March, April and May. Are you currently facing, or do anticipate having payment challenges?"

   Spanish Translation: *"Estamos aqui para ayudarle a atravesar estos momentos dificiles. En este momento, estamos eliminando y eximiendo el pago de cargos por pago atrasado de manera proactiva para Marzo, Abril y Mayo. Enfrenta actualmente dificultades con los pagos, o anticipa tenerlas?"*

   Note: There will not be late charge stops on the account. The suppression is happening behind the scenes via a transaction.

2. Does the customer anticipate payment challenges requiring additional assistance outside of the late fee suppression?

If	Then

payment challenges and requiring additional assistance	
The customer **does not** anticipate payment challenges requiring additional assistance outside the late fee suppression.	a. Clearly notate the account that the customer is not wanting any additional COVID assistance at this time **Note:** Do not log any actions for non FEMA or COVID on the account. b. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** "Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com" End of process.

3. Use the following script to communicate how we can assist:

"We can provide you with the following short-term relief for a period of 3 months:

- *Payment suspension*
- *We will not charge late fees or report additional missed payments to the credit bureaus*
- *If the account is past-due, we won't refer the account to foreclosure at this time.*

We encourage you to make payments if you can, we understand you may not be able to during the initial suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments."

Spanish Translation:

"Podemos brindarle el siguiente alivio a corto plazo para un periodo de tres meses:

Suspension de los pagos.

- *No cobraremos cargos por pago atrasado ni reportaremos pagos omitidos adicionales a las agencias de informacion crediticia.*
- *Si la cuenta esta atrasada, no la remitiremos a ejecucion hipotecaria en este momento.*

Le recomendamos que realice pagos si puede; comprendemos que es posible que no pueda realizarlos durante el periodo inicial de suspensión. Los pagos omitidos serán atendidos conforme a las pautas expuestas por el inversionista del préstamo. Si necesita asistencia adicional mas alla de la suspension inicial de tres meses, tendremos opciones adicionales disponibles para usted. Esas opciones podrian incluir una continuacion de la suspension del pago, mover los pagos atrasados al final del prestamo o una modificacion para abordar los cambios financieros a mas largo plazo que pueden afectar su capacidad de mantenerse al dia con sus pagos mensuales."

BK Wording:

"This temporary relief does not forgive any payments, however at the end of the relief period the account can be reviewed for longer term options in coordination with your Bankruptcy Attorney and the Bankruptcy Court. The approval letter you will receive will provide additional details. Would you like to begin the process?"

Spanish Translation: *"Este alivio temporario no perdona ningun pago, sin embargo, en el fin del periodo de alivio la cuenta puede ser revisada para opciones mas a largo plazo en coordinacion con su abogado de la bancarrota y la corte de bancarrota. La carta de aprobacion que usted recibira le proveera con detalles adicionales. Quisiera usted comenzar el proceso?"*

4. Advise the customer that accepting the short-term relief on their Home Equity account will place a restriction on that account.

"While you are protected under the payment suspension, your Wells Fargo Home Equity account will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing."

Spanish Translation: *"Mientras esté protegido por la suspensión de los pagos, su cuenta sobre el valor neto de la vivienda de Wells Fargo quedará restringida para nuevos adelantos y usted no tendrá acceso a los fondos de esta cuenta. Cuando finalice la suspensión de los pagos y cuando haya reanudado los pagos regulares, comuníquese con nosotros para solicitar un restablecimiento de la cuenta. Se proporcionará información adicional por escrito".*

5. Did the customer ask about refinance impacts?

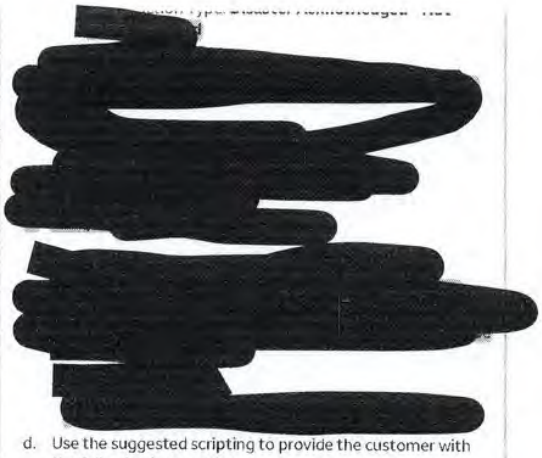
If	Then
The customer did inquire about refinance impacts	a. Advise the customer that their situation will need to be resolved by providing the following script: *"If applying with Wells Fargo to refinance your current mortgage loan or obtain a new mortgage loan, the hardship forbearance plan must be resolved prior to closing."* ***Spanish Translation:*** *"Si solicita a Wells Fargo refinanciar su préstamo hipotecario actual u obtener un nuevo préstamo hipotecario, el plan de aplazamiento de pagos por dificultades debe resolverse antes del cierre".* b. Proceed to the next step
The customer **did not** inquire about refinance impacts	Proceed to the next step.

6. Did the customer specifically inquire about a new home equity loan?

If	Then
The customer did not inquire about a new home equity loan	Proceed to the next step.
The customer did inquire about a new home equity loan	a. Use the following suggested scripting: *"After careful consideration, Wells Fargo has temporarily suspended all originations of home equity products after 5/1/20 until market conditions allow us to responsibly resume home equity originations."* ***Spanish Translation:*** *"Después de haberlo considerado detenidamente, Wells Fargo ha suspendido temporalmente todas las emisiones de productos sobre el valor neto de la vivienda después del 1 de mayo de 2020, hasta que las condiciones del mercado nos permitan reanudar de manera responsable las emisiones sobre el valor neto de la vivienda".* b. Proceed to the next step
The customer asks about an application that was submitted prior to 5/1/2020	a. Advise the customer that all Home Equity applications in process prior to 5/1/20 will be worked to completion ***Spanish Translation***: Todas las solicitudes sobre el valor neto de la vivienda en proceso antes del 1 de mayo de 2020 se gestionarán hasta su finalización. b. Proceed to the next step
The customer asks when Wells Fargo stopped accepting new Home Equity applications	a. Advise the customer that Wells Fargo temporarily stopped accepting applications for all new Home Equity Lines of Credit (HELOCs) after April 30. ***Spanish Translation:*** Wells Fargo dejo temporalmente de aceptar solicitudes para todas las nuevas líneas de crédito sobre el valor neto de la vivienda después del 30 de abril. b. Proceed to the next step

7. Did the customer accept the short-term relief?

If	Then
The customer accepts the short term relief	[redacted]

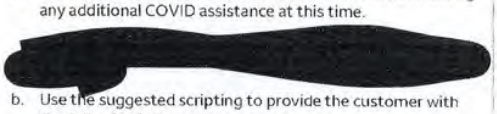


d. Use the suggested scripting to provide the customer with the following information:

"We have processed your request for relief. You will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period. We will contact you and work with you directly to understand your circumstances and identify the best way to help you going forward. If you would like more information, please visit WellsFargo.com for the most up to date information. Thank you for reaching out and keeping us informed during this difficult time."

Spanish Translation: *"Hemos procesado su solicitud de asistencia. Usted recibirá documentación en el transcurso de 7 a 10 días laborables, que incluye el plazo del período de suspensión de los pagos. Nos pondremos en contacto y colaboraremos con usted directamente para comprender sus circunstancias e identificar la mejor manera de ayudarle de aquí en adelante. Si desea más información, visite wellsfargo.com/es para obtener la información más actualizada. Gracias por comunicarse con nosotros y mantenernos informados en este momento difícil".*

e. Proceed to the next step

The customer **does not** accept the short term relief	a. Clearly notate the account that the customer is not wanting any additional COVID assistance at this time.  b. Use the suggested scripting to provide the customer with the following information: *"We will continue contacting you to see if your situation changes and to see if you need further assistance. You can also sign into wellsfargo.com to request assistance."* ***Spanish Translation:*** *"Nos mantendremos en contacto para verificar si su situacion a cambiado y determinar si necesita asistencia adicional. Tambien puede iniciar la solicitud de asistencia en nuestra pagina web wellsfargo.com"* End of process.

8. Determine if the customer is enrolled in ACH.

If	Then
The customer is not enrolled	No further steps required. End of process.
The customer is enrolled	a. Advise the customer that accepting the short-term relief requires cancellation of their ACH and they will need to re-enroll at the end of the relief period 



9. Determine when the next recurring withdrawal is scheduled to draft:

If	Then
There **is** a recurring withdrawal scheduled to draft for the current day	Proceed to the next step
There **is not** a recurring withdrawal scheduled to draft for the current day	No further steps required as the request in step 2 will remove the ACH during nightly processing.

10. Determine if the customer agrees to the draft occurring:

If The Customer	Then
Approves the draft occurring	No further steps required.
Does not approve the draft occurring and the draft will be returned as NSF	Advise the customer they should contact their banking institution to request a stop payment on the next draft.
Does not approve the draft occurring and will need it refunded	a. Advise the customer that we will have to wait until the funds are cleared and posted on the account to issue the refund. b. [redacted]

Opt Out Inquiries

If the customer previously accepted the short-term forbearance relief but now no longer wants the relief and is requesting to opt out, complete the steps within this section.

1. Advise the customer of the following:

   "Once the payment suspension is removed, you will need to ensure all payments are made. Additionally, credit reporting will resume as normal and any late payments will be reported as such to the credit reporting agencies. Once late fees resume, you will be charged late fees for any late payments."

   Spanish Translation: *"Una vez que se elimine la suspension del pago, debera asegurarse de que se realicen todos los pagos. Ademas, los informes de credito se reanudaran de manera normal y cualquier pago atrasado se informara como tal a las agencias de informes de credito. Una vez que se reanuden los cargos por pagos atrasados, se le cobraran cargos por pagos atrasados."*

   - **If Active Bankruptcy:** *"Once the payment suspension is removed, the payments will come due on the account. Late charges will continue to be suppressed and credit reporting will remain in accordance with bankruptcy guidelines."*

     Spanish Translation: *"Una vez que se elimina la suspension del pago, los pagos se venceran en la cuenta. Los cargos por demora continuaran siendo suprimidos y los informes de credito permaneceran de acuerdo con las pautas de bancarrota."*

come due on the account. Late charges and credit reporting will remain suppressed."

***Spanish Translation**: "Una vez que se elimina la suspension del pago, los pagos se venceran en la cuenta. Los cargos por demora continuaran siendo suprimidos."*

2. Determine the opt out steps based on the applicable scenario.

If	Then
The customer wants to opt-out of forbearance and doesn't want any assistance.	a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]
The customer wants to opt-out of forbearance and wants to pursue a long-term Home Preservation option instead.	a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]
The customer wants to opt-out of forbearance and the customer wants the deferral(s) reversed **Note:** This is only applicable to Wells Owned and Home Equity accounts	**If Wells Owned loan:** a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted] **If Home Equity account:** a. Clearly document the system of record with the reason the customer is opting out of the forbearance [redacted]

Payment Refund Requests from Impacted Customers

Customers impacted by COVID-19 may request to have payments returned. Below are examples of customer inquiries and applicable talking points:

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- If the refund will cause the customer's account to become due for more than 1 payment:

A: *We are not able to refund payments that will cause your account to become past due.*

Example: Refunding March's payment in April.

- If the refund will not cause the customer's account to become due for more than 1 payment:

A: *We can refund payments that will not cause your account to become past due (due for a previous calendar month).*

Example: Refunding April's payment in April.

Q: ***You drafted my payment after I told you I needed assistance. I need that money back.***

A: *I apologize that happened. I can request a refund of that payment for you.*

WFHM

[redacted]

HEQ

[redacted]

Talking Points on an Approved COVID-19 Forbearance

The following talking points should be used once the customer has been approved for the COVID-19 related forbearance.

1. If the customer has questions on their forbearance terms, use suggested scripting:
   - *You will get a forbearance approval letter in the mail that will outline terms that include:*
     - *Suspension of payments for 3 months.*
     - *We won't charge late fees or report additional missed payments to the credit bureaus.*
     - *If the account is past due, we won't refer the account to foreclosure at this time.*
       Note for Home Equity Line of Credit accounts: While you are protected under the payment suspension, your Wells Fargo Home Equity account will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends and when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing.

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19, depending on your loan type, you may be eligible for a forbearance extension. This option would extend the payment relief for an additional three months.

- *If you escrow, we'll continue to make your tax and insurance payments during the forbearance period. At your next escrow analysis, you may have a shortage because ongoing funds are not coming in. If you receive additional assistance at the end of the forbearance period, we may be able to spread the shortage amount over 60 months or provide other options.*
- *If you do not escrow, those payments will continue to be your responsibility during the forbearance period.*

2. If the customer would like more information on post forbearance options that may be available determine the investor and delinquency to use the talking points below. If the customer doesn't need additional information proceed to the next step.

Note: Delinquency date and definition of current may differ depending on investor.

If	Then
Wells Owned / Home Equity • Excludes active and suspended foreclosure accounts with a first legal date • Excludes active bankruptcy	• After being approved for the initial relief period as monthly payments are missed, they will be moved to the end of the loan. The movement of payments will defer the interest and the principal portion will be moved to the end of the loan. This will happen in the middle of each month during the relief period. • The term of your loan will be extended by the number of payments missed during the relief period. • The process is automated and no further action will be required from you as long as you are ready to resume your normal monthly payments when the forbearance period ends. • If there is still an ongoing hardship after the approved forbearance comes to an end, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Bank and Private • Excludes active and suspended foreclosure accounts with a first legal date • Excludes active bankruptcy	• Any payments that become/became due during the relief period and are still unpaid at the end of the forbearance will be moved to the end of your loan. We will send a confirmation letter to you when the payments have been moved. The process is automated and no further action will be required from you as long as you are ready to resume your normal monthly payments when the forbearance period ends. • If there is still an ongoing hardship after processing the deferral of missed payments, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were current as of March 1.	• Any payments that became due during the relief period and are still unpaid may be moved to the end of the loan through our home assistance options available at that time. There will be minimal effort required on your part to complete this process, but we will need to work together when you are ready to resume your normal monthly payments. • The review will not require that you submit any documentation. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were delinquent as of March 1. **Includes Wells Owned/Bank and Private/Home Equity in the following statuses:** Active or suspended foreclosure accounts with a first legal date	• At the end of the relief period, all payments missed during the relief and any that were due prior will be due at that time. • We know this may be difficult, so please know we have options to assist you if you are not able to pay these missed payments. Those options may include bringing the account current on your own, a repayment plan to assist you in bringing the account current, or a modification review to determine eligibility. • Modification options may include a short-term increase in your contractual payment, a modification that moves your missed payments to the end of the loan, or a modification that adds your missed payments to your balance while extending your maturity date to provide a lower payment. • It's important that we determine the best option for you based on your financial needs when the forbearance comes to an end. • We will need to collect financial documentation as part of our modification review process.

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the call.

3. Address any additional questions or concerns that the customer has.

   Note: You can direct the customer to check **https://update.wf.com/coronavirus/home-lending/** on a regular basis. This site will be updated as more information becomes available.

4. Advise the customer to call back during the last month of their forbearance (initial relief) if their impact has been resolved or if more assistance is needed and they are unable to bring the account current.

Talking Points on an Approved COVID-19 Forbearance - Active Bankruptcy

The talking points below are specific to customers with a loan in active bankruptcy. The talking points should be used once the customer has been approved for the COVID-19 related forbearance.

1. If the customer has questions on their forbearance terms, use suggested scripting:
   - *You will get a forbearance approval letter in the mail that will outline terms that include:*
     - *Suspension of payments for three months*
     - *We won't charge late fees or report additional missed payments to the credit bureaus*
     - *If the account is past due, we won't refer the account to foreclosure at this time*
   - *At the end of the initial forbearance period, if you are still experiencing a hardship due to COVID-19, depending on your loan type, you may be eligible for a forbearance extension. This option would extend the payment relief for an additional three months.*
   - *If you escrow, we'll continue to make your tax and insurance payments during the forbearance period. At the next escrow analysis, there may be a shortage because ongoing funds are not coming in. If you receive additional assistance at the end of the forbearance period, we may be able to spread the shortage amount over 60 months or provide other options.*
   - *If you do not escrow, those payments will continue to be your responsibility during the forbearance period.*

2. If the customer would like more information on post forbearance options that may be available:
   - You may have the ability to amend your Bankruptcy plan and you can work with your bankruptcy attorney to explore that option.

     Note: Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan.
   - Determine the Investor, BK Chapter and delinquency to use the talking points below.

     Notes:
     - If the customer doesn't need additional information proceed to the next step.
     - Delinquency date and definition of current may differ depending on investor.

If	Then
Wells Owned and **Active CH 7 BK** and **Account was current at the time the DISVIR log code was added**	• After being approved for the initial relief period as monthly payments are missed, they will be moved to the end of the loan. The movement of payments will defer the interest and the principal portion will be moved to the end of the loan. This will happen in the middle of each month during the payment relief period. • The term of the loan will be extended by the number of payments missed during the payment relief period. • The process is automated and no further action will be required from you as long as normal monthly payments are resumed when the forbearance period ends. • If there is still an ongoing hardship after the approved forbearance comes to an end, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Bank and Private and **Active CH 7 BK** and	• Any payments that become/became due during the payment relief period and are still outstanding at the end of the forbearance will be moved to the end of the loan. We will send a confirmation letter to you when the payments have been moved. The process is automated and no further action will be required from you as long as

the time the DISVIR log code was added	forbearance period ends. • If there is still an ongoing hardship after processing the deferral of missed payments, we will need to work together and review your hardship along with our other assistance programs. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were current as of March 1st and **Active bankruptcy** OR **Wells Owned/Bank and Private in the following scenarios:** • Active CH 7 BK, delinquent at the time the DISVIR log code was added, not in foreclosure (active or suspended with a first legal date) • Active CH 11, 12 and 13, not in foreclosure (active or suspended with a first legal date)	• As we discussed, you do have the ability to amend the bankruptcy plan and you can work with your attorney to do so. **Note:** Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan. • Any payments that became due during the relief period and are still outstanding may be moved to the end of the loan through our home assistance options available at that time. We will need to work together when normal monthly payments are ready to be resumed. • If eligible, a motion must be filed to obtain court consent. If court consent is obtained, we would be able to move forward with this option. Proceed to the next step to answer additional questions and close the call.
Fannie, Freddie, FHA, USDA, and VA that were delinquent as of March 1st and **Active bankruptcy** OR **Wells Owned/Bank and Private in the following scenarios:** • Active CH 7 BK that are in active or suspended foreclosure with a first legal date • Active CH 11, 12 and 13, that are in active or suspended foreclosure with a first legal date	• As we discussed, you do have the ability to amend the bankruptcy plan and you can work with your attorney to do so. **Note:** Chapter 7 Bankruptcy does not include a plan, therefore they do not have the ability to amend the plan. • If you are not able to amend your bankruptcy plan, then you will have the option to request a traditional Loss Mitigation review. That review will follow the normal process, which may include obtaining court consent. Proceed to the next step to answer additional questions and close the call.

3. Address any additional questions or concerns that the customer has.

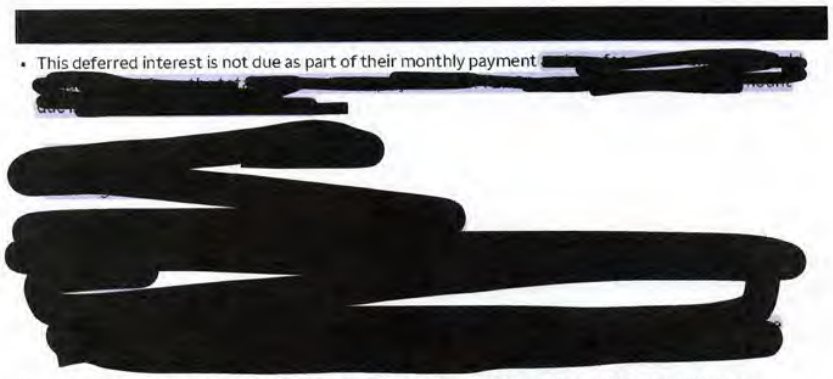
   Note: Advise the customer to check **https://update.wf.com/coronavirus/home-lending/** on a regular basis. This site will be updated as more information becomes available.

4. Advise the customer to call back during the last month of their forbearance (initial relief) if their impact has been resolved or if more assistance is needed and they are unable to bring the account current.

Wells Fargo Deferral Talking Points

Wells Owned customers will receive monthly deferral of payments. Odd due dates are being processed on a monthly basis. Bi-weekly loans also have their payments added to the end of the loan after the payment grace period for up to three months worth of payments. We will NOT discourage customers from making payments if they are able, but we will present them with the facts and let them make the decision.

Important: If a customer asks about their total amount due, it is important to know that the total amount due in MSP & ERC will be impacted due to the interest portion of the deferred payment on Wells Owned loans.



- This deferred interest is not due as part of their monthly payment

1. For customers who choose to make payments during the forbearance and have questions on whether or not their forbearance payments will be deferred, use the table below to provide them guidance:

If	Then
The account was **current** when the forbearance started And The customer does not make a payment or makes a partial payment	All contractual payments and interest will be deferred
The account was **current** when the forbearance started And The customer makes a full contractual payment	Nothing will be deferred for the month the payment was made. Payments made during forbearance will not automatically extend the forbearance
The account was **delinquent** when the forbearance started And The customer does not make a payment or makes a partial payment	Payments due during the forbearance will be deferred but outstanding delinquency will still be due. Customer can work with home preservation for payment assistance options.
The account was **delinquent** when the forbearance started And The customer makes a full contractual payment	Due date will moved forward and payments missed during forbearance will be deferred. Customer would have the missed payments deferred. If they paid the full amount owed prior to the forbearance, no further action would be needed. If there is any outstanding delinquency remaining after the forbearance the customer would need to work with home preservation for to cure the outstanding delinquency. Payments made during the forbearance will not automatically extend forbearance. **Example:** if customer was past due 2 months when they accepted the forbearance. If they made 1 contractual payment during the forbearance, they would still be 1 month past due at the end of the forbearance.

2. Customers may have questions regarding how the deferral amounts show on their online accounts or monthly statements. Once the first monthly payment is moved to the end of the loan the customer can view the deferred interest online and in their monthly statement. You can advise the customer:

   - The interest portion of the payment is placed in deferred interest.
   - The Activity section of the statement will display the interest and it will start with Fee Assessed. It is not a fee, this is the interest that was moved and you can review the Other column on your statement and you will see Deferred Interest and the amount that was deferred.
   - You can also see the Deferred Interest Balance under the Account Summary section.
   - The principal portion of the payment was moved to the Unpaid second principal balance.
   - You can see the total principal amount that was moved in the Unpaid second principal balance under the Account Summary on your statement.

This shows the principal coming out of your normal principal balance and being added to the second principal balance.

- These adjustments ensure that you are not charged any additional interest on the principal portion of the payment.
- The customer may also see the deferred interest online as a fee and you can assure them that it is the interest portion of the monthly payment that was moved.

Additional Questions The Customer May Have:

Q: Why was I charged a fee?

Answer: You were not charged a fee. We apologize the statement (or online) may be a bit confusing. Please refer to the Deferred Interest shown under the Other column in the Activity section of the statement.

Q: I thought these payments were being moved to the end of the loan. When do I have to pay these?

Answer: The payments have been moved to the end of the loan. We have extended your maturity date by one/two/three month(s). When you reach your original maturity date, the interest bearing principal balance, shown as Unpaid Principal Balance under the Account Summary will have been paid off. Then you will make one/two/three more payment(s), which will be allocated to the Deferred Interest Balance and the Unpaid second principal balance. Those additional payments will fully pay off the loan.

Q: If the customers pays in full, prior to the maturity date (refinance or sale), will the deferred interest and the 2nd UPB be due and payable at payoff?

Answer: Yes, the deferred interest and deferred principal (2nd UPB) will be required to be paid at payoff.

Forbearance and Credit Bureau Talking Points

When assisting customers who have questions related to their credit bureau report, refer to the following CBR talking points:

General CBR Talking Points:

We understand that you may not be able to make your regular payments during this difficult time. To help:

- We won't provide a past-due status for this account to the consumer reporting agencies.
- If current at the time of requesting assistance, the account will continue to report as current on your credit report during the payment suspension plan. We will also provide the credit bureaus with a comment code that says the account is in a forbearance plan.

If customer asks: How this will impact my credit?

- Your FICO score will not be impacted, and that this meets the requirements within the CARES Act. FICO is the credit score which is used by Wells Fargo for underwriting new credit/refinancing and also used by most lending companies. The credit bureaus may have independent credit score models. We cannot speculate how any of their proprietary models account for this; however, we do know, generally, those are not used for underwriting of credit.
- If you apply for credit while on a forbearance plan the lender will see the "account in forbearance" on your credit report. That may impact your ability to qualify for new credit or refinance.
- If delinquent at the time of requesting assistance, we will suppress credit bureau reporting during the payment suspension plan. Negative reporting is suppressed throughout the duration of the forbearance plan. However, your account will continue to show the delinquency status it was in prior to the forbearance plan. Once you bring your account current, we will report the account current on the next credit bureau report.

For those calling in with credit bureau questions or concerns:

FAQ to further assist:

Q. My credit score changed and you said it wouldn't? (Customer was current at time of request)

A. We provided information to the credit bureaus that the account was current with a comment code that it is in a forbearance. We have confirmed that your FICO score will not be impacted and that this meets the requirements within the CARES Act. FICO is the credit score which is used by Wells Fargo for underwriting new credit/refinancing and also used by most lending companies. The credit bureaus may have independent models which is what is showing up as a change. We cannot speculate how any of their proprietary models account for this, however we do know, generally those are not used for underwriting of credit. If you would like to review your FICO score, you can visit **www.myfico.com**. We want you to know that the consumer reporting agencies may be able to assist you with issues about your credit reporting. You may contact them at:

- Equifax Information Services, LLC
  PO Box 740256
  Atlanta, GA 30374-0256
  1-866-349-5191

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PO Box 4500
Allen, TX 75013
1-866-200-6020

- TransUnion LLC
  Consumer Dispute Center
  PO Box 2000
  Chester, PA 19016
  1-800-916-8800
- Innovis Customer Assistance
  PO Box 1640
  Pittsburgh, PA 15230-1640
  1-800-540-2505

Q. If Wells Fargo did not report special comment code that indicates the account is in forbearance, would my score have dropped?

A. The comment code does not impact your FICO score. The credit bureaus may have independent credit score models. We cannot speculate how any of their proprietary models account for this; however, we do know, generally, those are not used for underwriting of credit.

Q. That isn't acceptable, I want to escalate:

A. Refer customer to ECMO (complaints) per escalation policy, warm transfer whenever possible. Confirm the customer wants to remain on the forbearance plan (see next point if they say no).

Note: Refer to the following announcement for additional information on how to escalate a call: **Call Escalation - Express Communication**

Q. If the customer wants to be removed from forbearance, bring account current, and have comment code removed:

A. Review with the customer the total amount due to bring the account current. In most cases this will be one of, or a combination of April and May payments.

- We want to make sure that you are ok to resume making monthly payments and that you are making an informed decision. Once we remove the account from the forbearance plan, payments will be due on time, late fees will be charged normally, and any past due payments will be reported to the credit reporting agencies each month.
- Would you like to make the payment now to bring the account current? If not, we need to receive the April payment within 3 days. We will update the credit reporting to reflect that you are and were paying normally. This will remove the special comment code of "account in forbearance" and report the normal monthly payment which will be retroactively applied to the first month of your plan. You will need to resume your normal monthly payments moving forward, as indicated on your billing statement. I see your next payment due date is (May xx, 2020).

Q. How long will it be before I can see the updates on my credit bureau?

A. Wells Fargo will submit updates to the credit bureaus within 2-3 business days. When they will appear in your credit report, however, depends on how much time it takes for the credit bureaus to process the updates, which may vary by credit bureau and may take longer than 2-3 business days.

- [Ensure the customer understands the payment needs to be received]
- Follow the opt out steps within the procedure to fully remove the forbearance

Making Payments During the Relief Period - WFHM

Customers who are covered under COVID-19 protections and wish to continue to make payments may be limited in their payment options.

At this time, payment options may include:

- **Check by Phone**: Follow your standard procedures for setting up a payment through Easy Pay Plus.

  Notes:

  - When using Easy Pay Plus to process a payment from a customer on an active COVID-19 forbearance plan with $0 payments and the installments are kept, team members may receive an error message that reads:
  - The system has encountered an error in processing your request. If you were adding a payment, click the Detail tab to refresh the system. If you were modifying a payment, click the Clear button to refresh the system.
  - When receiving this error message team members should allocate the payment to the Suspense field in Easy Pay Plus. Once the payment is allocated to suspense, Easy Pay Plus will allow the transaction to submit.
- **Mail Payments**: Customers can continue to mail their payments to the address on their monthly statement.

- Visit the **Payment Address Website** for additional details on where payments can be mailed.

- **Online Bill Pay**: Use the information below to assist customers who inquire about making their payments using either the Wells Fargo Bill Pay service or a Third Party Bill Pay Service provider.
  - Customer has a Wells Fargo checking or savings account
    - You may use the Bill Pay functionality on Wellsfargo.com using a Wells Fargo Checking or Savings account.
    - If you have a Wells Fargo checking or savings account and do not currently use Wells Fargo Bill Pay, search Bill Pay on Wellsfargo.com for additional information and help with paying your bill.
    - If you currently use Wells Fargo Bill Pay, you will be able to add a payee for your mortgage account and schedule your payment. If you need additional instruction, search Bill Pay on Wellsfargo.com.
  - Customer does NOT have a Wells Fargo checking or savings account
    - You may use your preferred bill pay service provider to make your payment from a non-Wells Fargo checking or savings account.

      Attn. Team Member: Provide the customer with the appropriate payee information based on their Client number.

708	**936**
Wells Fargo Home Mortgage P.O. Box 51120 Los Angeles, CA 90051-5420 1-800-357-6675	Wells Fargo Home Mortgage P.O. Box 51162 Los Angeles, CA 90051-5462 1-800-357-6675

Note: The customer will also need their account number.

- **IVR**: Customers may have questions about the availability of making their contractual payments through the Interactive Voice Response (IVR) system.
  - Customers will be able to use the IVR systems for making their contractual payment during their forbearance. This will include customers on a repayment plan (RPP) or a forbearance plan.
  - Regular Customers less than 30 days past due will be able to pay 1 Contractual payment through IVR. They will not be required to pay outstanding fees.
  - Customers can make payments through IVR even if on recurring ACH

  Note: IVR options will not be available for active bankruptcy customers on a forbearance.
- **Online Banking:** Customers may have questions about the availability of their contractual payment through their online banking options.
  - Customers will be able to use the online banking for making their contractual payment during their forbearance. This will include customers on a repayment plan (RPP) or a forbearance plan.

Promise to Pays on Active COVID-19 Forbearance Plans:

- When a customer is on an active COVID 19 Forbearance plan a promise to pay should not be set up on the account. These accounts need to be treated the same as an Active Account Resolution Repayment Plan as entering a promise in DLQ1 will delete the current COVID 19 Forbearance plan.
- To validate a COVID 19 Forbearance plan has been set up on the account, review DLQ2.
  - Plan type will be 90,
  - Plan indicator (PI) will display an F.
  - Payment amounts for the three month plan will show as $0.00.
- The customer can set up a payment using Easy Pay but team members should not note the Forbearance date or amount in DLQ1 or use the Informal Plan Review (IPR) screen in ERC.

  Note: When the customer is on an active plan and does want to make a payment, add a long line comment noting their intentions but do not be enter an actual promise in ERC or manually in DLQ1.

Payment Acceptance on Foreclosure Loans:

Account Resolution and Foreclosure Call Center handling for payment acceptance on Foreclosure loans that are impacted by COVID-19.

All AR TMs:

- Loans with a FC workstation status of A or S that are under activated COVID-19 protection may appear as eligible to make payments within the EZ Pay system.
- Ensure these calls are warm transferred to the Foreclosure Call Center at 1-800-868-0043.

FC Call Center TMs:

should take place if the loan is not in active COVID-19 protection.

- If it is a COVID-19 related forbearance, then the call center would not accept a payment.
- Refer to the **Account Resolutions Payment Guidelines** procedure.

Determining Forbearance Approval Plans Dates

Utilize this section to help determine which months are included in the customer's forbearance.

Review DLQ2 to validate if the customer is already on an established forbearance plan. If so, utilize the DLQ2 screen to review what payments are included within the forbearance plan.

If the customer is not on a COVID-19 forbearance plan yet (no DLQ2 plan established) and is asking about what payments will be included in the forbearance plan, use the following table:

Date COVID-19 Coding Added (DISVIR Log Code/Disaster Virus Action Type)	Next Due Date	Payments Included Under The Forbearance Plan	Date Regular Payments Resume
April	April 1, 2020	April/May/June	Next payment due on July 1
May	May 1, 2020	May/June/July	Next payment due on August 1
May	June 1, 2020	June/July/August	Next payment due on September 1
June	June 1, 2020	June/July/August	Next payment due on September 1
June	July 1, 2020	July/August/September	Next payment due on October 1

Note: Loans that are paid ahead more than 1 month will not receive the forbearance automatically. If the customer determines they need additional payment assistance at a later date, we will have options available to assist them.

Frequently Asked Questions

Account Impacts:

Q: How does the short-term payment suspension (forbearance) affect my escrow account?

A: We'll continue to make your tax and insurance payments during the payment suspension period if you have an escrow account. However, the suspension of payments may result in a shortage in your escrow because it isn't receiving ongoing funds.

Attn. Team member: In some cases, the customer's shortage may be spread over a period of greater than 12 months. This is dependent on guidelines set forth by the investor.

Q: I saw on the news that interest rates are now 0%. How do I get 0% on my mortgage?

A: The Federal Reserve announced late Sunday that it was cutting its benchmark federal funds rate by 1% to a range of 0% to 0.25%. However, this does not directly equate to mortgage rates moving to 0%. If you'd like further information about rates for refinancing or purchasing a home, you can find details on Wellsfargo.com.

Q: Will I lose my HAMP incentives during the short-term relief period?

A: If the mortgage was modified under the Home Affordable Modification Program (HAMP) or Second Lien Modification Program (2MP) and you don't make a payment during this time, you could lose the pay-for-performance incentives. This is because you must remain in good standing with HAMP and 2MP.

Q: Will accepting the short-term relief have an impact on future ability to delete PMI?

A: If you are unable to make payments during the short-term relief period, your eligibility to delete mortgage insurance may be impacted.

Q: Will accepting the short-term relief have an impact on future ability to delete Escrow?

A: If you are unable to make payments during the short-term relief period, your eligibility to delete escrow may be impacted.

Q: Will the short-term relief have an impact on my ability to refinance my mortgage?

A: Use the responses below based on the customer's situation:

- Impact during short-term relief: If you would like to refinance your current mortgage loan or obtain a new mortgage loan, the forbearance plan must be resolved in advance.
- Impact outside short-term relief: If you would like more information about refinance or purchase options, you can find that online at wellsfargo.com or on the Wells Fargo mobile app.

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A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Relief And Payment Assistance:

Q: Can I submit a request for assistance online?

A: Yes, you can sign into wellsfargo.com and begin the request process by selecting the link in the banner that is displayed on both the Account Summary and Account Details screens.

Notes:

- The link to the form is accessible from a banner on both the Account Summary and Account Details screens once the customer signs into their secure Wells Fargo Online session.
- Once the customer completes the form, their request for relief will be processed. They will receive documentation within 7-10 business days, which includes the time frame for the payment suspension period.
- It may take 2-3 days to fully process the online requests

Q: What does the short-term relief protection include?

A: Short-term relief includes the following:

- Payment suspension for 3 months.

  Note: Due to specifics related to each customer's account (such as the due date at the time relief was added), the 3 months that are suspended may not be the same for each customer. The exact time frame for each customer will be included in the documentation they receive. Additionally, once imaged, the letter is available in ICMP.
- We won't charge late fees or report additional missed payments to the credit bureaus.
- If the account is past-due, we won't refer the account to foreclosure at this time.

We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor.

If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: Do I have to continue to make payments during the relief period?

A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor. If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: What happens if I don't, or can't, make my payments by the end of the relief period?

A: We encourage you to make payments if you can, we understand you may not be able to during the initial 3-month suspension period. Missed payments will be cared for based on guidelines set forth by the loan investor. If you need additional assistance beyond the initial 3-month suspension period, we will have additional options available to you. Those options could include a continuation of the payment suspension, moving the missed payments to end of the loan, or a modification to address longer-term financial changes that may impact your ability to keep up with your monthly payments.

Q: Where can I find general information about payment options Wells Fargo has available?

A: We have general information available on WellsFargo.com/assist.

Q: Do I, or all borrowers, on the loan have to sign paperwork and send it back to receive to the relief?

A: No, it is not necessary to sign and return the Home Preservation Agreement.

Other Wells Fargo Businesses:

Q: I saw/read that Wells Fargo is changing their refinance/purchase guidelines. What's changing?

A: Due to unprecedented market conditions, we are temporarily changing some of our refinance/purchase guidelines. If you'd like more information about refinance or purchase options, you

someone I can connect you with our refinance experts.

Note: If the customer would like to speak with someone, cold transfer them to Centralized Retail at 1-800-443-3429. Make sure they are aware that they may experience longer than normal hold times.

Q: I saw/read information about assistance for small businesses. How do I get that assistance?

A: There is information regarding assistance that may be available to small businesses on Wellsfargo.com. You can click on the Learn more link in the Alert message for COVID-19 assistance and services. You can also click here to review additional talking points.

Note: This may be referred to as the Paycheck Protection Program (PPP).

Wells Fargo Work Accommodations:

Q: Are you working from home?

- If the employee is working from home:
  - I can assure you that we are very focused on continuing to serve our customers, maintaining the security of our systems, and keeping our team safe. While the majority of our contact center jobs cannot be done from home, where possible, Wells Fargo has been reducing in-office staffing. That means ensuring we have technology and equipment in place to provide the service and security that's required.
  - These are unprecedented times, and Wells Fargo is coming up with creative solutions to address today's environment.
- If the employee is working in a contact center:
  - No, I am in a contact center. Certain critical functions can be operated only in a secure office environment. Since the majority of our contact center jobs cannot be done from home, significant measures have been put in place to ensure our safety, including adhering to CDC's social distancing guidelines, staggering staff and shifts, and implementing an enhanced cleaning program.
  - These are unprecedented times, and Wells Fargo has taken – and will continue to take – steps to keep our team safe.

[redacted]

04/17/19 Component created

[redacted]

[redacted]

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Call Handling and Talking Points Related to COVID-19

This temporary document contains the most up-to-date information related to temporary call handling and talking points regarding COVID-19.

Important: Temporary processes related to COVID-19 will **not** be updated in existing *my work* procedures.

CUSTOMER INQUIRIES

Follow the below guidelines to respond to customer inquiries related to the current environment:

- Always respond with empathy. This situation is continuously evolving and our customers may be impacted on multiple fronts (work, school closings, child care closings, etc.).
- Keep the conversation focused on the customer's needs: It is important to keep the conversation focused on the customer's needs issue(s) and not get into details regarding specific impacts to Wells Fargo as a company.
- Use the following suggested scripting when needed:

  "We appreciate your patience as we handle your requests over the next few weeks. Like many other businesses, we are experiencing impacts to our staffing as employees are dealing with school closings and higher levels of absences due to the corona virus. Rest assured our focus is to provide the highest level of service as we work through these ever changing times."
- Refer to the Questions and Answers section of this document for specific talking points.

[redacted]

This section was updated 3/19/20 At 1:35 p.m. CT

DISASTER AND PAYMENT ASSISTANCE PROCESSING

This section was updated 3/20/20 at 3:20 p.m. CT

[redacted]

Use the steps below to process disaster assistance for customers.

Note: You may also refer to the COVID-19 Disaster Processing Exhibit for these steps.

1. Use the following script to communicate how we will assist:

   "Options are continuing to evolve and we are here to assist you through this challenging time. At this time, I can create an application for Home Assistance Options, which will place you on a temporary suspension of payments.

   During this short-term relief period, you may choose to pay a portion of your payment or nothing at all. That choice is yours. You will have credit bureau protection, late fee suppression, as well as additional protections that will be detailed in the letter you receive.

   Are you ok with me creating this application and starting the process?"

   Note: This provides immediate protection from late fees, negative credit reporting, and aging delinquencies.

2. If the customer accepts, process the impact in the Disaster Tool.

[redacted]

4. Provide the customer with the following information.

   - You will receive a letter/loss mitigation package within 7-10 business days.
   - If you need assistance beyond 3 months, we will work with you to determine available options.
   - At the end of 3 months any missed payments will be cared for based on guidelines set forth by the investor on your loan. This could range from extending the loan term by the number of missed payments, capitalizing the missed payments into the loan balance, or other modification options.
   - We will suppress negative credit reporting.

5. If the customer is enrolled in recurring withdrawal, be sure to discuss with them and update, suspend, or cancel as appropriate.
6. Confirm that we have a valid email address on record for the customer. This will allow them to log into and utilize **Your Loan Tracker** once they are in active Loss Mitigation.

FORECLOSURE SALES AND EVICTIONS

This section was added 3/18/20

On Monday, March 16th, all foreclosure sales and evictions were postponed through April 17th. We are awaiting formal guidance from HUD, FNMA, FHLMC, etc. on anything further than sales at this point and will keep you updated as decisions are made.

GEM / WORK REQUEST TURN TIMES

This section was updated on 3/20/20 at 2:30 p.m.

[redacted]

When customers, please ensure they are aware that there could be delays in getting them the information they are requesting.

Suggested Scripting:

"We appreciate your patience as we handle your requests over the next few weeks. Like many other businesses, we are experiencing impacts to our staffing as employees are dealing with school closings and higher levels of absences due to the corona virus. Rest assured our focus is to provide the highest level of service as we work through these ever changing times."

LATE CHARGE SUPPRESSION / WAIVER

This section was updated

Late charges will automatically be suppressed (or waived if already assessed before suppression can be added) for all customer accounts for the months of **March** – **April**.

This section was updated 3/17/20

This section was updated 3/17/20

QUESTIONS AND ANSWERS

Q: Does Wells Fargo report me to the credit bureaus if I make a late payment?

This question was updated 3/19/20 at 12:30 p.m. CT

A: If you are protected under short-term relief, you will have protection from negative credit bureau reporting during the short-term relief period.

Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Q: What happens if I'm not able to make my payment by the end of the month?

This question was added 3/17/20

A: If you will not be able to make your payment by the last day of the month, we have options available to help. You can visit wellsfargo.com/assist if you have general questions, or we can refer you to our Home Preservation department.

Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Q: What happens if I don't make my payments by the end of the relief period?

This question was added 3/20/20 At 3:20 p.m.

A: At the end of the relief period (3 months) any missed payments will be cared for based on guidelines set forth by the investor on your loan. This could range from extending the loan term by the number of missed payments, capitalizing the missed payments into the loan balance, or other modification options. If you need assistance beyond 3 months, we will work with you to determine available options at that time.

Q: I saw on the news that interest rates are now 0%. How do I get 0% on my mortgage?

This question was added 3/18/20

A: The Federal Reserve announced late Sunday that it was cutting its benchmark federal funds rate by 1% to a range of 0% to 0.25%. However, this does not directly equate to mortgage rates moving to 0%. If you'd like further information about rates for refinancing or purchasing a home, you can find details on Wellsfargo.com.

Attn Team Members: If the customer would like to speak with an HMC, please follow standard procedures for connecting to Centralized Retail.

Note: Hold times may be longer than normal due to current volumes.

Q: I saw on the news that mortgage payments should be suspended / deferred? How do I get a suspension/deferral?

This question was updated 3/19/20 at 12:30 p.m. CT

A: Options are continuing to evolve and we are here to assist you through this challenging time. At this time, I can create an application for Home Assistance Options, which will place you on a temporary suspension of payments. During this short-term relief period, you may choose to pay a portion of your payment or nothing at all. That choice is yours. You will have credit bureau protection, late fee suppression, as well as additional protections that will be detailed in the letter you receive. Are you ok with me creating this application and starting the process?

Note: Refer to the Disaster and Payment Assistance Processing section of this document to process short-term relief.

Attn Team Members: As soon as, or if, information becomes available regarding this topic, we will communicate any changes that may need to occur.

Q: Where can I find information about payment options Wells Fargo has available?

This question was added 3/19/20 at 12:30 p.m. CT

A: We general information available on WellsFargo.com/assist.

Attn Team Members: If the customer indicates they are impacted and need assistance, refer to the Disaster and Payment Assistance Processing section of this document.

Q: What does the short-term relief protection include?

This question was added 3/19/20 at 12:30 p.m. CT

A: Short-term relief includes the following:

- Late charge suppression
- Negative credit reporting suppression
- Aging delinquencies

[redacted]

This section was added 3/20/20 at 11:40 a.m. CT

WELLS FARGO

Kristy Fercho
EVP – Head of Home Lending
MAC F2401-064
One Home Campus
Des Moines, Iowa 50328

CONFIDENTIAL TREATMENT REQUESTED

September 4, 2020

The Honorable Elizabeth Warren
The Honorable Brian Schatz
United States Senate
Washington, DC 20510

Dear Senators Warren and Schatz:

I am writing in further response to your July 29, 2020 inquiry and the August 13, 2020 email from your staff regarding Wells Fargo's provision of mortgage forbearances to customers facing COVID-19-related hardships.

As noted in our August 12, 2020 response, since March 9, 2020, Wells Fargo has provided its customers more than 964,000 mortgage forbearances, over 821,000 of which are in connection with federally-backed loans. We previously identified the circumstances in which we provided mortgage and home equity forbearance relief to customers who did not explicitly request it. These actions were taken to ensure that, in these unprecedented economic conditions, and at a time when we were experiencing significantly increased volumes of customer inquiries, every customer who needed a forbearance received one. As we wrote in our August 12 response, we sincerely apologize to any customer who received a forbearance that he or she did not want. We are actively reaching out to our customers and will help any customer who was negatively affected by an unwanted forbearance, including by removing forbearances when requested, adjusting credit reporting, allowing for immediate refinancing, and reinstating lines of credit for eligible customers who received a forbearance that was not utilized.

In response to questions no. 2 and 3 of your July 29 letter:

Wells Fargo has identified 904 accounts (as of August 31) held by customers in active bankruptcy proceedings to whom we provided forbearance relief that was not affirmatively requested by the customer. First, Wells Fargo provided forbearances for 426 customer accounts in active bankruptcy proceedings for whom we identified a court filing indicating that the customer may have been suffering a COVID-19-related hardship. Second, Wells Fargo provided forbearances for 478 customer accounts in active bankruptcy proceedings who were in the loss mitigation application process as of March 25. We have ceased placing customers in bankruptcy proceedings in forbearance without an affirmative request from the customer. We are working with customers who hold the 904 accounts to confirm whether the forbearances we provided were wanted. If a customer informs us they do not want the forbearance, we will remove it and, if a notice has been filed in bankruptcy court, we will withdraw, or seek permission to withdraw, it.

Of the 904 customer accounts in active bankruptcy proceedings:

- 736 accounts are associated with federally-backed loans; and
- 179 accounts were current on their mortgage payments when we provided the forbearance.

As part of our outreach efforts related to the 904 customer accounts:

- For 355 accounts, the customers have confirmed that they wanted the forbearance assistance.
- For 205 accounts, we are continuing to reach out to the customers to determine if each customer wanted the forbearance assistance.
- For 344 accounts, the customers have confirmed that they did not want the forbearance assistance. We filed 223 notices of forbearance or similar filings with the bankruptcy court in connection with these accounts. We are working with these customers to withdraw, or seek permission to withdraw, these filings and determine the possible impact to the customer if a bankruptcy trustee withheld disbursement as a result of the forbearance. To date, we have withdrawn 200 notices.

We are continuing to conduct customer outreach to confirm whether forbearances were wanted by certain other customers, including customers who received a forbearance because:

(1) as of March 25, the customer was in the loss mitigation application process. This includes the 478 accounts in active bankruptcy proceedings discussed above. The customers in the loss mitigation application process often are already in default and many of them had reached out to Wells Fargo to modify their loan because they were no longer able to make their payments.

(2) in the early weeks of the pandemic, the customer sent a secure email or contacted us by phone regarding a COVID-19-related hardship, or to request a fee waiver, even if the customer did not specifically request a forbearance. We subsequently changed our practices to ensure that customer service representatives expressly confirmed a customer's intent before providing a forbearance. In addition, we implemented a forbearance request form through Wells Fargo secure online banking and an interactive voice response unit with updated explanations and acknowledgement of customer intent.

(3) in late March and early April, the customer requested forbearance on a mortgage or home equity account, and we extended the forbearance to his or her mortgage-linked accounts.

As described in our August 12 response, we are working to identify customers, including in the populations described above, for whom we do not have a documented customer request or acknowledgement that a forbearance was wanted. Regardless of the channel through which a customer requested or received a forbearance, we are contacting by phone and email all customers whose initial 90-day forbearance period is expiring, or whose forbearance we automatically extended for another 90 days because they did not respond to our efforts to contact them. We are contacting these customers to ensure that we have confirmed that each customer has received only assistance that is wanted and needed, and that customers are aware of other Home Preservation solutions if they are interested in them. We are also contacting customers who asked to remove or opt out of a forbearance to ensure that the removal process is effective, and the customer's request for forbearance assistance removal and required account adjustments were completed correctly.

We remain committed to make things right for any customer who tells us that he or she received an unwanted or unneeded forbearance. We will remove a forbearance if requested by the customer, adjust credit reporting, allow for immediate refinancing, and reinstate lines of credit for eligible customers who received a

forbearance that was not utilized. We will work to make whole any customer who received an unwanted forbearance.

* * *

The information in this letter and in the enclosed production includes confidential business and financial information that Wells Fargo considers proprietary and competitively sensitive, and that Wells Fargo actually and customarily treats as private. Disclosure of such information would harm Wells Fargo and undermine the competitive financial marketplace. These materials are labeled as "Confidential," and Wells Fargo respectfully requests that these materials be treated as confidential under all applicable rules. If you should nonetheless consider the public release of such materials, Wells Fargo respectfully requests that it be given advance notice and an opportunity to discuss the matter with you, so that Wells Fargo may explain the basis for objecting to public release of the materials.

Additionally, this information and Wells Fargo's productions may contain material nonpublic information. Pursuant to the Stop Trading on Congressional Knowledge Act of 2012 ("STOCK Act"), Pub. L. 112-105, 126 Stat. 291, non-public information derived from a person's position as a Member of Congress or employee of Congress or gained from the performance of such person's official responsibilities may not be used as a means for making a private profit. Misuse of such information, including unauthorized disclosures to third parties outside of the Congress, may also give rise to liability under the securities laws, including section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

By the provision of such documents and information, Wells Fargo does not intend to waive and has not waived the attorney-client privilege or any other protections.

Sincerely,

Signature for Kristy Fercho

Kristy Fercho
EVP – Head of Home Lending

EXHIBIT D

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

Bartholow Ex.D

In re:	§	
	§	
Troy Shannon Harlow	§	Case No. 17-71487
	§	Chapter 13
Debtor	§	
	§	
TROY SHANNON HARLOW,	§	
	§	
	§	ADVERSARY NO. 20-07028
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 & CO.,	§	
	§	
WELLS FARGO BANK, N.A.,	§	
	§	
Defendants.	§	
	§	

PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Plaintiffs Troy Shannon Harlow, Mark Stephen Estes, Kimberly Porter Fewell, Beatriz Villegas-Rodriguez, and Rodolfo Rodriguez (together, "Plaintiffs" and individually "Mr. Harlow," "Mr. Estes," "Ms. Fewell," and "Mr. and Mrs. Rodriguez"), on behalf of themselves

and all others similarly-situated, file this second amended class action complaint against Defendants Wells Fargo & Co. ("WFC") and Wells Fargo Bank, N.A. ("Wells Fargo Bank")(Wells Fargo Bank and WFC are referred to herein together, as "Wells Fargo" or "Defendants"), seeking relief for the Plaintiffs and all other similarly-situated consumer bankruptcy debtors who have filed Chapter 13 bankruptcy cases in the Western District of Virginia and elsewhere nationwide, who have been subjected to Defendants' unlawful practice of filing false notices of unauthorized temporary mortgage forbearances. These notices falsely represent, among other things, that the Plaintiffs and other similarly situated Chapter 13 debtors requested temporary forbearance of mortgage payments that they did not, in fact, actually request, including payments that Wells Fargo had already received and accepted from Plaintiffs and putative class members at the time that Wells Fargo filed its false forbearance notices.

I.
PARTIES

PLAINTIFFS:

1. Plaintiff Troy Shannon Harlow is a resident of the Western District of Virginia. He is also the debtor in *In re Troy Shannon Harlow*, Chapter 13 Bankruptcy Case No. 17-71487, which was filed and is currently pending before the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division.

2. Plaintiff Mark Steven Estes is a resident of the Western District of Virginia. He is also the debtor in *In re Mark Steven Estes*, Chapter 13 Bankruptcy Case No. 17-70327, which was filed and is currently pending before the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division.

3. Plaintiff Kimberly Porter Fewell is a resident of the Western District of North Carolina. She is also the debtor in *In re Kimberly Porter Fewell*, Chapter 13 Bankruptcy Case No. 20-30194, filed in the United States Bankruptcy Court for the Western District of North Carolina, Charlotte Division.

4. Plaintiffs Beatriz Rodriguez-Villegas and Rodolfo Rodriguez are residents of the Southern District of Texas. They are also the debtors in *In re Rodolfo & Beatriz Rodriguez-Villegas*, Chapter 13 Bankruptcy Case No. 20-10074, which was filed and is currently pending before the United States Bankruptcy Court for the Southern District of Texas, Brownsville Division.

DEFENDANTS:

5. Defendant Wells Fargo & Co. is a diversified financial services company headquartered in San Francisco, California that provides banking, insurance, investments, mortgage banking, and consumer finance through banking stores, the internet, and other distribution channels to customers, businesses, and other institutions in all 50 states and in other countries.

6. Wells Fargo & Co. is the parent corporation of Defendant Wells Fargo Bank, N.A.

7. Wells Fargo & Co. exercises specific and financial control over the operations of Defendant Wells Fargo Bank, N.A., dictates the policies, procedures, and practices of Wells Fargo Bank N.A., exercises power and control over the specific activities upon which the claims herein are based, and is the ultimate recipient of the ill-gotten gains described herein.

8. Defendant Wells Fargo & Co. may be served with process through its registered agent, CSC – Lawyers Incorporating Service, at 2710 Gateway Oaks Dr., Suite 150N, Sacramento, CA 95833.

9. Defendant Wells Fargo Bank, N.A. is a subsidiary of Wells Fargo & Co. Wells Fargo Bank, N.A. is a national association that is headquartered in South Dakota and may be served with process through its registered agent, Corporation Service Company, at 327 Hillsborough Street, Raleigh, North Carolina 27603. Wells Fargo Bank, N.A. can also be served via certified mail through Michael V. Bradford, President, at 101 North Phillips Avenue Sioux Falls, SD 57104. Wells Fargo Bank, N.A. conducts mortgage servicing operations through its Wells Fargo Home Mortgage division, which is headquartered in Des Moines, Iowa. Plaintiffs' mortgages are currently serviced by Wells Fargo Bank, N.A.

II.
JURISDICTION AND VENUE

10. Jurisdiction of this action arises under 28 U.S.C. § 1334 and §§157(b) and (c). Plaintiffs assert claims against Defendants for violation of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to Plaintiffs Estes's and Harlow's claims occurred in this district, Plaintiffs Harlow and Estes filed for bankruptcy protection in this district, Defendants participated in the preparation and filing of the Rule 3002.1 notice and Notice of Forbearance in connection with Plaintiffs Harlow's and Estes's bankruptcy cases in this district, and Defendants transact business in this district.

12. Pursuant to Fed. R. Bankr. P. 7008(a), Plaintiffs consent to the entry of final orders or judgment in this adversary proceeding by the bankruptcy judge. Further, to the extent that any court determines that the Bankruptcy Court does not have authority to enter a final judgment on any cause of action set forth herein, Plaintiffs request that the Bankruptcy Court issue a report and recommendation for entry of a proposed judgment on such cause(s) of action to the United States District Court for the Western District of Virginia.

III.
BANKRUPTCY COURT AUTHORITY TO ADJUDICATE THIS MATTER AS A NATIONWIDE CLASS ACTION

13. 28 U.S.C. § 1334(a) confers upon district courts the original and exclusive jurisdiction of all cases under Title 11.

14. 28 U.S.C. § 1334(b) provides that "district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."

15. 28 U.S.C. § 157(a) authorizes district courts to refer cases falling within the ambit of § 1334 to bankruptcy judges for that district.

16. The Order of Reference applicable in the Western District of Virginia provides that "all cases under title 11, U.S.C. and all proceedings arising under title 11, U.S.C. or arising in or related to a case under title 11, U.S.C. pending on this date or filed on or after this date in the Western District of Virginia are referred to the bankruptcy judge for this District…" *Order of Reference, 1984* (W.D. VA Jul. 25, 1984).

17. Plaintiffs' claims invoke substantive rights created by the Bankruptcy Code and Rules and therefore fall within the Court's "arising under" jurisdiction. *See Jones v. Atlas*

Acquisitions, LLC, 16-03235, Order Denying Atlas Acquisitions LLC and Avi Schild's Motion to Dismiss Plaintiff's Class Certification Claims, Docket No. 44 (Bankr. S. D. Tex. May 19, 2017) (Bohm). **Exhibit A**. *See also*, *Cano v. GMAC Mortgage Corp. (In re Cano)*, 410 B.R. 506 (Bankr. S.D. Tex. 2009); *Noletto v. Nationsbanc Mortgage Corp. (In re Noletto)*, 244 B.R. 845 (Bankr. S.D. Ala. 2000).

18. This Court also has "arising in" jurisdiction in this case because Plaintiffs' claims can only arise in bankruptcy, as they relate to false and unauthorized forbearance notices filed by Defendants in Plaintiffs' and the other putative class members' Chapter 13 bankruptcy cases.

19. Bankruptcy courts are authorized to handle class actions in adversary proceedings through Fed. R. Bankr. P. 7023, incorporating Fed. R. Civ. P. 23, which provides the authority and procedure through which federal courts certify class actions. *In re Wilborn*, 609 F.3d 748, 754 (5th Cir. 2010); *In re Tate*, 253 B.R. 653, 663 (Bankr. W.D. N.C. 2000).

20. Because the District Court for the Western District of Virginia has jurisdiction over a nationwide class of debtors, this Court, operating as a unit of the District Court for the Western District of Virginia, has the authority to adjudicate all matters that fall within the District Court's bankruptcy jurisdiction. 28 U.S.C. § 1334. Thus, based on the language set forth in 28 U.S.C. §§ 1334 and 157, and the Western District of Virginia's *Order of Reference, 1984*, this Court may exercise jurisdiction over a nationwide class of debtors, including the class Plaintiffs seek to represent as set forth in this complaint, provided Plaintiffs and the putative class satisfy all other requirements of Fed. R. Bankr. P. 7023 for certification of a class action.

IV.
FACTS

21. Plaintiffs file this case on behalf of themselves and all other similarly-situated

consumer debtors who have filed for bankruptcy protection under the provisions of Chapter 13 of the United States Bankruptcy Code (11 U.S.C. § 1301 *et seq.*), in order to redress and enjoin Defendants' filing of false and disruptive notices of forbearance on Bankruptcy Courts' dockets and claims registers around the country.

22. Among other things, Wells Fargo's notices (a) falsely assert that Chapter 13 debtors' loans are in (delinquent) forbearance status when such debtors have not requested forbearance, and (b) to the extent such notices include payments that have already come due, they violate the requirements of Fed. R. Bankr. P. 3002.1(b), which requires mortgage creditors to file and serve notices of mortgage payment change no fewer than 21 days prior to the effective date of the payment change. Moreover, Wells Fargo's false forbearance notices violate borrowers' plan confirmation orders and/or improperly interfere with plan confirmation by purporting to unilaterally alter the borrower's mortgage loan obligations under debtors' proposed or already confirmed Chapter 13 plans.

A. SUMMARY OF CASE

23. WFC, through its subsidiary Wells Fargo Bank, operates as a loan servicing company for consumer home mortgage loans, which means that borrowers like the Plaintiffs and the putative class members make their monthly home mortgage payments to Wells Fargo, which is responsible for collecting and applying borrowers' payments on behalf of the owner of the borrowers' mortgage loans in accordance with the requirements of the borrowers' loan documents and applicable law, including relevant provisions of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), as implemented through Regulations X (RESPA) and Z (TILA).

24. As part of its mortgage servicing operations, Wells Fargo collects borrowers' monthly payments, which are ordinarily applied to principal and interest, taxes and insurance, and other lawful fees and charges that may have been assessed to such accounts, in accordance with the terms of the mortgage loan documents (note and deed of trust/mortgage/security instrument). Wells Fargo then disburses borrowers' mortgage payments to the appropriate parties, such as lenders, investors, taxing authorities, insurers, and other relevant entities.

25. Wells Fargo earns revenue from mortgage loan servicing in several ways. Without limitation, examples of ways that Wells Fargo earns revenue for mortgage loan servicing include: (a) Wells Fargo earns a per-loan servicing fee established by its servicing agreements with the owner(s) or investor(s) that are entitled to payment of the principal and interest payments set forth in the mortgage loan instruments (i.e. Note and Deed of Trust / Mortgage); (b) Wells Fargo earns "float" income on unapplied funds, which accrues for the time between when consumers pay and when funds are remitted to the loans' owners; (c) Wells Fargo retains all or part of certain fees it collects from borrowers, such as late charges, and (d) for loans Wells Fargo services for Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac")(Fannie Mae and Freddie Mac together are referred to herein as the "GSEs"), as well as for loans Wells Fargo services for trusts comprised of loans insured or guaranteed by government agencies known collectively as "Ginnie Mae," including loans insured by the Fair Housing Administration ("FHA") and the United States Department of Agriculture ("USDA"), as well as loans guaranteed by the U.S. Department of Veterans Affairs ("VA") (collectively, "Ginnie Mae" loans), Wells Fargo earns incentive payments after loans are placed in forbearance and borrowers accept and comply with certain "workout options" authorized by

the GSEs or by Ginnie Mae to cure the forborne payments, which are options that generally involve repayment plans, deferral agreements (i.e. balloon payments due at loan maturity), or various forms of loan modifications.

26. The CARES Act's forbearance provisions apply to federally-backed mortgages, which include loans serviced by Defendants on behalf of the GSEs and Ginnie Mae, which acquire, securitize, and insure or guarantee repayment of the majority of consumer mortgage loans in America, including conventional loans issued by the GSEs, as well as non-conventional, higher cost loans issued by Ginnie Mae entities, including the FHA, USDA, and VA.

27. As of July 2020, roughly 4.2 million homeowners were in forbearance plans, according to the Mortgage Bankers Association. About 12% of Ginnie Mae loans were in forbearance on July 8, compared with roughly 6% of Fannie Mae- and Freddie Mac-backed loans.

28. Wells Fargo is the third-largest servicer of loans backed by the Federal Housing Administration, the Department of Veterans Affairs, and the U.S. Department of Agriculture's USDA Rural Development loan program.

29. Ginnie Mae oversees the securitization of FHA, VA, and USDA loans by ensuring that principal and interest payments are paid to bondholders in a timely fashion.

30. Since June of 2020, Wells Fargo has bought out more than 7% of its entire Ginnie Mae servicing book, which has resulted in substantial principal losses for investors in Wells Fargo's mortgage backed securities.

31. Effective July 1, 2020, GSEs Fannie Mae and Freddie Mac implemented an "incentive fee structure" to compensate mortgage servicers when borrowers with loans in CARES Act forbearance complete workout options to provide for repayment of unpaid monthly mortgage

that came due during the forbearance period. These options include repayment plans, payment deferrals/COVID-19 payment deferrals, and certain types of mortgage modifications.

32. Additionally, with respect to loans Wells Fargo services on behalf of the GSEs (including Plaintiffs Mr. & Mrs. Rodriguez's Fannie Mae loan), Wells Fargo receives "reimbursement" of $100 for each forbearance notice it files in the borrower's bankruptcy case, up to a maximum "reimbursement" of $200 in the event Wells Fargo files two or more forbearance notices in a single bankruptcy case.

33. Wells Fargo is also incentivized to place GSE loans into forbearance in order to minimize its exposure to servicing requirements obligating Wells Fargo to advance borrowers' delinquent principal and interest payments to the investors in GSE-sponsored trusts.

34. Ordinarily, Wells Fargo's principal and interest advance obligations continue for GSE loans regardless of whether Wells Fargo collects payment from the borrowers, unless and until Wells Fargo either forecloses on the property or determines that the property's foreclosure value is insufficient to reimburse Wells Fargo for any further advances of monthly principal and interest after satisfying the remaining principal balance of the delinquent loan.

35. In its first quarter 2020 Form 10-Q quarterly report, filed with the Securities and Exchange Commission on May 5, 2020, Wells Fargo acknowledged the potential adverse impact of its principal and interest advance obligations with respect to loans in forbearance, explaining,

> As a servicer, we are required to advance certain delinquent payments of principal and interest on the mortgage loans we service. Due to an increase in customer requests for payment deferrals as a result of the COVID-19 pandemic, we expect the amount of principal and interest advances we were required to make as a servicer to increase, which may adversely impact our net servicing income. The amount and timing of reimbursement of these advances vary by investor and the applicable servicing agreements in place.

See Wells Fargo 2020 10-Q, https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2020/first-quarter-10q.pdf.

36. However, exclusively for loans in CARES Act forbearances, Fannie Mae and Freddie Mac have modified the principal and interest advance requirements applicable to servicers of GSE loans by limiting the servicers' (including, as relevant here, Wells Fargo's) principal and interest advance obligations to just four advances of delinquent monthly principal and interest payments for loans that have been in a CARES Act forbearance.

37. While the CARES Act forbearance terms are limited to no more than two 180 day periods (360 consecutive days total), once a GSE loan has been placed into CARES Act forbearance, the GSEs' limitation of servicers' principal and interest advance obligations to just four delinquent payments is permanent and is not tied to delinquency accruing during the CARES Act forbearance period.

38. Thus, based on the GSEs' CARES Act forbearance servicing guidelines, a servicer of a loan that was *ever* in a CARES Act forbearance, even months or years after the forbearance ends, would be entitled to forever cease making principal and interest advances on such loans after advancing principal and interest for just four missed payments by the borrower.

39. Wells Fargo's decision to place Chapter 13 bankruptcy debtors' loans into involuntary forbearance status was a consequence of its corporate policies of (a) seeking to maximize profits by manufacturing conditions (i.e. forbearance status, which is treated as delinquency status) that would allow it to purchase still-performing Ginnie Mae loans at a discount (i.e. below market value), which are guaranteed and/or insured against loss by federal government agencies, and (b) using CARES Act-specific servicing policies to limit its exposure to principal and

interest advance obligations that would otherwise be associated with non-performing Ginnie Mae and GSE loans, thereby limiting its exposure to losses Wells Fargo had already forecast would result from the economic downturn created by the effects of the COVID-19 pandemic.

40. Wells Fargo has publicly acknowledged the linkage between CARES Act forbearances and its repurchase of Ginnie Mae loans, explaining through a spokesperson: "In the normal course of business, Wells Fargo regularly purchases government-insured ... loans that are more than 90 days past due out of Ginnie Mae pools to manage balance sheet impacts and reduce expenses . . . . In June and July, the number of loans we purchased out of Ginnie Mae pools increased substantially due primarily to loans in COVID-related forbearances." Kate Berry, *Wells Fargo buys $14B of delinquent mortgages tied to pandemic*, American Banker (July 13, 2020), https://www.americanbanker.com/news/wells-fargo-buys-14b-of-delinquent-mortgages-tied-to-pandemic.

The Mechanics of Wells Fargo's Fraudulent Forbearance Scheme with Respect to its Practice of Filing False Forbearance Notices in Chapter 13 Bankruptcy cases:

41. WFC, through its subsidiary Wells Fargo Bank, works with its network of consumer bankruptcy attorneys and vendors, including (without limitation) Black Knight Financial Services, Inc. ("Black Knight"), James E. Albertelli, P.A. d/b/a ALAW a/k/a Albertelli Law a/k/a Albertelli Enterprises ("ALAW"), and InfoEx LLC ("InfoEx"), among others, to further Wells Fargo's false forbearance scheme.

42. Upon information and belief, Wells Fargo engages Black Knight, InfoEx, and ALAW to provide technical assistance and legal services associated with developing criteria for and implementing systems and processes (a) to identify Chapter 13 debtors with CARES Act forbearance eligible Wells Fargo-serviced Ginnie Mae loans with desirable characteristics for

repurchase or that are likely to benefit from the GSEs' limitations on principal and interest advance obligations for loans placed into CARES Act forbearances, (b) to prepare, execute, file, and serve false forbearance notices in these Chapter 13 debtors' bankruptcy cases, and (c) to solicit attorneys representing the Chapter 13 debtors in cases where Wells Fargo files its false forbearance notices to negotiate loan workout agreements so Wells Fargo can recover the forborne payments that are the subject of Wells Fargo's false forbearance notices.

43. Defendants use Black Knight's MSP mortgage loan servicing system and associated communication network as a common mortgage loan servicing and accounting system of record to store mortgage loan data, including data associated with the forbearance notices prepared, executed, filed, and served by or on behalf of Defendants, as well as to track the efforts of Defendants to secure loan workout incentive payments following the manufactured and false "forbearance" periods described in the false forbearance notices.

44. ALAW describes itself as "a full-service real estate law firm with attorneys practicing in offices across the Southeastern United States. The Firm represents institutional and private lenders, as well as investors, throughout the loan life cycle from securitization to origination and asset reclamation."

45. ALAW owns, controls, and directs the operations of a host of related and/or subsidiary law offices / legal services entities ("law offices") that employ licensed attorneys who provide foreclosure and bankruptcy-related legal services in bankruptcy courts and state courts, mostly in the South and Southeastern United States, including Florida, Georgia, Alabama, Arkansas, North Carolina, South Carolina, Ohio, Tennessee, and Texas.

46. ALAW is wholly owned by James E. Albertelli ("Albertelli"), an attorney licensed to practice law in Florida and Georgia.

47. Upon information and belief, Albertelli is also the owner and Chief Executive Officer of InfoEx, which is a Delaware Limited Liability Corporation that shares offices with those of ALAW at 5404 Cypress Center Drive, Suite 300, Tampa, Florida.

48. According to a website maintained by ALAW and InfoEx, InfoEx was "created by industry experts to deliver national end-to-end and modular default services and technology strategies. Through a unique synergy of technology, services, and embedded legal review, the InfoEx Servicing Suite supports a dramatic reduction in the cost and risk associated with the servicing of a defaulted asset."

49. The "industry experts" who helped "create" InfoEx include various individuals who are former employees of Lender Processing Solutions a/k/a "LPS," which is now owned by and known as Black Knight Inc., a publicly traded entity that provides and supports a mortgage servicing and accounting platform commonly known as "MSP," along with its companion application, "LoanSphere," which together comprise the primary system of record used by Defendants in connection with the servicing of the Plaintiffs' and other class members' mortgage loans.

50. InfoEx is not a law firm and does not purport to offer legal services itself.

51. Wells Fargo relies upon InfoEx, Black Knight, and other vendors that provide related services (such as print and mail vendors) to prepare and serve the false forbearance notices once they have been executed and filed by Wells Fargo's non-attorney personnel.

52. When Defendants file false notices of forbearance in cases of borrowers whose

Chapter 13 plans have not yet been confirmed, as was the case with the Rodriguez Plaintiffs, these false forbearance notices call into serious doubt the feasibility of their proposed plans, a mandatory precondition to confirmation of such borrowers' Chapter 13 plans, by giving the false appearance that such debtors are experiencing greater financial hardship than their schedules and statements of financial affairs disclose.

53. Similarly, for borrowers like Plaintiffs Harlow, Estes, and Fewell, whose Chapter 13 plans were already confirmed when Defendants filed their false forbearance notices, Defendants' filing of these false forbearance notices indicates a potentially negative change in financial circumstances that warrants explanation and potential adjustment of either such debtors' Chapter 13 plans (to increase distributions to lower-priority creditors based on the debtors' apparent access to additional disposable income during the forbearance period while the debtors' mortgage payment obligations are suspended), or, the debtors could be asked to update their budget information and/or amend their income and expense schedules on file with the Bankruptcy Court to account for the apparent change in circumstances reflected by Defendants' false representations that such debtors requested a forbearance of their mortgage payment obligations.

54. Moreover, in addition to being patently false insofar as they represent that the putative class members requested forbearance of their mortgage loans when they made no such request, these notices also routinely falsely assert that the debtors' mortgage loans have been in forbearance for one or more months *prior* to the filing of the notices, including months for which Plaintiffs and other putative class member debtors had already made their monthly mortgage payments, either directly to Wells Fargo or to the Chapter 13 Trustee in cases with confirmed "conduit" plans (i.e. plans in which the Trustee serves as the disbursing agent for post-petition

mortgage payments).

55. Wells Fargo's false forbearance notices also misrepresent that the terms of such notices were lawful and authorized by the CARES Act and the underlying mortgage loan documents, applicable bankruptcy law, and that they were approved and/or accepted by the Plaintiffs and/or the other class members.

56. Many of Defendants' false and unauthorized notices of temporary forbearance are filed on the Bankruptcy Courts' official dockets for borrowers' Chapter 13 cases, along with all of the other docket items for the debtor's bankruptcy case, including the bankruptcy petitions, plans, schedules, disclosures, motions, orders, and the like – documents that are ordinarily signed and filed by licensed attorneys and/or by the Bankruptcy Court itself.

57. In other cases, including Mr. Harlow's case, Defendants file the false forbearance notices on the Court's claims register, using a modified version of Official Form 410S1, which ordinarily is used to disclose changes in the debtor's monthly mortgage payment in accordance with Bankruptcy Rule 3002.1's requirements.

58. For each of the Plaintiffs, Defendants' false forbearance notices, whether filed on dockets or on courts' claims registers, are signed by non-attorneys and filed on Bankruptcy Courts' official dockets or claims registers in Plaintiffs' Chapter 13 bankruptcy cases.

59. These false forbearance notices are a critical component of Wells Fargo's fraudulent scheme to recover undeserved loan workout incentive payments, provide a pretext for repurchasing otherwise performing Ginnie Mae loans for profit, and provide a mechanism through which Wells Fargo can artificially limit its exposure to future principal and interest advance obligations with respect to GSE-backed loans of borrowers in Chapter 13 bankruptcy.

60. Wells Fargo's false forbearance notices filed in borrowers' Chapter 13 bankruptcy cases are prepared and filed solely to further Wells Fargo's fraudulent unauthorized forbearance scheme. Wells Fargo's false forbearance notices affirmatively misrepresent the borrower's intentions and statements by falsely asserting that the borrower requested a post-petition forbearance.

61. By knowingly filing these false forbearance notices, Wells Fargo "defile[s] the temple of justice," effecting a widespread fraud on this nation's Bankruptcy Courts, needlessly creating chaos and waste in Plaintiffs' and other class members' Chapter 13 cases, and unnecessarily burdening debtors and their counsel, as well as Bankruptcy Courts, Chapter 13 Trustees, and United States Trustees responsible for administering and monitoring these borrowers' Chapter 13 cases.

62. Importantly, "forbearance" of mortgage payments is not forgiveness of the borrower's obligation to make these payments. Rather, forbearance only puts off the borrower's duty to make mortgage payments during the applicable forbearance period.

63. At the conclusion of the forbearance period, any missed payments become immediately due and owing, unless the borrower makes alternative repayment arrangements with the servicer of the borrower's mortgage loans. In mortgage servicing parlance, these alternative repayment arrangements are known as "workout options."

64. For Chapter 13 debtors, the Bankruptcy Code and Rules already authorize a Court-supervised equivalent of workout options for debtors who miss mortgage payments while their Chapter 13 cases are pending, i.e. modification of the debtor's plan to address the missed post-petition payments.

65. These workout options are accomplished most frequently in Chapter 13 cases by (a) modifying the terms of debtors' Chapter 13 plans to provide for the cure of any missed payments through funds paid by the debtors to the Chapter 13 Trustee, who then distributes the payments to the mortgage servicers, (b) entering into Court-ordered repayment plans in which debtors cure their post-bankruptcy arrearages by making one or more direct payments to the mortgage servicer, or (c) through post-petition mortgage modifications, which ordinarily are fully disclosed, subject to Court oversight, and are formally approved by Bankruptcy Court order *prior to taking effect*.

66. Moreover, Chapter 13 debtors with plans that were confirmed prior to passage of the CARES Act by Congress are permitted under the CARES Act to cure any post-petition arrears on secured debt payments by extending the term of their Chapter 13 plans by up to two years (24 months) beyond the Bankruptcy Code's pre-CARES Act maximum of five years (60 months).

67. Defendants, as servicing agents for Plaintiffs' and other class members' secured creditors, are not creditors themselves, and they have no authority under the Bankruptcy Code and Rules to unilaterally modify debtors' Chapter 13 plans by motion, notice, or otherwise, including by filing false forbearance notices.

68. The injury to Plaintiffs and others who are impacted by Wells Fargo's use of false forbearance notices to further its fraudulent forbearance scheme is neither hypothetical nor abstract. Defendants' false forbearance notices needlessly burden not only debtors, but also the bankruptcy judges (and their staff), Chapter 13 Trustees (and their staff), and other parties in interest involved with administering the debtors' Chapter 13 case who can no longer rely on the veracity of Wells Fargo's sworn representations to the Court. Because of Wells Fargo's knowing misrepresentations, parties are now forced to investigate and determine whether every claimed

forbearance in a notice filed by Defendants is legitimate, and if not, determine and take whatever action they must take to prevent implementation of the terms of the false forbearance notices by the Trustee.

69. This burden is exemplified by the communications Chapter 13 trustees for this district have sent to the attorneys practicing in this district regarding the additional work in reviewing and evaluating these notices that trustees have now been forced to undertake as a consequence of Defendants' practice of filing false forbearance notices. *See* **Exhibit B**, Email from Herbert L. Beskin to local bar, dated June 3, 2020.

70. It is also important to clarify what this case is not about: Plaintiffs in this case do not seek to prevent any Chapter 13 debtor from properly entering into a forbearance agreement that such debtor has requested, understands, and wants, and which has been disclosed to and approved by their Chapter 13 Trustees and bankruptcy courts through proper, transparent disclosures and procedures, as required by the Bankruptcy Code and Rules and, to the extent applicable, Local Bankruptcy Rules.

71. Fed. R. Bankr. P. 3002.1 ("Rule 3002.1") was established to require mortgage servicers to disclose post-petition mortgage payment changes so Chapter 13 debtors have the information they require to be able to make their future post-petition mortgage payments in the proper amount, which is critical for their ability to emerge from Chapter 13 bankruptcy with a current mortgage loan.

72. Defendants' false forbearance notices thwart the intent and purposes of Rule 3002.1 by including previous months' payments in the false forbearance period indicated by such notices, even when, as is the case with all of the Plaintiffs, the debtors had already made post-petition

payments for one or more of the months Defendants falsely assert have been forborne at such debtors' requests.

73. Defendants' actions are, unfortunately, another example of Wells Fargo manipulating the bankruptcy process to obtain results that benefit it financially, without regard for and to the detriment of the desires and needs of its customers, much less federal bankruptcy law, the existing rules, and orders of bankruptcy courts, including plan confirmation orders and Fed. R. Bankr. P. 3002.1.

74. Defendants already know that these borrowers are in bankruptcy, and Defendants already know that these borrowers have not requested forbearances of their monthly mortgage payment obligations when Defendants cause their representatives and agents to execute, file, and serve false forbearance notices in Chapter 13 debtors' bankruptcy cases.

75. Regardless of Defendants' motives, it is nevertheless contrary to the long-established requirements of our judicial system for Defendants to allow non-attorney representatives to execute, file, and serve these notices on Bankruptcy Courts' dockets and claims registers without attorney review and approval. Corporations are only permitted to participate in federal court proceedings through counsel; they generally cannot represent themselves, although that is precisely what Defendants are doing by filing the false forbearance notices in borrowers' Chapter 13 cases.

76. Prior to filing their false forbearance notices, Defendants also do not communicate with debtors' counsel in any meaningful way to confirm borrower consent to the alleged request for forbearance described in the false forbearance notices. Thus, when they are filed, these notices come as a surprise to everyone but the Defendants, forcing needless investigation and action by

debtors, debtors' counsel, Chapter 13 Trustees, and bankruptcy courts responsible for administering the cases in which such notices are filed.

77. What ought to happen, even in the extraordinary circumstances presented by the COVID-19 pandemic, is that Chapter 13 debtors (through counsel) and the mortgage servicer (Wells Fargo) should first communicate and reach agreement about a proposed forbearance and subsequent workout option, which they would then present to the Court for approval in the form of a plan modification or agreed order pursuant to Fed. R. Bankr. P. 4001(d), prior to unilaterally imposing forbearance on debtors' mortgage loans and filing false forbearance notices with the nation's bankruptcy courts.

78. In "conduit" cases (i.e. cases where the Chapter 13 Trustee is responsible for making borrowers' ongoing monthly mortgage payments in addition to disbursements to the debtor's creditors on pre-petition debts), when the Trustee receives notification that a debtor's monthly mortgage payment has changed, the result is that the Chapter 13 Trustee often recalculates the allocation of disbursements of debtor's plan payments (funds paid to the Trustee by the debtors pursuant to their Chapter 13 plan) depending on the nature of the change in the mortgage payment.

79. Consequently, in some conduit cases where the debtor's creditors holding pre-petition unsecured debts are slated to receive less than 100% of their allowed claims, absent plan amendment, when the debtor's post-petition mortgage payment goes down, the debtor's Chapter 13 plan payment to the Trustee stays the same, but the amount that the Chapter 13 Trustee pays to unsecured creditors increases by the amount of the reduction in the debtor's mortgage payment. In other words, the "forbearance" adds no value to the debtor, whose responsibility under the

Court-confirmed Chapter 13 plan increases monthly by the amount of the supposedly forborne payment that is devoted instead to payment of unsecured creditors.

80. Similarly, in so-called "direct pay" cases (i.e. those cases in which debtors pay their post-petition monthly mortgage payments by sending funds directly to their mortgage loan creditor or its loan servicing agent), reductions in monthly mortgage payments can result in Chapter 13 Trustees seeking to increase the debtor's Chapter 13 plan payment when the mortgage payment decreases, as it does when a loan is in forbearance, on the theory that additional funds are available because the borrower is no longer making a mortgage payment.

81. Thus, Defendants' filing of false forbearance notices sabotages the Chapter 13 process, ignores and violates Bankruptcy Rule 3002.1, breaches the debtor's mortgage contract, undermines the Chapter 13 Trustee's administration of the debtor's confirmed Chapter 13 plan, and unfairly places the Chapter 13 debtors at risk of foreclosure.

82. Plaintiffs therefore seek certification of a nationwide class of similarly situated consumer debtors, as well as an order of this Court permanently enjoining these practices. Plaintiffs also ask the Court to allow the class to recover appropriate monetary relief from Defendants, including punitive damages and/or monetary sanctions for the Defendants' unjust enrichment and other harms the members of this putative class and the Chapter 13 process have suffered as a consequence of Defendants' illegal scheme, as well as class counsel's reasonable attorneys' fees and expenses.

B. PLAINTIFFS' BACKGROUND AND BANKRUPTCY CASES

Troy Shannon Harlow

83. On November 2, 2017, Plaintiff Troy Shannon Harlow filed his petition for Chapter

13 bankruptcy in the Western District of Virginia, Roanoke Division, which was assigned Case No. 17-71487 by the Bankruptcy Court.

84. Mr. Harlow's home is encumbered by a lien securing repayment of a mortgage loan serviced by Wells Fargo.

85. Mr. Harlow filed his Chapter 13 bankruptcy to address debts he incurred and/or assumed when he and his former wife divorced.

86. Mr. Harlow, who had medical issues that required a kidney transplant, has been deemed 100% disabled and is unable to return to work with the railroad where he was employed when his health began to deteriorate.

87. Mr. Harlow did seek and obtain a temporary reduction in his Chapter 13 plan payment due to his non-filing spouse's loss of income due to COVID-19, but the amended plan filed on April 17, 2020 specifically provided he was current on his mortgage and that he would continue making regular monthly mortgage payments to Wells Fargo.

88. Wells Fargo did not object to the amended plan, which was confirmed on June 2, 2020.

89. Mr. Harlow was current on his mortgage payments when he filed his bankruptcy petition, and he has remained current on his post-petition monthly mortgage payments since filing for bankruptcy in 2017.

90. Wells Fargo filed a proof of claim in Mr. Harlow's bankruptcy case, claiming $0.00 in pre-petition arrearages.

91. Defendants' false forbearance notice filed on the Claims Register for Mr. Harlow's case was filed on April 29, 2020 as a Rule 3002.1 Notice of Mortgage Payment Change, using

Official Form 410S1, which was executed and filed by Wells Fargo's non-attorney representative, "Thomas R. Dautel, VP Loan Documentation."

92. The April 29, 2020 Rule 3002.1 notice indicated that the forbearance would be effective beginning with the May 1, 2020 payment.

93. Like the false forbearance notices Defendants filed in the other Plaintiffs' Chapter 13 cases, the forbearance notice Wells Fargo filed in Mr. Harlow's case asserts, falsely, that "[Mr. Harlow] has requested, and Creditor\Servicer has provided a temporary suspension of mortgage payments."

94. Mr. Harlow did not request a forbearance of his mortgage loan payment obligations, did not contact Wells Fargo about a forbearance, and he did not and does not want a forbearance of his mortgage payment obligation.

95. Defendants also improperly modified the form of the Official Form 410S1 that they used when they filed the false forbearance notice on the Claims Register for Mr. Harlow's Chapter 13 case, adding the following unauthorized language to their filing:

> **The use of Official Form 410S1 and of the electronic filing method for a Notice of Payment Change is being used to provide interested parties with notice of the forbearance arrangement, detailed below. It is only being used due to limitations on existing functionality available to limited users within the Courts' CMECF systems. The use of this form in no way implies that a payment change is occurring or has occurred on the account. This filing does not imply that the provisions of FRBP 3002.1 apply to this filing, nor does the Servicer\Creditor consent to the application of any provisions of FRBP 3002.1 to this filing.**

96. At the time that Wells Fargo filed its false forbearance notice in Mr. Harlow's case, using its improperly modified Official Form 410S1, Mr. Harlow was current on his post-petition monthly mortgage payments.

97. Because of his relatively static income, Mr. Harlow needs to be allowed to make his regular monthly mortgage payments. If he were to be required by the Court or the Chapter 13

Trustee to increase his plan payments to pay other debts based on a misunderstanding created by Defendants' false forbearance notice filed in Mr. Harlow's case, i.e. that his mortgage payment obligations have been suspended because of his disability, Mr. Harlow would not have the option to work extra hours or take on a second job to cure the allegedly forborne payments. He also might not be able to secure other loan workout options with Defendants, in which case he could lose his home or be forced back into another bankruptcy to attempt to cure the payments included in Wells Fargo's false forbearance notice filed in Mr. Harlow's case.

98. On June 18, 2020, Mr. Harlow's bankruptcy attorneys filed an objection to Defendants' false forbearance notice.

Mark Stephen Estes

99. Plaintiff Mark Stephen Estes filed his Chapter 13 Bankruptcy Petition on March 14, 2017 (VAWB Case No. 17-70327), and the Bankruptcy Court entered its order confirming Mr. Estes's Chapter 13 plan on May 4, 2017. (Estes Docket No. 18).

100. Wells Fargo is the servicer of Mr. Estes's mortgage loan, which is secured by a lien against his home.

101. Mr. Estes is paying his post-petition arrears and his ongoing post-petition monthly mortgage payments via the Chapter 13 Trustee pursuant to the terms of Mr. Estes' confirmed Chapter 13 plan and all subsequent amendments thereto.

102. Mr. Estes has been employed for the last 17 years by Volvo, although he was temporarily furloughed in March of 2020 due to the shutdown precipitated by the COVID-19 pandemic.

103. On April 10, 2020, Mr. Estes filed an amended plan that proposed to (a) forgive

Mr. Estes's April 2020 plan payment and any arrearage resulting from the reduction in income caused by Volvo's furlough, (b) reduce Mr. Estes's trustee payment for May of 2020 to $1,000, and (c) extend Mr. Estes's Chapter 13 plan to 62 months (extending the remaining number of monthly payments under Mr. Estes' Chapter 13 plan) as authorized by the provisions of the CARES Act.

104. As of April 10, 2020, Mr. Estes had already cured his post-petition mortgage arrearages, having cured the post-petition mortgage arrearages through the Chapter 13 Trustee in accordance with the provisions of an agreed order resolving a motion for relief from stay Wells Fargo filed early in Mr. Estes's Chapter 13 case.

105. Mr. Estes's April 10, 2020 amendment to his Chapter 13 plan does not contemplate any forbearance of Mr. Estes's post-petition monthly mortgage payments, nor does it seek to add any post-petition mortgage arrearage to be paid through his Chapter 13 plan.

106. The Court approved Mr. Estes's April 10, 2020 amended Chapter 13 plan by order entered June 1, 2020.

107. On May 11, 2020, well after Mr. Estes had cured his pre- and post-petition mortgage arrearages, Wells Fargo, through a non-attorney representative identified as, "Nickesha Presley, VP Loan Documentation," filed a false "Notice of Temporary Forbearance" on the Court's docket for Mr. Estes's Chapter 13 case (Estes Docket No. 77).

108. Mr. Estes did not request a forbearance of his mortgage loan, did not contact Wells Fargo about forbearance or any other loss mitigation option in connection with his pandemic-related employment changes (or otherwise), and Mr. Estes did not want and does not want a forbearance of his mortgage payment obligations, which are already provided-for in his confirmed

Chapter 13 plan, as amended.

109. The May 11, 2020 Forbearance notice Wells Fargo filed in Mr. Estes's Chapter 13 case also indicates that the (unwanted) three-month mortgage forbearance would apply to Mr. Estes's post-petition mortgage payment due for May 1, 2020 and would continue through and including the July 2020 monthly mortgage payment.

110. At the time Wells Fargo filed the false forbearance notice in Mr. Estes's Chapter 13 case, pursuant to the terms of Mr. Estes's confirmed amended Chapter 13 plan, the Trustee had disbursed funds to Wells Fargo for Mr. Estes's post-petition mortgage payments through and including the post-petition installment for April 2020 and was holding funds sufficient to satisfy the May 2020 monthly mortgage payment and the June 2020 was not yet due.

111. Defendants' preparation, execution, filing, and service of the false forbearance notice in Mr. Estes's Chapter 13 case caused harm to the debtor, debtor's counsel, the Chapter 13 Trustee, and the Court, all of whom have been needlessly burdened by Defendants' false filing.

112. On May 13, 2020, Mr. Estes's counsel filed an objection to the Defendants' false forbearance notice filed in his Chapter 13 case.

113. Instead of filing a substantive response to Mr. Estes's objection and coming to Court to explain its error, Wells Fargo filed a response that simply stated, without explanation, that its forbearance notice filed in Mr. Estes's case was "erroneously filed," while further confusing the issues by making another false statement, characterizing the false forbearance notice being withdrawn as a notice of *debtor's* request for mortgage forbearance.

114. Adding insult to injury, Wells Fargo's response asserts, without explanation, that "no action detrimental to the Debtor was taken by Creditor."

115. Mr. Estes denies that Defendants' filing and subsequent attempted unilateral withdrawal of the false forbearance notice was not detrimental to him.

116. By filing the false forbearance notice in Mr. Estes's Chapter 13 case, Defendants impermissibly interfered with Mr. Estes's mortgage loan contract and the Court's plan confirmation orders.

117. Upon information and belief, Defendants, through Wells Fargo's designated non-attorney representative, Ms. Presley, have filed false notices with the Court without performing appropriate due diligence to verify the assertions contained in the forbearance notice, without the supervision and approval of an attorney licensed to practice in this Court, and they did so without consideration for the potential harmful impact that could result from filing this false forbearance notice for debtors, debtors' counsel, the Chapter 13 Trustees, and this honorable Court.

Kimberly Porter Fewell

118. On February 14, 2020, Plaintiff Kimberly Porter Fewell filed her voluntary Chapter 13 petition in the Western District of North Carolina, Charlotte Division. Chapter 13 Case No. 20-30194, Docket No. 1 (hereinafter, "Fewell Docket No. [x]").

119. Throughout the pendency of her Chapter 13 case, Ms. Fewell has made all required post-petition mortgage payments in accordance with the requirements of her confirmed Chapter 13 plan.

120. Ms. Fewell's Chapter 13 Plan, which was confirmed by order of the Bankruptcy Court on April 28, 2020, proposed that Ms. Fewell would pay $1,025.00 per month for a 1% distribution on the allowed amount of her general unsecured creditors' claims, inclusive of Ms. Fewell's ongoing monthly mortgage payments. *See* Fewell Docket Nos. 2 and 17.

121. On May 12, 2020, "Eugenia Ijames" a/k/a Eugenia I. James a/k/a Eugenia L. James, who was, upon information and belief, acting in her capacity as an employee or authorized agent of Defendant Wells Fargo at the time, filed a "Notice of Temporary Forbearance" (the "Fewell Forbearance Notice") on the Court's docket for Ms. Fewell's Chapter 13 Bankruptcy. Fewell Docket No. 19.

122. The Fewell Forbearance Notice falsely states that, "due to a financial hardship resulting directly or indirectly from the COVID-19 emergency," Ms. Fewell "requested, and Creditor\Servicer [sic] has provided a temporary suspension of mortgage payments."

123. Ms. Fewell has not experienced a financial hardship resulting directly or indirectly from the COVID-19 emergency, as she is employed by the grocer, Food Lion, and therefore has been designated an essential worker and has not had her employment disrupted by the pandemic.

124. Ms. Fewell did not ask Wells Fargo to suspend her mortgage payments, temporarily or otherwise.

125. The Fewell Forbearance Notice also falsely states, "[t]his short-term relief is consistent with the COVID-19 relief available under the Coronavirus Aid, Relief, and Economic Security (CARES) Act."

126. However, the CARES Act requires that the borrower (a) attest to experiencing a financial hardship due to the COVID-19 emergency and (b) request a forbearance of her obligation to make monthly mortgage payments.

127. Since Ms. Fewell neither attested to experiencing a financial hardship due to the COVID-19 emergency nor requested a forbearance of her monthly mortgage payment obligation,

the forbearance described in Wells Fargo's notice was not consistent with the CARES Act's requirements.

128. The Fewell Forbearance Notice, filed on May 12, 2020, also falsely states that the "Effective Date" of the forbearance Ms. Fewell did not request was April 1, 2020, meaning at the time Defendants filed the false forbearance notice in Ms. Fewell's Chapter 13 bankruptcy case, the alleged forbearance would have been applicable to two monthly payments (April and May 2020) that Ms. Fewell had already made through her plan payments to the Chapter 13 Trustee.

129. Thus, by filing the Fewell Forbearance Notice, Defendants falsely implied to the Court and the Chapter 13 Trustee that Ms. Fewell was in violation of the requirements of her confirmed Chapter 13 plan, which required Ms. Fewell to make monthly mortgage payments for April and May of 2020.

130. Nothing in Ms. Fewell's mortgage note or deed of trust, or her Chapter 13 plan, authorizes either the borrower or the servicer to unilaterally alter the loan terms.

131. The Fewell Forbearance Notice implies that Ms. Fewell would be required to work with Wells Fargo, her attorney, and the Chapter 13 Trustee to determine "how to address the suspended payments in the long-term, including obtaining any necessary court consent and approval."

132. The Fewell Forbearance Notice, despite implying that Ms. Fewell had failed to make two monthly mortgage payments (for April and May of 2020), which she was required by the Court's confirmation order to make, nevertheless falsely represents that it "does not constitute an amendment or modification to the Debtor's plan of reorganization."

133. At the same time, the Fewell Forbearance Notice also indicates that Ms. Fewell was not relieved of "the responsibility to amend or modify the plan of reorganization to reflect the forbearance arrangement, if required."

134. Ms. Fewell should not have been placed in the position of being required to act to confirm the falsity of Defendants' representations in the false forbearance notice filed in her bankruptcy case in order to prevent a motion to dismiss being filed by the Chapter 13 Trustee and being subjected to the danger of losing her home to foreclosure.

135. On May 15, 2020, the United States Bankruptcy Court for the Western District of North Carolina entered an administrative order that requires the Chapter 13 Trustee to begin reserving the ongoing contractual mortgage payments upon receipt of a filed Notice of Forbearance. *See In re: Administration of Conduit Mortgage Claims in Chapter 13 Cases Following Notices of Forbearance Related to COVID-19*, the United States Bankruptcy Court for the Western District of North Carolina, May 15, 2020. As a result, Ms. Fewell's counsel had to immediately contact the Chapter 13 Trustee after receiving the Fewell Forbearance Notice to stop the automatic reservation.

136. Ms. Fewell's credit could be negatively impacted by Defendants' filing of the Fewell Forbearance Notice, if indeed Wells Fargo was reporting to the Credit Reporting Agencies (Experian, Trans Union, Equifax) that her loan was in a forbearance status.

137. Consequently, Ms. Fewell has been forced to pull and review her credit file to ensure that Wells Fargo was not falsely reporting her loan as being in a forbearance status.

138. Ms. Fewell's counsel contacted Wells Fargo's attorneys at the law firm of Shapiro & Ingle, LLP to inquire about why Wells Fargo filed the Fewell Forbearance Notice.

139. Although nobody at the Shapiro & Ingle firm responded directly to Ms. Fewell's counsel regarding their inquiry, on June 10, 2020, attorney Andrew Lawrence Vining of the law firm of Shapiro & Ingle, LLP, on behalf of Wells Fargo, filed a document captioned as a "NOTICE OF WITHDRAWAL OF DEBTOR'S REQUEST FOR MORTGAGE FORBEARANCE DUE TO THE COVID-19 PANDEMIC FOR 90 DAYS" ("Withdrawal") Fewell Docket No. 20.

140. The Withdrawal filed by Wells Fargo, through counsel, is also false insofar as it again falsely represents that the notice related to a request by Ms. Fewell for a forbearance of her monthly mortgage payment obligations when she made no such request.

Beatriz Villegas-Rodriguez and Rodolfo Rodriguez

141. Plaintiffs Beatriz Villegas-Rodriguez and Rodolfo Rodriguez (together, "Mr. & Mrs. Rodriguez"), a married couple, are debtors in a Chapter 13 bankruptcy case (Case No. 20-10074) filed on February 25, 2020 in the United States Bankruptcy Court for the Southern District of Texas, Brownsville Division.

142. Mr. & Mrs. Rodriguez were not behind on their monthly mortgage payments prior to filing their Chapter 13 bankruptcy and were initially paying their mortgage directly to Wells Fargo through automatic withdrawals deducted from their bank account twice monthly.

143. On May 12, 2020, Defendants, through a non-attorney representative, filed a purported Rule 3002.1 Notice on the docket for Mr. & Mrs. Rodriguez's Chapter 13 case that falsely represents that the basis for the alleged change in Mr. & Mrs. Rodriguez's monthly mortgage payment was, "[n]otice of forbearance arrangement based on debtor's(s') request (COVID19)." Rodriguez Docket No. 32.

144. Defendants' May 12, 2020 forbearance notice also falsely represents that Mr. & Mrs. Rodriguez and Wells Fargo had agreed to a three-month forbearance beginning with the April 1, 2020 installment.

145. At the time the Defendants filed the false forbearance notice in Mr. & Mrs. Rodriguez's Chapter 13 case, two of the three allegedly forborne payments had already come due.

146. Moreover, at the time Defendants filed the false forbearance notice in Mr. & Mrs. Rodriguez's Chapter 13 case, Mr. & Mrs. Rodriguez had already made both their April and May 2020 monthly mortgage payments, contrary to the representations in the Defendants' false forbearance notice.

147. Defendants' false forbearance notice filed in Mr. & Mrs. Rodriguez's Chapter 13 case purports to have been executed, under penalty of perjury, by "Eugenia Lee Hodges" whose title is described on the false forbearance notice as, "VP Loan Documentation."

148. Upon information and belief, Eugenia Lee Hodges is a non-attorney employee of Wells Fargo.

149. Neither Mr. Rodriguez nor Ms. Villegas-Rodriguez requested a forbearance from Wells Fargo prior to Defendants' filing of the forbearance notice in their Chapter 13 case.

150. The last page of the false forbearance notice Defendants filed in Mr. & Mrs. Rodriguez's Chapter 13 case states, "Wells Fargo Bank, N.A. ("Creditor\Servicer") hereby provides notice that due to a recent financial hardship resulting directly or indirectly from the COVID-19 emergency, the Debtor (sic) has requested, and Creditor\Servicer has provided a temporary suspension of mortgage payments."

151. Mr. & Mrs. Rodriguez's Chapter 13 plan had not yet been confirmed at the time that Defendants filed the false forbearance notice in their Chapter 13 bankruptcy case.

152. Consequently, in reliance on Defendants' representations in the false forbearance notice filed in Mr. & Mrs. Rodriguez's Chapter 13 bankruptcy, Mr. & Mrs. Rodriguez's bankruptcy attorney prepared and filed a proposed amended Chapter 13 plan that sought to account for the payments that Defendants' false forbearance notice falsely asserted were not being made by Mr. & Mrs. Rodriguez.

153. After filing the amended plan, Mr. & Mrs. Rodriguez's counsel learned that Mr. & Mrs. Rodriguez did not request the forbearance described in Defendants' false forbearance notice filed in Mr. & Mrs. Rodriguez's Chapter 13 case and was therefore forced to file a another amended plan that disregarded the false claims in Defendants' false forbearance notice filed in Mr. & Mrs. Rodriguez's Chapter 13 case.

154. Mr. & Mrs. Rodriguez were alarmed and distressed to learn that Defendants had filed sworn statements with the Bankruptcy Court having jurisdiction of their Chapter 13 case, which falsely represented that Mr. & Mrs. Rodriguez had agreed to a forbearance they did not request.

155. Mr. & Mrs. Rodriguez, who were current on their mortgage payments pre-petition and were keeping current on their post-petition mortgage payments, were also alarmed and distressed by Defendants' representation in the false forbearance notice filed in their case that the alleged forbearance included past monthly mortgage payments that Mr. & Mrs. Rodriguez in fact had already paid.

156. Defendants' false forbearance notice raised questions for Mr. & Mrs. Rodriguez regarding what Wells Fargo was doing with the payments they had already made, and it undermined their confidence that Defendants would properly accept and apply their subsequent mortgage payments during and after their Chapter 13 bankruptcy case.

157. Defendants' false forbearance notice filed in Mr. & Mrs. Rodriguez's Chapter 13 case has needlessly burdened the administration of Mr. & Mrs. Rodriguez's Chapter 13 bankruptcy, wasting the time and resources of Mr. & Mrs. Rodriguez, as well as the time and resources of their bankruptcy attorney, the Chapter 13 Trustee for their case, the Bankruptcy Court, and the other parties-in-interest in their bankruptcy case, who have been forced to adjust and re-adjust to the appearance of changes to Mr. & Mrs. Rodriguez's Chapter 13 Plan, all resulting from Defendants' false filings in Mr. & Mrs. Rodriguez's bankruptcy case.

158. Defendants' false forbearance notice filed in Mr. & Mrs. Rodriguez's Chapter 13 case also creates the potential that Wells Fargo will file needless, inaccurate motions for relief from stay at the end of the falsely alleged "forbearance" period, in order to recover the supposedly-forborne monthly payments, unless Mr. & Mrs. Rodriguez agree to enter into a post-forbearance workout agreement to cure the payments described in Defendants' false forbearance notice – all despite the fact that Mr. & Mrs. Rodriguez were current on their mortgage when they filed for bankruptcy and have remained current post-petition.

159. On June 3, 2020, more than three weeks after Wells Fargo filed the false forbearance notice in Mr. & Mrs. Rodriguez's Chapter 13 case, an attorney from the ALAW firm, Justin A. Swosinski, acting on behalf of Wells Fargo, contacted counsel for Mr. & Mrs. Rodriguez by email regarding the forbearance Wells Fargo had allegedly "offered to [his] clients."

160. Mr. Swosinski is not listed as an attorney licensed to practice law in Texas by the State Bar of Texas.

161. The email from Mr. Swosinski stated:

> Good afternoon Mr. Limon,
>
> I hope you are doing well. As you may know our office represents Wells Fargo Bank in the above-referenced bankruptcy matter filed by your client. As you may also know, Wells Fargo has offered to your clients a forbearance of his monthly post-petition mortgage payments. The forbearance lasts for 3 months, after which your client will need to bring the loan current. We understand that not all debtors will be able make this lump sum payment, so we'd like to try and proactively reach a resolution to cure these missed payments now, opposed to waiting until the balance becomes due.
>
> Please review the attached Home Preservation Documentation, which was sent by Wells Fargo to you and your clients. Once you have reviewed it, please confirm the forbearance is something your client has requested and remains interested in pursuing. Thereafter, please contact me so that we can discuss the forbearance and hopefully figure out a plan.

162. Mr. and Mrs. Rodriguez filed an objection to Defendants' false forbearance notice on June 19, 2020.

V. CLASS ALLEGATIONS

163. Defendants and their agents have prepared, filed, and served forbearance notices in Chapter 13 bankruptcy cases pending before bankruptcy courts across the country that falsely assert that "due to a recent financial hardship resulting directly or indirectly from the COVID-19 emergency," the Chapter 13 debtors in whose cases the notices were filed "requested, and Creditor\Servicer (sic) [Wells Fargo Bank, N.A.] has provided a temporary suspension of mortgage payments."

164. Defendants' forbearance notices filed in the putative class members' cases also falsely assert that, "[t]his short-term relief is consistent with the COVID-19 relief available under the Coronavirus Aid, Relief, and Economic Security (CARES) Act."

165. Forbearance notices prepared, filed, and served by Defendants in Plaintiffs' Chapter 13 cases purport to have been executed by non-attorneys, who are, upon information and belief, Wells Fargo employees or other individuals authorized by Wells Fargo to execute and file forbearance notices on its behalf with Bankruptcy Courts across the United States.

166. Defendants' false forbearance notices filed by Wells Fargo's non-attorney personnel using the Bankruptcy Courts' ECF systems are either filed on the Bankruptcy Courts' dockets for borrowers' Chapter 13 bankruptcy cases as "Notices" or they are filed on the Bankruptcy Courts' dockets or claims registers using a modified version of Official Form 410S1 for Rule 3002.1 Notices of Mortgage Payment Changes.

167. The false forbearance notices that Defendants prepare, file, and serve in connection with the putative class members' Chapter 13 cases also falsely indicate that the (bogus) forbearance period includes one or more payments that came due prior to the date that such notices were filed.

168. Nothing in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the CARES Act authorizes Defendants to use non-attorney personnel to file forbearance notices on Bankruptcy Courts' dockets for borrowers' Chapter 13 cases without attorney review and approval.

169. Nothing in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the CARES Act authorizes Defendants to file Rule 3002.1 Notices of Mortgage Payment Change

using Official Form 410S1 as a means of disclosing alleged forborne payments that came due prior to the filing of such notices.

170. Nothing in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the CARES Act authorizes Defendants to modify Official Form 410S1 in connection with their filing of Rule 3002.1 Notices of Mortgage Payment Change.

171. The Rule 3002.1 Notices of Mortgage Payment Change that falsely claim that class members requested forbearance of their mortgage loans are signed by Wells Fargo representatives under penalty of perjury.

172. The Wells Fargo representatives who sign and file the Rule 3002.1 Notices of Mortgage Payment Changes claiming, falsely, that class members requested forbearance of their mortgage loans have no basis for asserting that the information provided in the notices are "true and correct to the best of [such representatives'] knowledge, information, and reasonable belief."

173. Upon information and belief, Wells Fargo has no policies and/or procedures in place to prevent its representatives from filing false notices of forbearance in Chapter 13 cases of borrowers who never requested the forbearances described in the notices, whether such notices are filed on the Bankruptcy Courts' dockets or on the claims registers for such borrowers' Chapter 13 cases. Alternatively, whatever policies and procedures Wells Fargo does maintain to prevent such false filings are either inadequate or are not enforced by Wells Fargo in a manner that is reasonably calculated to prevent Wells Fargo from filing false notices of forbearance for loans of borrowers who did not request forbearance.

174. Upon information and belief, InfoEx is compensated by Wells Fargo for the false forbearance notices it serves on behalf of Wells Fargo.

175. Upon information and belief, ALAW is compensated by Wells Fargo for legal services performed in connection with Wells Fargo's forbearance notices, including but not limited to effectuating loan workout options for borrowers whose loans have been placed into forbearance.

176. Wells Fargo is also compensated by the various federal agencies on whose behalf it services borrowers' loans when it files forbearance notices and when it completes loan workout options with borrowers whose loans have been placed into forbearance pursuant to the CARES Act.

177. With respect to loans Wells Fargo services for Fannie Mae or Freddie Mac, for each loan placed into forbearance that Wells Fargo subsequently modifies in accordance with Fannie Mae and Freddie Mac's matrix for workout options, Wells Fargo will receive an incentive fee of up to $1,000 for workout options entered into on or after July 1, 2020. *See* Fannie Mae Lender Letter (LL-2020-09) dated June 10, 2020 available at https://singlefamily.fanniemae.com/media/23091/display.

178. Published FHA procedures, rules, and regulations also provide that servicers of FHA loans may receive incentive fees for successfully implementing workout options following a forbearance period.

179. Wells Fargo also receives servicing income for the loans it services, and Plaintiffs are informed and believe and therefore allege that Wells Fargo is therefore incentivized to modify its customers' mortgage loans following a CARES Act forbearance in a way that extends the terms of the modified loans, resulting in reduced monthly payments over a longer period of time, in order to prevent Wells Fargo from losing loan servicing rights (a/k/a "run off") upon such borrowers' sale of their homes or refinancing of their mortgages. Thus, upon information and belief, Wells Fargo uses these false forbearance notices to increase its mortgage servicing income by lowering

borrowers' monthly mortgage payments in order to keep them paying on their existing (albeit modified) mortgage loans.

180. Wells Fargo is also entitled to reimbursement from Fannie Mae, Freddie Mac, and the other federal agencies on whose behalf Wells Fargo services mortgage loans, for attorneys' fees, at pre-determined flat-fee amounts, incurred in connection with bankruptcy-related legal services performed by Wells Fargo's attorneys, including, among others, services performed by attorneys associated with ALAW.

181. Wells Fargo has previously been admonished for engaging in similar conduct involving the filing of Rule 3002.1 Notices of Mortgage Payment Change that falsely asserted that borrowers had agreed to mortgage loan modifications that the borrowers knew nothing about, including in the United States Bankruptcy Court for the Western District of Pennsylvania and in the United States Bankruptcy Court for the Western District of North Carolina. In *In re Eyer*, the bankruptcy court for the Western District of Pennsylvania entered an order striking a notice of mortgage payment change related to a modification that the debtor did not request because the notice had "nothing to do with the [d]ebtor's current obligations under its note and/or mortgage with Wells Fargo." *In re Eyer,* Case No. 12-70985, Memorandum Order Striking Notice of Payment Change, Docket No. 93 (Bankr. W.D. Penn. Dec. 30, 2015). **Exhibit C**. The court also noted that such a procedure was not appropriate for trial modifications, and required the filing of a motion to "insure that such items are not merely entered into by default – and without meaningful opportunity for debtors to seek guidance and counsel from their attorneys..." *Id.*

182. Further, Chief Bankruptcy Judge Beyer, in the Western District of North Carolina, entered an order in *In re Allen* regarding Wells Fargo's practice of filing Rule 3002.1 Notices of

Monthly Mortgage Payment Change that falsely stated that borrowers' loans were subject to modifications that such borrowers had not requested and knew nothing about, a practice that Judge Beyer described as, "beyond the pale of due process." *In re Allen*, Case No. 13-31034, Order Sustaining Objection to Notice of Mortgage Payment Change, Docket No. 29 (Bankr. W.D. N.C. Sept. 19, 2016).[1]

183. Indeed, in the Western District of Virginia alone, Plaintiffs' counsel have identified at least nine false forbearance notices Defendants have prepared, executed, filed, and served in debtors' Chapter 13 bankruptcy cases, including, among others, in the cases of two of the four proposed class representatives for this case, those of Estes and Harlow.

184. As described above, the national scope of this problem is demonstrated by the fact that similar false notices of forbearance were also prepared, executed, filed and served by Defendants in the Southern District of Texas and in the Western District of North Carolina, in the cases of the other two proposed class representatives for this case, Mr. and Mrs. Rodriguez and Ms. Fewell. Such notices have also been filed in cases pending in the Eastern and Middle Districts of North Carolina.

185. Upon information and belief, Defendants have engaged in substantially the same conduct, filing false forbearance notices in Chapter 13 cases of borrowers who never requested a forbearance, in other cases in United States Bankruptcy Courts nationwide, including but not

[1] Judge Beyer also entered an order sustaining a debtor's objection to a similar notice of mortgage payment change regarding a modification the debtor did not request, requiring Wells Fargo to pay the debtor's counsel's fees incurred for filing the objection. *See In re Roman*, Case No. 15-31462, Order Sustaining Objection to Notice of Mortgage Payment Change, Awarding Fees and Expenses to Debtor's Counsel to be Paid by Wells Fargo, and Setting Compliance Hearing for October 25, 2016, Docket No. 34 (Bankr. W.D. N.C. Oct. 14, 2016).

limited to bankruptcy courts in New Jersey, Louisiana, and the Southern and Northern Districts of Texas.

186. Defendants' false forbearance notices are systemically harmful to the purposes and administration of Chapter 13 bankruptcy in this country.

187. For debtors like Plaintiffs Harlow, Estes, and Fewell, whose plans were confirmed long before the false and unauthorized notices were filed, the notices disrupt Trustees' administration of their plans and needlessly subject the debtors' budgets to unwarranted scrutiny by creditors and Trustees.

188. For debtors, including Mr. & Mrs. Rodriguez, whose plans had not yet been confirmed when such notices were filed, these forbearances present a major change in the debtor's apparent financial circumstances, which, at a minimum poses questions and requires needless investigation and "proof" that the false notices are, in fact, false in order to satisfy confirmation standards under § 1325 of the Code.

189. By filing these false forbearance notices, Defendants are forcing debtors and/or their counsel to take affirmative action in order to avoid changes to their mortgage loans and their bankruptcy cases that they never requested. As such, Defendants are actively creating uninvited and unnecessary confusion, work, and risk for debtors and/or their counsel, which results in a practical and financial burden on debtors and their lawyers to take the time to address these payment change notices, generating unnecessary attorneys' fees for debtors (and potential malpractice exposure for debtors' attorneys if they do not act promptly) as a result.

190. This practice also creates additional unnecessary confusion and work for Chapter 13 Trustees in "conduit" cases, i.e. those cases in which the Trustee is responsible under the terms

of the debtor's confirmed plan to make payments both to cure pre-petition mortgage arrearages and to maintain the debtor's post-petition mortgage obligations.

191. The purpose of Rule 3002.1 is to create a streamlined process for administration of the debtor's post-petition mortgage obligations, meaning Chapter 13 Trustees are heavily dependent on the servicers who file Rule 3002.1 notices to file them correctly, so that debtors' accounts are brought current at the time of their discharge upon completion of their Chapter 13 plans, as the Bankruptcy Code intends.

192. By filing patently false forbearance notices, Trustees are forced to carefully scrutinize and investigate all payment change notices to ensure they do not involve unapproved and unwanted forbearances. Whereas these notices would ordinarily be implemented automatically, given the uncertainty Defendants' false forbearance notices introduce, the entire payment change notice implementation process now requires verification. This is the opposite of the intended purpose of Rule 3002.1, which was implemented to provide a streamlined and uniform mechanism for acknowledging and processing ordinary contractual changes to monthly mortgage payment amounts, such as for routine escrow and interest rate adjustments.

193. Because Wells Fargo's wrongful conduct is widespread and uniform, this case should be certified for class action treatment pursuant to Fed. R. Bankr. P. 7023(a) and 7023(b)(2) and (3).

194. The class Plaintiffs seek to represent consists of all individuals in the United States:

- who currently are in a Chapter 13 bankruptcy case or were formerly in a Chapter 13 bankruptcy case, and

- in whose Chapter 13 case Wells Fargo filed a forbearance notice, whether as a "notice" filed on the Court's docket, or as a "Rule 3002.1 Notice of Mortgage Payment Change" filed on the Court's docket or claims register, which falsely represents that the debtor(s) in such case requested a forbearance of their monthly mortgage payment obligation as a result of financial hardships associated with the COVID-19 crisis.

195. The class does not include the Judges of this Court, the Judges of the United States Courts of Appeals, or the Justices of the United States Supreme Court.

196. Numerosity – The class is so numerous, with class members throughout the country, that joinder of all class members is impracticable. A class action is the only feasible method of adjudicating the rights of the affected borrowers, and, absent allowance of a certification of a class action, a failure of justice will result. Plaintiffs include debtors with cases filed in three districts in three different states. Investigation of Defendants' forbearance notice practices in jurisdictions across the United States indicates that Defendants are filing these notices in many more states. The number of putative class members that have already been identified is sufficient to justify further discovery to establish the numerosity element of Rule 7023, as there are likely many more unidentified putative class members throughout the country.

197. Commonality – The questions of law and fact common to all class members that predominate over those pertaining to individual class members include, but are not limited to, whether Wells Fargo engaged and engages in the practices complained of and whether such actions violate the Bankruptcy Code and Rules, and other federal law as alleged. Specifically, the common question of law is whether Defendants' practice of filing false forbearance notices in the bankruptcy

courts of the United States constitutes an abuse of process. A common question of fact is whether Defendants have filed these false forbearance notices in Chapter 13 debtors' cases around the country.

198. Typicality - Plaintiffs' claims are typical of the claims of the class members. All are based on the same factual and legal theories. The Plaintiffs have been subjected to the same misconduct as the members of the proposed class.

199. Adequacy of representation – Plaintiffs will fairly and adequately protect the interests of all class members. Plaintiffs understand their responsibilities to the class as a whole, and they understand that Defendants' false forbearance notices threaten to undermine the administration of their bankruptcy cases and the other class members' Chapter 13 cases nationwide. Plaintiffs have retained capable counsel experienced in state and federal consumer law and consumer class-action litigation, and consumer bankruptcy law class-action litigation. Neither Plaintiffs nor their counsel have any conflicts that would interfere with the vigorous prosecution of this action.

200. A class action is superior to other available methods for the fair and efficient adjudication of this controversy in that:

(a) the class necessarily consists of persons (Chapter 13 debtors) in unfavorable economic circumstances who are not able to pay to maintain individual actions against Defendants,

(b) many class members lack the sophistication to recognize that Defendants' actions are unlawful and to retain litigation counsel,

(c) many class members have acceded or will accede to Defendants' unlawful conduct, and

(d) there is no reason that the courts should be burdened with multiple lawsuits challenging Defendants' facially improper practice of filing false forbearance notices in borrowers' Chapter 13 bankruptcy cases.

201. Finally, Plaintiffs would show the Court that Defendants, in preparing, executing, filing, and serving the false forbearance notices challenged herein, have acted and refused to act on grounds generally applicable to the class as a whole.

VI. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO") ENTERPRISE ALLEGATIONS

202. Plaintiffs repeat and reallege the allegations in this complaint.

The Enterprise

203. Defendants are all "persons" within the meaning of 18 U.S.C. § 1961(3).

204. Based upon Plaintiffs' current knowledge, the following persons constitute a group of individuals associated in fact that will be referred to herein as the "Wells Fargo Enterprise": (1) WFC (2) Wells Fargo Bank, and (3) vendors, including (without limitation) Black Knight, Inc. ("Black Knight"), InfoEx LLC, and ALAW, which created, maintained, and implemented the systems and processes used by Defendants to (a) identify Chapter 13 debtors with Wells Fargo-serviced CARES Act forbearance-eligible mortgage loans, (b) prepare, execute, file, and serve false forbearance notices in such Chapter 13 debtors' bankruptcy cases, and (c) to solicit attorneys representing debtors in Chapter 13 bankruptcy in whose cases such false forbearance notices are filed to enter into retention workout agreements intended to address the payments that the forbearance notices falsely assert were forborne and not paid by such borrowers.

205. The Wells Fargo Enterprise is an ongoing organization that engages in, and whose activities affect, interstate commerce.

206. The members of the Wells Fargo Enterprise function as a continuing unit and share the common purpose of maximizing their profits by placing Chapter 13 debtors' loans into unauthorized forbearance status and subjecting Plaintiffs and class members to the burdens and consequences of their false forbearance notices filed in debtors' Chapter 13 bankruptcies.

207. The Wells Fargo Enterprise has a systematic linkage because there are contractual relationships, agreements, financial ties, and coordination of activities between WFC, Wells Fargo Bank, Black Knight, InfoEx, and ALAW.

208. Wells Fargo Bank, InfoEx, and ALAW use Black Knight's MSP mortgage loan servicing system and associated communication network as a common mortgage loan servicing and accounting system of record to store mortgage loan data, including data associated with the forbearance notices prepared, executed, filed, and served by Defendants, as well as to track the efforts of Defendants to secure lucrative loan retention workout incentive payments following the manufactured and false "forbearance" periods documented by these false notices.

209. With respect to borrowers in Chapter 13 bankruptcy with loans serviced by Wells Fargo, at the direction of and for the benefit of WFC, Wells Fargo Bank has contracted with InfoEx, ALAW, and Black Knight for purposes of granting InfoEx and ALAW access to the MSP mortgage servicing system of record maintained by Black Knight so that InfoEx and ALAW can identify loans for which false forbearance notices can be prepared and filed.

210. Upon information and belief, InfoEx assists Wells Fargo, through records maintained on Black Knight's MSP servicing system, in the preparation of false forbearance notices, which notices are then executed and filed in Chapter 13 debtors' bankruptcy cases by Wells

Fargo's non-attorney personnel. Once filed, InfoEx serves the false forbearance notices on Wells Fargo's behalf.

211. Upon information and belief, Wells Fargo's personnel access the queued false forbearance notices prepared by InfoEx via a desktop application that provides access to the InfoEx-prepared false forbearance notices.

212. Upon information and belief, after Wells Fargo files the false forbearance notices using the court's ECF system, InfoEx, on behalf of Wells Fargo, proceeds to print and serve such notices, via U.S. Mail, to Chapter 13 debtors and their counsel on Wells Fargo's behalf.

213. While all Defendants participate in and are members and part of the Wells Fargo Enterprise, they also have an existence separate and distinct from the enterprise.

214. WFC is a diversified financial services company organized under the laws of Delaware and registered as a financial holding company and a bank holding company under the Bank Holding Company Act of 1956, as amended.

215. WFC provides banking, investment and mortgage products and services, as well as consumer and commercial finance through banking locations, ATMs, the internet and mobile banking.

216. WFC conducts substantially all of its operations through its subsidiaries, including but not limited to Wells Fargo Bank.

217. WFC is a separate and distinct legal entity from its subsidiaries, including Wells Fargo Bank.

218. A significant source of the funds WFC uses to pay dividends on its common and preferred stock and debt service on its debt is dividends from WFC's subsidiaries, including

dividends from Wells Fargo Bank generated by the Wells Fargo Enterprise's fraudulent forbearance scheme and false forbearance notices.

219. WFC receives substantially all of its funding and liquidity from dividends, loans and other distributions from its subsidiaries, including, among others, Wells Fargo Bank.

220. WFC uses funds it obtains from Wells Fargo Bank, including funds generated in connection with the Wells Fargo Enterprise's fraudulent forbearance scheme and the false forbearance notices Wells Fargo files in Chapter 13 bankruptcy debtors' cases around the country to satisfy WFC's financial obligations, including payments of principal and interest on WFC's debt.

221. WFC's access to funds from its subsidiary Wells Fargo Bank is therefore contingent on Wells Fargo Bank's ability to generate such funds for WFC's benefit, including through Wells Fargo Bank's participation of the Wells Fargo Enterprise's fraudulent forbearance scheme by, among other things, filing false forbearance notices.

222. WFC and Wells Fargo Bank control, operate, and direct the affairs of the Wells Fargo Enterprise by, among other things, working with InfoEx and Black Knight to program their computer systems to identify borrower accounts for inclusion in the fraudulent forbearance scheme and to generate, store, and communicate the unlawful false forbearance notices for Wells Fargo customers with active Chapter 13 bankruptcy cases.

223. The Wells Fargo Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which the Defendants engage.

Predicate Acts

224. § 1961(1) of RICO provides that "racketeering activity" includes any act indictable under 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire fraud). As set forth herein, Defendants have engaged, and continue to engage, in conduct violating each of these laws in order to effectuate their scheme.

Violations of 18 U.S.C. § 1341 and 18 U.S.C. § 1343

225. As alleged herein, for the purpose of executing and/or attempting to execute the above-described scheme to defraud or obtain money by means of false pretenses, representations or promises, Defendants, in violation of 18 U.S.C. § 1341, placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carriers, and received matter and things from the Postal Service or commercial interstate carriers, including but not limited to serving through the mail the false forbearance notices filed in bankruptcy courts across the nation, correspondence regarding proposed loan retention workout options with respect to accounts placed into unauthorized forbearance status, checks, motions, and other filings with the United States Bankruptcy Court.

226. For the purpose of executing and/or attempting to execute the above-described scheme to defraud or obtain money by means of false pretenses, representations or promises, the Defendants, in violation of 18 U.S.C. § 1343, transmitted and received by wire, matter and things, including but not limited to loan data, proposed post-forbearance workout terms and agreements, false forbearance notices, false reporting to the GSEs and Ginnie Mae, as well as to the Securities and Exchange Commission, Federal Reserve Board, and the Office of the Comptroller of the Currency, among others, regarding loans Wells Fargo subjected to its fraudulent forbearance

scheme, as well as related email correspondence, monthly mortgage statements and online account information, telephone correspondence, and the Wells Fargo Enterprise made or caused to be made false statements over the telephone, facsimile, electronic mail, Electronic Case Filing system for the United States Bankruptcy Court, and the internet.

227. The matter and things sent by Defendants via the Postal Service, commercial carrier, wire, or other interstate electronic media included, inter alia: false forbearance notices filed with bankruptcy courts around the country, email correspondence to counsel for Chapter 13 debtors, data used to prepare false forbearance notices, agreements, monthly mortgage statements, correspondence, payments, and filings with the United States Bankruptcy Court using the court's Electronic Case Filing system.

228. Other matter and things sent through or received via the Postal Service, commercial carrier, wire, or other interstate electronic media by Defendants included information or communications among members of the Wells Fargo Enterprise in furtherance of or necessary to effectuate the fraudulent forbearance scheme, including by identifying eligible borrower accounts for placement into unauthorized forbearance status, repurchasing Ginnie Mae loans in unauthorized forbearance, filing false forbearance notices in Plaintiffs' and other Chapter 13 debtors' bankruptcy cases, and by sending paper and electronic correspondence to borrowers and/or their bankruptcy counsel regarding post-forbearance workout options.

229. The false forbearance notices fraudulently misrepresent that Plaintiffs' and the class members' loan payment obligations have been suspended by Wells Fargo at the request of the Plaintiffs due to financial hardship caused by the COVID-19 crisis. These notices also misrepresent that the terms of such notices were lawful and authorized by the CARES Act and the

underlying mortgage loan documents, applicable bankruptcy law, and that they were approved and/or accepted by the Plaintiffs and/or the other class members.

230. As set forth above, among other things, Defendants' purpose in causing the false forbearance notices to be prepared and filed in Plaintiffs' and other Chapter 13 debtors' bankruptcy cases is to invoke CARES Act-specific relief from Wells Fargo's ordinary principal and interest advance obligations under applicable GSE or Ginnie Mae servicing requirements, including by limiting the number of principal and interest advances Wells Fargo is required to make on delinquent GSE loans and/or by qualifying Ginnie Mae loans for repurchase by Wells Fargo based on false representations to Ginnie Mae investors that such loans were in voluntary forbearance status for 90 or more days.

231. On April 7, 2020, federal banking regulators issued the Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised) (the Interagency Statement). The guidance in the Interagency Statement provides Wells Fargo with troubled debt restructuring accounting benefits, including clarification that it is not necessary to consider the impact of the COVID-19 pandemic on the financial condition of a borrower in connection with a short-term (e.g., six months or less) COVID-related modification provided the borrower is current at the date the modification program is implemented.

232. Placing borrowers' loans into forbearance status allows Wells Fargo to avoid advancing the loans' delinquency status. For CARES Act forbearances resolved with modifications in the form of payment deferrals, delinquency status will not advance and loans that were accruing

at the time they are placed into forbearance will generally not be placed on nonaccrual status during the forbearance period.

233. WFC's loss estimation techniques used for calculating and reporting the allowance for credit losses on its mortgage portfolio rely on delinquency-based models. Therefore, WFC manipulates the delinquency status of the loans it owns, including loans repurchased in connection with the fraudulent forbearance scheme, as well as GSE loans subjected to unauthorized forbearances and payment deferral activities pursuant to the CARES Act, to delay the short-term accounting impacts of recognizing delinquencies for customers with loans in unauthorized CARES Act forbearance. In other words, Wells Fargo is using the unauthorized CARES Act forbearances to place accounts into an artificial delinquency status (to limit principal and interest advance obligations or to justify repurchase of Ginnie Mae loans) while also avoiding the accounting consequences of holding or servicing delinquent loans.

234. As of June 30, 2020, the unpaid principal balance of loans with COVID-related modifications was 13% of Wells Fargo's total consumer loan portfolio, and Wells Fargo acknowledged in its second quarter 2020 Form 10-Q filing with the SEC that this figure included customers that continued to make payments after receiving a modification and those that were no longer in forbearance.

235. During second quarter 2020, Wells Fargo unilaterally extended prior unauthorized forbearances for an additional 90 days, including 90-day extensions of unauthorized forbearances Wells Fargo imposed on Plaintiffs' and other Chapter 13 debtors' mortgage loans.

236. According to Wells Fargo's second quarter 2020 Form 10-Q, as of June 30, 2020, the unpaid principal balance of Wells Fargo's consumer mortgage loans that received extensions

of prior forbearances was $876 million. Upon information and belief, this figure includes some or all of Plaintiffs' loans, as well as numerous other Chapter 13 debtors' mortgage loans that have been subjected to unauthorized forbearance practices.

237. The email correspondence ALAW sent to counsel for Plaintiffs and to bankruptcy counsel for the class members on Wells Fargo's behalf fraudulently misrepresents that Plaintiffs need to engage with ALAW and Wells Fargo to come to an agreement regarding appropriate post-forbearance loan workout options, while implicitly threatening to seek bankruptcy court intervention if Plaintiffs and their counsel fail to participate in the workout process.

238. Defendants' misrepresentations, acts of concealment, and failures to disclose were knowing and intentional and made for the purpose of deceiving the Court, the Chapter 13 Trustees administering the bankruptcy cases of the Plaintiffs and the members of the class, the GSEs and/or Ginnie Mae and their investors, repurchasing performing FHA loans from Ginnie Mae trusts at a discount, avoiding and/or minimizing Wells Fargo's principal and interest advance obligations, and obtaining unlawful and unauthorized loan retention workout agreements and otherwise obtaining the property of Plaintiffs and the members of the class illegally.

239. Because this is a class action, and there were numerous acts of mail and wire fraud that were used to carry out the scheme, it would be impracticable for Plaintiffs to plead all details of the scheme with particularity. Therefore, Plaintiffs cannot plead the precise dates of all of Defendants' fraudulent use of the U.S. mail and interstate wire facilities, and corresponding acts of mail and wire fraud, as this information cannot be alleged without access to Defendants' records.

240. Defendants either knew or recklessly disregarded the fact that the misrepresentations and omissions described above were material, and the Bankruptcy Courts,

Chapter 13 Trustees, and creditors, as well as Plaintiffs and the other members of the class relied upon the Defendants' misrepresentations and omissions. Had the Bankruptcy Courts, Chapter 13 Trustees, and creditors, as well as Plaintiffs and other members of the class known the truth that the false forbearance notices were used as a profit center rather than to effectuate bona fide, authorized, requested, agreed, and lawful agreements regarding the mortgage payment obligations Plaintiffs and other members of the class, they would have immediately rejected and disregarded Defendants' false forbearance notices.

Pattern of Racketeering Activity

241. The Defendants have engaged in a "pattern of racketeering activity," as defined by 18 U.S.C. § 1961(5), by committing at least two acts of racketeering activity, i.e. indictable violations of 18 U.S.C. §§ 1341 and 1343 as described above, within the past four years.

242. Defendants did not begin filing the false forbearance notices until after passage of the CARES Act in March of 2020, which is within four years of Plaintiffs filing of their original complaint in this case.

243. Each of the defendants has committed numerous acts of racketeering activity. Each act of racketeering activity was related, had a similar purpose, involved the same or similar participants and method of commission, had similar results and impacted similar victims, including Plaintiffs and the other class members.

244. The multiple acts of racketeering activity that Defendants committed were related to each other and amount to and pose a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5).

VII. CAUSES OF ACTION

COUNT I
(VIOLATION OF RICO 18 U.S.C. § 1962(c))

245. Plaintiffs repeat and reallege the allegations in this complaint.

246. This claim for relief arises under 18 U.S.C. § 1964(c).

247. § 1962(c) of RICO provides that it "shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ."

248. Through the pattern of racketeering activities outlined above, the Defendants have conducted and participated in the affairs of the Wells Fargo Enterprise.

249. Each of the Defendants agreed to participate, directly or indirectly, in the conduct of the affairs of the Wells Fargo Enterprise through a pattern of racketeering activity comprised of numerous acts of mail fraud and wire fraud, and each Defendant so participated in violation of 18 U.S.C. § 1962(c).

250. As set forth above, Defendants have violated 18 U.S.C. § 1962(c) by conducting, or participating directly or indirectly in the conduct of, the affairs of the Wells Fargo Enterprise through a pattern of racketeering.

251. As a direct and proximate result, Plaintiffs and class members have been injured in their business or property or both by the predicate acts, which make up the Defendants' patterns of racketeering activity.

252. Specifically, and as set forth elsewhere herein, Plaintiffs and class members, as well as the integrity of the Chapter 13 bankruptcy process itself, have been injured by Defendants in their business or property in a variety of ways, including by Wells Fargo actively undermining

Plaintiffs' and the other class members' bankruptcy reorganizations through its practice of filing false notices of forbearance in Plaintiffs' and the other class members' bankruptcy cases.

253. Plaintiffs and the other class members have also been injured in that their mortgage loans have been unlawfully subjected to the risk that they could be treated as being in contractual default as a result of Defendants' filing of the false forbearance notices, which can result in Chapter 13 Trustees holding funds paid by debtors and intended to be applied toward such debtors' ongoing post-petition monthly mortgage payments and/or by Wells Fargo placing borrower funds received during the post-petition forbearance periods into a "suspense" or "unapplied funds" account, which causes the loans to continue accruing interest on the unpaid principal balances, resulting in the accrual of contractual late fees, and causing Wells Fargo to assess charges for property inspections, broker price opinions, motions for relief from stay, foreclosure referrals, and other unlawful and improper default-related "services" and processes that are triggered by Wells Fargo's treatment of the loan as being in contractual default due to the fact that Wells Fargo believes the loans to be in a forbearance status and that it has therefore received less than full contractual monthly mortgage payments in Plaintiffs' and other class members' cases.

COUNT II
(UNAUTHORIZED PRACTICE OF LAW)

254. Plaintiffs repeat and reallege the allegations in this complaint.

255. By permitting non-attorney personnel and agents to prepare, execute, file and serve objectively false forbearance notices on the dockets of Chapter 13 cases maintained by bankruptcy courts around the country, Defendants and their representatives have engaged in the unauthorized

practice of law, in violation of Pt. 6 § I, Rules of Supreme Ct. of Va., which provides, in pertinent part:

> 1. **PROHIBITION AGAINST UNAUTHORIZED PRACTICE OF LAW:** No non-lawyer shall engage in the practice of law in the Commonwealth of Virginia or in any manner hold himself or herself out as authorized or qualified to practice law in the Commonwealth of Virginia except as may be authorized by rule or statute. The term "non-lawyer" means any person, firm, association or corporation not duly licensed or authorized to practice law in the Commonwealth of Virginia. Any person or entity who practices law without being licensed or otherwise authorized to practice law shall be guilty of a Class 1 misdemeanor. Va. Code § 54.1-3904.
> 2. **GENERAL DEFINITION**: A person or entity engages in the practice of law when representing to another, by words or conduct, that one is authorized to do any of the following:
> A. Undertake for compensation, direct or indirect, to give advice or counsel to an entity or person in any matter involving the application of legal principles to facts.
> B. Select, draft or complete legal documents or agreements which affect the legal rights of an entity or person.
> C. Represent another entity or person before a tribunal.
> D. Negotiate the legal rights or responsibilities on behalf of another entity or person.

256. By permitting non-attorneys to execute and file forbearance notices on the dockets and claims registers of Bankruptcy Courts without attorney supervision, and without any basis in law or fact, Defendants engaged in the unauthorized practice of law.

257. Defendants' unauthorized practice of law had an impact on Plaintiffs' and the class members' Chapter 13 cases, as well as the bankruptcy court, the Chapter 13 trustees, and other parties in interest in such cases.

258. As alleged herein, Defendants' unlicensed practice of law has damaged Plaintiffs and the other class members.

259. Defendants' are sophisticated, regular participants in the bankruptcy process that routinely hire counsel to represent them in connection with borrowers' Chapter 13 bankruptcy cases.

260. Defendants are also recidivists who have a long history of abusing the provisions of the Bankruptcy Code and Rules and of flouting established rules and procedures of Bankruptcy Courts around the nation in connection with their servicing of loans of borrowers in Chapter 13 bankruptcy.

261. Given their sophistication and history of misconduct, Defendants' use of non-attorneys to file false forbearance notices constitutes a particularly reprehensible and willful kind of unauthorized practice of law, such that substantial punitive sanctions are necessary and appropriate to punish Defendants for engaging in such conduct and to deter Defendants and their industry peers from engaging in similar practices in the future.

COUNT III
(VIOLATION OF FED. R. BANKR. P. 3002.1)

262. As described in this complaint, by filing false forbearance notices using Rule 3002.1 Notices of Monthly Mortgage Payment Change and official form 410S1, Defendants are needlessly disrupting Plaintiffs' and the other class members' Chapter 13 bankruptcy cases in an outrageous and damaging manner.

263. Defendants have also violated Fed. R. Bankr. P. 3002.1(b)'s requirement that mortgage payment change notices be filed more than 21 days before the effective date of the payment change, by filing forbearance notices that indicate that the borrower's payments for prior months were forborne, after Plaintiffs and other class members had already made their regular monthly mortgage payments for those months.

264. Defendants' abuse of Fed. R. Bankr. P. 3002.1 has damaged Plaintiffs and caused them to incur attorneys' fees.

265. Defendants' conduct as described herein is part of a general pattern and practice of conduct by Defendants that is either expressly authorized by Defendants' policies and procedures, or, to the extent not authorized, such conduct is either not prohibited by such policies and procedures, or the policies and procedures Defendants maintain to prevent such conduct are so deficient and/or so completely unenforced by Defendants as to render them meaningless.

266. Pursuant to Fed. R. Bankr. P. 3002.1(i), Defendants' failure to comply with Fed. R. Bankr. P. 3002.1(b) allows the Court, after notice and hearing, to award Plaintiffs appropriate relief, including actual damages, punitive damages, reasonable expenses, and attorneys' fees caused by Defendants' abuse of Rule 3002.1.

267. Plaintiffs respectfully pray the Court award them and the class such relief.

COUNT IV
(OBJECTION TO FALSE FORBEARANCE NOTICES)

268. Plaintiffs repeat and reallege the allegations in this complaint.

269. Plaintiffs Harlow, Estes, and Rodriguez/Villegas-Rodriguez have filed objections to Wells Fargo's false forbearance notices, which Plaintiffs incorporate herein by this reference and are attached hereto as **Exhibit D.**

270. Plaintiffs object to the false forbearance notices, among other things, because the notices falsely represent that Plaintiffs requested a forbearance of their monthly mortgage payment obligations, including for months in which Plaintiffs have in fact already made their monthly mortgage payments, either directly to Defendants or to the Chapter 13 Trustees administering their cases, as provided in their confirmed Chapter 13 plans.

271. Plaintiffs respectfully request that the Court sustain Plaintiffs' objection to the false forbearance notices prepared, executed, filed, and served by Defendants.

COUNT V
(VIOLATION OF THE AUTOMATIC STAY)

272. Plaintiffs repeat and reallege the allegations in this complaint.

273. Defendants' actions in this case constitute willful violations of the automatic stay as set forth in 11 U.S.C. § 362(a)(3) and (6).

274. Defendants had actual knowledge that Plaintiffs were debtors in pending Chapter 13 cases and that the automatic stay was in effect at the time it took the actions described herein.

275. Defendants violated the automatic stay by preparing, executing, filing, and serving false forbearance notices that impacted the Plaintiffs' and other class members' ability to confirm their Chapter 13 bankruptcy plans and/or to perform according to the terms of the plan confirmation orders in Plaintiffs' and other class members' Chapter 13 cases, and Defendants did so by filing false forbearance notices, without obtaining relief from the automatic stay or Plaintiffs' prior consent.

276. By filing the false forbearance notices, Defendants effectively were unilaterally modifying Plaintiffs' and other class members' loans and confirmed Chapter 13 plans, frustrating the Bankruptcy Courts' and Chapter 13 Trustees' administration of the Plaintiffs' and other class members' Chapter 13 cases.

277. Defendants' conduct as described herein is part of a general pattern and practice of conduct by Defendants, which is either expressly authorized by, or not specifically prohibited by, their policies and procedures, or which, if unauthorized or prohibited by such policies and procedures, is conduct that in practice is permitted and/or which policies and procedures are

insufficient to ensure against the filing of the false forbearance notices as exemplified by the false forbearance notices filed in Plaintiffs' Chapter 13 cases.

278. Plaintiffs and the members of the class were injured by Defendants' violation of the automatic stay as set forth in this complaint.

279. Defendants' acts constitute willful violations of the automatic stay. Defendants knew the automatic stay was applicable to Plaintiffs and the members of the class, Defendants' actions were intentional, and Defendants' acts alleged herein violated the provisions and purposes of the Bankruptcy Code.

280. As a result of the above violations of 11 U.S.C. § 362, and pursuant to 11 USC § 362(k) of the Bankruptcy Code Defendants are liable to Plaintiffs and the class for their actual damages, punitive damages, and reasonable attorneys' fees and costs resulting from Defendants' willful stay violations.

COUNT VI
(11 U.S.C. § 105 (a) ABUSE OF PROCESS/INHERENT AUTHORITY)

281. Plaintiffs repeat and reallege the allegations in this complaint.

282. The process utilized by Defendants in this case has impacted the orderly administration of the bankruptcy process.

283. Plaintiffs and other class members sought the protection of the Bankruptcy Code to prevent the foreclosure of their homes and/or as a means of rehabilitating to their financial affairs.

284. The ability of debtors in Chapter 13 bankruptcy to emerge from bankruptcy having cured and maintained their mortgage loans pursuant to § 1322(b)(5) of the Bankruptcy Code is of critical importance both to consumer debtors and creditors, as it allows debtors to protect their homes while giving creditors a degree of certainty and reasonable expectations regarding the

anticipated distributions that will be paid out, based on the largest budget item in most debtors' Chapter 13 cases, their home mortgage payment.

285. In filing any document with the bankruptcy courts affecting a debtor's mortgage obligations, responsible creditors must consider the specific facts and details of the borrowers' circumstances and affirmatively conclude that such filing is actually necessary and warranted. By filing false forbearance notices in Plaintiffs' Chapter 13 bankruptcy cases, Defendants have failed to fulfill this duty.

286. When mortgage creditors and their agents, like the Defendants herein, file documents using Official Form 410S (3002.1 Notices), which are submitted under penalty of perjury, or when they file documents on bankruptcy courts' dockets for debtors' Chapter 13 cases, courts, debtors, trustees, and other creditors participating in debtors' Chapter 13 cases are entitled to expect and insist that facts asserted by such mortgage creditors and/or their agents in any such notices and/or docket filings have been carefully researched and, to the best of the creditor's knowledge, are not only true, but are complete enough to be an accurate characterization.

287. Official Form 410S states: "I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief."

288. As set forth above, Defendants' forbearance notices are materially false because Plaintiffs did not request that Defendants provide them a forbearance of their monthly mortgage payment obligations.

289. Where, as here, a creditor's policies or practices interfere with the debtor's rights, it is the Court's right and duty to prevent such conduct. *See In re Lyon & Reboli, Inc.*, 24 B.R.

152, 154 (Bankr. E.D.N.Y. 1982) (noting obligation of court under § 105 to pass upon propriety of salaries of insiders where there is potential for, and the prima facie appearance of, abuse); *In re Panem*, 352 B.R. 269, 278 (Bankr. D. Colo. 2006) (reasoning that if court failed to review terms and conditions of submitted stipulation, it would abdicate its duties); *In re Earl*, 140 B.R. 728, 741 (Bankr. N.D. Ind. 1992) (using § 105(a) where "Court must preserve the integrity of the Bankruptcy system and prevent the abusive use of the Bankruptcy system invoked only to thwart the legitimate rights of creditors, and preclude an unwarranted congestion of its docket by enjoining the Debtor from again filing another chapter 13 case in the near future."); *In re Fasano*, 85 B.R. 639 (Bankr. S.D. Fla. 1988) (holding debtors in contempt, citing "Court's duty under Section 105 to protect the bankruptcy system from abuse.")

290. Defendants' actions—in filing objectively false forbearance notices—constitute an abuse of process under § 105(a).

291. Section 105(a) states that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title ... or to prevent an abuse of process."

292. Under § 105, bankruptcy judges have broad authority to take necessary or appropriate actions to prevent an abuse of the bankruptcy process, including imposition of sanctions.

293. Situations where courts have relied on § 105(a) for authority to sanction conduct, or to prevent an abuse of the judicial process have largely involved cases in which courts found that the filing of false documents—which disrupted the bankruptcy process and prejudiced debtors—constituted an abuse of process. *See, e.g.*, *Rojas v. Citi Corp Trust Bank FSB* (*In re Rojas*), No. 07-

70058, 2009 WL 2496807, at *3, 9 (Bankr. S.D. Tex. Aug. 12, 2009) (filing a false proof of claim in contravention of § 501 and Rule 3001 would constitute an abuse of process); *In re Schuessler*, 386 B.R. 458, 488–489 (Bankr. S.D.N.Y. 2008) (holding that abuse of process arises when a creditor revokes a privilege granted to a debtor without notice, solely because of their bankruptcy filing, and the creditor's action disrupts the bankruptcy process and unnecessarily prejudices the debtor); *Brannan v. Wells Fargo Home Mortgage, Inc.* (*In re Brannan*), 485 B.R. 443, 454 (Bankr. S.D. Ala. 2013) (holding that the submission of fraudulent affidavits in support of motions for relief would constitute abuse of process); *In re Fagan*, 376 B.R. 81, 82 (Bankr. S.D.N.Y. 2007) (imposing sanctions based on fact that debtors must not be subjected to risk of foreclosure and loss of their homes on basis of false certifications of post-petition defaults); *In re Haque*, 395 B.R. 799 (Bankr. S.D. Fla. 2008) (imposing sanctions pursuant to § 105(a) for filing false stay relief affidavits claiming entitlement to default interest). *Allen v. Fitzgerald, Trustee for Region Four*, 2019 WL 6742996 (W.D. Va. Dec. 11, 2019) (affirming *In re Williams*, 2018 WL 832894 (Bankr. W.D. Va. Feb. 12, 2018)).

294. Defendants' actions, or lack thereof, in filing false forbearance notices and/or in failing to ensure that the forbearance notices they were filing were not false prior to filing them, taken together, constitute a maneuver that has undermined the integrity of the bankruptcy system, disrupted the bankruptcy process, and, as such, were a deliberate abuse of the judicial process. §105(a) of the Bankruptcy Code is an appropriate mechanism to punish and deter Defendants' misconduct.

295. Plaintiffs and the class have been damaged by Defendants' abuse of the Bankruptcy Code, Rules, and processes, which has caused them to incur damages, including attorneys' fees.

296. Accordingly, Plaintiffs ask this Court to find that Defendants' actions in filing false forbearance notices constitute an abuse of process.

297. Based upon such findings, and under the Court's inherent powers and the authority set forth in 11 U.S.C. § 105(a), Plaintiffs seek an award of sanctions and/or punitive damages, declaratory and injunctive relief, actual damages, and attorneys' fees and costs.

298. Accordingly, under § 105 and/or the Court's inherent authority, Defendants should be sanctioned in an appropriate amount and made to pay Plaintiffs' reasonable attorneys' fees for bringing this action.

COUNT VII
(CONTEMPT)

299. Plaintiffs repeat and reallege the allegations in this complaint.

300. As outlined in the preceding counts and the preceding factual allegations, Wells Fargo has violated and breached Plaintiffs' Chapter 13 plans and the orders confirming the plans.

301. Title 11 U.S.C. § 1322(b)(5) allows a Chapter 13 debtor to cure deficiencies and maintain regular monthly mortgage payments. Section 1327 of Title 11 of the United States Code provides as follows: "The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan."

302. Plaintiffs' confirmed Chapter 13 plans contain specific provisions regarding the amount and application of funds received from both the Chapter 13 Trustees and the Plaintiffs during the pendency of their Chapter 13 case. By filing Rule 3002.1(b) payment change notices instructing the Trustees to apply funds earmarked for Plaintiffs' post-petition mortgage payments in a manner that would prevent Plaintiffs' mortgage loan from becoming current upon emerging

from bankruptcy, Wells Fargo violated §§ 1322(b)(5) and 1327, and other provisions of the Code and Rules, the Plaintiffs' Chapter 13 plans, and the orders confirming the plans.

303. Wells Fargo's acts were a willful abuse of the Bankruptcy Code and Rules. Wells Fargo knew of the existence of these provisions, its acts were intentional, and the acts alleged herein violated the provisions and purposes of the Code and Rules.

304. The actions of Defendants show that it is their policy and procedure to ignore the directives of the nation's bankruptcy courts and the Bankruptcy Code and Rules.

305. Accordingly, Plaintiffs ask this Court to find Defendants in contempt and in violation of the Bankruptcy Code's and Rules' provisions and their purposes pursuant to the Court's inherent powers and pursuant to its powers under 11 U.S.C. § 105(a). Plaintiffs also ask that the Court use its inherent and statutory powers to award sanctions and actual damages, punitive damages, as well as reasonable attorneys' fees and costs, and issue injunctive relief.

COUNT VIII
(FRAUD ON THE COURT)

306. Plaintiffs repeat and reallege the allegations in this complaint.

307. Defendants made material representations in their false forbearance notices filed with the Court, which have needlessly and detrimentally interfered with the administration of Plaintiffs' and the other class members' Chapter 13 cases, which impacts the Court, the Chapter 13 Trustee, and all of the Plaintiffs' creditors, as well as Plaintiffs and their counsel.

308. Defendants' false forbearance notices falsely represent that borrowers in Chapter 13 bankruptcy (a) requested and received Wells Fargo's agreement to allow them to miss monthly mortgage payments that they were required to pay under the terms of their confirmed plans, or which were expected under their proposed and not-yet-confirmed plans, schedules, and

statements filed with the Bankruptcy Court and relied upon by parties in interest to evaluate such proposed plans' feasibility prior to confirmation, and (b) they also falsely represent and/or imply that the Plaintiffs and other class members did not make monthly mortgage payments that came due prior to the filing of the false forbearance notices, when Plaintiffs and other class members in fact had made the payments described in the forbearance notices.

309. Defendants' false representations in the false forbearance notices were material because they either did in fact cause, or would have, but for the diligence of Plaintiffs' counsel, caused (a) denial or delay of confirmation of then unconfirmed Chapter 13 plans, and (b) Plaintiffs' Chapter 13 bankruptcy plans to be modified without prior disclosure, Court approval, or Plaintiffs' consent.

310. Defendants' false representations in the false forbearance notices were material because they either did in fact cause, or would have, but for the diligence of Plaintiffs' counsel, caused Plaintiffs to go into default or would increase Plaintiffs' default under the unmodified terms of their mortgage loans.

311. When Defendants made the material false representations in the false forbearance notices filed with Bankruptcy Courts across the United States, Defendants (i) knew that the material representations were false, or (ii) made the material misrepresentations recklessly without any knowledge of their truth and as a positive assertion.

312. Defendants filed and served the false forbearance notices with the knowledge and intent that they would be acted upon by Chapter 13 Trustees and the Bankruptcy Courts.

313. The Plaintiffs, the Court, other participants in the bankruptcy process, and the bankruptcy process have been damaged by Defendants' fraud on the Court.

314. The Court can, and should, use its inherent and 11 U.S.C. § 105 authority to sanction Defendants for this fraudulent conduct.

COUNT IX
(DEFAMATION)

315. Plaintiffs repeat and reallege the allegations in this complaint.

316. Unjust enrichment resulting from defamation.

317. Wells Fargo falsely represented to the Bankruptcy Courts where Plaintiffs' and the putative class members' Chapter 13 bankruptcy cases were pending that Plaintiffs and the putative class members requested that Wells Fargo provide forbearance relief with respect to their mortgage loans.

318. Wells Fargo falsely represented to the GSEs and/or Ginnie Mae and the investors in the GSE and/or Ginnie Mae trusts that owned Plaintiffs' and the putative class members' mortgage loans that Plaintiffs and the putative class members requested that Wells Fargo provide forbearance relief with respect to their mortgage loans.

319. At the time that it made representations to the Bankruptcy Courts where Plaintiffs' and the putative class members' Chapter 13 cases were pending, Wells Fargo knew its representations that Plaintiffs and the putative class members had requested forbearance relief with respect to their mortgage loans were false.

320. By making its false representations to the Bankruptcy Courts where Plaintiffs' and the putative class members' Chapter 13 cases were pending, Wells Fargo was also making false representations to the Chapter 13 Trustees administering the Plaintiffs' and the putative class members' cases when it filed false forbearance notices indicating that Plaintiffs and the putative class members had requested forbearance relief from Wells Fargo.

321. Wells Fargo acted with malice or willful intent to injure Plaintiffs and the putative class members by knowingly misrepresenting that Plaintiffs and the putative class members had requested forbearance relief.

322. At the time that Wells Fargo falsely represented in its false forbearance notices that Plaintiffs and the putative class members had requested forbearance relief, Wells Fargo knew that a Chapter 13 debtor requesting mortgage forbearance relief would indicate a post-petition change in the Plaintiffs' and putative class members' financial circumstances, which would have the effect of interfering with and increasing the labor and expense required for the administration of Plaintiffs' and the putative class members' Chapter 13 cases.

323. Wells Fargo falsely represented that Plaintiffs and the putative class members had requested CARES Act mortgage forbearance relief in order to secure accounting benefits that were exclusively applicable to government-backed mortgage loans in CARES Act forbearance.

324. Upon information and belief, Wells Fargo has been and will in the future be unjustly enriched by the accounting benefits Wells Fargo improperly claimed based on its false representations that Plaintiffs and the putative class members had requested CARES Act mortgage forbearance relief, including, without limitation, by being able to limit or avoid present and/or future principal and interest payment advance obligations in the event of alleged or actual delinquent payments by Plaintiffs and/or the putative class members and, with respect to Ginnie Mae loans, by being able to repurchase and actually repurchasing some or all of Plaintiffs' and other putative class members' Ginnie Mae loans at a discount, which loans Wells Fargo can re-securitize for additional unjustly obtained profit.

325. Wells Fargo also falsely represented in its false forbearance notices that Plaintiffs and the putative class members' unauthorized forbearances were effective for months prior to Wells Fargo's filing of the false forbearance notices, including months in which Wells Fargo had already received Plaintiffs' and/or the putative class members' monthly mortgage payments and/or for which Wells Fargo knew that Plaintiffs and/or the putative class members had already made payment to the Chapter 13 Trustees administering their Chapter 13 bankruptcy cases pursuant to proposed or confirmed Chapter 13 plans.

326. Even after one or more of the Plaintiffs and/or putative class members directly informed Wells Fargo that Wells Fargo's representations in the forbearance notices were false and that the Plaintiffs and/or putative class members did not want forbearance, Wells Fargo further misrepresented to Plaintiffs, the GSEs and/or Ginnie Mae, and the investors of the GSE and/or Ginnie Mae trusts that owned the Plaintiffs' and putative class members' mortgage loans, as well as in and in SEC filings that Wells Fargo was extending forbearance relief for Plaintiffs' and/or the putative class members' mortgage loans at the request of Plaintiffs' and/or the putative class members.

327. Wells Fargo knew that it had received and applied mortgage payments from Plaintiffs' and the putative class members that were the subject of the false forbearance notices Wells Fargo filed with the Bankruptcy Courts.

328. The Plaintiffs and putative class members have been injured by Wells Fargo's false and defamatory misrepresentations indicating that Plaintiffs and the putative class members requested forbearance relief, which has required Plaintiffs and the putative class members to

devote time, incur expenses, and experience undeserved aggravation and inconvenience to address the false representations in Wells Fargo's false forbearance notices.

329. Plaintiffs and the putative class members are entitled to actual and exemplary / punitive damages and attorneys' fees as a result of Wells Fargo's willful publication of false and defamatory statements about them.

COUNT X
(ATTORNEYS' FEES)

330. Plaintiffs repeat and reallege the allegations in this complaint.

331. Through the conduct described herein, Defendants have inflicted actual damages upon Plaintiffs by violating or obstructing confirmation of Plaintiffs' Chapter 13 plans, Rule 3002.1, and the Bankruptcy Code and Rules as described herein.

332. Moreover, Plaintiffs have been forced to retain legal counsel, who have incurred reasonable and necessary attorneys' fees on their behalf. Such fees are properly taxed against Defendants by virtue of their flagrant violations of the Chapter 13 provisions of the Code, Fed. R. Bankr. P. 3002.1, Plaintiffs' Chapter 13 plans, the automatic stay in 11 U.S.C. § 362(a), and Defendants' gross abuse of the bankruptcy process. The Court may, and on these facts the Court should, award Plaintiffs their attorneys' fees as against Defendants pursuant to the Court's inherent and § 105(a) authority.

VIII. REQUEST FOR DECLARATORY RELIEF

333. Plaintiffs repeat and reallege the allegations in this complaint.

334. As outlined in the preceding counts and the preceding factual allegations, Defendants have violated Fed. R. Bankr. P. 3002.1 and 4001(c), and 11 U.S.C. §§ 362, 364,

1322(b)(5), 1327, and 1329, and has committed a gross abuse of process. Plaintiffs seek a declaration that Defendants' conduct as described herein violates 11 U.S.C. §§ 364, 1322(b)(5), 1327, and 1329, Fed. R. Bankr. P. 3002.1 and 4001(c) and constitutes a gross abuse of process.

IX. REQUEST FOR PRELIMINARY INJUNCTION

335. Plaintiffs repeat and reallege the allegations in this complaint

336. Plaintiffs and the class are entitled to a preliminary injunction, pursuant to Fed. R. Civ. P. 65 and 11 U.S.C. § 105(a), enjoining Defendants from engaging in the acts and practices described herein, including enjoining Defendants from

- filing forbearance notices that falsely state that Chapter 13 debtors have requested and received mortgage forbearances when such debtors did not request forbearance of their mortgage payment obligations;
- failing to accept and apply monthly mortgage payments tendered by Plaintiffs and the other class members for months included in the false forbearance notices;
- seeking to engage Plaintiffs and/or other class members regarding workout options based on payments described in the false forbearance notices;
- seeking or obtaining relief from the automatic stay in bankruptcies of Plaintiffs and other class members with respect to payments described in the false forbearance notices without first confirming that such payments were not actually made;
- foreclosing on Plaintiffs' or class members' homes based on defaults that include allegedly missed monthly mortgage payments described in the false

forbearance notices without first confirming that such payments were not actually made; and

- making false assertions to class members' attorneys through email or otherwise.

337. Plaintiffs assert that, absent an injunction to prevent such misconduct, Defendants and their attorneys, agents, vendors, and/or other representatives will continue to wrongfully file false forbearance notices without the consent of Plaintiffs and other class members, in direct violation of the Bankruptcy Code and Rules.

338. There is a substantial likelihood that Plaintiffs will prevail on the merits, courts have already sanctioned Wells Fargo for similar misconduct. *See Campbell v. Countrywide Home Loans, Inc. (In re Campbell)*, 545 F.3d 348, 356 n. 1 (5th Cir. 2008). Bankruptcy courts in North Carolina and Pennsylvania have already disapproved of Wells Fargo's filing of Rule 3002.1 Notices of Mortgage Payment Change that falsely represented that debtors had agreed to mortgage modifications they did not know about or request, and nothing in the Bankruptcy Code or Rules suggests that Defendants' filing of false forbearance notices is even arguably permissible.

339. The harm faced by the Plaintiffs and the class outweighs any "harm" that will be sustained by Defendants if the preliminary injunction were granted. The panoply of the harms to debtors (and the entire bankruptcy system) are described above. These far outweigh Defendants' interest in profiting in connection with the filing of false forbearance notices.

340. Issuing a preliminary injunction will not adversely affect the public interest but rather will enhance it. Wells Fargo's actions eviscerate the purposes of the Bankruptcy Code and the administration of Chapter 13 proceedings, which are intended to provide the debtors the ability to cure their arrearages and receive a "fresh start" after the successful completion of their plans.

Wells Fargo's actions broadcast (again) its perception that it has impunity for conduct that overtly disobeys the provisions of the United States Bankruptcy Code and court orders. Wells Fargo's actions erode public confidence in the bankruptcy courts' ability to ensure that debtors receive the "fresh start" they earn by completing their three-to-five-year Chapter 13 plan payments, a process that requires extreme sacrifice on their part.

341. The public has the right to expect that the courts will enforce the provisions of the Bankruptcy Code and will not allow lenders to illegally undermine and even destroy debtors' right to successfully complete their Chapter 13 plans and cure their mortgage arrears through their Chapter 13 plan. Even though the Court should balance the threatened injury to Plaintiffs against any harm to the defendant, when balancing the hardships of the public interest against a private interest, the public interest should receive greater weight. *See FTC v. World Wide Factors*, 882 F.2d 344, 346-47 (9th Cir. 1989). The substantial adverse effects of Defendants' false forbearance notices militate strongly in favor of this Court issuing a preliminary injunction.

342. The posting of a bond is not a prerequisite to the issuance of a preliminary injunction in this case because Defendants cannot demonstrate that preserving the *status quo* will cause it cognizable economic harm. *See FTC v. Southwest Sunsites, Inc.*, 665 F. 2d 711, 714 n.1 (5th Cir. 1982) (ruling that a temporary restraining order or preliminary injunction may be granted without bond). Defendants' filing of the false forbearance notices alters the *status quo*. The Plaintiffs' and class members' plans created a *status quo* whereby the Plaintiffs and the class members address their mortgage deficiency through their plans and orders confirming their plans. The *status quo* is the Bankruptcy Code and Rules, and the class members' proposed and confirmed Chapter 13 plans, which require that debtors obtain bankruptcy court approval prior to obtaining

credit. Since the Plaintiffs and class members are continuing to attempt to pay pursuant to their plans, the posting of security is unnecessary.

343. In addition, or alternatively, the Court can issue a preliminary injunction to prevent Wells Fargo from taking the actions Plaintiffs and the class seek to enjoin based on its 11 U.S.C. § 105(a) authority. Plaintiffs and class members therefore request that the Court use its 11 U.S.C. § 105(a) authority to issue a preliminary injunction enjoining Defendants from engaging in the acts set forth above during the pendency of this case.

344. Plaintiffs ask the Court to set this application for preliminary injunction for hearing if the parties are unable to agree to a preliminary injunction and, after hearing the request, issue a preliminary injunction against Wells Fargo enjoining it from the actions set out above.

X. REQUEST FOR PERMANENT INJUNCTION

345. Plaintiffs reallege and incorporate by reference the above-numbered paragraphs.

346. Plaintiffs and the class are entitled to an injunction permanently enjoining Defendants from engaging in the acts and practices above as to any person who is a member, or could become a member, of the class of persons described in this suit.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants be cited to appear and answer these allegations and that, upon final trial of this cause, they be granted all relief to which they are justly entitled, including:

a. Certification of the class of Chapter 13 debtors who have been subjected to false forbearance notices filed by Defendants in such debtors' Chapter 13 cases;

b. Disgorgement of any compensation received by Defendants in connection with the false forbearances and/or the preparation and filing of the false forbearance notices;

c. All actual damages, including attorneys' fees and costs (at trial and on appeal) to which Plaintiffs are entitled;

d. All compensatory damages to which Plaintiffs are entitled, including attorneys' fees and costs, exemplary damages, and/or punitive damages and sanctions for Defendants' actions as described herein, and a finding of contempt;

e. A declaration that Defendants' actions violate 11 U.S.C. §§ 364, 1322(b)(5), 1327, and 1329, Fed. R. Bankr. P. 3002.1 and 4001(c), and constitute a gross abuse of the bankruptcy process;

f. An injunction preventing Defendants from engaging in the conduct described herein and requiring Defendants to restore the Plaintiffs' and class members accounts to *status quo ante*, as though the account was never treated as being in forbearance status; and

g. All such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I, Theodore O. Bartholow, III, swear under penalty of perjury that Wells Fargo has confirmed that it consents to Plaintiffs' filing of the foregoing second amended complaint.

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the parties listed below via ECF notification and/or electronic mail on November 16, 2020.

/s/ Malissa L. Giles
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EXHIBIT A

ENTERED
05/19/2017

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	**Case No. 15-34818**
KATRINA LONG JONES,	§	
	§	**Chapter 13**
Debtor.	§	
	§	
	§	
KATRINA LONG JONES and NATASHA HILL,	§	
	§	
Plaintiffs	§	**Adversary No. 16-3235**
	§	
v.	§	
	§	
ATLAS ACQUISITION LLC and AVI SCHILD,	§	
	§	
Defendants.	§	

ORDER DENYING ATLAS ACQUISITION LLC AND AVI SCHILD'S MOTION TO DISMISS PLAINTIFFS' CLASS CERTIFICATION CLAIMS
[This Order Relates to Adv. Doc. No. 27]

I. BRIEF INTRODUCTION

Presently pending before this Court is the motion of the defendants to dismiss this adversary proceeding. The plaintiffs, who seek to prosecute this adversary proceeding as a class action, vigorously oppose the request for dismissal. For the reasons set forth herein, this Court denies the motion to dismiss.

II. PROCEDURAL BACKGROUND

On September 14, 2015, Katrina Long Jones ("Ms. Jones") filed a voluntary petition initiating the main Chapter 13 case in this Court. [Main Case No. 15-34818, Doc. No. 1]. On October 22, 2015, Atlas Acquisition LLC ("Atlas") filed a proof of claim in Ms. Jones's main

case, and Avi Schild ("Schild") (hereinafter, Atlas and Schild will collectively be referred to as the "Defendants") signed the proof of claim as "President." [Main Case No. 15-34818, Claim No. 5]. Atlas subsequently withdrew Claim No. 5 on April 20, 2016. [Main Case No. 15-34818, Doc. No. 49].

On October 24, 2016, Ms. Jones, on behalf of herself and others similarly situated, initiated this adversary proceeding by filing a complaint against the Defendants. [Adv. Doc. No. 1]. On December 30, 2016, Ms. Jones and Natasha Hill ("Ms. Hill") (collectively, the "Plaintiffs"), on behalf of themselves and others similarly situated, filed a First Amended Complaint against the Defendants, which is presently the "live" pleading (the "Complaint"). [Adv. Doc. No. 22]. Ms. Hill is a debtor in a Chapter 13 case (Case No. 15-31663) currently pending before the United States Bankruptcy Court for the Western District of Louisiana. [*Id.* at p. 3 ¶ 5]. According to the Complaint, the Plaintiffs request that this Court award them actual damages, statutory damages, punitive damages, and other legal and equitable relief for the Defendants' abuse of the bankruptcy system and their willful and intentional disregard for the requirements for filing legitimate claims in many Chapter 13 cases throughout the country. [*Id.* at pp. 26–36 of 37]. Specifically, the Plaintiffs allege that the Defendants have abused "the bankruptcy process by filing fraudulent, false, and misleading proofs of claim in bankruptcy cases . . . . " [*Id.* at pp. 1–2 ¶ 1]. Further, the Plaintiffs contend that the Defendants have been "gaming" the bankruptcy system by filing proofs of claim in various Chapter 13 cases only to withdraw such claims after being exposed by debtors' counsel, the Chapter 13 trustees, the bankruptcy courts, and/or the United States Trustee's office. [*Id.* at p. 8 ¶ 30]. Indeed, the Plaintiffs assert that the Defendants' intentional filing of deficient claims, only to withdraw them when challenged, is in fact its "business model since at least August 2012." [*Id.* at p. 21 ¶ 89].

On January 31, 2017, the Defendants filed their Motion to Dismiss Plaintiffs' Class Certification Claims (the "Motion to Dismiss"). [Adv. Doc. No. 27]. On the same day, the Defendants filed a brief in support of the Motion to Dismiss. [Adv. Doc. No. 28]. On March 3, 2017, the Plaintiffs filed their response to the Motion to Dismiss, [Adv. Doc. No. 29], and on April 14, 2017, the Plaintiffs filed their amended response to the Motion to Dismiss, [Adv. Doc. No. 32]. Then, on April 15, 2017, the Defendants filed their supplemental brief in support of the Motion to Dismiss. [Adv. Doc. No. 33]. On April 19, 2017, this Court held a hearing on the Motion to Dismiss (the "Hearing") during which the Court heard oral arguments from both the Plaintiffs' counsel and the Defendants' counsel regarding three specific issues raised in the Motion to Dismiss. The Court then took the matter under advisement. Thereafter, on April 26, 2017, the Plaintiffs filed a post-hearing brief. [Adv. Doc. No. 42].

III. THRESHOLD CONCLUSIONS

As a threshold matter, it is worth noting that this Court has jurisdiction to determine whether it has subject matter jurisdiction over this adversary proceeding. *Chicot Cnty. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376–77 (1940) (holding that a federal court has authority to determine whether it has subject matter jurisdiction over a dispute); *In re AE Liquidation, Inc.*, 435 B.R. 894, 900 (Bankr. D. Del. 2010); *VeraSun Energy Corp. v. W. Plains Co.*, No. 08-12606 (BLS), 2013 WL 3336870, at *6–7 (Bankr. D. Del. June 28, 2013). Moreover, for purposes of ruling on the Motion to Dismiss, this Court concludes that the issue of the constitutional authority of a bankruptcy court to enter a *final* order, as articulated in *Stern v. Marshall*, 564 U.S. 462 (2011), is not a concern here. This is so because denial of the Motion to Dismiss is not a final order. *See Truong v. Kartzman*, 513 F.3d 91, 93 (3d Cir. 2008) (stating that "an order in an individual adversary proceeding is not final unless it ends the litigation on

the merits and leaves nothing more for the court to do but execute the judgment") (internal citations omitted); *Smith v. AET Inc.*, Civ. Act. Nos. C-07-123, C-07-124, C-07-126, 2007 WL 1644060, at *3 (S.D. Tex. June 4, 2007) ("Denial of a motion to dismiss does not resolve a 'discrete issue' in the pending litigation, as is required for an order to be considered 'final' for purposes of Section 158(a)(1)."") (citing *In re Eagle Bus Mfg., Inc.*, 62 F.3d 730, 734 (5th Cir. 1995)).

The Defendants move for dismissal under Federal Rule of Civil Procedure 12(b)(1)[1] for lack of subject matter jurisdiction.[2] The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction (i.e., the Plaintiffs in the suit at bar). *McNutt v. GM Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Davis v. U.S.*, 597 F.3d 646, 649 (5th Cir. 2009). A court must assume that all of the allegations in the complaint are true. *Garcia v. U.S.*, 776 F.2d 116, 117 (5th Cir. 1985). A court may base its disposition of a motion to dismiss for lack of subject matter jurisdiction on "the complaint alone, the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Ynclan v. Dep't of the Air Force*, 943 F.2d 1388, 1390 (5th Cir. 1991).

With regard to a Rule 12(b)(6) motion, a court may grant a request for dismissal when a party fails to "state a claim upon which relief can be granted." The determination of a Rule 12(b)(6) motion requires a court to "accept[ ] all well-pleaded facts [of the complaint] as true, viewing them in the light most favorable to the plaintiff." *Torch Liquidating Trust v. Stockstill*,

[1] Any reference to a "Rule" is a reference to the Federal Rules of Civil Procedure, and any reference to "the Code" refers to the United States Bankruptcy Code. Further, any reference to any section (i.e., §) refers to a section in 28 U.S.C., unless otherwise noted.

[2] Bankruptcy Rule 7012(b) sets forth that Rule 12(b) of the Federal Rules of Civil Procedural applies in adversary proceedings.

561 F.3d 377, 384 (5th Cir. 2009) (quoting *Vanderbrook v. Unitrin Preferred Ins. Co. (In re Katrina Canal Breaches Litig.*), 495 F.3d 191, 205 (5th Cir. 2007)). Thus, a court may not look outside of the complaint when ruling on a Rule 12(b)(6) motion. *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir.1992). Further, a Rule 12(b)(6) motion should be denied if the plaintiff pleads "enough facts to state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Specifically, "[f]actual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* at 555 (citations omitted). "[T]he complaint must contain either direct allegations or permit properly drawn inferences to support" all facts necessary for proper relief. *Torch Liquidating Trust*, 561 F.3d at 384 (quoting *Campbell v. City of San Antonio,* 43 F.3d 973, 975 (5th Cir. 1995)). The defendant bears the burden to show that the plaintiff has not stated a claim. *Davis v. Wells Fargo*, 824 F.3d 333, 349 (3d Cir. 2016).

IV. ANALYSIS OF THE THREE ISSUES RAISED IN THE MOTION TO DISMISS

In the Motion to Dismiss, the Defendants argue that the Complaint should be dismissed for three separate and distinct reasons. They contend that:

> (1) This Court has no jurisdiction under § 1334 to certify a nationwide class of Chapter 13 debtors;
>
> (2) The Plaintiffs are not qualified as adequate class representatives as a matter of law; and
>
> (3) The Plaintiffs' claims cannot be certified under Rule 23(b)(3) as a matter of law.

[*See* Adv. Doc. No. 33, p. 1 of 14].

The Court denies the Motion to Dismiss because it finds that: (a) it has subject matter jurisdiction to certify a nationwide class of debtors; (b) a separate evidentiary hearing must be held to determine whether the Plaintiffs qualify as adequate class representatives; and (c) a

separate evidentiary hearing must be held to determine whether the Plaintiffs' claims can be certified under Rule 23(b)(3). The Court discusses its reasons for denying the Motion to Dismiss below.

A. Whether This Court has Subject Matter Jurisdiction to Certify a Nationwide Class of Chapter 13 Debtors?

There is no question that any analysis of a bankruptcy court's subject matter jurisdiction begins with § 1334. Section 1334(a) confers upon district courts the original and exclusive jurisdiction of all cases under title 11. Section 1334(b), in turn, provides that "district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." District courts are then authorized to refer these cases and proceedings to the bankruptcy judges for that district. § 157(a). In fact, the District Court for the Southern District of Texas has provided for such referral to the bankruptcy judges by General Order 2012-6 (entitled General Order of Reference), which automatically refers all eligible cases and proceedings to the bankruptcy courts.

Therefore, in order for this Court to have jurisdiction over the putative class members' claims set forth in the Complaint, these claims must constitute: (1) a core proceeding "arising under" title 11; (2) a core proceeding "arising in" a case under title 11; *or* (3) a proceeding "related to" a case under title 11. *U.S. Brass Corp. v. Travelers, Ins. Grp. (In re U.S. Brass Corp.)*, 301 F.3d 296, 303–04 (5th Cir. 2002) (citing §§ 1334(a)-(b)). Because § 1334(b) contains disjunctive language, and because the third category of jurisdiction is the broadest, the Fifth Circuit has determined that a matter need only be "related to" a bankruptcy case for a bankruptcy court to have jurisdiction. *Id.* at 304; *Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1022 (5th Cir. 1999) (citing *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 569 (5th Cir. 1995)).

However, although "related to" jurisdiction is considered the broadest category of a bankruptcy court's jurisdiction, it is not the only category. As noted in the paragraph above, bankruptcy courts also have jurisdiction over matters that "arise under" or "arise in cases under" title 11. *See, e.g.*, *In re Legal Xtranet, Inc.*, 453 B.R. 699, 705 n.1 (Bankr. W.D. Tex. 2011) ("[I]f 'related to' jurisdiction is *not* found, that does not mean that there can be no bankruptcy subject matter jurisdiction . . . [a] matter might . . . *not* be 'related to' the bankruptcy case . . . yet clearly fall within the bankruptcy subject matter jurisdiction of the federal courts, by virtue of either arising under a provision of title 11 . . . or arising in the bankruptcy case . . . ."") (emphasis in original); *In re Rodriguez*, 396 B.R. 436, 448 (Bankr. S.D. Tex. 2008) ("Bankruptcy courts' subject matter jurisdiction is not limited to matters 'related to cases under title 11.' Bankruptcy courts also have subject matter jurisdiction over matters arising under title 11 and arising in cases under title 11."); *In re Simmons*, 205 B.R. 834, 843 (Bankr. W.D. Tex. 1997) ("Finding that it is only necessary to determine whether a matter is *at least* 'related to' the bankruptcy in this case, . . . therefore, does not usurp the possibility that one of these 'distinguishable' categories ["related to," "arising under," or "arising in"] incorporates matters which would otherwise fall outside the 'related to' penumbra.") (emphasis in original).

1. The Arguments Made by the Defendants and by the Plaintiffs

The Defendants assert that bankruptcy courts (including this Court) lack subject matter jurisdiction over a nationwide class of debtors. Holding this position, they seek to dismiss the Plaintiffs' request to certify a nationwide class of debtors under Rule 12(b)(1). Specifically, the Defendants assert that this Court lacks jurisdiction because the Plaintiffs' claims do not "arise under" title 11, but rather: (1) "the Plaintiffs' claim for abuse of process arises under the Court's inherent authority and 11 U.S.C. § 105;" (2) the Plaintiffs' claim under Bankruptcy Rule 3001

"arises under a Federal Rules of Bankruptcy Procedure," which in turn, arises under § 2075 of title 28; and (3) "the Plaintiffs' claims for declaratory and injunctive relief arise under title 28, rather than title 11." [Adv. Doc. No. 28, p. 15 of 64]. Further, while counsel for the Defendants concedes that this Court does have "arising in" jurisdiction, [Apr. 19, 2017 Tr. 26:13–29:7], he insists that "arising in" jurisdiction only vests in the "home court" of a bankruptcy case, [*id.* at 9:11–15], and therefore this Court lacks jurisdiction over a *nationwide* class. However, counsel for the Defendants concedes that this Court may have jurisdiction over a nationwide class of debtors if "arising under" jurisdiction exists. [*Id.* at 26:10–23]. Finally, the Defendants contend that this Court lacks "related to" jurisdiction because "claims in cases arising in other districts cannot have a conceivable effect on the estate being administered in [the Southern District of Texas]." [Adv. Doc. No. 28, p. 11 of 64].

The Plaintiffs argue that because district courts have jurisdiction over nationwide class actions, so do bankruptcy courts. The Plaintiffs assert that "28 U.S.C. § 1334(b) grants subject matter jurisdiction to the District Court over any debtor's claims that fall within the court's 'related to,' 'arising in,' or 'arising under' jurisdiction . . . ." [Adv. Doc. No. 29, pp. 7–8 of 30]. They contend that because their claims invoke substantive rights created by the Code (i.e., by seeking redress under 11 U.S.C. § 105 for the Defendants' violations and abuses of 11 U.S.C. §§ 501 and 502)[3] and by the Bankruptcy Rules (i.e., Bankruptcy Rule 3001(a), (c)(2)(D)), they fall within the Court's "arising under" jurisdiction. [*Id.* at p. 12 of 30]; [Apr. 19, 2017 Tr. 42:17–20].

[3] In their post-hearing brief, in footnote six, the Plaintiffs state the following: "Plaintiffs' complaint does invoke the Code, and in particular Code §§ 501 and 502. In *Rojas*, the plaintiffs did include a cause of action for violation of 11 U.S.C. §§ 501 and 502. If the Court believes that such specific counts are necessary for the Court to invoke its § 105(a) powers to provide the relief Plaintiffs seek, the Court should allow Plaintiffs to amend their complaint." [Adv. Doc. No. 42, p. 5 of 13] (citation omitted). This Court construes the Complaint as asserting a cause of action for violation of 11 U.S.C. §§ 501 and 502, but if the Plaintiffs want to amend the Complaint to plead with even greater specificity, the Court will grant them leave to do so, unless, of course, the Defendants can convince the Court otherwise. Needless to say, the Plaintiffs need to file a motion for leave to amend and, if they do, the Defendants have the right to oppose the motion—and thereafter, the Court will make a decision.

Additionally, at the Hearing, the Plaintiffs argued that this Court has "arising in" jurisdiction because "[their] claims can only arise in bankruptcy court." [Apr. 19, 2017 Tr. 42:17–21]. Further, with regard to the Defendants' assertion that this Court lacks "related to" jurisdiction, the Plaintiffs insist that the "related to" prong should not be conflated with the "arising in" and "arising under" prongs. [Adv. Doc. No. 29, p. 13 of 30].

Interpreting the plain language of §§ 1334 and 157, and Fifth Circuit precedent, this Court finds that it has jurisdiction over a nationwide class of debtors, as discussed below.

2. Analysis of a Bankruptcy Court's Jurisdiction Over a Nationwide Class of Debtors

The Court first notes that there is no question that bankruptcy courts are permitted to handle class actions in adversary proceedings. After all, Bankruptcy Rule 7023 incorporates Rule 23, which authorizes bankruptcy courts to certify a class action. *In re Wilborn*, 609 F.3d 748, 754 (5th Cir. 2010) ("[C]lass action proceedings are expressly allowed in the Federal Bankruptcy Rules, which provide that the requirements for class actions under Federal Rule of Civil Procedure 23 apply in adversary proceedings . . . if bankruptcy court jurisdiction is not permitted over a class action of debtors, [Bankruptcy] Rule 7023 is virtually read out of the rules."). Thus, assuming that all prerequisites for class certification under Rule 23 are satisfied, this Court may certify a class action. While the Defendants do not dispute that this Court may certify a class action within the Southern District of Texas, [Apr. 19, 2017 Tr. 5:12–14], they insist that bankruptcy courts (including this Court) cannot exercise jurisdiction over a *nationwide* class of debtors. This Court disagrees based upon existing law within the Fifth Circuit.

In *Bolin*, more than one million former debtors sought certification of a nationwide class asserting claims against Sears for its unlawful attempts to collect discharged debts. 231 F.3d 970, 972 (5th Cir. 2000). The class sought injunctive, declaratory, and monetary relief under the

Code, RICO, and the Truth in Lending Act. *Id.* at 973. The district court certified the nationwide class under Rule 23(b)(2) and Sears appealed. *Id.* On appeal, the Fifth Circuit vacated the district court's certification on the basis that the certified class did not fit within the confines of Rule 23(b)(2). *Id.* at 978. Interestingly, while the Fifth Circuit had a duty to consider the district court's subject matter jurisdiction, it did not directly address the issue of whether the district court had subject matter jurisdiction to certify a nationwide class of debtors. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 147 (2009) ("[T]he Court of Appeals would indeed have been duty bound to consider whether the Bankruptcy Court had acted beyond its subject-matter jurisdiction.") (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)). While it did not directly address the issue, the Fifth Circuit chose not to dismiss the suit, but rather remanded to the district court for reconsideration of the certification question. *Bolin*, 231 F.3d at 979. Thus, the Fifth Circuit's decision not to dismiss the suit represents an implicit approval of the District Court's ability to certify a nationwide class of debtors. *Cano v. GMAC Mortg. Corp. (In re Cano)*, 410 B.R. 506, 550 (Bankr. S.D. Tex. 2009) ("The Fifth Circuit has implied that bankruptcy courts have jurisdiction over nationwide bankruptcy class actions.").

Applying this interpretation to the dispute at bar, because the District Court for the Southern District of Texas has jurisdiction over a nationwide class of debtors, *see id.*, this Court—operating as a unit of the District Court for the Southern District of Texas—has the authority to adjudicate all matters that fall within the District Court's bankruptcy jurisdiction. § 1334. Indeed, as noted previously, in the Southern District of Texas, General Order 2012-6 automatically refers all eligible cases and proceedings to the bankruptcy courts. Thus, based on the language set forth in §§ 1334 and 157 and General Order 2012-6, this Court concludes that it may exercise jurisdiction over a nationwide class of debtors, including the class for whom the

Plaintiffs have filed the Complaint—assuming of course that the Plaintiffs satisfy all other requirements for a class action.

3. The Court has "Arising Under" Jurisdiction in this Adversary Proceeding

As noted above, bankruptcy courts exercise jurisdiction—through referral from the district courts—over core proceedings (i.e., cases that "arise under" and "arising in" title 11) and proceedings that are "related to" a bankruptcy case. Although not precisely defined, a matter "arising under" title 11 "invokes a substantive right provided by title 11." *Matter of Wood*, 825 F.2d 90, 97 (5th Cir. 1987). Indeed, the Defendants argue that the only way this Court may have jurisdiction over a nationwide class of debtors is if the Plaintiffs' claims invoke a substantive right provided by the Code (i.e., "arises under" title 11). [Apr. 29, 2017 Tr. 26:10–23].

The Fifth Circuit has suggested that substantive rights may be created not only by the Code, but by the Bankruptcy Rules. Specifically, in *Matter of Wood*, the Fifth Circuit made clear that "[i]f the proceeding involves a right created by the *federal bankruptcy law*, it is a core proceeding." 825 F.2d at at 97 (emphasis added). Further, the Fifth Circuit, in *Matter of Smith*, stated that "[b]ankrupty courts cannot use their equity powers under Section 105(a) to fashion *substantive rights and remedies not contained in the Bankruptcy Code or [Bankruptcy] Rules* or to negate substantive rights or remedies that are available." 21 F.3d 660, 666 (5th Cir. 1994) (emphasis added).

Here, the Plaintiffs argue that, by seeking 11 U.S.C. § 105 redress for the Defendants' violations and abuses of 11 U.S.C. §§ 501 and 502, the class action invokes substantive rights created by the Code. [Adv. Doc. No. 29, pp. 11–12 of 30]; [Apr. 19, 2017 Tr. 42:17–20]. Further, the Plaintiffs contend that the class action invokes substantive rights created by federal bankruptcy law—namely, Bankruptcy Rule 3001. [Adv. Doc. No. 29, p. 12 of 30]; [Apr. 19,

2017 Tr. 42:17–20]. Strongly disagreeing with the Plaintiffs, the Defendants assert that the putative class action's claims for an abuse of process arising under the Court's inherent power and 11 U.S.C. § 105, violations under Bankruptcy Rule 3001, and relief under title 28 do not constitute substantive rights created by bankruptcy law. [Adv. Doc. No. 28, p. 15 of 64].

The Fifth Circuit in *Matter of Smith* made it clear that while bankruptcy courts may not create, modify, or expand substantive rights, such substantive rights may originate from the Bankruptcy Rules in addition to the Code. 21 F.3d at 666 ("Bankrupty courts cannot use their equity powers under Section 105(a) to fashion *substantive rights and remedies not contained in the Bankruptcy Code or [Bankruptcy] Rules* . . . .") (emphasis added). Here, the Plaintiffs are neither asking this Court to create *new* substantive rights created by the Code or Bankruptcy Rules, nor are they asking this Court to modify or expand substantive rights that are already provided for in the Code or the Rules. And, while many of the Bankruptcy Rules do not provide a substantive right "created by federal bankruptcy law," Bankruptcy Rule 3001—the specific rule that the Plaintiffs allege the Defendants violated—does in fact give rise to a substantive right created by federal bankruptcy law. Indeed, Bankruptcy Rule 3001(c)(2)(D)(iii) provides that the Plaintiffs have the right to be "award[ed] other appropriate relief, including reasonable expenses and attorney's fees caused by the failure [to attach supporting documentation to a proof of claim]." *Compare Marek v. Chesny*, 473 U.S. 1, 35 (1985) ("The right to attorney's fees is 'substantive' under any reasonable definition of [the term,] '[s]uch rules shall not abridge, enlarge or modify any substantive right.'") (quoting § 2072), *with In re Myles*, 395 B.R. 599, 608 (Bankr. M.D. La. 2008) (finding that Bankruptcy Rule 2016 creates no substantive right, but rather, "provides the mechanism for bankruptcy court approval of attorney compensation from the estate"). Thus, there is no question that Bankruptcy Rule 3001(c) provides the Plaintiffs a

substantive right created by federal bankruptcy law—namely, the right to recover "appropriate relief, including reasonable expenses and attorney's fees." *See Matter of Wood*, 825 F.2d at 97 ("If the proceeding involves a right created by the federal bankruptcy law, it is a core proceeding [i.e., invokes a substantive right]."). Accordingly, the Plaintiffs have satisfied their burden under Rule 12(b)(1) because they have shown that this Court has "arising under" jurisdiction for suits seeking to enforce substantive rights created by sections of the Code and, additionally, substantive rights created by the Bankruptcy Rules. *Davis*, 597 F.3d at 649.

4. The Court has "Arising In" Jurisdiction in This Adversary Proceeding

Even assuming that this Court lacks "arising under" jurisdiction, the Court nevertheless has "arising in" jurisdiction.

A bankruptcy court has core "arising in" jurisdiction to adjudicate proceedings "that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." *Matter of Wood,* 825 F.2d at 97. Stated differently, a bankruptcy court has "arising in" jurisdiction to "hear administrative matters that arise *only* in bankruptcy cases." *Id.* (emphasis in original). Here, the Court finds that it has "arising in" jurisdiction because the Plaintiffs' claims, and those of the purported class members, could not possibly exist outside of bankruptcy.

As stated above, the Plaintiffs argue that this Court has "arising in" jurisdiction because their claims arise from the Defendants' filing of "fraudulent, false, and misleading proofs of claim" in numerous bankruptcy cases throughout the country. [Adv. Doc. No. 22, pp. 1–2 ¶ 1]. This Court agrees. Assuming that all of the Plaintiffs' allegations set forth in the Complaint are true, *Garcia*, 776 F.2d at 117, there is no question that when a party files a proof of claim in a bankruptcy case—and this is what the Complaint alleges that the Defendants did—then "arising

in" jurisdiction exists; indeed, the filing of a proof of claim can *only* "arise in" a bankruptcy case. Because the Plaintiffs' claims are based on alleged violations of 11 U.S.C. §§ 501 and 502, and Bankruptcy Rule 3001, the claims could "arise *only* in bankruptcy cases"—a point that the Defendants do not contest. [Apr. 19, 2017 Tr. 6:8–10, 9:11–15]. Accordingly, the Plaintiffs have met their burden under Rule 12(b)(1) to show that this Court has "arising in" jurisdiction. *Davis*, 597 F.3d at 649.

However, having found that this Court has "arising under" and "arising in" jurisdiction over a nationwide class does not end the inquiry. The Plaintiffs still have the burden to establish all the elements under Rule 23(a) and (b) in order to obtain class certification in this particular adversary proceeding. *See In re Kosmos Energy Ltd. v. Sec. Litig.*, 299 F.R.D. 133, 144 (N.D. Tex. 2014) ("Plaintiff bears the burden of establishing all four general class certification elements under Rule 23(a) and the two additional certification requirements under Rule 23(b)(3)"). The Defendants contend that, as a matter of law, the Plaintiffs cannot satisfy this particular rule. [*See* Adv. Doc. No. 33, p. 1 of 14]. The Plaintiffs assert that they can and should be afforded the opportunity to do so at an evidentiary hearing. [Adv. Doc. No. 29, p. 18 of 30]. The Court now addresses this issue.

B. Whether the Plaintiffs Qualify as Adequate Class Representatives Under Rule 23(a)(4)?

Rule 23(a)(4) requires that the proposed representatives of a class action "fairly and adequately protect the interests of the class." The Defendants argue that Ms. Jones is not a suitable class representative because, among other things, she faces a conflict of interest "between her fiduciary duty to maximize recovery for the creditors in her own personal case and her duties to the unnamed class members." [Adv. Doc. No. 28, p. 20 of 64]. The Defendants argue that Ms. Hill also is not a suitable class representative because this Court lacks subject

matter jurisdiction over her bankruptcy case and, additionally, because she is barred from asserting claims under the doctrine of judicial estoppel. [*Id.* at p. 21 of 64]. The Plaintiffs assert that the Defendants' request for this Court to dismiss the Plaintiffs' class certification under Rule 23 is premature, as this issue should be decided at a separate class certification evidentiary hearing. [Adv. Doc. No. 29, p. 18 of 30].

The Court finds merit in the Plaintiffs' argument. Indeed, the statements made by counsel for the Defendants at the Hearing regarding the issue of adequate class representatives convince this Court all the more that the Plaintiffs' position is correct:

> Now, admittedly this would normally be something you would decide on an evidentiary record . . . But what we know from looking at the plans that were filed in this case and the Schedules and the proceedings the Court can take judicial notice of its file and, I've also argued that the Court can take notice of documents available on ECF, which gets[the Court] to be able to look at Ms. Hill's file . . . .

[Apr. 19, 2017 Tr.12:24–13:8]. This Court is unable to discern how taking judicial notice of its file somehow deprives the Plaintiffs of an evidentiary hearing on class certification. As one court has stated:

> The concept of [Federal Rule of Evidence 201] is to take judicial notice of a fact whose accuracy cannot be reasonably questioned. Defendants have not addressed the two prongs of the [Federal Rule of Evidence 201(b)] test and why they are met in the present case. Therefore, the Court does not believe it would be appropriate to take notice of the contents of the records. If Defendants would like to admit certain statements from the records at trial, they will have to go through the proper evidentiary channels.

Feuerbacher v. Wells Fargo Bank, Case No. 4:15-CV-59, 2016 WL 3669744, at *2 n.1 (E.D. Tex. July 11, 2016). The Defendants here, like the defendants in *Feuerbacher*, have failed to satisfy the two prongs of Federal Rule of Evidence 201(b).

Moreover, courts have generally held that granting a motion to dismiss concerning class certification qualifications before discovery has commenced and before a hearing on class certification has been conducted is premature. *See, e.g.*, *Grant v. Houser*, Civ. Act. Nos. 10–805, 10–872, 2010 WL 3303853, at *6 (E.D. La. Aug. 17, 2010) (denying defendants' motion to dismiss in its entirety and holding that "it is premature to determine whether Plaintiffs will be able to meet the Rule 23 requirements . . . [and that] the question can be properly revisited in response to a motion to certify the class"); *Duplessie v. Zale Corp.*, No. 3:04-CV-2361-M, 2005 WL 1189840, at *1 (N.D. Tex. May 18, 2005) (denying Zale's motion to dismiss after finding that "Zale's arguments concerning Duplessie's adequacy as a class representative premature"). *See also In re Enron Corp. Sec., Derivative & Erisa Litig.*, No. MDL-1446, Civ.A.H-01-3624, 2004 WL 405886, at *24 (S.D. Tex. Feb. 25, 2004) ("Since class certification issues are premature in *Newby* because the Court must first address pending motions to dismiss . . . , and because a hearing and a proper record will be necessary to decide certification issues, the Court defers ruling on part of ICER's motion, i.e., to intervene as a class representative."); *Pinero v. Jackson Hewitt Tax Serv., Inc.*, 638 F.Supp.2d 632, 640 (E.D. La. 2009) (denying the defendants' motion to dismiss as premature because "[d]efendants have yet to answer plaintiff's complaint and have moved to stay discovery until the motions to dismiss are resolved").

Accordingly, for all of these reasons, the Court rejects the Defendants' argument that, as a matter of law, the Plaintiffs cannot serve as class representatives, and instead will schedule a separate hearing at which time the Plaintiffs may present evidence in support of class certification and the Defendants may present evidence in opposition thereto.[4] This approach

[4] The Court notes that the Defendants are entitled to introduce evidence in support of their judicial estoppel argument. However, the Court notes that the arguments made by the Plaintiffs on pages seven through ten in their post-hearing brief as to why this defense is inapplicable here are compelling, and the Defendants will need to address them should they continue to insist that the Plaintiffs are estopped from prosecuting the Complaint.

accords with the Fifth Circuit's holding in *Merrill v. S. Methodist University* that "the district court should ordinarily conduct an evidentiary hearing on this question [of class certification]." 806 F.2d 600, 608–09 (5th Cir. 1986).

C. Whether the Plaintiffs may Proceed Under Rule 23(b)(3)?

The Defendants next contend that, as a matter of law, the Plaintiffs cannot satisfy Rule 23(b)(3) and therefore, this Court should grant the Motion to Dismiss. Specifically, it is the Defendants' position that the Plaintiffs cannot proceed under Rule 23(b)(3) as a matter of law because, among other things, "individuals issues clearly dominate over common issues." [Adv. Doc. No. 28, p. 34 of 64]. The Plaintiffs argue that just like the Defendants' request to dismiss this suit because the Plaintiffs cannot serve as class representatives, the arguments regarding the Plaintiffs' failure to qualify under Rule 23(b)(3) is premature. [Adv. Doc. No. 29, p. 24 of 30]. The Plaintiffs also contend that the question is not whether there are *any* individual issues, but whether common questions of law or fact *predominate*. [*Id.* at p. 25 of 30]. This is only one aspect of Rule 23 that the Plaintiffs have the burden of proving at a separate class certification hearing, and the Plaintiffs assert that they should be afforded the opportunity to satisfy this burden at an evidentiary hearing.

The Court finds merit in the Plaintiffs' argument, and it will thus give them the opportunity to show that a class action should be certified under Rule 23(b)(3). *See, e.g.*, *Lang v. DirecTV, Inc.*, 735 F.Supp.2d 421, 439–40 (E.D. La. Aug. 13, 2010) (denying defendants' motion to strike the class allegations and finding that "these arguments are premature [because] . . . the record is not sufficiently developed for the Court to determine whether class certification would be appropriate"); *Grant*, 2010 WL 3303853, at *6 (denying defendants' motion to dismiss in its entirety and holding that "it is premature to determine whether Plaintiffs will be able to

meet the Rule 23 requirements . . . [and that] the question can be properly revisited in response to a motion to certify the class"); *Bros. v. Portage Nat'l Bank*, Civ. Act. No. 3:06-94, 2007 WL 965835, *7 (W.D. Pa. Mar. 29, 2007) (explaining that a Rule 12(b)(6) motion must not be used "as a vehicle for preempting a certification motion").

Accordingly, the Court rejects the Defendants' argument that, as a matter of law, the Plaintiffs cannot satisfy the elements of Rule 23(b)(3) to obtain class certification, and finds that the Defendants have not met their burden in establishing that the Plaintiffs have not stated a claim for which relief can be granted. Rule 12(b)(6); *Davis*, 824 F.3d at 349. Rather, the Court will schedule a separate hearing at which time the Plaintiffs may present evidence in support of class certification and the Defendants may present evidence in opposition thereto. Once again, this approach accords with the Fifth Circuit's holding in *Merrill*, 806 F.2d at 608–09, that "the district court should ordinarily conduct an evidentiary hearing on this question [of class certification]."

V. Conclusion

There is no question that class actions serve a valuable remedial role. Indeed, class actions promote efficiency and economy, as debtors, in many cases, do not have the resources to litigate issues with their creditors individually. *See Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553 (1974); *In re Wilborn*, 609 F.3d at 752–54. While this Court recognizes that it does not have freewheeling jurisdiction to adjudicate any and all matters brought in bankruptcy court, it simply cannot ignore the plain language set forth in §§ 1334 and 157, Bankruptcy Rule 7023, Fifth Circuit precedent (i.e., *Matter of Smith*), and General Order 2012-6 for the Southern District of Texas. As discussed herein, this Court's jurisdiction arises by referral from the District Court for the Southern District of Texas. This means that if the District Court may

exercise jurisdiction over claims of a debtor class, then General Order 2012-6 instructs that such proceedings are automatically referred to this Court. Thus, this Court finds that it may exercise subject matter jurisdiction over a nationwide class of debtors. That said, however, it remains for the Plaintiffs to establish that they should be certified as a class under Rule 23—and that is why an evidentiary hearing needs to be held. For all the reasons set forth above, it is therefore:

ORDERED that the Motion to Dismiss is denied in its entirety; and it is further

ORDERED that an evidentiary class certification hearing shall be held on August 2, 2017, at 10:00 A.M., in Courtroom 600, 6th Floor, Bob Casey Federal Courthouse, 515 Rusk Street, Houston, Texas.

Signed on this 19th day of May, 2017.

Jeff Bohm
United States Bankruptcy Judge

EXHIBIT B

From: Herbert Beskin [mailto:HBeskin@cvillech13.net]
Sent: Wednesday, June 3, 2020 3:28 PM
To: Doug Little (delittleesq@aol.com) <delittleesq@aol.com>; Lynn Bradley (LBradley@tgblaw.com) <LBradley@tgblaw.com>; Bob Stevens (bob@scslawfirm.com) <bob@scslawfirm.com>; Marshall M. Slayton Esq. (marshall@marshallslayton.com) <marshall@marshallslayton.com>; Jennifer Wagoner (jennifer@marshallslayton.com) <jennifer@marshallslayton.com>; Shannon Morgan <smorgan@rc.law>; Linzie Ragland Esq. (raglandwl@aol.com) <raglandwl@aol.com>; eleban39@aol.com; John P. Goetz (John@johngoetzlaw.com) <John@johngoetzlaw.com>; James M. McMinn (james@johngoetzlaw.com) <james@johngoetzlaw.com>;jerry@marshallslayton.com; Suad Bektic (sbektic@newdaylegal.com) <sbektic@newdaylegal.com>; Scott Carpenter (scott@newdaylegal.com) <scott@newdaylegal.com>;jcm@newdaylegal.com; Roland Carlton (rcarlton@carltonlegalservices.com) <rcarlton@carltonlegalservices.com>; Hannah W. Hutman (HHutman@hooverpenrod.com) <HHutman@hooverpenrod.com>; Dave Wright Esq. (dave@coxlawgroup.com) <dave@coxlawgroup.com>; David Cox <david@coxlawgroup.com>; Janice Hansen <janice@coxlawgroup.com>; Heidi Shafer <heidi@CoxLawGroup.com>; Stephen Dunn Esq. (stephen@stephendunn-pllc.com) <stephen@stephendunn-pllc.com>; Michelle Dunn Esq. (michelle@stephendunn-PLLC.COM) <michelle@stephendunn-PLLC.COM>; Reginald Yancey (bobby.1925Z@gmail.com) <bobby.1925Z@gmail.com>; Mike Hart <mike@hartlawroanoke.com>; Yvonne Cochran Esq. (ycochran@cochranlawfirm.net) <ycochran@cochranlawfirm.net>; Brian K. Stevens Esq. (bkstevens1534@gmail.com) <bkstevens1534@gmail.com>; 'Robert B. Easterling, Attorney' <eastlaw@easterlinglaw.com>; David Meeks (movetostrike.meeks@gmail.com) <movetostrike.meeks@gmail.com>; Bryan Ragland (bryan@raglandlegal.com) <bryan@raglandlegal.com>; Donald M. Burks (don@DonBurksLaw.com) <don@DonBurksLaw.com>; William Harville <harvillelaw@gmail.com>; Andrew S. Chen, Esq. (andrew@conwaylegal.com) <andrew@conwaylegal.com>; Martin C. Conway (martin@conwaylegal.com) <martin@conwaylegal.com>; Michael P. Regan Esq. (mprlaw90@comcast.net) <mprlaw90@comcast.net>; Malissa Giles <mgiles@gileslambert.com>; Anthony L. White Esq. (awhite@alwhitelaw.com) <awhite@alwhitelaw.com>; Earl Oberbauer (earl@oberbauer-law.com) <earl@oberbauer-law.com>
Subject: RE: Coronavirus upate #9: Trustee's policy on mortgage forbearance notices

6/3/20

Attorneys:

This is an update on mortgage forbearances after hearing Judge Connelly's thoughts and attorney comments at the 5/28/20 virtual "brown bag lunch" meeting.

1. The Judge announced that:

A. At this time the Court will NOT be issuing any kind of Standing Order or Local Rule to deal with the forbearance notices being filed by mortgagees and servicers.

B. The Judge is open to entering "comfort orders" agreed to by the parties concerning these notices.

C. The amount and kind of notice, if any, that might be necessary for the entry of any such orders will vary with the relief being sought.

D. The Judge is sensitive to the additional costs these notices may impose upon debtors, and some of the associated problems (e.g., payments made during a forbearance period being put into the creditor's suspense account instead of being applied to the current payment).

2. The general consensus of the attorneys on the call, both debtor and creditor, was that the servicers are still formulating their policies about how to handle these forbearances, and there is no uniformity as to what kind of workouts (if any) they will be offering debtors at the end of these forbearance periods.

3. A number of debtor attorneys expressed concern that some/many of these forbearance notices are apparently being issued without the debtors having requested them, and that many debtors may confuse these temporary forbearances with a forgiveness of payments or an automatic tail-ending of payments.

4. **Given all this, the policy of my office will be:**

A. For <u>conduit mortgage cases</u>(Trustee making the ongoing mortgage payments): If a notice of forbearance has been filed, I will continue to make the ongoing mortgage payments I have been ordered to pay in the initial distribution order, the confirmed plan, and the confirmation order *until and unless* an order has been entered instructing me to do otherwise. I believe that these previous orders take precedence over a creditor's notice of temporary forbearance.

1. In each conduit case, I will try to reach out to the debtors' attorney to determine what action the attorney wants to take regarding the forbearance notice and current mortgage payments, and what, if any, kind of order we might want to have entered. Attorneys should feel free to contact me as well.

2. If the attorney requests that I ignore the forbearance notice and continue to make the ongoing mortgage payments as previously ordered, I will not feel the need for any additional order, but I will endorse one if requested.

3. If the attorney requests that I temporarily cease making the mortgage payments, I will ask that an order be entered establishing the period of non-payment, how the funds representing those payments should be allocated or disbursed, any impact on the plan base gross, and how any resulting mortgage deficiency will be cured.

4. In each case, we will have to determine (i) whether a motion or notice will need to be filed, (ii) what, if any, notice should be given to the mortgagee / servicer, and (iii) whether we need the endorsement of the creditor on any such order.I'm not sure at this time what the Court will require.

B. In <u>non-conduit mortgage cases(w</u>here the debtors are making the mortgage payments directly): If a forbearance notice is filed with the Court, my office will take no action. I will assume that the attorney in each case is monitoring such notices,discussing with their clients what action needs to be taken, and taking appropriate action where required.

Call me if you have any questions about this.

Herb

Herbert L. Beskin, Esq.
Chapter 13 Trustee
P.O. Box 2103
Charlottesville VA 22902
Phone: 434 817 9913, ext. 121; Fax: 434 817 9916
E-mail: hbeskin@cvillech13.net
Visit our website at: www.cvillech13.net

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	Case No. 12-70985-JAD
MICHELE L. EYER,	)	
	)	
Debtor.	)	Chapter 13
_____	X	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	Related to Dkt. Nos. 73, 75 & 80
Movant,	)	
	)	
- v -	)	
	)	
MICHELE L. EYER,	)	
	)	
Respondent.	)	
_____	X	

MEMORANDUM ORDER STRIKING NOTICE OF PAYMENT CHANGE

By way of hearing held on December 18, 2015, the Court heard and considered the Notice of Mortgage Payment Change (regarding Claim No. 11) filed by Wells Fargo Bank, N.A. ("Wells Fargo"), as well as the responses filed by the Chapter 13 Trustee and the Debtor with respect to the same.

In consultation with the other Judges of this Court, it is concluded that the Notice of Payment Change filed by Wells Fargo should be stricken. The Court reaches this conclusion because the payment change notice has nothing to do with the Debtor's current obligations under its note and/or mortgage with Wells Fargo. Rather, the Notice of Payment Change submitted by Wells Fargo is merely an offer (or a request) that the Debtor enter into a loan modification agreement.

The Court appreciates the efficiency of the process undertaken by Wells Fargo to seek a modification by way of a Notice of Mortgage Payment Change. However, to insure that such items are not merely entered into by default – and without meaningful opportunity for debtors to seek guidance and counsel from their attorneys – it seems more appropriate that mortgage modification approval be obtained by way of a formal motion joined by the debtors (through their counsel if they have an attorney). This process is appropriate to insure that any loan modification entered into by the debtors is knowingly made, is voluntary, and is in their best interests. In addition, such transactions appear to be outside the "ordinary course" and a motion would be the appropriate vehicle by operation of 11 U.S.C. § 363 and/or Fed.R.Bankr.P. 9019.

[Remainder of Page Intentionally Left Blank]

For these reasons, the Notice of Payment Change filed by Wells Fargo is STRICKEN, without prejudice to Wells Fargo and the Debtor filing in the future a motion requesting approval of a loan modification if, and to the extent, an agreement with respect to the same is reached between the parties.

SO ORDERED this 30th day of December, 2015.

mas

Jeffery A. Deller
Chief U.S. Bankruptcy Judge

Case Administrator to Serve:
James A. Prostko, Esq., Counsel to Wells Fargo Bank, N.A.
Theresa C. Homady, Esq., Counsel to the Debtor
Ronda Winnecour, Esq., Chapter 13 Trustee

FILED
12/30/15 10:32 am
CLERK
U.S. BANKRUPTCY
COURT - WDPA

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

IN RE:	)	CHAPTER 13
Troy Shannon Harlow	)	
	)	CASE NO. 17-71487
DEBTOR	)	

MOTION OBJECTING TO NOTICE OF MORTGAGE PAYMENT CHANGE (FORBEARANCE) FILED BY WELLS FARGO BANK, NA AND NOTICE OF PRETRIAL HEARING

Troy Shannon Harlow, Debtor, by his attorney, Malissa L. Giles, files this motion objecting to the Notice of Mortgage Payment Change filed on April 29, 2020, and respectfully represents:

Background Facts

1. On Nov. 2, 2017, the Debtor filed for protection of the Court under Chapter 13 and has been operating under a confirmed Chapter 13 plan since the Court entered its order confirming Debtor's plan on May 24, 2018.
2. Debtor's home is encumbered by a lien securing repayment of a mortgage loan serviced by Wells Fargo Bank, NA ("Wells Fargo").
3. The debtor was current on his mortgage when the Chapter 13 case was filed and he is paying the contractual post-petition payment directly pursuant to Debtor's confirmed Chapter 13 plan and all subsequent amendments thereto.

Wells Fargo's Notice of Temporary Forbearance

4. On April 29, 2020, Wells Fargo, through its non-attorney representative, Thomas R. Dautel, who is allegedly the VP Loan Documentation, filed an Official Form 410S1 "Notice of Mortgage Payment Change" and indicated payments would be in forbearance.
5. The Official Form 410S1 included a notice which falsely asserts that "the Debtor has requested, and Creditor\Servicer has provided a temporary suspension of mortgage payments."
6. The Debtor did not request a forbearance of his mortgage loan, did not contact Wells Fargo about forbearance, and Debtor did not want and does not want a forbearance of his mortgage payment obligation.

7. The form contained added language which provided:

> **The use of Official Form 410S1 and of the electronic filing method for a Notice of Payment Change is being used to provide interested parties with notice of the forbearance arrangement, detailed below. It is only being used due to limitations on existing functionality available to limited users within the Courts' CMECF systems. The use of this form in no way implies that a payment change is occurring or has occurred on the account. This filing does not imply that the provisions of FRBP 3002.1 apply to this filing, nor does the Servicer\Creditor consent to the application of any provisions of FRBP 3002.1 to this filing.**

8. The added language indicates the loan is in forbearance, but then by use of the above langage informs parties "use of this form in no way implies that a payment change is occurring or has occurred on the account."
9. At the time that Wells Fargo filed the Official Form 410S1 "Notice of Mortgage Payment Change, pursuant to the terms of Debtor's confirmed amended Chapter 13 plan, the Debtor was current in his payments.
10. Moreover, in May of 2020, Wells Fargo filed numerous Notices of Forbearance in the U.S. Bankruptcy Court Western District of Virginia, many of which falsely represent to the Court that they related to forbearances that debtors requested. See Exhibit A for the list of unauthorized notices filed in the undersigned counsel's cases alone.
11. These notices, the vast majority of which are not filed pursuant to Rule 3002.1 notices or proofs of claims, were filed improperly by non-attorney employees of Wells Fargo and/or, upon information and belief, by non-attorney representatives of one or more vendor companies hired by Wells Fargo to prepare and file such notices.
12. In the context of a Chapter 13 bankruptcy case, mortgage forbearances and Wells Fargo's forbearance notices are unnecessary and improper as a secured creditor has no authority to modify a Chapter 13 plan by motion, notice or otherwise.
13. A forbearance is not a mortgage payment change and these "notices of forbearance," and the Official Form 410S1 Notice of Mortgage Payment Change filed in this case seek to impermissibly modify debtors' confirmed Chapter 13 plans without court approval.
14. In some instances, the notices of forbearance assert payments are to be put in forbearance for months that the lender already has been paid.
15. In every instance in which Wells Fargo has filed a forbearance notice that the Chapter 13 debtor did not request, these notices needlessly burden the Bankruptcy system by causing confusion and requiring debtors, debtors' counsel, Chapter 13 trustees, and the Court to take action to ensure that such notices do not create further inefficiency and needless expense, as well as the potential for post-discharge disagreement between the debtor and mortgage servicer regarding the mortgage loan's status after the borrower is no longer

protected by the provisions of the Bankruptcy Code and Rules and is no longer represented by counsel.

16. The filing of these notices could result in trustees requiring debtors to update their budgets to explain their change in circumstances and could alter the way Chapter 13 plan payments are allocated by increasing distributions to unsecured creditors using plan payments intended for post-petition mortgage payments.

17. But what really matters is that Wells Fargo is using non-attorneys to file false notices regarding unauthorized modifications to borrowers' mortgage loans.

18. While Wells Fargo Bank, NA seeks to characterize these motions as an expedient mechanism of addressing an issue with Covid-19, the Bank or its designated non-attorney representative has proceeded to file these notices with no due diligence, no verification of the assertions contained therein, and no consideration of the impact upon the debtors, the Chapter 13 Trustees or the US Bankruptcy Court.

19. The actions of Well Fargo Bank, NA have caused debtors uncertainty in whether to pay their mortgage payments even when they had the ability to do so and ultimately harm the debtors in how Wells handles accounting of these loans.

20. The actions of Wells Fargo Bank, NA have caused the Chapter 13 Trustees additional work in reviewing the notices, determining if the notices impact the plan, and noticing counsel for the debtors of the requests. See Exhibit B and C showing communications to counsel from Chapter 13 Trustees in this district.

21. The actions of Wells Fargo Bank, NA have caused harm to debtors' counsel by the extra work to research the requests, address the unauthorized requests and determine appropriate responses.

22. The harm to the US Bankruptcy Court, its debtors and its officers of the Court for the false notices justifies sanctions against Wells Fargo Bank, NA.

WHEREFORE, the Debtor, by counsel, respectfully moves this Court to strike the Official Form 410S1 Notice of Mortgage Payment Change filed on April 29, 2020 by Wells Fargo Bank, NA, to award sanctions for the wrongful activity of Wells Fargo Bank, NA in filing false notices with the Court, and for such other relief as is just.

Respectfully Submitted:
TROY SHANNON HARLOW
BY: /s/ Malissa L. Giles
Counsel

NOTICE OF HEARING

Comes now the Debtor, by counsel, and notices Wells Fargo Bank, NA and interested parties that he will ask the United States Bankruptcy Court, Western District of Virginia, Roanoke Division, (210 Church Avenue, Room 200, Roanoke, VA 24011) to hold a pre-trial hearing on July 6, 2020 at 11:00 a.m. and request the Court set a 90-day discovery schedule in this matter.

TROY SHANNON HARLOW
Dated: June 18, 2020 /s/ Malissa L. Giles
Counsel

Certificate of Service

I, Malissa Lambert Giles, counsel for the debtor, hereby certify that I have today, the 18th day of June 2020 mailed a copy of the foregoing Motion and Notice of Hearing to:

Thomas R. Dautel, VP Loan Documentation
Wells Fargo Bank, NA
MAC N9286-01Y
1000 Blue Gentian Road
Eagan MN 55121-7700

Andrew Todd Rich, Esq. via electronic mail
Counsel for Wells Fargo Bank, NA

Chapter 13 Trustee via CM/ECF

Dated: June 18, 2020 /s/ Malissa L. Giles
Counsel

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

Exhibit A

Name	Case #	Lender	Type Plan	Date Notice Filed
Bass, William and Courtney	16-71259	Wells Fargo Mort.	Dir. Pay.	5/11/2020
Estes, Mark	17-70327	Wells Fargo Mort.	Conduit	5/11/2020
Newman, Lisa	18-70330	Wells Fargo Mort.	Dir. Pay Mort.	5/11/2020
Altman, Mark & Callie	18-71074	Wells Fargo Mort.	Conduit	5/11/2020
Stewart, Joseph	19-70598	Wells Fargo Mort.	Conduit	5/11/2020
Rash, Larissa Hodge	17-61722	Wells Fargo Mort.	Dir Pay Mort.	5/11/2020
DeShazo, Moncie & Monica	19-62556	Wells Fargo Mort.	Dir. Pay Curr.	5/11/2020
Kovar, Ronald and Eugenia*	19-71514	Wells Fargo Mort.	Dir. Pay Mort.	5/12/2020
Harlow, Troy	17-71487	Wells Fargo Mort.	Dir. Pay Mort.	4/29/2020

*Requested, but cancelled prior to Notice being filed. Notice not withdrawn.

From: Herbert Beskin
To: Doug Little (delittleesq@aol.com); Lynn Bradley (LBradley@tqblaw.com); Bob Stevens (bob@scslawfirm.com); Marshall M. Slayton Esq. (marshall@marshallslayton.com); Jennifer Wagoner (jennifer@marshallslayton.com); Shannon Morgan; Linzie Ragland Esq. (raglandwl@aol.com); eleban39@aol.com; John P. Goetz (John@johngoetzlaw.com); James M. McMinn (james@johngoetzlaw.com); jerry@marshallslayton.com; Suad Bektic (sbektic@newdaylegal.com); Scott Carpenter (scott@newdaylegal.com); jcm@newdaylegal.com; Roland Carlton (rcarlton@carltonlegalservices.com); Hannah W. Hutman (HHutman@hooverpenrod.com); Dave Wright Esq. (dave@coxlawgroup.com); David Cox; Janice Hansen; Heidi Shafer; Stephen Dunn Esq. (stephen@stephendunn-pllc.com); Michelle Dunn Esq. (michelle@stephendunn-PLLC.COM); Reginald Yancey (bobby.1925Z@gmail.com); Mike Hart; Yvonne Cochran Esq. (ycochran@cochranlawfirm.net); Brian K. Stevens Esq. (bkstevens1534@gmail.com); "Robert B. Easterling, Attorney"; David Meeks (movetostrike.meeks@gmail.com); Bryan Ragland (bryan@raglandlegal.com); Donald M. Burks (don@DonBurksLaw.com); William Harville; Andrew S. Chen, Esq. (andrew@conwaylegal.com); Martin C. Conway (martin@conwaylegal.com); Michael P. Regan Esq. (mprlaw90@comcast.net); Malissa Giles; Anthony L. White Esq. (awhite@alwhitelaw.com); Earl Oberbauer (earl@oberbauer-law.com)
Subject: RE: Coronavirus upate #9: Trustee"s policy on mortgage forbearance notices
Date: Wednesday, June 3, 2020 3:25:22 PM

6/3/20

Attorneys:

This is an update on mortgage forbearances after hearing Judge Connelly's thoughts and attorney comments at the 5/28/20 virtual "brown bag lunch" meeting.

1. The Judge announced that:
   A. At this time the Court will NOT be issuing any kind of Standing Order or Local Rule to deal with the forbearance notices being filed by mortgagees and servicers.
   B. The Judge is open to entering "comfort orders" agreed to by the parties concerning these notices.
   C. The amount and kind of notice, if any, that might be necessary for the entry of any such orders will vary with the relief being sought.
   D. The Judge is sensitive to the additional costs these notices may impose upon debtors, and some of the associated problems (e.g., payments made during a forbearance period being put into the creditor's suspense account instead of being applied to the current payment).

2. The general consensus of the attorneys on the call, both debtor and creditor, was that the servicers are still formulating their policies about how to handle these forbearances, and there is no uniformity as to what kind of workouts (if any) they will be offering debtors at the end of these forbearance periods.

3. A number of debtor attorneys expressed concern that some/many of these forbearance notices are apparently being issued without the debtors having requested them, and that many debtors may confuse these temporary forbearances with a forgiveness of payments or an automatic tail-ending of payments.

4. **Given all this, the policy of my office will be:**

A. For <u>conduit mortgage cases</u> (Trustee making the ongoing mortgage payments): If a notice of forbearance has been filed, I will continue to make the ongoing mortgage payments I have been ordered to pay in the initial distribution order, the confirmed plan, and the confirmation order *until and unless* an order has been entered instructing me to do otherwise. I believe that these previous orders take precedence over a creditor's notice of temporary forbearance.

1. **In each conduit case, I will try to reach out to the debtors' attorney to determine what action the attorney wants to take regarding the forbearance notice and current mortgage payments, and what, if any, kind of order we might want to have entered. Attorneys should feel free to contact me as well.**
2. **If the attorney requests that I ignore the forbearance notice and continue to make the ongoing mortgage payments as previously ordered, I will not feel the need for any additional order, but I will endorse one if requested.**
3. **If the attorney requests that I temporarily cease making the mortgage payments, I will ask that an order be entered establishing the period of non-payment, how the funds representing those payments should be allocated or disbursed, any impact on the plan base gross, and how any resulting mortgage deficiency will be cured.**
4. **In each case, we will have to determine (i) whether a motion or notice will need to be filed, (ii) what, if any, notice should be given to the mortgagee / servicer, and (iii) whether we need the endorsement of the creditor on any such order. I'm not sure at this time what the Court will require.**

B. In <u>non-conduit mortgage cases (w</u>here the debtors are making the mortgage payments directly): If a forbearance notice is filed with the Court, my office will take no action. I will assume that the attorney in each case is monitoring such notices, discussing with their clients what action needs to be taken, and taking appropriate action where required.

Call me if you have any questions about this.

Herb

Herbert L. Beskin, Esq.
Chapter 13 Trustee
P.O. Box 2103
Charlottesville VA 22902
Phone: 434 817 9913, ext. 121; Fax: 434 817 9916
E-mail: hbeskin@cvillech13.net
Visit our website at: www.cvillech13.net

From: Chapter 13 Trustee
To: Chapter 13 Trustee
Subject: Mortgage Payment Forbearance
Date: Wednesday, May 27, 2020 12:13:38 PM

Counsel—

I hope everyone is staying safe and hopefully sane at the same time. The COVID emergency created countless issues and legislation tried to quickly react to help millions of people. Once such issue resulted in people seeking mortgage payment forbearance. Servicers and creditors tried quickly to establish procedures in bankruptcy cases but as with any fast response, there are often many questions left unanswered. It is the unanswered questions flowing from the new Notices of Forbearance we see filed in many of the cases that concern me. Questions like, how will the payments be cured, will the payments be properly accounted after a service transfer and the problems that may arise at Plan completion and final cure notices. After speaking with many about the best way to respond, I've developed the following procedures for the cases my office administers. To make clear, this procedure may not apply to cases Herb Beskin administers and you should consult with his office for his procedures.

What seems universally agreed is that in bankruptcy cases, the notice, without a court order, does not bind anyone to any terms. So the end goal in my procedure is to obtain a court order to clearly define what mortgage payments are placed into forbearance, how the payments will be repaid and ensure debtors communicate other issues, like unemployment, to counsel so additional pleadings can address collateral issues. The pleadings you may see from my office in response to a Notice of Forbearance are:

1) Motion to Dismiss: If a debtor is delinquent on Plan payments as well as forbearance of the mortgage payment, this motion will be an attempt to have the debtor communicate with counsel so counsel can gather the necessary information to file an amended plan addressing not only the delinquency but also how the mortgage payments will be cured. The bottom line is that all the facts indicate something is going wrong with the budget and debtors need to communicate the problem to counsel before we can solve anything.
2) Motion to Strike: In a conduit mortgage case, if the debtor is not delinquent, then any basis to place any mortgage payments into forbearance doesn't seem appropriate and the notice should be stricken. The motion will advise debtors to contact attorneys if there is some cash flow issue that requires an alternative plan to be filed by the debtor to address the cash flow issues and the forbearance agreement. Otherwise, payments will not be placed into forbearance and the notice should be stricken from the record.
3) Motion to Modify: If the debtor is not delinquent on Plan payments and it is a direct-pay mortgage then I'll move to modify the Plan to pay the mortgage payments in forbearance as a post-petition arrears claim. If related solely to the COVID emergency, which all of these should be, then I will not seek to convert this to a conduit mortgage case. Assuming there is enough funding in the Plan I will not seek to increase the Plan payments. If there is insufficient funding, then I will seek to increase the funding beginning two months after the motion in an attempt to allow debtors time to communicate with their attorney as to whether they can afford the increase.

With no information or agreement from the servicer to the contrary, it will be my office's position that the mortgage payments in forbearance should be paid through case administration by the end of the bankruptcy case. All pleadings will allow an alternative resolution assuming it is agreed upon or properly noticed to the creditor/servicer.

To summarize, the goal at the end of any pleading is for the debtor and servicer to both have an

order addressing how the mortgage payments in forbearance will be cured. My final caveat is that Judge Black has been made aware that I developed a process to address these notices. I did not discuss my process with him as he felt more comfortable addressing each case on its own merits if brought before him. So please be aware that while parties may agree on an outcome, Judge Black may still want to review the issue in a hearing and an outcome is not guaranteed simply because all parties agreed to it.

I hope to begin filing pleadings the first week of June. If you have any questions, please feel free to contact me at chris@ch13wdva.com or 540/342-3774 ext 123 or Rachel Jones at rjones@ch13wdva.com or 540/342-3774 ext 132.

Thank you,

Chris Micale,
Chapter 13 Trustee
15 Salem Ave SE Ste 300
Roanoke, VA 24011
540/342-3774 ext 123

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

IN RE:	)	CHAPTER 13
Mark Stephen Estes	)	
	)	CASE NO. 17-70327
	)	
DEBTOR	)	

MOTION TO STRIKE REQUEST FOR MORTGAGE FORBEARANCE, OPPORTUNITY FOR OBJECTION AND NOTICE OF HEARING

This motion by Mark Stephen Estes, debtor, by his attorney, Malissa L. Giles, respectfully represents:

1. The debtor filed for protection of the Court under Chapter 13 and is operating under a confirmed Chapter 13 plan.
2. The debtor owns a home and is paying the mortgage via the Chapter 13 Trustee to Wells Fargo Bank, NA.
3. On May 11, 2020, Wells Fargo Bank, NA filed a pleading titled "Notice of Temporary Forbearance" with this court at docket entry 77.
4. The pleading is misrepresentative in that it says "the Debtor has requested" the forbearance.
5. The debtor has had no direct contact with Wells Fargo Bank, NA.
6. The pleading says the debtor's mortgage payments will be suspended for May, June and July 2020.
7. The debtor is making payments through the Chapter 13 Trustee who is holding funds to pay the mortgage payments.
8. On April 10, 2020, under the Cares Act, the debtor filed an amended plan that seeks to reduce his trustee payments temporarily, but does NOT seek to add any mortgage arrearage or forbearance to the plan, as the trustee has sufficient funds to maintain the monthly mortgage payments.
9. The debtor neither requested nor needs a forbearance directly from the lender as the Amended Chapter 13 Plan provides him a mechanism to address the mortgage should that be needed.
10. To the extent Wells Fargo Bank, NA objects to the Amended Plan filed on April 10, 2020 at docket entry 75, it must file an objection as required by the Court's Rules.

11. The debtor puts Wells Fargo Bank, NA on notice he will object to any fees charged against his account by the lender in relationship to the incorrect and unauthorized notice filed by the lender, as there was no legitimate purpose for the notice.

WHEREFORE, the debtor, by counsel, respectfully moves this Court to strike the Notice of Temporary Forbearance (incorrectly docketed as Notice of Debtor's Request for Mortgage Forbearance Due to the Covid-19 Pandemic for 90 Days) filed by Wells Fargo Bank, NA and for such other relief as is just.

Respectfully Submitted:

Mark Stephen Estes
BY: /s/ Malissa L. Giles
Counsel

NOTICE OF HEARING

Comes now the debtor, by counsel, and notices Wells Fargo Bank, NA and interested parties that the United States Bankruptcy Court, Western District of Virginia, Roanoke Division, (210 Church Avenue, Room 200, Roanoke, VA 24011) will consider the attached Motion to Strike on July 6, 2020 at 11:00 a.m.

IF NO OBJECTIONS ARE FILED WITHIN 21 DAYS OF SERVICE OF THIS NOTICE, the Court may consider entry of an order striking the pleading and cancel the hearing scheduled for July 6, 2020.

Mark Stephen Estes

Dated: May 13, 2020

/s/ Malissa L. Giles
Counsel

Certificate of Service

I, Malissa Lambert Giles, counsel for the debtors, hereby certify that I have today, the 13th day of May 2020 mailed a copy of the foregoing Motion and Notice of Hearing to:

Nickesha Presley, VP Loan Documentation
Wells Fargo Bank, NA
Default Document Processing
N9286-01Y
1000 Blue Gentian Road
Eagan MN 55121-7700

Andrew Todd Rich, Esq.
Counsel for Wells Fargo Bank, NA

via electronic mail

Chapter 13 Trustee

via CM/ECF

Dated: May 13, 2020

/s/ Malissa L. Giles
Counsel

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

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

IN RE:	§	CASE NO.: 20-10074
Rodolfo & Beatriz Rodriguez-Villegas	§	
Debtor(s)	§	CHAPTER 13

DEBTORS' OBJECTION TO 3002.1 NOTICE OF MORTGAGE PAYMENT CHANGE FILED BY WELLS FARGO (DOC#32)

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 30 DAYS FROM THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Rodolfo and Beatriz Villegas-Rodriguez, by their attorney, and file this objection to the Rule 3002.1 Notice of Mortgage Payment Change filed by Wells Fargo Bank, NA (DOC#32). As cause, the Debtors respectfully represent:

1. On February 25, 2020, the Debtors filed for protection of the Court under Chapter 13 of the United Bankruptcy Code. (DOC#1).

2. The Debtors' home is encumbered by a lien securing repayment of a mortgage loan owned by Wells Fargo Bank, NA ("Wells Fargo").

3. On March 5, 2020, the Debtors filed their chapter 13 plan. (DOC#17).

4. The Debtors were not behind on their loan to Wells Fargo pre-petition and

initially were paying their mortgage directly to Wells Fargo through automatic withdrawals from their bank account, twice a month. Consequently, the Debtors' Chapter 13 plan was not a "conduit" plan with respect to the Wells Fargo monthly mortgage payments.

5. On May 12, 2020, Wells Fargo filed a purported Fed. R. Bankr. P. 3002.1 Notice stating: "Notice of forbearance arrangement based on debtor's(s') request (COVID19)" (Docket No. 32) (hereafter, the "Rule 3002.1 Notice").

6. On the last page of the Rule 3002.1 Notice, Wells Fargo states: "Wells Fargo Bank, N.A. ("Creditor\Servicer") hereby provides notice that due to a recent financial hardship resulting directly or indirectly from the COVID-19 emergency, the Debtor has requested, and Creditor\Servicer has provided a temporary suspension of mortgage payments."

7. The undersigned learned, only after filing an amended plan, that the Debtors did not request a mortgage loan forbearance from Wells Fargo.

8. The Rule 3002.1 Notice filed by Wells Fargo alarmed and distressed the Debtors, as they did not want to be in a Wells Fargo loan forbearance.

9. The Rule 3002.1 Notice asserts that payments are to be put in forbearance for months that the Debtors already paid.

10. By filing a Rule 3002.1 Notice for an alleged forbearance that the Debtors did not request, Wells Fargo has needlessly burdened the Bankruptcy system by causing confusion and requiring Debtors, Debtors' counsel, the Chapter 13 Trustee, and the Court to take action to counter the effects of the false Rule 3002.1 Notice.

11. Further, the false Rule 3002.1 Notice filed by Wells Fargo has caused Debtors' counsel to incur a great deal of work and expense in explaining to the Debtors the potential consequences of such a filing and any potential deleterious effects on the Debtors ability to reorganize.

12. Moreover, Wells Fargo's false Rule 3002.1 Notice creates the potential for

needless, inaccurate motions for relief from stay at the end of the alleged "forbearance" period. It also creates potential post-discharge disagreements between the Debtors and Wells Fargo regarding the mortgage loan's status after the Debtors are no longer protected by the provisions of the Bankruptcy Code and Rules and, potentially, when they are no longer represented by counsel.

13. The Debtors object to the Rule 3002.1 Notice filed by Wells Fargo.

14. An affidavit signed by the Debtors confirming the above facts is attached hereto.

WHEREFORE, the Debtors, by counsel, object to the Rule 3002.1 Notice filed by Wells Fargo at Docket No. 32, and request that the Court, after notice and a hearing, sustain Debtors' objection to same, and grant Debtors any further relief to which they may show themselves entitled.

Respectfully submitted,

LIMÓN LAW OFFICE

By: /s/Abelardo Limón, Jr.
Abelardo Limón, Jr.
Texas Bar No. 1235770
890 West Price Road
Brownsville TX 78520
(956) 544-7770
(956) 544-4949 facsimile

CERTIFICATE OF SERVICE

I certify that on June 19, 2020, a true copy of the Debtors' Objection to Rule 3002.1 Notice of Mortgage Payment Change was mailed to the parties listed below by regular U.S. mail and/or served electronically to the parties on the attached service list.

CHAPTER 13 TRUSTEE:
Cindy Boudloche
555 N Carancahua, Suite 600
Corpus Christi TX 78478

U.S. TRUSTEE:
606 N. Carancahua, Suite 1107
Corpus, TX 78476

Debtor(s):
Rodolfo & Beatriz Rodriguez
6647 Pino Verde
Brownsville, TX 78526

And to all creditors requesting notice as found below:

Linebarger Goggan Blair & Sampson, LLP
PO Box 17428
Austin, TX 78760

Synchrony Bank
c/o PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541

Wells Fargo Bank, N.A.
c/o Albertelli Law
Attorneys for Secured Creditor
PO Box 23028
Tampa, FL 33623

/s/Abelardo Limón, Jr.
Abelardo Limón, Jr.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

IN RE:	§	CASE NO.: 20-10074
Rodolfo & Beatriz Rodriguez-Villegas	§	
Debtor(s)	§	CHAPTER 13

AFFIDAVIT OF RODOLFO AND BEATRIZ RODRIGUEZ-VILLEGAS REGARDING OBJECTION TO RULE 3002.1 NOTICE OF MORTGAGE PAYMENT CHANGE OF WELLS FARGO BANK, N.A.

1. Our names are Rodolfo and Beatriz Rodriguez-Villegas. Our social security numbers are: xxx-xx-7758 and xxx-xx-1884. We are over the age of 18 years and competent to execute this Affidavit. We have personal knowledge of all the facts stated herein. We testify under penalty of perjury as to the facts stated herein.

2. We have read the objection to rule 3002.1 Notice of Mortgage Payment Change filed by Wells Fargo N.A. in our case and to which this affidavit is attached and we hereby swear under oath that all facts in the objection are true and correct.

3. Further Affiants sayeth not.

/s/ Rodolfo Rodriguez
Rodolfo Rodriguez

/s/ Beatriz Rodriguez Villegas
Beatriz Rodriguez Villegas

STATE OF TEXAS *
*
COUNTY OF CAMERON *

On this 19 day of June, 2020, Rodolfo Rodriguez and Beatriz Rodriguez Villegas, personally appeared before me, and being by me duly sworn, stated and affirmed under penalty of perjury that all the facts alleged in the Affidavit are within affiant's personal knowledge and are true and correct, to certify which witness my hand and seal of office.

[NOTARY SEAL HERE]
ABELARDO LIMON
Notary ID 6139033
My Commission Expires
August 15, 2021

/s/ A. Limon
Printed Name A. LIMON
Notary Public, State of Texas
My commission expires: 8-15-21

Fill in this information to identify the case:

Debtor 1 Rodolfo Rodriguez

Debtor 2 (Spouse, if filing) Beatriz Villegas- Rodriguez

United States Bankruptcy Court for the: Southern District of Texas (Brownsville)

Case number 20-10074

Official Form 410S1

Notice of Mortgage Payment Change

12/15

If the debtor's plan provides for payment of postpetition contractual installments on your claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of Creditor: Wells Fargo Bank, N.A.

Court claim no. (if known): 4

Last 4 digits of any number you use to identify the debtor's account: 0667

Uniform Claim Identifier: WFCMGF2010074TXS77580667

Date of payment change:
Must be at least 21 days after date of this notice: 04/01/2020

New total payment:
Principal, interest, and escrow, if any: Forbearance

Part 1: Escrow Account Payment Adjustment

1. Will there be a change in the debtor's escrow account payment?

☑ No

☐ Yes Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law.
Describe the basis for the change. If a statement is not attached, explain why:

Current escrow payment: _____ New escrow payment: _____

Part 2: Mortgage Payment Adjustment

2. Will the debtor's principal and interest payment change based on an adjustment to the interest rate on the debtor's variable-rate account?

☑ No

☐ Yes Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law.
If a notice is not attached, explain why:

Current interest rate: _____ New interest rate: _____

Current principal and interest payment: _____ New principal and interest payment: _____

Part 3: Other Payment Change

3. Will there be a change in the debtor's mortgage payment for a reason not listed above?

☐ No

☑ Yes Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (Court approval may be required before the payment change can take effect.)

Reason for change: Notice of forbearance arrangement based on debtor's(s') request (COVID19)

Current mortgage payment: _____ New mortgage payment: _____

1142513-766f227c-4ead-4388-bedd-d264f7efb1c5-

Debtor 1 Rodolfo Rodriguez — Case number (if known) 20-10074
First Name Middle Name Last Name

The CM/ECF system imposes certain constraints, including limits on the number of characters that may be entered into certain fields, when filing a proof of claim. As a result of these constraints and limitations, the creditor name that appears on the bankruptcy court's claims register (and any supplemental proof of claim) may differ from the creditor name that appears on the actual proof of claim form.

Part 4: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's authorized agent.

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

✕ /s/ Eugenia Lee Hodges — Date 05/12/2020
Signature

Print: Eugenia Lee Hodges — Title VP Loan Documentation
First Name Middle Name Last Name

Company Wells Fargo Bank, N.A.
Address MAC N9286-01Y
1000 Blue Gentian Road
Eagan, MN 55121-7700

Specific Contact Information:
P: 800-274-7025
E: NoticeOfPaymentChangeInquiries@wellsfargo.com

The use of Official Form 410S1 and of the electronic filing method for a Notice of Payment Change is being used to provide interested parties with notice of the forbearance arrangement, detailed below. It is only being used due to limitations on existing functionality available to limited users within the Courts' CMECF systems. The use of this form in no way implies that a payment change is occurring or has occurred on the account. This filing does not imply that the provisions of FRBP 3002.1 apply to this filing, nor does the Servicer\Creditor consent to the application of any provisions of FRBP 3002.1 to this filing.

NOTICE OF TEMPORARY FORBEARANCE

Effective Date of Forbearance: 04/01/2020

Number of monthly payments in Forbearance: 3

Wells Fargo Bank, N.A. ("Creditor\Servicer") hereby provides notice that due to a recent financial hardship resulting directly or indirectly from the COVID-19 emergency, the Debtor has requested, and Creditor\Servicer has provided a temporary suspension of mortgage payments. This short-term relief is consistent with the COVID-19 relief available under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

During this short-term relief, all terms and provisions of the mortgage note and security instrument, other than the payment obligations, will remain in full force and effect unless otherwise adjusted by this court or through a loan modification. If full or partial payments continue to be received during the forbearance period, Creditor/Servicer will apply such payment(s) pursuant to standard operating procedures.

During the forbearance period and up to an including the time when that period ends, Creditor\Servicer will work with the Debtor, the Debtor's attorney (if applicable) and the bankruptcy trustee on how to address the suspended payments in the long-term, including obtaining any necessary court consent and approval. NOTE: This Temporary Forbearance does not forgive any indebtedness; it only suspends the date that such indebtedness must be paid.

This Notice does not constitute an amendment or modification to the Debtor's plan of reorganization, and does not relieve the Debtor of the responsibility to amend or modify the plan of reorganization to reflect the forbearance arrangement, if required.

UNITED STATES BANKRUPTCY COURT

Southern District of Texas (Brownsville)

Chapter 13 No. 20-10074

In re:

Judge: Eduardo V Rodriguez

Rodolfo Rodriguez and Beatriz Villegas-Rodriguez

Debtor(s).

CERTIFICATE OF SERVICE

I hereby certify that on or before May 12, 2020, I served a copy of this Notice and all attachments upon each of the entities named below by the court's notice of electronic filing or by placing a copy thereof in an envelope, in the United States Mail with first class mail postage prepaid, addressed to each of them as follows:

Debtor: By U.S. Postal Service First Class Mail Postage Prepaid:

Rodolfo Rodriguez
Beatriz Villegas- Rodriguez
6647 Pino Verde St
Brownsville, TX 78526

Debtor's Attorney: By CM / ECF Filing:

Abelardo Limon, Jr
Limon Law Office PC
890 W Price Rd
Brownsville, TX 78520

Trustee: By CM / ECF Filing:

Cindy Boudloche
Chapter 13 Trustee
555 N Carancahua
Ste 600
Corpus Christi, TX 78401-0823

/s/ John Shelley

InfoEx, LLC
(as authorized agent for Wells Fargo Bank, N.A.)

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

Bartholow Ex. E

GERALD FORSBURG, JENNA DOCTOR, LUIS CASTRO, MARISOL CASTRO, AND BARBARA PRADO ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,	§	
	§	CAUSE NO. 5:20-CV-00046
PLAINTIFFS,	§	
V.	§	
	§	JURY DEMAND
WELLS FARGO & CO.,	§	
AND	§	
WELLS FARGO BANK, N.A.,	§	
DEFENDANTS.	§	

PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiffs Gerald Forsburg, Jenna Doctor, Luis Castro, Marisol Castro, and Barbara Prado, on behalf of themselves and all others similarly situated, file this second amended class action complaint against Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A. (referred to herein together with Wells Fargo & Co., as "Wells Fargo"), seeking relief for Plaintiffs and all other similarly situated consumer borrowers in the Western District of Virginia and elsewhere nationwide, who have been subjected to Defendants' unlawful practice of placing its customers' mortgage loans into unwanted and harmful "forbearance" status.

I. PARTIES

PLAINTIFFS:

1. Plaintiff Gerald Forsburg ("Mr. Forsburg") owns a home located in Mount Jackson, Virginia. Mr. Forsburg's property is encumbered by a lien securing repayment of a federally related and federally guaranteed loan backed by the Fair Housing Administration ("FHA"), which loan is serviced by Wells Fargo.

2. Plaintiff Jenna Doctor ("Ms. Doctor") is a citizen of Florida whose homestead property is located in Castleberry, Florida. Ms. Doctor's homestead property is encumbered by a lien securing repayment of a federally related loan backed by the FHA, which loan is serviced by Wells Fargo.

3. Plaintiffs Luis and Marisol Castro ("Mr. and Mrs. Castro") are Texas citizens whose homestead property is located in Dallas, Texas. Mr. and Mrs. Castro's property is encumbered by a lien securing repayment of a federally related loan backed by the Federal National Mortgage Association ("Fannie Mae").

4. Plaintiff Barbara Prado ("Ms. Prado") is a California citizen whose homestead property is located in Freemont, California. Ms. Prado's property is encumbered by liens securing repayment of two federally related loans backed by the FHA, which are both serviced by Wells Fargo.

DEFENDANTS:

5. Defendant Wells Fargo & Co. is a diversified financial services company headquartered in San Francisco, California that provides banking, insurance, investments, mortgage banking, and consumer finance through banking stores, the internet, and other

distribution channels to customers, businesses, and other institutions in all 50 states and in other countries.

6. According to a December 2019 Wells Fargo company presentation, as of September 2019, Wells Fargo was the largest mortgage servicer in the country, servicing 8.2 million loans totaling $1.4 trillion dollars in unpaid balances.

7. Wells Fargo & Co. is the parent corporation of Defendant Wells Fargo Bank, N.A. Wells Fargo & Co. exercises specific and financial control over the operations of Defendant Wells Fargo Bank, N.A., dictates the policies, procedures, and practices of Wells Fargo Bank N.A., exercises power and control over the specific activities upon which the claims herein are based, and is the ultimate recipient of the ill-gotten gains described herein. Wells Fargo & Co. represents on its website that it controls and sets the standard for its loan servicing business, stating that:

> Wells Fargo & Company Responsible Servicing Principles for U.S. Residential Real Estate Lending . . . Wells Fargo's vision to satisfy all our customers' financial needs . . . Similarly, we have long adhered to [] responsible servicing practices. . ..

8. Defendant Wells Fargo & Co. may be served with process through its registered agent, CSC – Lawyers Incorporating Service, at 2710 Gateway Oaks Dr., Suite 150N, Sacramento, CA 95833.

9. Defendant Wells Fargo Bank, N.A. is a subsidiary of Wells Fargo & Co. Wells Fargo Bank, N.A. is a national association that is headquartered in South Dakota and may be served with process through its registered agent, Corporation Service Company, at 10 Shockoe Slip, Fl 2, Richmond, VA 23219. Wells Fargo Bank, N.A. can also be served through Charles Scharf, CEO, at 101 North Phillips Avenue Sioux Falls, SD 57104.

10. Wells Fargo Bank, N.A. conducts mortgage servicing operations through its Wells Fargo Home Mortgage division, which is headquartered in Des Moines, Iowa. Plaintiffs' mortgage loans are currently serviced by Wells Fargo Bank, N.A.

II. JURISDICTION AND VENUE

11. The Court has jurisdiction over the lawsuit because the suit arises under the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire fraud), the Truth in Lending Act ("TILA"), as implemented through Regulation Z, and the Real Estate Settlement Procedures Act ("RESPA"), as implemented through Regulation X.

12. The Court also has jurisdiction over the lawsuit under 28 U.S.C. § 1332(d), the Class Action Fairness Act, because the suit is a class action, the parties are minimally diverse, and the amount in controversy exceeds $5 million, excluding interest and costs.

13. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). The Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs' common law claims against Wells Fargo because Plaintiffs' non-statutory claims are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy under Article 3 of the U.S. Constitution. The Court also has jurisdiction over Plaintiffs' state law claims in this action pursuant to 28 U.S.C. § 1367.

14. This Court has jurisdiction over Defendants because Defendants purposefully availed themselves of the privilege of conducting activities in the Commonwealth of Virginia and established minimum contacts sufficient to confer jurisdiction over Defendants. The assumption of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice

and is consistent with the constitutional requirements of due process. Defendants had continuous and systemic contacts with the Commonwealth of Virginia sufficient to establish general jurisdiction over Defendants.

15. The causes of action pled in this second amended complaint arose from or related to contacts of Defendants to the Commonwealth of Virginia, which gives this Court specific jurisdiction to decide Plaintiffs' claims against Defendants.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the property securing Plaintiff Forsburg's loan at issue in this case, which is Forsburg's real property, is located in this district.

III. FACTS

17. Plaintiffs file this case on behalf of themselves and all other similarly situated borrowers with loans serviced by Wells Fargo that have been placed into forbearance status without such borrowers' consent, excluding consumer debtors who have filed for bankruptcy protection under the provisions of Chapter 13 of the United States Bankruptcy Code (11 U.S.C. § 1301 et seq.), in order to redress and enjoin Defendants' practice of placing mortgage loans into CARES Act forbearances without borrowers' consent.

18. Plaintiffs seek certification of a nationwide class and state-wide subclasses of similarly situated consumer borrowers, as well as an order of this Court permanently enjoining, on a nationwide basis, Wells Fargo's practice of placing loans into forbearance status without borrowers' prior authorization.

19. Plaintiffs also ask the Court to allow the nationwide class to recover appropriate monetary relief, including actual damages, statutory damages, punitive damages and/or monetary

sanctions, as well as an award of reasonable attorneys' fees and expenses from the Defendants for the Defendants' unjust enrichment and other tangible and intangible harms the members of this putative class have suffered as a result of Defendants' illegal scheme. Plaintiffs further seek that these damages be trebled pursuant to the civil provisions of the RICO Act.

20. It is also important to clarify what this case is *not* about: Plaintiffs in this case do not seek to prevent any borrower from properly entering into a forbearance agreement under and consistent with the requirements of the CARES Act (or otherwise) if the borrower has requested, understands, and wants loan forbearance.

21. With respect to the information Wells Fargo furnishes to the Credit Reporting Agencies, when Wells Fargo treats borrowers' loans as being in a forbearance status, Wells Fargo suppresses reporting of information regarding its receipt and application of borrowers' payments received during the forbearance period, even when the borrower remains current on his or her payment obligations before, during, and after Wells Fargo places the loan in forbearance status. Moreover, Wells Fargo reports that the loan is in forbearance, which appears in the comments section of the tradeline for the mortgage loan on the borrower's credit reports.

22. The absence of the monthly payment information and the forbearance notation on the borrower's credit reports gives lenders the impression that the borrower is in financial distress and often results in the borrower being unable to obtain credit or refinance existing loans.

23. As a result, at the conclusion of the unauthorized forbearance period, unless Wells Fargo ultimately approves and the borrower accepts a loan retention workout option for curing the unauthorized forbearance, Wells Fargo's mortgage servicing system and associated servicing policies and procedures will result in borrowers' loans being delinquent and being reported to

credit reporting agencies as delinquent.

24. While a borrower's mortgage loan is reported by the credit reporting agencies as being in active forbearance status, whether or not the borrower has remained current on his/her payments during the forbearance period, lenders and other consumers of credit related information consider the fact that the loan is in forbearance to be a seriously negative indication regarding the borrower's creditworthiness.

Wells Fargo's Mortgage Servicing Business Model

25. Wells Fargo is a mortgage servicing company, which means that borrowers like the Plaintiffs and the putative class members make their monthly mortgage payments to Wells Fargo, which is responsible for collecting and applying borrowers' payments on behalf of the owner of the borrowers' mortgage loans in accordance with the requirements of the borrowers' loan documents and applicable law, including relevant provisions of the Fair Credit Reporting Act, TILA, and RESPA, as implemented through Regulations X (RESPA) and Z (TILA).

26. As part of its mortgage servicing operations, Wells Fargo collects borrowers' monthly payments, which are applied to principal and interest, taxes and insurance, and other fees and charges that may have been assessed to such accounts. Wells Fargo then disburses these payments to the appropriate parties, such as lenders, investors, taxing authorities, insurers, and other relevant entities.

27. Wells Fargo earns revenue from mortgage loan servicing in several ways. Without limitation, examples of ways that Wells Fargo earns revenue for mortgage loan servicing include: (a) Wells Fargo earns a per-loan servicing fee established by its servicing agreements with the owner(s) or investor(s) that are entitled to payment of the principal and interest payments set forth

in the mortgage loan instruments (i.e. Note and Deed of Trust / Mortgage); (b) Wells Fargo earns "float" income on unapplied funds, which accrues between when consumers pay and when funds are remitted to the loans' owners; (c) Wells Fargo retains all or part of certain fees it collects from borrowers, such as late charges, and (d) for loans owned by Ginnie Mae (i.e. loans backed by the Fair Housing Administration ("FHA"), Veterans' Administration ("VA"), or U.S. Department of Agriculture ("USDA")), Fannie Mae, and Freddie Mac (Ginnie Mae, Fannie Mae, and Freddie Mac loans are referred to herein collectively as "GSE loans"), Wells Fargo earns incentive payments after loans are placed in forbearance and borrowers accept and comply with certain "workout options" offered by Wells Fargo to cure the forborne payments, which generally involve repayment plans, deferral agreements, or specific kinds of loan modifications.

Wells Fargo Benefits from Placing Borrowers' Loans into Forbearance

28. Importantly, "forbearance" of mortgage payments is not forgiveness of the borrower's obligation to make monthly payments that are "forborne." Rather, forbearance only puts off the borrower's duty to make mortgage payments during the applicable forbearance period.

29. At the conclusion of the forbearance period, any missed payments become immediately due and owing, unless the borrower makes alternative repayment arrangements with the servicer of the borrower's mortgage loan. In mortgage servicing parlance, these alternative repayment arrangements are known as "loan workout options."

30. For every Fannie Mae and Freddie Mac mortgage loan Wells Fargo places into forbearance, Wells Fargo stands to receive a minimum of $500 and up to $1,000 in incentive payments, depending which workout option Wells Fargo's borrower accepts at the conclusion of the forbearance term.

31. With respect to Ginnie Mae loans Wells Fargo places into forbearance, Wells Fargo also is entitled to receive incentive compensation for post-forbearance loan workouts, although the structure for calculating the amount of these incentive payments and the available workout options are different (in immaterial ways) for Ginnie Mae loans, depending on whether the loan was originated by the VA, the USDA, or the FHA.

32. Wells Fargo also benefits from placing GSE loans in CARES Act forbearance as a strategy for limiting potential losses Wells Fargo would otherwise incur in the event borrowers default on forborne loans in the future.

33. Servicers of Ginnie Mae loans, including Wells Fargo, are required to advance borrowers' principal and interest payments to the investors holding certificates issued by the Ginnie Mae trust that owns the borrower's mortgage loan.

34. For Mr. Forsburg's, Ms. Doctor's, and Ms. Prado's FHA (Ginnie Mae) loans, this obligation to advance the borrower's principal and interest payment to the investor continues each month for the servicer (Wells Fargo) whether or not the borrower actually makes a monthly principal and interest payment.

35. However, Wells Fargo can avoid this obligation to advance principal and interest payments for borrowers with Ginnie Mae loans that have been delinquent for 90 or more days by repurchasing such loans from the Ginnie Mae trusts. Pursuant to applicable servicing guidelines, Wells Fargo may repurchase Ginnie Mae loans after they have been in CARES Act forbearance status for 90 or more days, including, upon information and belief, loans Wells Fargo has placed into forbearance status without the borrowers' consent and even when such borrowers were making ongoing monthly mortgage payments during the forbearance period.

36. In a July 13, 2020 article published by American Banker, an industry expert, commenting on Wells Fargo's purchase in June and July 2020 of $14 billion in Ginnie Mae loans, explained, "When the loans become delinquent, it's cheaper for Wells to buy the loans than to advance principal and interest and pay a 4% coupon to investors when their cost of funds is lower." See https://www.americanbanker.com/news/wells-fargo-buys-14b-of-delinquent-mortgages-tied-to-pandemic.

37. In that same American Banker article, Wells Fargo spokesperson Tom Goyda confirmed that Wells Fargo's July 2020 repurchase of $14 billion in Ginnie Mae loans was related to COVID-related forbearances:

> "In the normal course of business, Wells Fargo regularly purchases government-insured ... loans that are more than 90 days past due out of Ginnie Mae pools to manage balance sheet impacts and reduce expenses," said Goyda. "In June and July, the number of loans we purchased out of Ginnie Mae pools increased substantially due primarily to loans in COVID-related forbearances."
>
> *Id.*

38. According to Scott Buchta, the head of fixed-income strategy at Brean Capital, "Wells erred on the side of caution and put more people into forbearance programs in April than other servicers, on average[.]" *Id.*

39. Wells Fargo's portfolio of Fannie Mae and Freddie Mac loans carries principal and interest payment advance obligations that are similar to its advance obligations for Ginnie Mae loans, with one important difference specifically applicable to loans in CARES Act forbearance: Wells Fargo's principal and interest advance obligations on Fannie Mae and Freddie Mac loans that received a CARES Act forbearance terminate after Wells Fargo makes four advances of borrowers' missed principal and interest payments.

40. So long as Fannie Mae and Freddie Mac loans are placed into a CARES Act forbearance, Wells Fargo is not required to repurchase delinquent Fannie Mae and Freddie Mac loans in order to be allowed to cease making principal and interest advances. Instead, after Wells Fargo makes advances for four monthly principal and interest payments missed by the borrower on a loan that Wells Fargo has placed in a CARES Act forbearance, under applicable Fannie Mae and Freddie Mac servicing guidelines, Wells Fargo no longer has any further obligation to advance principal and interest payments on the loan.

41. Therefore, regardless of whether a loan is backed by Ginnie Mae, Fannie Mae, or Freddie Mac, Wells Fargo benefits from placing loans into CARES Act forbearances by limiting its exposure to principal and interest advance obligations in the event of future defaults.

42. Meanwhile, in recent public statements by its top executives, Wells Fargo has made no secret of its assessment that the U.S. economy is likely headed for a serious downturn in the near future as a consequence of the COVID-19 pandemic.

Wells Fargo's False Forbearances Harm Borrowers

43. When Wells Fargo reports to the credit reporting agencies regarding loans in forbearance status, it adds a special comment code that indicates that the borrower's account is in a forbearance status and it suppresses information about payment activity on the loan during the period in which that special comment code is in place.

44. For borrowers who are subjected to Wells Fargo's practice of placing accounts into forbearance status without the borrower's consent, potential credit grantors, insurers, current and/or potential employers, background checkers, and any other party who reviews such borrowers' credit reports are given the false impression that the borrower has experienced a serious

economic hardship that is ongoing, when in reality this is not necessarily the case. However, because of Wells Fargo's improper suppression of payment information in its credit reporting for the unauthorized forbearance period, credit grantors and others are unable to see whether the borrowers have been making their mortgage payments during the unauthorized forbearance period.

45. When Wells Fargo places a borrower's account into forbearance status, Wells Fargo also automatically terminates in-progress modifications of borrowers' mortgage loans, even as to those borrowers, like Mr. Forsburg, whose modifications were previously approved by Wells Fargo, leaving uncured the accumulated arrearage payments that would otherwise have been cured by the modification.

46. Borrowers with loans placed into forbearance status without their consent also lose access to credit markets, including losing the ability to refinance existing loans or obtain credit cards or other kinds of new secured and unsecured lines of credit at the current historically low interest rates because Wells Fargo adds a special comment code to the credit reports of borrowers, indicating their mortgage loan has been placed into forbearance status and suppresses its reporting to the Credit Reporting Agencies of borrowers' monthly payments received and applied during the forbearance period, even when the borrower continues making monthly mortgage payments during the forbearance period.

47. Because the CARES Act only authorizes one opportunity for borrowers to obtain forbearance relief for up to 180 days, which relief may be extended at the borrower's request for an additional period of up to 180 days, Wells Fargo's placement of borrower accounts into forbearance status without their consent deprives borrowers of the ability to access the full relief available to them under the CARES Act when, if, and as needed, without notice to the borrowers.

48. Importantly, the CARES Act only authorizes borrowers to enter into forbearance once for each loan. This forbearance can be for an initial period of up to 180 days, which may be extended for up to an additional 180 days at the borrower's request.

49. Thus, for example, consider what would happen to a borrower that made each monthly payment from April through September of 2020 after the borrower's loan was placed by Wells Fargo into unauthorized CARES Act forbearance status in April 2020: the September payment would be the final payment subject to the unauthorized initial 180 day forbearance period under the CARES Act, and, should the borrower require forbearance relief beginning in October, the borrower's only option would be to seek a 180 day "extension" of the unauthorized forbearance period, instead of being able to initiate a CARES Act forbearance for up to 180 days starting in October of 2020, which forbearance could then be extended under the CARES Act for an additional 180 days starting in April of 2021.

50. Wells Fargo's false credit reporting regarding borrowers whose loans Wells Fargo places into forbearance status without authorization also causes borrowers to suffer needless reputational harm that can result in loss of employment opportunities, lost security clearances, increased insurance premiums, and other consequences resulting from Wells Fargo's false representations to the credit reporting agencies that such borrowers have voluntarily requested forbearance and/or Wells Fargo's failure to report such borrowers' ongoing monthly mortgage payments during the term of the forbearance.

51. Wells Fargo's own website reveals that Wells Fargo is already conscious of many undesirable consequences of forbearances for borrowers. These include escrow shortages generated by forbearances (because the escrow portion of forborne payments is not subject to

deferral) resulting in monthly escrow payment increases to collect the accumulated escrow shortages.

52. Mortgage modifications-in-progress for borrowers whose loans are placed into forbearance status are also automatically cancelled by Wells Fargo.

53. Borrowers in forbearance are also generally unable to refinance their mortgage loans and they experience other forms of credit impairment, including inability to access existing lines of credit and home equity loans, and inability to get new unsecured loans and credit cards. https://update.wf.com/coronavirus/home-lending/.

54. Additionally, when Wells Fargo places a borrower's account into forbearance status, without notice to the borrower, Wells Fargo cancels the borrower's pre-arranged automatic payments and cuts off the borrower's access to Wells Fargo's online mortgage payment applications, requiring borrowers to pay by telephone or by mail to Wells Fargo. This practice often results in borrowers incurring late fees (which are income for Wells Fargo) and can cause unanticipated arrearages to accumulate.

55. When Wells Fargo places borrowers' loans into unauthorized forbearance with respect to payments already made by the borrowers for months that have already come due, Wells Fargo deprives borrowers of some of the relief that would otherwise be available to them under the CARES Act in the event they later decide to request forbearance, denying such borrowers the opportunity to choose when to initiate a forbearance period and/or reducing the available forbearance period to which the borrower would otherwise be entitled under the CARES Act by counting months when the borrower actually paid their mortgage toward the total number of months of forbearance authorized by the CARES Act .

56. Even as to those borrowers who Wells Fargo acknowledges have been placed into forbearance without their consent, Wells Fargo refuses to correct any such borrower's credit reporting to reflect that the borrower's loan was never in forbearance status and continues to suppress accurate payment history information reflecting such borrower's monthly mortgage payments received and applied during the unauthorized forbearance period.

57. Wells Fargo also refuses, in many instances, to terminate the unauthorized forbearance status it places on its borrowers' loans, and, in some instances, Wells Fargo even attempts to extend forbearances after its customers have told it that the forbearance is unwanted and unauthorized or that they no longer wish to have their loan treated as being in forbearance status.

PLAINTIFFS' BACKGROUND

Gerald Forsburg

58. Mr. Forsburg's mortgage loan, secured by a lien against his property located at 129 Shannon Avenue in Mount Jackson, Shenandoah County, Virginia, is a loan backed by the FHA and serviced by Wells Fargo.

59. Mr. Forsburg' personal liability on the mortgage loan secured by the Shannon Avenue property was discharged in a Chapter 7 bankruptcy in 2016, although the remaining unpaid debt on that loan continues to be secured by a lien against the Shannon Avenue property.

60. After his 2016 bankruptcy, Mr. Forsburg's mortgage loan fell into default, and Mr. Forsburg began working with Wells Fargo in an effort to obtain a FHA Home Affordable Mortgage Program ("HAMP") loan modification in order to reduce his interest rate and monthly mortgage payment and to catch up on the arrears owing on the mortgage loan.

61. In connection with his mortgage modification efforts, Mr. Forsburg accepted a trial modification plan offered by Wells Fargo, which required Mr. Forsburg to make three monthly payments of $848.53 for January, February, and March of 2020 as a precondition to Wells Fargo providing Mr. Forsburg with a final mortgage modification.

62. Mr. Forsburg made each of the trial modification payments under the trial modification plan on time and in full, as required.

63. On March 11, 2020, Wells Fargo approved Mr. Forsburg's loan for a final FHA HAMP mortgage modification.

64. The monthly payment under the terms of Mr. Forsburg's modified mortgage loan is $831.75, with the first post-modification installment due May 1, 2020.

65. Mr. Forsburg was not required to make a monthly payment for April of 2020 under the terms of his mortgage modification agreement. Moreover, Mr. Forsburg's modified monthly payment of $831.75 represents substantial savings compared with his pre-modification monthly mortgage payment of approximately $1,052.68. Additionally, the contractual annual interest rate for Mr. Forsburg's modified loan is 3.5%, a significant reduction of the pre-modification interest rate of 4.875%.

66. Mr. Forsburg's mortgage modification recapitalized $8,648.26 in unpaid amounts, resulting in a $148,633.85 new modified principal balance for his mortgage loan secured by the Shannon Avenue property.

67. On March 18, 2020, Wells Fargo sent final modification paperwork via FedEx to Mr. Forsburg, with instructions that Mr. Forsburg needed to sign the documents and have them notarized before returning the executed documents to Wells Fargo.

68. Mr. Forsburg received the FedEx from Wells Fargo with the final modification paperwork on March 19, 2020.

69. On March 20, 2020, Mr. Forsburg executed the final modification documents before a notary, who notarized Mr. Forsburg's signature and returned the final modification documents to Wells Fargo.

70. On or about April 2, 2020, Mr. Forsburg attempted to log into Wells Fargo's online payment portal in order to confirm that Wells Fargo had implemented his FHA HAMP mortgage modification and to make his May 1, 2020 modified monthly mortgage payment of $831.75.

71. When he attempted to log in to make his mortgage payment on April 2, 2020, Mr. Forsburg received a message from Wells Fargo stating that his mortgage loan had not yet been updated with the terms of his March 11, 2020, Wells Fargo approved, fully executed, final FHA HAMP modification, and Wells Fargo indicated that it would "be in touch" with Mr. Forsburg "soon."

72. Unbeknownst to Mr. Forsburg, sometime after March 20, 2020 and prior to April 2, 2020, Wells Fargo had placed his original, unmodified loan into a three-month forbearance program, effective as of the mortgage payment due for April of 2020.

73. Mr. Forsburg did not request that his mortgage loan be placed into forbearance prior to April of 2020, or at any time thereafter.

74. Prior to placing Mr. Forsburg's loan into forbearance status for April of 2020, Wells Fargo did not inform Mr. Forsburg that placing his loan into forbearance would result in Wells Fargo terminating the final mortgage modification agreement Mr. Forsburg had accepted on March 20, 2020.

75. Because Mr. Forsburg's loan was in forbearance status, Wells Fargo stopped implementation of the final FHA HAMP mortgage modification that it offered to Mr. Forsburg, which Mr. Forsburg had accepted.

76. Instead, without notice to Mr. Forsburg, Wells Fargo unilaterally placed Mr. Forsburg's original, unmodified mortgage loan into forbearance status.

77. As a result, without Mr. Forsburg's prior knowledge or consent, Wells Fargo cancelled the final FHA HAMP modification Mr. Forsburg had accepted on March 20, 2020.

78. When Mr. Forsburg contacted Wells Fargo by telephone to make his May 2020 payment under the newly modified loan terms, he was told that he did not need to make a payment because his loan was in forbearance. Mr. Forsburg was not told at that time that his modification had not been implemented by Wells Fargo.

79. As recently as July 21, 2020, a Wells Fargo representative told Mr. Forsburg that Wells Fargo placed all loans that were in the modification process into forbearance status.

80. Moreover, upon information and belief, after cancelling the modification and placing the loan in forbearance, Wells Fargo has also placed Mr. Forsburg's loan in foreclosure status.

81. Mr. Forsburg has contacted Wells Fargo multiple times regarding this issue and, despite spending anywhere from 45 – 90 minutes on the phone, has not received a definitive answer from Wells Fargo regarding this issue. Indeed, Wells Fargo's representatives have given him conflicting information about the status of his mortgage loan after Wells Fargo placed his account in forbearance.

82. In an article by Pulitzer Prize winning journalist Gretchen Morgenson, writing for

NBC News, a Wells Fargo representative explained that it was Wells Fargo's practice to unilaterally place loans of borrowers who were in the modification process into forbearance status under the CARES Act, without such borrowers' prior knowledge or consent. Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him.* NBCNews, July 16, 2020, https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635.

83. Wells Fargo's website's "FAQ" section related to COVID-19 and CARES Act forbearance indicates that Wells Fargo cancels pending modification applications for its borrowers when *borrowers* accept a CARES Act forbearance. Yet, Mr. Forsburg was told by a Wells Fargo representative that *Wells Fargo* placed borrowers with pending loan modifications into forbearances.

84. Mr. Forsburg had the ability and intention of making the payments required of him under his modified loan terms, as set forth in the final modification documents he executed and returned to Wells Fargo on March 20, 2020.

85. Mr. Forsburg did not want or request a CARES Act forbearance from Wells Fargo.

86. During the unauthorized forbearance period, Mr. Forsburg was prevented from making any payment via Wells Fargo's online payment system, other than payment in the amount of his pre-modification loan; Wells Fargo gives him no option to specify a different payment amount.

87. Wells Fargo's actions in placing Mr. Forsburg's loan in forbearance, without Mr. Forsburg's knowledge or consent, deprived Mr. Forsburg of the opportunity to cure his arrears and lower his interest rate through the modification.

Jenna Doctor

88. Ms. Doctor's mortgage loan, secured by a lien against her property located at 7 Hitching Post Ln, Casselberry, FL 32707, is a loan backed by the FHA and serviced by Wells Fargo.

89. Ms. Doctor and her husband are both employed and have been able to continue making their monthly mortgage payments without interruption. Mr. and Mrs. Doctor were current on their mortgage loan.

90. Around the second week of April 2020, Ms. Doctor, using her Wells Fargo online account, reviewed information about Wells Fargo's COVID-19 and CARES Act relief. After reviewing the information, Ms. Doctor elected not to enroll in the forbearance program because Ms. Doctor and her husband were able to continue making their payments and they had no financial need to forgo payments.

91. At no time did Ms. Doctor consent to or request that Wells Fargo place her mortgage loan account in forbearance.

92. However, at some point prior to June 29, 2020, Wells Fargo placed Ms. Doctor's mortgage loan account in forbearance status without Ms. Doctor's knowledge or consent.

93. Ms. Doctor is currently pregnant, with her baby due in late 2020. In June 2020, Ms. Doctor learned that her baby had developed a medical condition that would require treatment, causing Ms. Doctor and her husband to incur additional out-of-pocket medical expenses. Ms. Doctor and her husband also wish to make certain upgrades and improvements to their home prior to the birth of their child.

94. On or about June 29, 2020, Ms. Doctor contacted a loan officer at the Fairwinds Credit Union (the "Credit Union"), where Ms. Doctor is a member and account holder. Ms.

Doctor sought to obtain a secured loan to cover both the out-of-pocket medical expenses for herself and her unborn child and the improvements to her homestead.

95. The Credit Union made a "hard inquiry" with Equifax on June 29, 2020. The credit information the Credit Union received in response to its inquiry indicated that Ms. Doctor's mortgage loan was in forbearance.

96. Also on June 29, 2020, the Credit Union informed Ms. Doctor that it could not extend Ms. Doctor credit because her mortgage loan was in forbearance. Ms. Doctor then informed the Credit Union that she was not in forbearance, that she had made her monthly mortgage payments each month, and that she never requested a forbearance with Wells Fargo.

97. Prior to June 29, 2020, Ms. Doctor had applied for and received several loans with the Credit Union. Ms. Doctor was informed by the Credit Union that the reason for the decision not to extend credit to Ms. Doctor on June 29, 2020 was because of the reporting or furnishing to the credit reporting agency that her Wells Fargo account was in forbearance for May and June 2020.

98. On June 29, 2020, Ms. Doctor called and spoke with a representative at Wells Fargo to dispute Wells Fargo's placement of her mortgage loan account into forbearance. Ms. Doctor confirmed with the Wells Fargo representative that her account was contractually current and that Wells Fargo had received and applied the monthly payments due for each month of the purported forbearance period.

99. During the phone call with Wells Fargo on June 29, 2020, Ms. Doctor was informed that she was automatically put in forbearance, since every Wells Fargo borrower has been affected by COVID-19. The Wells Fargo representative indicated that Ms. Doctor's account was in a

forbearance from May 1, 2020 through July 1, 2020., but Ms. Doctor could "opt-out" of the forbearance program. Ms. Doctor demanded that her account be removed from the forbearance program, as she had never requested any forbearance relief with Wells Fargo.

100. On July 1, 2020, Ms. Doctor contacted Wells Fargo and spoke with a representative concerning its reporting of the unwanted forbearance to the credit agencies. Wells Fargo refused to change the information it reported regarding Ms. Doctor's account and stated that the account would reflect she had chosen to opt out of the final forbearance month of July 2020.

101. On July 6, 2020, Ms. Doctor contacted the Credit Union loan officer about the steps she took with Wells Fargo and what she needed to do to move forward with a loan. Ms. Doctor was informed by the Credit Union that her Wells Fargo account was still reported as in forbearance.

102. On July 6, 2020, Ms. Doctor called Wells Fargo and spoke with a Wells Fargo supervisor. Ms. Doctor explained that she needed the forbearance removed from Wells Fargo's reporting to the credit reporting agencies because continued reporting would result in her being denied a loan with her Credit Union. The Wells Fargo supervisor stated Wells Fargo could only send Ms. Doctor an official "opt out" document.

103. Also on July 6, 2020, Wells Fargo sent an email to Ms. Doctor attaching a letter dated July 1, 2020, which referenced "Confirming your request to opt out of mortgage payment suspension" and stated that Wells Fargo was returning the account to normal servicing and "reporting payment activity to the consumer reporting agencies."

104. For the months of April through July 2020, Wells Fargo furnished information to the credit reporting agencies that the status of Ms. Doctor's monthly mortgage payments was paid, paid as agreed, or current. In addition, Wells Fargo furnished information that Ms. Doctor's

mortgage loan account was in forbearance for at least May and June of 2020.

105. On July 7, 2020, Ms. Doctor filed a complaint online with the Consumer Financial Protection Bureau about Wells Fargo's credit reporting and reporting incorrect information. Specifically, Ms. Doctor complained that Wells Fargo placed her mortgage loan account in forbearance without her knowledge or consent and reported her mortgage loan as in forbearance to the credit reporting agencies, which would prevent Ms. Doctor from obtaining credit from her Credit Union until the reference to the forbearance was removed from her credit reports.

106. On or about July 7, 2020, Ms. Doctor disputed with Equifax the reporting of false and incorrect information furnished by Wells Fargo stating that Ms. Doctor's mortgage loan account was in forbearance.

107. On or about July 16, 2020, Ms. Doctor complained again about Wells Fargo's credit reporting and, by July 16, 2020, Equifax began a re-investigation of Ms. Doctor's dispute relating to Wells Fargo's reporting of her account as in forbearance.

108. On July 31, 2020, Ms. Doctor sent written disputes to Equifax, Transunion, and Experian.

109. On or about July 31, 2020, Ms. Doctor received a response from Wells Fargo concerning her complaint with the CFPB regarding Wells Fargo's placement and reporting of her account in a forbearance status. Wells Fargo states that it is "unable to remove the forbearance comment that was previously reported for April 1, 2020, through June 1, 2020." Wells Fargo goes on to state that the "account was last reported to the consumer reporting agencies on July 15, 2020, as current with no forbearance comment."

110. As of August 6, 2020, Ms. Doctor's Equifax report still noted that her mortgage

loan account was in forbearance for the months of May and June 2020.

Luis and Marisol Castro

111. Mr. and Mrs. Castro's mortgage loan, secured by a lien against their homestead property located at 3221 San Marcus Ave., Dallas, TX 75228, is a federally related mortgage loan backed by Fannie Mae and serviced by Wells Fargo.

112. In late March, Mr. Castro went to Wells Fargo's website to pay their April 2020 mortgage payment.

113. While Mr. Castro was on Wells Fargo's website, he noticed a large "box" on the website that referenced COVID-19 and contained a button marked "Get Help Now" for payment assistance.

114. Mr. Castro was curious about what "payment assistance" would involve and clicked on the "Get Help Now" button on Wells Fargo's website, expecting more information about the various payment assistance options that might be available to him.

115. Once Mr. Castro clicked that "Get Help Now" button, Wells Fargo's website displayed a message "congratulating" him and informing him that his loan has been enrolled in a forbearance plan.

116. Mr. Castro did not receive any additional information at that time explaining the terms or the consequences of the forbearance program, and Mr. Castro assumed that being automatically enrolled in the program would not be detrimental to him or Mrs. Castro.

117. Despite Wells Fargo placing Mr. and Mrs. Castro's loan account into a forbearance that he did not request, Mr. Castro proceeded to make his April 2020 payment that same day in late March.

118. Wells Fargo accepted Mr. and Mrs. Castro's April 2020 mortgage payment.

119. In late April, Mrs. Castro went to Wells Fargo's website to make their May 2020 mortgage payment but found that she was unable to log on to make the payment.

120. Later that same day, Mrs. Castro called Wells Fargo and made the May 2020 mortgage payment by telephone. Wells Fargo accepted Mr. and Mrs. Castro's May 2020 payment.

121. While speaking with the Wells Fargo representative in connection with their May 2020 mortgage payment, the Wells Fargo representative informed Mrs. Castro that she was unable to make her payment online because their loan was in forbearance status.

122. Mrs. Castro did not understand at the time she was speaking with the Wells Fargo representative that having a loan in forbearance status could be harmful to her credit or otherwise, but Mrs. Castro also did not like being unable to make payments online. Accordingly, during her call in late April 2020, Mrs. Castro asked Wells Fargo's representative to remove whatever it was that was keeping her from making her payments online.

123. Wells Fargo subsequently removed the restriction on Mr. and Mrs. Castro's account that prevented them from making their monthly mortgage payments online, and they have made their June – August 2020 mortgage payments.

124. Wells Fargo did not remove Mr. and Mrs. Castro's mortgage loan from forbearance status in April 2020.

125. In fact, Wells Fargo sent Mr. and Mrs. Castro a letter dated April 16, 2020, regarding the "short-term payment suspension." The April 16, 2020 letter stated: "This payment suspension option is based on an incomplete application for assistance. Other payment assistance options may be available. If you would like a review for all available assistance options, you may

submit a complete application, which would include information about your income and expenses. This review is available whether or not you accept this short-term payment suspension. Please contact us for more information."

126. The April 16, 2020 letter also stated: "**Note:** If you find you don't need this short-term payment suspension, please continue to make your normal payments. Take advantage of this payment suspension only when you really need it, because you may need to repay any missed payments at the end of the short-term payment suspension period."

127. Further, the April 16, 2020 letter did not disclose that the forbearance status of Mr. and Mrs. Castro's mortgage loan account would be reported to the credit reporting agencies or that Wells Fargo would suppress its reporting regarding the payments it was receiving from Mr. and Mrs. Castro during the forbearance period.

128. In late May 2020, Mr. and Mrs. Castro decided to refinance their mortgage loan. At the time, Mr. and Mrs. Castro did not know or understand that Wells Fargo was reporting their mortgage loan to the credit reporting agencies as in forbearance status.

129. Mr. and Mrs. Castro attempted to obtain a refinance but were unable to close on their refinance of their mortgage loan account in July 2020 because Wells Fargo had reported their mortgage loan account as in forbearance status.

130. Moreover, due to the credit reporting of their loan as in forbearance preventing Mr. and Mrs. Castro from closing their refinance, Mr. and Mrs. Castro incurred a late fee for their July 2020 monthly mortgage payment because they anticipated that they would not have to make a mortgage payment in July 2020 due to their anticipated refinance.

131. The tradelines for Mr. and Mrs. Castro's mortgage loan serviced by Wells Fargo

on their TransUnion credit reports indicate in the "Remarks" section of the report that their mortgage loan account is in forbearance. Further, the "Terms" section of the report states "$0 per month for 360 months, Deferred" and Wells Fargo did not report that Mr. and Mrs. Castro made their April – June 2020 mortgage payments.

132. Similarly, the tradelines for Mr. and Mrs. Castro's mortgage loan serviced by Wells Fargo on their Equifax credit reports indicate in the "Comments 2" section that their mortgage loan account was in forbearance in April and May 2020 and the "Payment History" section does not indicate that Mr. and Mrs. Castro made their April – July 2020 monthly mortgage payments. Moreover, the "Terms Frequency" is listed as "DEFERRED" and the "Comments" section states their mortgage loan account is in forbearance.

133. The tradeline for Mr. and Mrs. Castro's mortgage loan serviced by Wells Fargo on Mrs. Castro's Experian report states the "Status" of the loan as "Open/Never late. Deferred, payments begin Oct 2020," and states the monthly payment is "$0." Further, the payment history section does not reflect Wells Fargo's receipt of Mr. and Mrs. Castro's April through June 2020 mortgage payments and the "Comment" section states "Account in Forbearance."

134. Wells Fargo sent Mr. and Mrs. Castro a letter dated July 9, 2020, which informed Mr. and Mrs. Castro that Wells Fargo had extended the forbearance period for another three months. The Castros did not consent to Wells Fargo's extension of the forbearance, which they had not wanted or authorized in the first place.

135. Mr. and Mrs. Castro then contacted Wells Fargo via telephone on multiple occasions in June and July of 2020, asking to be removed from the forbearance program.

136. On a call in late July 2020, Mr. Castro was informed by a Wells Fargo representative

that the "Get Help Now" button was placed on Wells Fargo's website due to higher than normal call volume that resulted in five hour wait times before customers could speak to a Wells Fargo representative.

137. On August 3, 2020, Mr. Castro called Wells Fargo again in a further attempt to get his account removed from forbearance status. He spoke to four different Wells Fargo representatives and none of them were able to remove his loan from forbearance status. Ultimately, a Wells Fargo representative hung up on him.

Barbara Prado

138. Barbara Prado is a chef by trade. Until September 1, 2020, for eight years, she had been employed as a manager by the Bon Appetit cafe and restaurant chain, including throughout March 2020.

139. Ms. Prado has two FHA mortgage loans that are serviced by Wells Fargo and are secured by her homestead property, which is located in Fremont, California.

140. Ms. Prado's primary mortgage loan has an account number ending in 4898 (the "Primary Mortgage Loan").

141. From April through September 2020, Ms. Prado's monthly payment on her Primary Mortgage Loan has been $1,594.70, which includes principal, interest, and escrow for property taxes and insurance.

142. Ms. Prado was current on her Primary Mortgage Loan as of March 31, 2020, and Ms. Prado has made each monthly installment payment on her Primary Mortgage Loan from April through September 2020.

143. Ms. Prado's secondary mortgage loan has an account number ending in 9035 (the

"Secondary Mortgage Loan").

144. The monthly payment on Ms. Prado's Secondary Mortgage Loan is $167.90.

145. Prior to April 2020, Ms. Prado had arranged for her payments on the Secondary Mortgage Loan to be automatically drafted from her bank account by Wells Fargo each month in the amount of $200.00, designating the $32.10 surplus to be applied to further reduce the loan's principal balance.

146. Ms. Prado called Wells Fargo on Saturday, March 28, 2020, to inquire about COVID-19 related payment assistance options with respect to her Primary Mortgage Loan only. Including hold time, Ms. Prado's March 28, 2020 call to Wells Fargo lasted approximately 43 minutes.

147. Ms. Prado does not recall or believe that she ever requested "forbearance" during her March 28, 2020 call with Wells Fargo and she does not recall authorizing Wells Fargo to place her Primary Mortgage Loan account into forbearance status effective April 1, 2020.

148. Wells Fargo sent Ms. Prado a letter dated September 4, 2020, in which Wells Fargo asserts that Ms. Prado called Wells Fargo regarding her Primary Mortgage Loan on March 28, 2020, "and stated that [Ms. Prado] would need two months deferred as [she] did not know when [she] would be going back to work."

149. Wells Fargo's September 4, 2020 letter does not assert that Ms. Prado ever requested "forbearance" as to her Primary Mortgage Loan, nor does it assert that Ms. Prado agreed on March 28, 2020 (or at any other time) to a "payment suspension" that would be immediately effective.

150. On September 15, 2020, a Wells Fargo representative, Erica Nosbisch, informed

Ms. Prado that Wells Fargo placed her Primary Mortgage Loan account into forbearance status on March 30, 2020.

151. Ms. Prado actually made her monthly mortgage payments on her Primary Mortgage Loan from April through September of 2020.

152. In addition to placing Ms. Prado's Primary Mortgage Loan into forbearance following Ms. Prado's March 28, 2020 call, Wells Fargo placed Ms. Prado's Secondary Loan Account into forbearance status, without Ms. Prado requesting a forbearance on her Secondary Mortgage Loan and without her knowledge or consent.

153. Wells Fargo's September 4, 2020 letter to Ms. Prado acknowledges that Wells Fargo placed Ms. Prado's Secondary Mortgage Loan into forbearance status without Ms. Prado's consent, "because of the request from [her] on [her Primary Mortgage Loan]. Due to high call volumes, the process was automated and forbearance assistance was provided for all accounts associated with [Ms. Prado's Primary Mortgage Loan]."

154. When Wells Fargo placed Ms. Prado's Secondary Mortgage Loan into forbearance status, it also terminated the pre-arranged automatic electronic monthly payments that Ms. Prado had set up with Wells Fargo for her Secondary Mortgage Loan without prior notice to Ms. Prado.

155. Because she had come to expect that the $200 monthly payment on her Secondary Mortgage Loan would be automatically drafted from her bank account each month, Ms. Prado did not notice that her Secondary Mortgage Loan payments to Wells Fargo for April, May, and June 2020 had not been drafted from her account.

156. On June 10, 2020, at her daughter's urging, and with her daughter present, Ms. Prado called Wells Fargo to obtain information about the CARES Act forbearance program.

157. During her June 10, 2020 call, after listening to a Wells Fargo representative's attempt to explain how the forbearance program would work, Ms. Prado informed Wells Fargo that she was not interested in forbearance at that time.

158. The Wells Fargo representative Ms. Prado spoke with on June 10, 2020 did not mention to Ms. Prado that both her Primary Mortgage Loan and her Secondary Mortgage Loan were already, or had already been, in forbearance.

159. On July 9, 2020, Ms. Prado received an email from Wells Fargo informing her that Wells Fargo would be extending the forbearance term on her Secondary Mortgage Loan for an additional 90 days.

160. Ms. Prado was alarmed by Wells Fargo's July 9, 2020 email extending the term of the unauthorized forbearance on her Secondary Mortgage Loan.

161. Ms. Prado did not request that Wells Fargo extend the forbearance on her Secondary Mortgage Loan.

162. On July 9, 2020, Ms. Prado attempted to call Wells Fargo to get information about why Wells Fargo was sending her an email that said her Secondary Mortgage Loan account was in forbearance status. However, she was kept on hold for so long that it was interfering with her work and she ultimately was forced to hang up before she was able to speak with anyone at Wells Fargo.

163. So, after getting off work on July 9, 2020, Ms. Prado went to a Wells Fargo branch bank to seek an explanation for Wells Fargo's email indicating that her Secondary Mortgage Loan was in forbearance.

164. Upon Ms. Prado's arrival at the Wells Fargo branch bank at approximately 4:30pm on July 9, 2020, Ebonique Edogun, a Wells Fargo representative at the Wells Fargo branch banking

location, attempted to assist Ms. Prado that evening by trying to call Wells Fargo's mortgage division to obtain information about the forbearance on the Secondary Mortgage Loan.

165. Ms. Edogun's call to Wells Fargo on Ms. Prado's behalf remained on hold past the Wells Fargo branch bank's business hours, until approximately 5:30 p.m. Pacific time. At that point, Ms. Prado asked Ms. Edogun to end the call so they could both go home.

166. The next morning, at approximately 5:30 a.m. Pacific time on July 10, 2020, Ms. Prado again called Wells Fargo to inquire about the July 9, 2020 email regarding extension of the forbearance on her Secondary Mortgage Loan.

167. During the July 10, 2020 call, Ms. Prado first spoke with a Wells Fargo representative named Colleen, who later transferred Ms. Prado's call to a supervisor named Rosemary.

168. While speaking with Colleen during the July 10, 2020 call, Ms. Prado learned, to her surprise, that her Primary Mortgage Loan was also in forbearance status.

169. During the July 10, 2020 call, Ms. Prado also learned that her Secondary Mortgage Loan was three months behind because of the unauthorized forbearance on her Secondary Mortgage Loan account and Wells Fargo's undisclosed cancellation of her automatic electronic payment arrangement with Wells Fargo for the Secondary Mortgage Loan.

170. While speaking with Rosemary during the July 10, 2020 call, Ms. Prado requested to have the forbearance removed from both loans.

171. Rosemary, Wells Fargo's representative, advised Ms. Prado during the July 10, 2020 call that Ms. Prado would be able to defer the missed (forborne) payments on her Secondary Mortgage Loan to the end of her loan, and that this process would be done through correspondence

Ms. Prado would receive by mail.

172. Later in July, instead of offering to defer the missed (forborne) payments on her Secondary Mortgage Loan, Wells Fargo sent Ms. Prado a letter dated July 13, 2020, informing Ms. Prado that she had an overdue balance on her Secondary Mortgage Loan account and requesting that Ms. Prado call Wells Fargo because "...we want to help you."

173. Ms. Prado made her July 2020 Secondary Mortgage Loan payment directly to Wells Fargo in the amount of $200, which Wells Fargo initially accepted and applied to Ms. Prado's Secondary Mortgage Loan account on July 14, 2020, designating $167.90 as the regular payment, and $32.10 as a principal payment, as reflected on the July 14, 2020 statement Wells Fargo sent Ms. Prado.

174. Wells Fargo then sent Ms. Prado a second statement in July 2020, dated July 16, 2020, which reverses the $32.10 that Wells Fargo applied as a principal payment on July 14, 2020, and places $32.10 into an unapplied funds account.

175. Wells Fargo also sent Ms. Prado a letter dated July 14, 2020, congratulating Ms. Prado because she was once again enrolled in monthly automatic payments for her Secondary Mortgage Loan, beginning August 14, 2020.

176. Wells Fargo next sent Ms. Prado a letter dated July 15, 2020 stating that her account was due for "3 payment(s) for the month(s) of May 1, 2020 through July 15, 2020 [sic] . . .." Wells Fargo's July 15, 2020 letter offers Ms. Prado various options to "help [her] stay in [her] home," none of which included deferral of her payments to the end of the note, as she had been told previously.

177. On July 22, 2020, Ms. Prado called Wells Fargo regarding her Secondary Mortgage

Loan account because she was confused by Wells Fargo's correspondence, which did not comport with her prior conversation on July 10, 2020 with Wells Fargo's representative, Rosemary, in which Rosemary informed Ms. Prado that the forborne payments on her Secondary Mortgage Loan would be put at the end of her loan.

178. A Wells Fargo representative named Raphael spoke with Ms. Prado during the July 22, 2020 call. Raphael informed Ms. Prado that he could see no indication in Wells Fargo's system that Ms. Prado had requested forbearance on her Secondary Mortgage Loan and that a Wells Fargo representative named "Tayion Pugh" appeared to be the person who put the process in motion that resulted in Ms. Prado's Secondary Mortgage Loan account being placed into forbearance status. Raphael was not able to explain why the forborne (without authorization) payments on Ms. Prado's loan were not being deferred.

179. On July 28, 2020, Ms. Prado accessed her Secondary Mortgage Loan account information through Wells Fargo's website in order to determine how much she would need to pay to bring her Secondary Mortgage loan current. According to Wells Fargo's website as of July 28, 2020, Ms. Prado was required to pay $610.40 to bring her loan current at that time.

180. The next day, July 29, 2020, Ms. Prado went to a Wells Fargo branch bank and paid $610.40, believing that she was bringing her account contractually current.

181. However, Wells Fargo has not treated Ms. Prado's Secondary Mortgage Loan account as contractually current subsequent to July 29, 2020, even though Ms. Prado has made her August and September monthly payments.

Jorge Goytisolo, III

182. Mr. Goytisolo's mortgage loan, secured by a lien against his homestead property

located at 4306 Portola Ave., Los Angeles, CA 90032, is a federally related mortgage loan backed by Fannie Mae and serviced by Wells Fargo.

183. Mr. Goytisolo did not request a forbearance of his mortgage loan from Wells Fargo.

184. Mr. Goytisolo and his wife did contact Wells Fargo by telephone to obtain information about the CARES Act forbearance program. However, after learning that the CARES Act forbearance program would merely delay their monthly mortgage payment obligations, Mr. Goytisolo and his wife decided against the forbearance and specifically informed Wells Fargo that they did not want their loan to be placed into forbearance.

185. Despite Mr. Goytisolo's and his wife's specific and unambiguous statements to Wells Fargo that she and Mr. Goytisolo did not want their loan to be put into forbearance, Wells Fargo placed their loan into forbearance status anyway.

186. After putting Mr. Goytisolo's loan into forbearance status against his wishes, Wells Fargo furnished trade line information to the credit reporting agencies, indicating that Mr. Goytisolo's mortgage loan was in forbearance status.

187. Mr. Goytisolo was current on his mortgage loan before he and his wife contacted Wells Fargo to inquire about the CARES Act forbearance program, and they have continued to make their ongoing monthly mortgage payments to Wells Fargo, on time and in full, ever since.

188. However, in addition to reporting that Mr. Goytisolo's loan was in forbearance status, following Mr. Goytisolo's inquiry, from that point forward, Wells Fargo stopped reporting that it was receiving Mr. Goytisolo's monthly mortgage payments each month.

189. Subsequent to their inquiry to Wells Fargo regarding information about CARES Act forbearances, Mr. Goytisolo and his wife have been attempting to refinance their mortgage

loan in order to take advantage of the historically low interest rates that are currently available.

190. Mr. Goytisolo and his wife discovered that Wells Fargo was reporting to the credit reporting agencies that their loan was in forbearance when they applied to refinance their mortgage loan.

191. Indeed, Mr. Goytisolo has been unable to complete a refinance of his mortgage loan serviced by Wells Fargo precisely *because* Wells Fargo has been reporting the loan as being in forbearance status.

192. In the weeks since Mr. Goytisolo and his wife realized that their mortgage loan was placed in forbearance by Wells Fargo against their wishes, they have spent substantial time and resources in their efforts to have Wells Fargo correct their account and credit information.

193. Although Wells Fargo supposedly adjusted their account and credit reporting, Mr. Goytisolo and his wife have not received written confirmation from Wells Fargo regarding such supposed adjustments. They still have not had their refinance approved.

Other Class Member Borrowers Similarly Affected

194. As reported by Gretchen Morgenson, borrowers in at least 14 different states have been placed in mortgage loan forbearances by Wells Fargo that they did not want or request. Gretchen Morgenson, *More Wells Fargo customers say the bank decided to pause their mortgage payments without asking*, NBCNews, July 22, 2020, https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610.

195. NBCNews reports that Tammi Wilson ("Ms. Wilson") has a mortgage loan account that is serviced by Wells Fargo. In March 2020, Ms. Wilson checked the status of her

mortgage loan account on Wells Fargo's website. While there, Ms. Wilson clicked on a link and provided contact information to receive information regarding COVID-19 payment assistance. *Id.*

196. When Ms. Wilson went to make her April 2020 mortgage payment online, she received a pop-up message stating she had no active accounts and could not make a payment. *Id.* Ms. Wilson later learned that Wells Fargo had placed her into a CARES Act forbearance without her knowledge. *Id.*

197. Ms. Wilson did not ask for the forbearance and continued to make her monthly mortgage payments. *Id.*

198. After spending hours on the phone with Wells Fargo representatives, Wells Fargo sent Ms. Wilson a letter dated July 1, 2020 confirming her request to opt out of the forbearance program. *Id.*

199. Despite opting out of the program, Ms. Wilson's recent credit report indicates that her mortgage loan is in forbearance and that her April and May payments were not credited to her account, even though Ms. Wilson submitted the payments. *Id.*

200. Also according to NBCNews, Eileen Roth, a Wells Fargo customer in New York, also received a forbearance that she did not want. *Id.* Ms. Roth was notified by Wells Fargo on June 22, 2020 that Wells Fargo had suspended the auto-draft of Ms. Roth's mortgage payments on March 20 due to the forbearance. *Id.* Ms. Roth's credit report also indicates that her mortgage loan account is in forbearance. *Id.*

201. In response to questioning by Ms. Morgenson, Wells Fargo's representative stated: "As soon as COVID began to impact our customers, Wells Fargo was intently focused on assisting any customers who needed help, and we have deferred 2.5 million payments for consumer and

small business customers as a result. During the early stages of the crisis — even before the CARES act was passed — we provided relief to mortgage and home equity customers who we learned were impacted by COVID over the phone, through our secure email channel, or through other means. Customers placed in forbearance received notices of that action through multiple channels, and we removed them from forbearance upon their request." *Id.*

202. According to the Consumer Financial Protection Bureau, a mortgage servicer is supposed to receive an attestation from a borrower of a COVID-19 related financial hardship prior to granting a forbearance. *Id.* However, upon information and belief, Wells Fargo does not require an attestation from borrowers, as neither Plaintiffs nor the borrowers featured in Ms. Morgenson's report provided an attestation to Wells Fargo.

IV. CLASS ALLEGATIONS

203. Wells Fargo has placed loans of borrowers it services into forbearance status without its borrowers' consent.

204. Plaintiffs seek to represent the following classes:

Nationwide Class: Every person with residential property encumbered by a lien securing repayment of a loan serviced by Wells Fargo that, subsequent to March 26, 2020, Wells Fargo placed into a forbearance term or extended an existing term of forbearance without such person's consent.

Virginia Class: Every person with residential property located in Virginia encumbered by a lien securing repayment of a loan serviced by Wells Fargo that, subsequent to March 26, 2020, Wells Fargo placed into a forbearance term or extended an existing forbearance term without such person's consent.

Florida Class: Every person with residential property located in Florida encumbered by a lien securing repayment of a loan serviced by Wells Fargo that, subsequent to March 26, 2020, Wells Fargo placed into a forbearance term or extended an existing term of forbearance without such person's consent.

Texas Class: Every person with residential property located in Texas encumbered by a lien securing repayment of a loan serviced by Wells Fargo that, subsequent to March 26, 2020, Wells Fargo placed into a forbearance term or extended an existing term of forbearance without such person's consent.

California Class: Every person with residential property located in California encumbered by a lien securing repayment of a loan serviced by Wells Fargo that, subsequent to March 26, 2020, Wells Fargo placed into a forbearance term or extended an existing term of forbearance without such person's consent.

205. Nothing in the CARES Act or any other law or agreement between Plaintiffs (including the putative members of the class) and Wells Fargo authorizes Wells Fargo to unilaterally place borrowers' mortgage loan accounts into forbearance status without their consent.

206. It is either Wells Fargo's explicit intent and policy to place borrowers' loans into forbearance without authorization or Wells Fargo has no policies and/or procedures in place to prevent it from placing loans into forbearance status without its borrowers' consent, or whatever policies and procedures Wells Fargo does maintain are either inadequate or are not enforced by Wells Fargo in a manner that is reasonably calculated to prevent Wells Fargo from placing loans into forbearance without borrowers' prior knowledge or consent.

Wells Fargo's Incentives & History of Similar Misconduct

207. When it completes specified loan workout options with borrowers whose loans have been placed into forbearance pursuant to the CARES Act, Wells Fargo receives incentive payments from the various federal agencies on whose behalf Wells Fargo services such borrowers' mortgage loans.

208. For each loan placed into forbearance for which Wells Fargo subsequently defers repayment of some or all of the forborne payments until loan maturity in accordance with Fannie Mae and Freddie Mac's matrix for loan retention workout options, Wells Fargo receives an incentive fee of $500.

209. For each loan placed into forbearance for which Wells Fargo enters into a completed repayment plan in accordance with Fannie Mae and Freddie Mac's matrix for loan retention options Wells Fargo receives an incentive fee of $500.

210. Wells Fargo also receives servicing income for the loans it services, and Plaintiffs are informed and believe and therefore allege that Wells Fargo is therefore incentivized to modify its customers' mortgage loans following a CARES Act forbearance in a way that extends the loan's term and lowers the borrower's monthly mortgage payment in order to prevent "run off" of loan servicing rights, which occurs when borrowers sell their homes or refinance their mortgages. Thus, upon information and belief, Wells Fargo uses these false forbearance notices to increase its mortgage servicing income by lowering borrowers' monthly mortgage payments in order to keep them paying on their existing (albeit modified) mortgage loans.

211. Wells Fargo has previously engaged in similar conduct involving providing its borrowers with products and services that are detrimental to the borrowers, without such borrowers' prior knowledge or consent, including:

- Opening accounts for Wells Fargo customers without their knowledge or consent.
- Charging Wells Fargo auto lending customers for unnecessary insurance without their knowledge or consent.
- Filing Rule 3002.1 Notices of Mortgage Payment Change that falsely asserted that borrowers had agreed to mortgage loan modifications that the borrowers knew nothing about, including in the United States Bankruptcy Court for the Western District of Pennsylvania and in the United States Bankruptcy Court for the Western District of North Carolina.[1]
- In the United States Bankruptcy Court for the Western District of Virginia alone, Plaintiffs' counsel have identified at least eleven false forbearance notices Defendants have prepared, executed, filed, and served in debtors' Chapter 13 bankruptcy cases.

[1] In *In re Eyer*, the bankruptcy court for the Western District of Pennsylvania entered an order striking a notice of mortgage payment change related to a modification that the debtor did not request because the notice had "nothing to do with the [d]ebtor's current obligations under its note and/or mortgage with Wells Fargo." *In re Eyer,* Case No. 12-70985, Memorandum Order Striking Notice of Payment Change, Docket No. 93 (Bankr. W.D. Penn. Dec. 30, 2015). Further, Chief Bankruptcy Judge Beyer, in the Western District of North Carolina, entered an order in *In re Allen* regarding Wells Fargo's practice of filing Rule 3002.1 Notices of Monthly Mortgage Payment Change that falsely stated that borrowers' loans were subject to modifications that such borrowers had not requested and knew nothing about, a practice that Judge Beyer described as, "beyond the pale of due process." *In re Allen*, Case No. 13-31034, Order Sustaining Objection to Notice of Mortgage Payment Change, Docket No. 29 (Bankr. W.D. N.C. Sept. 19, 2016). Judge Beyer also entered an order sustaining a debtor's objection to a similar notice of mortgage payment change regarding a modification the debtor did not request, requiring Wells Fargo to pay the debtor's counsel's fees incurred for filing the objection. *See In re Roman*, Case No. 15-31462, Order Sustaining Objection to Notice of Mortgage Payment Change, Awarding Fees and Expenses to Debtor's Counsel to be Paid by Wells Fargo, and Setting Compliance Hearing for October 25, 2016, Docket No. 34 (Bankr. W.D. N.C. Oct. 14, 2016).

- In an article by Ms. Morgenson, published by NBC News on July 22, 2020 and discussed *supra*, numerous other instances of this same misconduct – placing loans into forbearance without borrower authorization - is described with respect to several borrowers, including Plaintiff Gerald Forsburg.

212. In addition to the named Plaintiffs, Plaintiffs' counsel are aware of Wells Fargo engaging in similar conduct with respect to loans secured by properties of borrowers located in Alabama, Ohio, Oklahoma, Louisiana, Pennsylvania, Colorado, Delaware, Washington, Minnesota, California, Georgia, Texas, New Jersey, Missouri, Tennessee, New Hampshire, Florida, and Connecticut. Upon information and belief, Wells Fargo has been engaging in these same practices on a nationwide basis.

213. Because Wells Fargo's wrongful conduct is widespread and uniform, this case should be certified for class action treatment pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) and (3).

214. The classes Plaintiffs seek to represent exclude borrowers who have filed for bankruptcy protection under Chapter 13 of the United States Bankruptcy Code.

215. The class does not include the Judges of this Court, the Judges of the United States Courts of Appeals, or the Justices of the United States Supreme Court.

216. Numerosity – The class is so numerous, with class members throughout the country, that joinder of all class members is impracticable. A class action is the only feasible method of adjudicating the rights of the affected borrowers, and, absent allowance of a certification of a class action, a failure of justice will result. An investigation of Defendants' forbearance practices across the United States has revealed that Defendants are placing borrowers' loans into

forbearance status without their consent on a nationwide basis. The number of putative class members that have already been identified is sufficient to justify further discovery to establish the numerosity element of Rule 23, as there are likely many more unidentified putative class members throughout the country.

217. Commonality – The questions of law and fact common to all class members that predominate over those pertaining to individual class members include, but are not limited to, whether Wells Fargo engaged and engages in the policies and practices complained of and whether such actions violate federal and other common law duties, as alleged herein.

218. Specifically, the common question of law for the nationwide class is whether Defendants' practice of placing loans into forbearance without borrowers' prior consent violates the CARES Act, RICO, RESPA, the Fair Credit Reporting Act, as well as whether such conduct constitutes Fraud, Breach of Contract, Negligence, Gross Negligence, and/or Defamation.

219. The common question of law for the state subclasses is whether, under applicable state laws, members of such subclasses are entitled to additional recovery beyond the recovery available to other members of the nationwide class.

220. The common facts are that Defendants have placed borrowers' loans into forbearance without consent to do so, and Defendants have falsely reported to the nation's credit reporting agencies that such loans were placed into forbearance at borrowers' request and have failed to report to the nation's credit reporting agencies that borrowers' loan payments have been received and applied despite having received such payments.

221. Typicality – Plaintiffs' claims are typical of the claims of the class members. All are based on the same factual and legal theories. The Plaintiffs have been subjected to the same misconduct as the members of the proposed class.

222. Adequacy of representation – Plaintiffs will fairly and adequately protect the interests of all class members and sub-class members. Plaintiffs understand their responsibilities to the class as a whole and to the subclasses they represent, and Plaintiffs understand that Defendants' practice of placing borrowers' loans into forbearance without borrower consent causes borrowers harm, aggravation, credit damage, risk of not being hired or of losing employment, risk of losing status or security clearance with employers, and can prevent borrowers from accessing the credit markets that would otherwise be available to them, including credit cards, refinance loans, unsecured lines of credit, home equity lines of credit, auto loans, denial of borrowers' ability to access, on their own terms, the forbearance relief available to them under the CARES Act, and other harmful consequences and damages resulting directly from Wells Fargo's unauthorized placement of borrowers' loans into forbearance status.

223. Plaintiffs have retained capable counsel experienced in state and federal consumer law and consumer class-action litigation. Neither Plaintiffs nor their counsel have any conflicts that would interfere with the vigorous prosecution of this action.

224. A class action is superior to other available methods for the fair and efficient adjudication of this controversy in that:

(a) the class necessarily consists of persons who may be unaware of Wells Fargo's unauthorized and undisclosed placement of loans into forbearance status, who may not be aware of or capable of funding the cost of litigating individual actions against Wells Fargo,

(b) many class members lack the sophistication necessary to recognize Wells Fargo's unlawful placement of borrowers' loans into CARES Act forbearance status without authorization and/or the resources necessary to retain competent litigation counsel,

(c) many class members have acceded or will accede to Defendants' unlawful conduct, and

(d) there is no reason that the courts should be burdened with multiple lawsuits challenging Defendants' facially improper practice of placing borrowers' loans into forbearance without borrowers' consent.

225. Defendants, in placing borrowers' loans into forbearance without borrowers' consent, have acted and refused to act on grounds generally applicable to the class as a whole.

V. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO") ENTERPRISE ALLEGATIONS

226. Plaintiffs repeat and reallege the allegations in this complaint.

The Enterprise

227. Defendants are all "persons" within the meaning of 18 U.S.C. § 1961(3).

228. Based upon Plaintiffs' current knowledge, the following persons constitute a group of individuals associated in fact that will be referred to herein as the "Wells Fargo False Forbearance Enterprise:" (1) Wells Fargo, (2) vendors, including (without limitation) Black Knight, Inc. ("Black Knight"), and unknown website hosting, design, and tracking vendors, internet service providers, IVR system providers, and mail vendors who either directly assist or provide systems that assist Wells Fargo's false forbearance scheme, (3) the GSEs on whose behalf Wells Fargo services borrowers' loans, and (4) the GSE sponsored Trusts that own borrowers' loans (as to which Wells Fargo collects borrowers' payments and distributes them to the trusts), as well as the investors, sponsors, underwriters, brokers, attorneys, ratings agencies, accounting,

and other individuals or entities responsible for , or assisting with, or participating in, directly or indirectly, the process of evaluating, marketing, and implementing the enterprise, who reap a portion of the proceeds Wells Fargo obtains in connection with its misconduct, or otherwise are compensated for their participation in the Wells Fargo False Forbearance Enterprise.

229. Upon information and belief, vendors involved in the Wells Fargo False Forbearance Enterprise provide Wells Fargo with services and/or assistance with, or otherwise participate in the enterprise by (a) identifying accounts of borrowers for placement into forbearance status; (b) preparing and mailing and/or emailing correspondence related to borrowers' accounts that have been placed into forbearance status without their consent; (c) communicating information to credit reporting agencies related to accounts that Wells Fargo has placed into forbearance status without borrowers' prior consent, and/or reporting such information once communicated by Wells Fargo through or with the assistance of other participants in the Wells Fargo False Forbearance Enterprise, (d) assisting Wells Fargo with loan workout options to address the mortgage arrearages resulting from Wells Fargo's unauthorized placement of borrowers' loans into forbearance status, and (e) providing loans and/or access to capital Wells Fargo uses to repurchase loans from GSEs and their investors that Wells Fargo placed in forbearance status without borrowers' consent.

230. The Wells Fargo False Forbearance Enterprise is an ongoing organization that engages in, and whose activities affect, interstate commerce.

231. The members of the Wells Fargo False Forbearance Enterprise function as a continuing unit and share the common purpose of maximizing their profits by placing loans of the Plaintiffs and class members into forbearance status without authorization.

232. The Wells Fargo False Forbearance Enterprise has a systematic linkage because there are contractual relationships, agreements, financial ties, and coordination of activities between Defendant Wells Fargo, Wells Fargo's other corporate affiliates and subsidiaries, Black Knight, Experian, TransUnion, Equifax, Fannie Mae, Freddie Mac, Ginnie Mae, InfoEx, various law firms, print and mailing vendors, internet service providers, brokers, investment bankers, rating agencies, accountants, servicers, sponsors, underwriters, and other entities participating in conducting the affairs of the enterprise. Wells Fargo, Experian, Equifax, Transunion, Fannie Mae, Freddie Mac, Ginnie Mae, InfoEx, various law firms, and print and mailing vendors use Black Knight's MSP mortgage loan servicing system and associated communication network as a common mortgage loan servicing, communication, and accounting system of record to store and communicate data related to the accounts of borrowers whose loans Wells Fargo places into forbearance without borrowers' prior knowledge or consent.

233. While Defendants participate in and are members and part of the Wells Fargo False Forbearance Enterprise, they also have an existence separate and distinct from the enterprise.

234. Defendants control, operate, and direct the affairs of the Wells Fargo False Forbearance Enterprise by, among other things determining that borrowers' accounts should be placed into forbearance status; programming their computer systems to generate, store, and communicate information related to the identification of and subsequent treatment of loans placed into forbearance without borrowers' consent; mailing borrowers correspondence regarding loans placed into forbearance without borrowers' authorization, repurchasing loans placed into forbearance without borrower consent on the false pretext that the loans are in default because they are in forbearance status, even when the loans in question are actually performing loans; furnishing

false information to the credit reporting agencies indicating that loans are in forbearance and withholding information regarding borrower payments received and applied during forbearance periods borrowers did not request.

235. The Wells Fargo False Forbearance Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which the Defendants engage.

Predicate Acts

236. § 1961(1) of RICO provides that "racketeering activity" includes any act indictable under 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire fraud). As set forth herein, Defendants have engaged, and continue to engage, in conduct violating each of these laws in order to effectuate their scheme.

Violations of 18 U.S.C. § 1341 and 18 U.S.C. § 1343

237. As alleged herein, for the purpose of executing and/or attempting to execute the above-described scheme to defraud or obtain money by means of false pretenses, representations, or promises, Defendants, in violation of 18 U.S.C. § 1341, placed in post offices and/or in authorized repositories matter and things to be sent or delivered by the Postal Service, caused matter and things to be delivered by commercial interstate carriers, and received matter and things from the Postal Service or commercial interstate carriers, including but not limited to correspondence and electronic communication with borrowers, the GSEs, print and mail vendors, and the credit reporting agencies regarding loans placed into forbearance without borrowers' authorization, as well as correspondence regarding proposed loan workout options, credit reporting, investor reporting, payment distributions, workout incentive compensation, loan buybacks and/or suspension of principal and interest advance obligations, among other things.

238. For the purpose of executing and/or attempting to execute the above-described scheme to defraud or obtain money by means of false pretenses, representations or promises, the Defendants, in violation of 18 U.S.C. § 1343, transmitted and received by wire, matter and things, including but not limited to loan data, proposed loan modification terms, agreements, email correspondence, monthly mortgage statements, telephone correspondence, credit reporting information, investor reporting, and made or caused to be made false statements over the telephone, facsimile, electronic mail, and the internet.

239. The matter and things sent by Defendants via the Postal Service, commercial carrier, wire, or other interstate electronic media included, inter alia: false reports to credit reporting agencies that borrowers requested forbearance and/or failure to report and/or disclose payment receipts; false, deceptive and misleading written correspondence with borrowers; email correspondence; misleading websites and mobile device electronic user interfaces that place borrowers into forbearance with the click of a single button without warning or explanation, as well as other data used to place accounts into forbearance status and/or to inform third parties of borrowers' loans that Wells Fargo placed into forbearance status without borrowers' consent; agreements; monthly mortgage statements; investor reporting; correspondence; and payments.

240. Other matter and things sent through or received via the Postal Service, commercial carrier, wire, or other interstate electronic media by Defendants include information or communications in furtherance of or necessary to effectuate the scheme.

241. Defendants' misrepresentations, acts of concealment, and failures to disclose were knowing and intentional and made for the purpose of deceiving borrowers, the GSEs, investors in

GSE-backed trusts, the credit markets, equity and debt investors in Wells Fargo, and other persons, regulators, and entities to conceal or perpetuate Wells Fargo's unlawful scheme.

242. Because this is a class action, and there were numerous acts of mail and wire fraud that were used to carry out the scheme, it would be impracticable for Plaintiffs to plead all details of the scheme with particularity. Therefore, Plaintiffs cannot plead the precise dates of all of Defendants' use of the U.S. mail and interstate wire facilities, and corresponding acts of mail and wire fraud, as this information cannot be alleged without access to Defendants' records.

243. Defendants either knew or recklessly disregarded the fact that the misrepresentations and omissions described above were material, and the GSEs, their investors, Defendants' debt and equity investors, the credit reporting agencies, and participants in credit markets that rely on the integrity of credit information, as well as the Plaintiffs and the other members of the class, relied upon or were injured by others' reliance upon the Defendants' misrepresentations and omissions. Had the GSEs and their investors, Wells Fargo's debt and equity investors, the participants in the credit markets, and Plaintiffs and other members of the class known the truth that Wells Fargo's placement of loans into forbearance status without borrower authorization was used as a profit center and/or unlawful loss mitigation hedge, rather than to effectuate bona fide, authorized, requested, agreed, and lawful agreements regarding the mortgage payment obligations of Plaintiffs and other members of the class, they would have immediately rejected and disregarded Defendants' misconduct.

Pattern of Racketeering Activity

244. The Defendants have engaged in a "pattern of racketeering activity," as defined by 18 U.S.C. § 1961(5), by committing at least two acts of racketeering activity, i.e. indictable violations of 18 U.S.C. §§ 1341 and 1343 as described above, within the past four years.

245. Defendants did not begin placement of borrowers' mortgage loans into unauthorized CARES Act forbearances until on or after March 27, 2020, when the CARES Act was passed by Congress, which is within four years of Plaintiffs' filing of their original complaint in this case.

246. Each of the Defendants has committed numerous acts of racketeering activity. Each act of racketeering activity was related, had a similar purpose, involved the same or similar participants and method of commission, had similar results and impacted similar victims, including Plaintiffs and the other class members.

247. The multiple acts of racketeering activity that Defendants committed were related to each other and amount to and pose a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5).

VI. CAUSES OF ACTION

COUNT I
VIOLATION OF RICO 18 U.S.C. § 1962(c)

248. Plaintiffs repeat and reallege the allegations in this complaint.

249. This claim for relief arises under 18 U.S.C. § 1964(c).

250. § 1962(c) of RICO provides that it "shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities which affect, interstate or foreign

commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ."

251. Through the pattern of racketeering activities outlined above, the Defendants have conducted and participated in the affairs of the Wells Fargo False Forbearance Enterprise.

252. Each of the Defendants agreed to participate, directly or indirectly, in the conduct of the affairs of the Wells Fargo False Forbearance Enterprise through a pattern of racketeering activity comprised of numerous acts of mail fraud and wire fraud, and each Defendant so participated in violation of 18 U.S.C. § 1962(c).

253. As set forth above, Defendants have violated 18 U.S.C. § 1962(c) by conducting, or participating directly or indirectly in the conduct of, the affairs of the Wells Fargo False Forbearance Enterprise through a pattern of racketeering.

254. As a direct and proximate result, Plaintiffs and class members have been injured in their business or property or both by the predicate acts, which make up the Defendants' patterns of racketeering activity.

255. Specifically, and as set forth elsewhere herein, Plaintiffs and class members, the integrity of the housing market and consumer credit markets, as well as GSE-sponsored mortgage trusts, have been injured by Defendants in their business or property in a variety of ways, including by Wells Fargo actively undermining Plaintiffs' and the other class members' ability to pay their mortgages without unlawful interference by Wells Fargo in the form of placing borrowers' loans into forbearance status without prior authorization.

256. Plaintiffs and the other class members have also been injured in that their mortgage loans have been unlawfully subjected to the risk that they could be treated as being in contractual

default as a result of Defendants' unauthorized forbearances and/or by the harm to borrowers' credit that results from having a mortgage loan that is improperly designated as being in forbearance status. Additional harms include threats to borrowers' ability to obtain, advance in, or maintain employment and/or loss of stature and other reputational damage to affected borrowers, denial of credit applications and/or obtaining higher cost credit than borrowers would ordinarily be entitled to obtain, freezing of accounts and loss of access to credit, cancellation of loan modifications in process and/or cancellation of completed and final loan modifications, and other economic harms, as well as needless aggravation, frustration and outrage over Defendants' misconduct, which Plaintiffs and other class members did nothing to provoke.

257. Plaintiffs were injured by Wells Fargo's material omissions of fact and fraudulent placement of their loans into forbearance status, including the cancellation of Plaintiff Forsburg's mortgage modification, credit damage, lost profits, loss of access to credit markets and/or home equity lines of credit, reputational damage, frustration, outrage, and various out-of-pocket costs and other pecuniary damages and general damages.

COUNT II
(FRAUD)

258. Plaintiffs repeat and reallege the allegations in this complaint.

259. Wells Fargo made material omissions of fact in failing to disclose to Plaintiffs that it had placed their loans into forbearance without their consent.

260. Plaintiffs detrimentally relied upon Wells Fargo's material omissions of fact when they did not inform Plaintiffs promptly that their accounts had been placed in forbearance and Plaintiff Forsburg did not challenge the forbearance to preserve his modification. Moreover, Plaintiffs Doctor and Castro and other class members continued to make their monthly mortgage

payments with the understanding and expectation that doing so would result in their loans being serviced in the ordinary course of business without the consequences associated with having a loan characterized as being in forbearance status.

261. Plaintiffs' reliance on Wells Fargo's material omissions of fact was justified and reasonable, as Plaintiffs were performing under their mortgage loans and had no basis to assume and were not on notice that Wells Fargo would defraud them by placing their loans into forbearance status without authorization, and no common law, statute, or other agreement among Plaintiffs and their mortgage lender and/or Wells Fargo authorized Wells Fargo to place borrowers' loans into forbearance without their consent.

262. Plaintiffs were injured by Wells Fargo's material omissions of fact and fraudulent placement of their loans into forbearance status, experiencing cancellation of Plaintiff Forsburg's mortgage modification, denial of Plaintiff Doctor's home equity line of credit application, denial of Mr. and Mrs. Castro's refinancing application, credit damage, loss of access to new credit and existing credit cards and home equity lines of credit, reputational damage, frustration, outrage, and various out-of-pocket costs and other pecuniary damages and general damages.

COUNT III
(VIOLATIONS OF THE TRUTH IN LENDING ACT & REAL ESTATE SETTLEMENT PROCEDURES ACT)

263. Plaintiffs repeat and reallege the allegations in this complaint.

264. As discussed above, mortgage servicers are responsible for collecting and processing mortgage payments received from borrowers. Any delay in processing payments can result in unwarranted late fees and/or unjustified claims of borrower default.

265. Complaints about slow payment processing led the Federal Reserve Board in 2008 to promulgate a rule requiring mortgage servicers to credit payments to consumers' accounts as of the date of receipt. Reg. Z, 12 CFR § 1026.36(c)(1)(i); 73 Fed. Reg. 44,522 (July 30, 2008). Section 1464 of the Dodd-Frank Act, enacted in 2010, essentially codified the FRB rule, and the CFPB finalized regulations implementing the prompt crediting provision of the Dodd-Frank Act. See 78 Fed. Reg. 10,902 (effective Jan. 10, 2014).

266. The Dodd-Frank Act amendments to the Truth in Lending Act ("TILA") also mandate that servicers credit periodic payments on consumer credit transactions secured by a consumer's principal dwelling as of the date of receipt. Like the FRB rule, there is an exception when a delay in crediting the payment does not result in any charge to the consumer or in the reporting of negative credit information to a consumer reporting agency. These statutory requirements were implemented through regulations that became effective on January 10, 2014. 15 USC 1639f(a).

267. The Official Interpretations to Regulation Z provide guidance on the exception permitting a delay in posting if there are no negative consequences to the consumer:

> Under § 1026.36(c)(1)(i), a mortgage servicer must credit a payment to a consumer's loan account as of the date of receipt. This does not require that a mortgage servicer post the payment to the consumer's loan account on a particular date; the servicer is only required to credit the payment *as of* the date of receipt. Accordingly, a servicer that receives a payment on or before its due date (or within any grace period), and does not enter the payment on its books or in its system until after the payment's due date (or expiration of any grace period), does not violate this rule as long as the entry does not result in the imposition of a late charge, additional interest, or similar penalty to the consumer, or in reporting of negative information to a consumer reporting agency.
>
> Official Interpretations to Reg. Z, ¶ 36(c)(1)(i)-1 (emphasis in original).

268. There is no exception to the prompt crediting rules when the borrower is in bankruptcy or in a trial loan modification. There is also no specific exception to the rule for small servicers. See 78 Fed. Reg. 10,902, 10,956 (Feb. 14, 2013).

269. The requirements of TILA typically do not directly apply to loan servicers. However, because 12 C.F.R. § 1024.36(b)(3) of the Real Estate Settlement Procedures Act ("RESPA") specifically identifies a violation of TILA under 12 C.F.R. § 1026.36(c)(1) as an error relating to the servicing of a borrower's mortgage loan, failure to comply with TILA's requirement that payments be credited as of the date of receipt is a RESPA violation.

270. Upon information and belief, Wells Fargo has placed Plaintiffs' mortgage loan accounts into forbearance and/or extended existing forbearance periods without Plaintiffs' knowledge, consent, or approval and violated RESPA and TILA by failing to apply Plaintiffs' monthly mortgage payments as of the date they came due and failing to report publicly that payments made by Plaintiffs have actually been received and applied.

271. Upon information and belief, Wells Fargo has demonstrated a pattern and practice of failing to comply with Regulations X and Z because Wells Fargo has engaged in this practice of placing borrowers in unwanted and unauthorized forbearance agreements on a nationwide basis.

272. As a result, Plaintiffs have been injured as a result of Wells Fargo's failure to comply with the requirements of RESPA and TILA. Plaintiffs have experienced cancellation of a mortgage modification, credit damage, loss of access to credit markets and/or home equity lines of credit, reputational damage, frustration, outrage, and various out-of-pocket costs and other pecuniary damages and general damages.

273. Accordingly, Wells Fargo is liable to Plaintiffs for actual damages, costs, attorneys' fees, and statutory damages of at least $2,000.00 per violation, pursuant to 12 U.S.C. § 2605.

COUNT IV
(VIOLATIONS OF THE FAIR CREDIT REPORTING ACT)

274. Plaintiffs repeat and reallege the allegations in this complaint.

275. Plaintiff Jenna Doctor is a "consumer" as that term is defined by 15 U.S.C. § 1681a(c).

276. Wells Fargo is a "furnisher" of consumer information as defined by 12 CFR 1022.41(c) and as described throughout the Fair Credit Reporting Act ("FCRA"), as Wells Fargo regularly reports consumer account information to the Credit Reporting Agencies for inclusion in credit reports.

277. Wells Fargo willfully violated 15 U.S.C. § 1681s-2(b) by failing to adequately investigate and correct inaccurate credit reporting information with the Credit Reporting Agencies following Plaintiff Jenna Doctor's formal reinvestigation requests with the Credit Reporting Agencies under 15 U.S.C. § 1681i.

278. Plaintiffs and the putative class members in this case have had their credit information compiled and furnished by Wells Fargo regarding their mortgage loans indicating falsely that Plaintiffs' and the putative class members' loans are in forbearance when Plaintiffs and the putative class members did not request forbearance.

279. Wells Fargo also failed to furnish information to the Credit Reporting Agencies regarding payments Plaintiffs and the putative class members in this case made on their mortgage loans during the period in which Plaintiffs' and the putative class members' loans were reported improperly as being in forbearance status.

280. Wells Fargo knew, or should have known, that Plaintiffs and the class members did not request or affirmatively consent to the mortgage loan forbearances that Wells Fargo reported to the Credit Reporting Agencies.

281. Despite the fact that Wells Fargo knew or should have known that it placed borrowers into mortgage forbearances that they did not request or consent to, Wells Fargo had a policy of reporting the forbearance in the comments section of Plaintiffs' and the class members' credit reports.

282. The forbearance notation on the class members' credit reports clearly indicates to potential creditors or other third parties that the class members experienced some sort of financial hardship. These forbearance notations adversely affect class members' ability to obtain credit.

283. Wells Fargo knew that the presence of the forbearance notations in the class members' credit reports would damage the class members' ability to obtain new credit, which may be essential to a consumer's daily life.

284. Wells Fargo's failure to report its receipt of payments made by Plaintiffs and the class members during the period in which Wells Fargo improperly furnished information to the Credit Reporting Agencies indicating that their loans were in forbearance status also adversely affects Plaintiffs' and the class members' ability to obtain credit, including but not limited to preventing and/or significantly impeding borrowers' ability to refinance their home mortgage loans and/or to borrower against the equity in their homes, as experienced by Ms. Doctor and Mr. and Mrs. Castro.

285. Wells Fargo has chosen to inaccurately report that Plaintiffs' and the class members' mortgage loan accounts were in forbearance and to falsely report "no data" or other

indication that fails to reflect Wells Fargo's receipt of payments during the period in which Wells Fargo improperly treated the loan as being in forbearance.

286. Wells Fargo received notice of Plaintiff Doctor's dispute from the Credit Reporting Agencies and either (1) failed to reasonably investigate the dispute or (2) investigated the dispute and incorrectly determined that it had been accurately reporting Plaintiff Doctor's and the class members' mortgage loan account.

287. Ms. Doctor disputed Wells Fargo's credit reporting with Equifax on or about July 7, 2020.

288. Ms. Doctor disputed Wells Fargo's credit reporting with Equifax again on or about July 16, 2020, and Equifax began a re-investigation of Ms. Doctor's dispute of Wells Fargo's reporting her mortgage loan account as in forbearance status.

289. Ms. Doctor submitted dispute letters to the Credit Reporting Agencies on July 31, 2020, disputing Wells Fargo's reporting of her mortgage loan account as "in forbearance" when Ms. Doctor never requested or authorized such forbearance.

290. Wells Fargo received an inquiry from each credit reporting agency as part of the Credit Reporting Agencies' investigation into each dispute submitted by Ms. Doctor.

291. Wells Fargo failed to adequately investigate Ms. Doctor's disputes raised in her letters to the Credit Reporting Agencies.

292. Upon information and belief, Wells Fargo failed to review all relevant information provided by the Credit Reporting Agencies and by Ms. Doctor in relation to each dispute sent to the Credit Reporting Agencies by Ms. Doctor.

293. Wells Fargo failed to conduct and report the results of a complete investigation into each dispute raised by Ms. Doctor.

294. Wells Fargo failed to promptly delete, modify, or block reporting of inaccurate, incomplete, or unverifiable information in response to each dispute raised by Ms. Doctor.

295. Wells Fargo failed to fully correct the information it supplied to the Credit Reporting Agencies regarding Ms. Doctor's account.

296. Wells Fargo has also breached its duties as set forth in 15 U.S.C. § 1681s-2(a) by failing to adequately investigate and fully correct inaccurate credit reporting information with the Credit Reporting Agencies following Ms. Doctor's dispute of the credit reporting errors.

297. In the event that Wells Fargo submitted corrections to the Credit Reporting Agencies regarding Ms. Doctor's account, it failed to correct its own records such that it would prevent re-reporting of the incorrect information in subsequent automatic system submissions to the Credit Reporting Agencies.

298. Ms. Doctor has incurred actual damages and has suffered physically, mentally, and emotionally as a result of Wells Fargo's willful violations of the Fair Credit Reporting Act.

299. Based on Wells Fargo's violations of 15 U.S.C. § 1681s-2(b), Plaintiffs and the class members are entitled to actual damages, costs, and attorneys' fees pursuant to 15 U.S.C. § 1681o.

300. Moreover, as a result of each and every negligent violation of the FCRA, Plaintiffs and the class are entitled to statutory damages and reasonable attorneys' fees pursuant to 15 U.S.C. § 1681o.

301. Plaintiffs and the class members are also entitled to statutory damages, punitive damages, and reasonable attorneys' fees for each and every of Wells Fargo's willful violation of the FCRA pursuant to 15 U.S.C. § 1681n(a).

COUNT V
(VIRGINIA COMMON LAW CIVIL CONSPIRACY)
(AS TO PLAINTIFF FORSBURG AND THE VIRGINIA CLASS MEMBERS)

302. Plaintiffs repeat and reallege the allegations in this complaint.

303. As alleged herein, with respect to Plaintiff Gerald Forsburg and members of the Virginia class, Defendants and the members of the Wells Fargo False Forbearance Enterprise constitute a combination of two or more persons.

304. The purpose of the Wells Fargo False Forbearance Enterprise is to accomplish, by concerted action, the unlawful purpose of obtaining loan workout compensation and/or of profiting from repurchasing borrowers' mortgage loans from the FHA and/or its investors based on false representations that borrowers' loans were in forbearance, profit by preventing financial losses associated with "loan runoff" (loss of income from borrowers' loans) with respect to borrowers who would otherwise have refinanced their loans, and/or to profit by securitizing the repurchased loans that Wells Fargo falsely represents to be in forbearance status, through the unlawful means of misrepresenting to investors, government agencies, credit reporting agencies, and those businesses and individuals who rely on the information reported by the credit reporting agencies, that borrowers' loans were in forbearance status at the borrowers' request.

305. Including all other applicable damages alleged herein, Plaintiff Forsburg and the members of the Virginia class have been damaged as a result of Defendants' acts in furtherance of Wells Fargo False Forbearance Enterprise by:

- Incurring damage to reputation, loss of access to credit, denial of credit, denial of employment, loss of employment, demotion of employment or loss of promotion, denial of security clearances, and other harmful consequences of having false and harmful information reported to the Credit Reporting Agencies by Wells Fargo, which information actually appeared on their credit reports regarding their mortgage loans.

- Harm to credit has been compounded by Wells Fargo's refusal to update and correct its false credit reporting regarding payments Wells Fargo accepted and applied to accounts of borrowers whose loans were placed in forbearance without their consent, when Wells Fargo should have been removing the special comment code falsely indicating the loan is in forbearance or any other distressed status, and by furnishing accurate information regarding Plaintiffs' and the other class members' monthly mortgage payments to the credit reporting agencies that were suppressed while the borrowers' loans were being treated as being in forbearance without the borrowers' consent.

- Being deprived of positive and accurate information Wells Fargo would otherwise have reported to the Credit Reporting Agencies, which Wells Fargo withheld solely because it was reporting these borrowers' loans as being in forbearance status.

- Being deprived of access to the CARES Act's forbearance provisions by being unwittingly forced into forbearance without their consent, thereby consuming months of available forbearance and preventing borrowers from subsequently requesting to have their loans placed into forbearance, as the CARES Act contemplates.

306. Plaintiff Gerald Forsburg and the members of the Virginia class are entitled to damages, including actual damages, punitive damages, and attorneys' fees as a result of Defendants' actions as described herein.

COUNT VI
(VIOLATIONS OF VIRGINIA'S BUSINESS CONSPIRACY STATUTE)
(AS TO PLAINTIFF FORSBURG AND THE VIRGINIA CLASS MEMBERS)

307. Plaintiffs repeat and reallege the allegations in this complaint.

308. As alleged herein, with respect to Plaintiff Gerald Forsburg and the members of the Virginia Class, Defendants and the other participants in the Wells Fargo False Forbearance Enterprise constitute a combination of two or more persons.

309. Among other things, one purpose of the Wells Fargo False Forbearance Enterprise was to willfully or maliciously injure Plaintiff Forsburg's and the Virginia Class members' reputation, trade, business, or profession.

310. As alleged herein, Plaintiff Forsburg and the other members of the Virginia class were damaged as a result of the conduct of the Wells Fargo False Forbearance enterprise in placing borrowers' accounts into forbearance status without their authorization and falsely representing to credit reporting agencies, Fannie Mae, Freddie Mac, Ginnie Mae, and/or the FHA, USDA, or VA and any investors having an interest in such borrowers' loans that such loans were in forbearance status.

311. Wells Fargo attempted to conspire with one or more of the other participants in the Wells Fargo False Forbearance Enterprise for the purpose of benefitting financially by obtaining loan workout incentive compensation, avoiding principal and interest advance obligations, and preventing loan runoff by preventing borrowers from refinancing their loans, while willfully disregarding the rights of Plaintiff Forsburg and the members of the Virginia class, despite having knowledge of the fact that placing loans into forbearance status would unfairly harm Plaintiff Forsburg and the other Virginia class members, who had not requested that their loans be placed into forbearance status.

312. Wells Fargo acted with legal malice toward Plaintiff Forsburg and the members of the Virginia class by disregarding and/or intentionally inflicting reputational and credit-related damages that Wells Fargo knew would result from its placement of borrowers' loans into forbearance status.

313. Wells Fargo's own website reveals that Wells Fargo is already conscious of many undesirable consequences of forbearances for borrowers. These include escrow shortages (because the escrow portion of forborne payments is not subject to deferral) and resulting payment increases, cancellation of mortgage modifications-in-progress, temporary inability to refinance loans that have been in forbearance, loss of access to credit, including inability to access existing lines of credit and home equity loans, and inability to get new unsecured loans and credit cards. https://update.wf.com/coronavirus/home-lending/. Additionally, when Wells Fargo places a borrower's account into forbearance status, Wells Fargo also cancels the borrower's pre-arranged automatic payments and cuts off the borrower's access to Wells Fargo's online mortgage payment applications, requiring the borrower to pay by telephone or by mail to Wells Fargo, all without prior notice to the borrower. This practice can result in borrowers incurring late fees, unanticipated arrearages, and can compromise the ability of Chapter 13 debtors to manage their budgets.

314. Wells Fargo's false forbearance notices purport to be retroactive to months that have already come due, including monthly payments that Wells Fargo has already collected. So, without authorization, Wells Fargo is depriving borrowers of the full relief the CARES Act would grant them in the event they later decide to accept a forbearance, reducing the available forbearance period to which they would otherwise be entitled under the CARES Act.

315. The conspiratorial actions of the participants in the Wells Fargo False Forbearance Enterprise caused Plaintiff Forsburg and the other Virginia class members to suffer damages, including reputational damage, credit harm, loss of credit opportunity, injury to trade, business, or profession, mental anguish, and emotional distress.

316. Because of Wells Fargo's violation of Virginia's civil conspiracy statute, the members of the Virginia class have incurred and are entitled recover treble their damages, including lost profits, as well as their reasonable attorneys' fees and costs of this litigation.

317. Because of Wells Fargo's violation of Virginia's civil conspiracy statute, the members of the Virginia class are entitled to an injunction prohibiting Wells Fargo from engaging in the practices and conduct complained of herein.

COUNT VII
(VIOLATION OF THE TEXAS DEBT COLLECTION ACT ("TDCA"))
(ON BEHALF OF PLAINTIFFS MR. AND MRS. CASTRO AND THE TEXAS CLASS)

318. Plaintiffs repeat and reallege the allegations in this complaint.

319. Plaintiffs Mr. and Mrs. Castro are "consumers" as that term is defined by the Texas Debt Collection Practices Act, set forth in Chapter 392 of the TEX. FIN. CODE (the "TDCA").

320. Mr. and Mrs. Castro's relationship with the Defendants arose out of a "consumer debt" as that term is defined in the TDCA.

321. Defendants regularly collect consumer debts and are a "debt collector" as that term is defined in the TDCA.

322. Defendants violated § 392.304(19) of the TDCA because they misrepresented to the credit reporting agencies that Mr. and Mrs. Castro's mortgage loan account was in forbearance status when Mr. and Mrs. Castro never consented to the alleged forbearance.

323. Moreover, Defendants' failure to provide any meaningful disclosure relating to the terms and consequences of being enrolled in the COVID-19 forbearance program before placing

Mr. and Mrs. Castro's mortgage loan into the program without Mr. and Mrs. Castro's consent was deceptive.

324. As alleged above, Defendants made misrepresentations to the credit bureaus that the Texas class members' mortgages were in forbearance when members of the Texas class did not consent to the alleged forbearance. Further, Defendants failed to provide any meaningful disclosure relating to the terms and consequences of being enrolled in the COVID-19 forbearance program before placing the Texas class members' mortgage loans into forbearance without their consent.

325. Mr. and Mrs. Castro and the members of the Texas class have suffered actual damages, including loss of credit, out-of-pocket expenses, and attorneys' fees, amongst others, and have suffered physically, mentally, and emotionally as a result of Defendants' violations of the TDCA.

326. Defendants violated the TDCA and Mr. and Mrs. Castro and the members of the Texas class are thus entitled to their actual damages, attorneys' fees, and injunctive relief pursuant to § 392.403 of the TDCA.

COUNT VIII
(VIOLATION OF THE FLORIDA CONSUMER COLLECTIONS PRACTICES ACT ("FCCPA"))
(ON BEHALF OF PLAINTIFF JENNA DOCTOR AND THE FLORIDA CLASS)

327. Plaintiffs repeat and reallege the allegations in this complaint.

328. Plaintiff Jenna Doctor is a "consumer," as she is a natural person obligated to pay a debt on her homestead property.

329. The debt which Defendants attempted to collect was a "consumer debt" within the meaning of § 559.55(1) of the FCCPA, as Ms. Doctor's mortgage debt in question arises out of debt incurred for family or household purposes.

330. Defendants violated § 559.72(5) of the FCCPA when Defendants represented to the credit reporting agencies that Ms. Doctor's mortgage loan account was in forbearance, when Ms. Doctor did not, in fact, consent to the placement of her account into forbearance status. Defendants knew that the information they reported to the credit reporting agencies was false because Defendants knew Ms. Doctor did not consent to the placement of her account in forbearance when it made each representation to the credit reporting agencies.

331. As alleged above, Defendants made representations to the credit reporting agencies that the mortgage loan accounts of the members of the Florida class were in forbearance when the members of the Florida class did not request or consent to the forbearance, and Defendants knew that the information it reported to the credit reporting agencies regarding the Florida class members' mortgage loan accounts was false.

332. Defendants' representations to the credit reporting agencies regarding Ms. Doctor and the members of the Florida class harmed Ms. Doctor's and the Florida class members' reputations. Specifically, due to Defendants' representations to the credit reporting agencies that Ms. Doctor's mortgage loan account was in forbearance, Ms. Doctor's application for credit was denied.

333. Pursuant to § 559.77(2) of the FCCPA, Ms. Doctor is entitled to her actual damages, statutory damages of $1,000.00, and her reasonable attorneys' fees and costs. The

members of the Florida class are entitled to statutory damages in the amount of $500,000 or 1% of the Defendants' net worth, whichever is less.

COUNT IX
VIOLATION OF THE CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT (ON BEHALF OF PLAINTIFF MS. PRADO AND THE CALIFORNIA CLASS)

334. Plaintiffs repeat and reallege the allegations in this complaint.

335. Ms. Prado brings this action under the California Consumer Credit Reporting Agencies Act, Cal. Civ. Code §§ 1785, *et seq.* ("CCCRAA") on behalf of herself and the California class members.

336. Ms. Prado and the members of the California class are consumers as that term is defined by Cal. Civ. Code § 1785.3(b).

337. In the regular course of its business operations, Wells Fargo routinely furnishes information to credit reporting agencies pertaining to transactions between Wells Fargo and its consumers, so as to provide information as to a consumer's credit worthiness, credit standing, and credit capacity.

338. This action concerns Wells Fargo's furnishing of false derogatory information on Ms. Prado's consumer credit report, as defined by Cal. Civ. Code § 1785.3(c).

339. Specifically, Wells Fargo furnished the information to the credit reporting agencies, as defined by Cal. Civ. Code § 1785.3(d), that Ms. Prado's mortgage loan account was in forbearance, when Ms. Prado did not request or consent to the forbearance.

340. Wells Fargo's reporting is misleading because it implies that Ms. Prado requested the forbearance when she did not.

341. Further, Wells Fargo failed to provide information relating to payments Ms. Prado made and did not decrease the principal balance owed on the loan, falsely reporting a larger amount due on Ms. Prado's mortgage loan account on her credit report.

342. Wells Fargo, its agents, subsidiaries, and partners are "persons" as defined by Cal. Civ. Code § 1785.3(j).

343. Wells Fargo furnished and continues to furnish information it knows is false, incomplete, misleading, and inaccurate in violation of Cal. Civ. Code § 1785.25(a).

344. The foregoing acts and omissions constitute numerous and multiple violations of the CCCRAA.

345. As evidenced above, Wells Fargo's violation of the CCCRAA is willful.

346. As a result of each and every violation of the CCCRAA, Ms. Prado and the California class members are entitled to damages, attorneys' fees, and costs pursuant to Cal. Civ. Code § 1785.31(a)(1) and Cal. Civ. Code § 1785.31(d); punitive damages of not less than $100.00 and up to $5,000.00 per willful violation of Cal. Civ. Code § 1785.25(a) pursuant to Cal. Civ. Code § 1785.31(a)(2)(B); and equitable and injunctive relief pursuant to Cal. Civ. Code § 1785.31(b).

COUNT X
VIOLATION OF THE CALIFORNIA ROSENTHAL ACT
(ON BEHALF OF PLAINTIFF MS. PRADO AND THE CALIFORNIA CLASS)

347. Plaintiffs repeat and reallege the allegations in this complaint.

348. Wells Fargo is a "debt collector" as that term is defined under the Cal. Civ. Code § 1788.2(c) because it collects, in the ordinary course of business numerous debts and payments from consumers.

349. This matter involves money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a "consumer debt" and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

350. As discussed above, Ms. Prado entered into a consumer credit transaction, as that term is defined by Cal. Civ. Code § 1788.2(e), involving an extension of credit pertaining to her mortgage loan.

351. Wells Fargo placed Ms. Prado and the California class members' mortgage loans into forbearance status without their consent.

352. Further, Wells Fargo continued to keep Ms. Prado and the California class members' mortgage loans in forbearance status, despite Ms. Prado and the members of the California class continuing to make their monthly mortgage payments. Upon information and belief, Wells Fargo failed to apply these payments towards the outstanding principal and interest on Ms. Prado's and the California class members' mortgage loan accounts.

353. Wells Fargo made representations that it will not place individuals into forbearance status without a consumer request, yet it placed Ms. Prado's and the California class members' mortgage loan accounts into forbearance without their knowledge or consent.

354. As such, Wells Fargo violated 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(5), 1692e(10), and 1692f, which are incorporated into Cal. Civ. Code § 1788.17, for making misrepresentations regarding forbearance, placing consumers into forbearance without their knowledge or consent, and attempting to extend consumers' forbearance periods without their knowledge or consent.

355. Wells Fargo also falsely communicated to the credit reporting agencies that Ms. Prado's and the California class members' mortgage loan accounts were in forbearance, in violation of 15 U.S.C. § 1692e(8), which is also incorporated in Cal. Civ. Code § 1788.17. Wells Fargo's false communications with third parties regarding Ms. Prado's and the California class members' accounts, and the amount still due and owing, were also false under §§ 1692e, 1692e(2), 1692e(5), and 1692e(10), which are incorporated in Cal. Civ. Code § 1788.17.

356. Wells Fargo continued to collect the monthly mortgage fees, despite placing Ms. Prado's mortgage loan account into forbearance and failing to apply those funds to her mortgage loan account.

357. Ms. Prado and the California class members seek statutory damages, attorneys' fees, and costs pursuant to Cal. Civ. Code § 1788.30.

COUNT XI
(BREACH OF CONTRACT)

358. Plaintiffs repeat and reallege the allegations in this complaint.

359. The notes and deed of trusts and/or mortgages for the Plaintiffs' mortgage loans constitute valid contracts between Plaintiffs and the owners of their loans.

360. Plaintiffs tendered performance according to the terms of the contracts.

361. Defendants breached the Plaintiffs' mortgage loan contracts by placing them into forbearance status without Plaintiffs' consent.

362. Defendants also breached the Plaintiffs' and other class members' mortgage loan contracts by placing borrowers' mortgage payments into suspense accounts instead of applying funds received according to the payment application provisions of such borrowers' mortgage notes and deeds of trusts/ mortgage

363. Plaintiffs have incurred actual damages and attorneys' fees as a result of Defendants' breaches of their mortgage loan contracts.

364. Plaintiffs are entitled to recover their actual damages and attorneys' fees for Defendants' breaches of their mortgage loan contracts, and request that the Court award the same.

COUNT XII
(GROSS NEGLIGENCE)

365. Plaintiffs repeat and reallege the allegations in this complaint.

366. In a mortgagor-mortgagee relationship, a lender owes a borrower the duty to exercise reasonable care to avoid a foreseeable risk of injury to the borrower. *Hurd v. BAC Loan Servicing, LP*, 880 F. Supp.2d 747, 763 (N.D. Tex. 2012) (citing *Thrash v. Ocwen Loan Servicing, LLC*, 433 B.R. 585, 598-97 (Bankr. N.D. Tex. 2010). *See also Lukasik v. San Antonio Blue Haven Pools, Inc.*, 21 S.W.3d 394, 403 (Tex. App.—San Antonio 2008, no pet.)(citing *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987)(Every person has a duty to exercise reasonable care to avoid foreseeable risk of injury to others.)); *Trevino v. HSBC Mortgage Services, Inc. (In re Trevino)*, 535 B.R. 110, 150-151 (Bankr. S.D. Tex. 2015).

367. By knowingly placing borrowers' loans into forbearance status without their consent, Defendants demonstrated an utter disregard of prudence amounting to complete neglect of the safety and financial welfare of the Plaintiffs and the other class representatives. Wells Fargo's misconduct is such a degree of negligence as would shock any fair-minded person. *Ferguson v. Ferguson*, 212 Va. 86, 92, 181 S.E.2d 648, 653 (1971) (emphasis omitted).

368. Alternatively, or additionally, Wells Fargo acted with willful and wanton negligence, with conscious disregard or reckless indifference, to Plaintiffs' and the other class members' rights by placing Plaintiffs' and other class members' mortgage loans into forbearance

status without their knowledge or consent. Wells Fargo knew from its knowledge of existing circumstances and conditions, as reflected by its own website and published materials and its own institutional knowledge regarding how the credit markets would function and the effect a forbearance notation would have on consumers' credit, that its conduct probably would cause injury to Plaintiffs and the other class members. *Woods v. Mendez*, 265 Va. 68, 76-77 (2003).

369. As a result of Wells Fargo's conduct as described herein, Plaintiffs have been damaged, including the cancellation of Plaintiff Forsburg's mortgage modification, credit damage, loss of access to credit markets and/or home equity lines of credit, reputational damage, frustration, outrage, and various out-of-pocket costs and other pecuniary damages and general damages.

COUNT XIII
(DEFAMATION)

370. Plaintiffs repeat and reallege the allegations in this complaint.

371. Wells Fargo furnished information to credit reporting agencies TransUnion, Experian, and Equifax that it knew to be false, namely that the loans of Ms. Doctor and the Castros were in forbearance status and that it had no data regarding payments that Wells Fargo actually received and applied to the mortgage loan accounts of Ms. Doctor and the Castros.

372. Wells Fargo acted with malice or willful intent to injure Ms. Doctor and the Castros when it knowingly reported false information to the credit reporting agencies indicating that the loans of Ms. Doctor and the Castros were in forbearance status and that Wells Fargo had no data regarding payments Wells Fargo actually received from and applied to the mortgage loan accounts of Ms. Doctor and the Castros.

373. The Castros and Ms. Doctor directly informed Wells Fargo that they did not want their loans to be in forbearance status.

374. Wells Fargo knew that neither the Castros nor Ms. Doctor requested to have their loans placed into forbearance status.

375. Wells Fargo knew that it had received and applied the Castros' and Ms. Doctor's mortgage payments when it reported to the credit reporting agencies that it had "no data" regarding payments made by the Castros and Ms. Doctor during the time when Wells Fargo placed the Castros' and Ms. Doctor's accounts into forbearance status without their consent.

376. Wells Fargo continued to report to the credit reporting agencies that the accounts of the Castros and Ms. Doctor were in forbearance status and that Wells Fargo had no data regarding payments received during the time when Wells Fargo was reporting the loan as being in forbearance, even after being informed by the Castros and Ms. Doctor that their respective accounts were being improperly reported as being in forbearance status and that the payments that the Castros and Ms. Doctor had made were not reflected on their credit reports.

377. After the Castros informed Wells Fargo that they did not want their loan to be in forbearance status, and despite Wells Fargo receiving the Castros' payments during the original forbearance period, Wells Fargo unilaterally extended the forbearance period for the Castros' loan and continued to report to the credit reporting agencies that the Castros' loan was in forbearance status and that it had no data about the payments that Wells Fargo was receiving from the Castros each month.

378. Upon information and belief, Wells Fargo also falsely reported to Fannie Mae and/or the Fannie Mae Trust (and by extension, Wells Fargo reported to the investors in the

Fannie Mae Trust) that the Castros' loan was in forbearance status when Wells Fargo was receiving the Castros' payments and was actually aware that the Castros did not want their loan to be treated as being in forbearance status.

379. The Castros have been unable to refinance their mortgage loan because of Wells Fargo's knowingly false reporting to the credit reporting agencies that their mortgage loan account was in forbearance status and because Wells Fargo reported to the credit reporting agencies that Wells Fargo had no data regarding the Castros' payments during the period when Wells Fargo treated the Castros' loan as being in forbearance without the Castros' consent.

380. Ms. Doctor was unable to obtain a line of credit or loan against the equity in her home from her credit union because of Wells Fargo's knowingly false reporting to the credit reporting agencies that her mortgage loan account was in forbearance status and because Wells Fargo reported to the credit reporting agencies that Wells Fargo had no data regarding Ms. Doctor's payments during the period when Wells Fargo treated Ms. Doctor's loan as being in forbearance.

381. Plaintiffs and the class members are entitled to actual and exemplary / punitive damages as a result of Wells Fargo's publication of false defamatory statements about them.

COUNT XIV
(ATTORNEYS' FEES)

382. Plaintiffs repeat and reallege the allegations in this complaint.

383. Through the conduct described herein and as set forth above, Wells Fargo has inflicted actual damages upon Plaintiffs in a variety of ways.

384. Moreover, Plaintiffs have been forced to retain legal counsel, who has incurred reasonable and necessary attorneys' fees on their behalf. Such fees are properly taxed against Wells

Fargo by virtue of Wells Fargo's violations of RICO, RESPA, the FCRA, Virginia Civil Conspiracy, Texas Debt Collection Act, Florida Consumer Collections Practices Act, and for its liability to Plaintiffs resulting from its fraud and/or gross negligence and breaches of contract. The Court may, and on these facts the Court should, award Plaintiffs their attorneys' fees as against Wells Fargo pursuant to the Court's inherent authority.

VII. REQUEST FOR DECLARATORY RELIEF

385. Plaintiffs repeat and reallege the allegations in this complaint.

386. As outlined in the preceding counts and the preceding factual allegations, Wells Fargo has violated the CARES Act, TILA, FCRA, RESPA, Virginia Civil Conspiracy (Statutory and Common Law), FCCPA, TDCA, and RICO.

387. Particularly with respect to the CARES Act, which does not provide an independent private right of action for borrowers whose loans are impacted by servicer misconduct in violation of the CARES Act's express requirements, a Declaratory Judgment confirming the unlawful nature of Wells Fargo's placement of borrowers' loans into CARES Act forbearance without their consent is necessary to protect other borrowers against similar, future violations by Wells Fargo and to put other mortgage servicers on notice that the kind of conduct outlined herein is unlawful.

VIII. REQUEST FOR PRELIMINARY INJUNCTION

388. Plaintiffs repeat and reallege the allegations in this complaint.

389. Pursuant to Fed. R. Civ. P. 65, Plaintiffs and the class are entitled to a preliminary injunction enjoining Wells Fargo from engaging in the acts and practices described herein, including:

- Placing borrowers' loans into forbearance status without authorization from the borrowers.
- Canceling any loan modifications in progress or completed prior to placing loans into forbearance status without borrower authorization.
- Communicating to any credit reporting agency, GSE, or other third party that a borrower's loan is in forbearance status unless the borrower authorized placement of the loan into forbearance.
- Foreclosing on any borrower whose loan was placed into forbearance status without authorization so long as this case is pending.
- Sending false and misleading communications to class members regarding the status of their mortgage loans.

390. Plaintiffs assert that Wells Fargo will continue to wrongfully treat loans as being in forbearance and/or will place loans into forbearance status without the consent of the borrowers on such loans, in direct violation of the requirements of the CARES Act and in breach of borrowers' mortgage loan agreements.

391. There is a substantial likelihood that Plaintiffs will prevail on the merits, as numerous courts and regulators have already sanctioned Wells Fargo for similar misconduct. *See* **Appendix 1**.

392. The harm faced by the Plaintiffs and the class outweigh any "harm" that will be sustained by Wells Fargo if the preliminary injunction were granted. The summary of some of the panoply of the harms to borrowers (and to the integrity of the financial system) caused by Wells

Fargo's misconduct is described above. These harms far outweigh Wells Fargo's interest in profiting and/or minimizing losses by illegally placing borrowers' loans into forbearance status.

393. Issuing a preliminary injunction will not adversely affect the public interest but rather will enhance it. Wells Fargo's actions flout the clear requirements of the CARES Act, and make a mockery of the integrity of the credit markets, GSEs' mortgage backed investment trusts, and other fundamental aspects of financial systems, as well as the good faith market participants who rely upon its transparency to make informed decisions. Wells Fargo's actions broadcast (again) its perception that it has impunity for conduct that overtly disobeys the provisions of the laws of the United States. Wells Fargo's actions erode public confidence in the rule of law and the integrity of our free markets, which depend on participants, especially major national banks like Wells Fargo, playing by the rules and not making up rules as they go along according to what seems convenient.

394. The public has the right to expect that the courts will not condone contemptuous disregard for the laws of the United States and will act to appropriately sanction bad faith actors who cause harm to the economy and especially to individual consumers who have done nothing wrong. Even though the Court should balance the threatened injury to Plaintiffs against any harm to the defendant, when balancing the hardships of the public interest against a private interest, the public interest should receive greater weight. *See FTC v. World Wide Factors*, 882 F.2d 344, 346-47 (9th Cir. 1989). The substantial adverse effects of Wells Fargo's unauthorized mortgage forbearances militate strongly in favor of this Court issuing a preliminary injunction.

395. The posting of a bond is not a prerequisite to the issuance of a preliminary injunction in this case because Wells Fargo cannot demonstrate that preserving the status quo will

cause it cognizable economic harm. *See FTC v. Southwest Sunsites, Inc.*, 665 F. 2d 711, 714 n.1 (5th Cir. 1982) (ruling that a temporary restraining order or preliminary injunction may be granted without bond). Wells Fargo's unauthorized placement of borrowers' loans into forbearance alters the status quo. The Plaintiffs and class members were in the status quo when they were paying their mortgages in the ordinary course. The status quo is the mortgage loan contract, and since the Plaintiffs and class members have demonstrated no desire to modify the status quo, the posting of security is unnecessary.

396. In addition, or alternatively, the Court can issue a preliminary injunction to prevent Wells Fargo from taking the actions Plaintiffs and the class seek to enjoin based on its inherent authority. Plaintiffs and class members have alleged that Wells Fargo is engaging in brazen violations of clearly articulated and duly ratified law of the United States, as embodied in the CARES Act, and the preliminary injunction is simply a directive of the Court seeking to ensure that such violation(s) cease and that the status quo contemplated by the CARES Act be restored.

397. Plaintiffs ask the Court to set this application for preliminary injunction for hearing if the parties are unable to agree to a preliminary injunction and, after hearing the request, issue a preliminary injunction against Wells Fargo enjoining it from the actions set out above.

IX. REQUEST FOR PERMANENT INJUNCTION

398. Plaintiffs repeat and reallege the allegations in this complaint.

399. Plaintiffs and the class are entitled to an injunction permanently enjoining Wells Fargo from engaging in the acts and practices above as to any person who is a member, or could become a member, of the class of persons described in this suit.

X. DEMAND FOR JURY TRIAL

400. Plaintiffs repeat and reallege the allegations in this complaint.

401. Plaintiffs and the class request a jury trial for any and all counts contained herein for which a trial by jury is permitted by law.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants be cited to appear and answer these allegations and that, upon final trial of this cause, they be granted all relief to which they are justly entitled, including:

a. Certification of the nationwide class and the subclasses of borrowers that were placed in mortgage forbearances by Defendants without the borrowers' authorization or consent;

b. All actual damages, including attorneys' fees and costs (at trial and on appeal) to which Plaintiffs are entitled;

c. All compensatory damages to which Plaintiffs are entitled, including attorneys' fees and costs, as well as exemplary damages, and/or punitive damages, treble damages, and sanctions for Defendants' actions as described herein;

d. An injunction preventing Defendants from engaging in the conduct described herein and requiring Defendants to obtain authorization from borrowers before placing borrowers in a mortgage forbearance;

e. A declaratory judgment confirming the unlawful nature of Wells Fargo's unauthorized placement of borrowers' loans into and/or unauthorized extension of CARES Act forbearance; and

f. All such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I, Theodore O. Bartholow, III, swear under penalty of perjury that Wells Fargo has confirmed in writing that it consents to Plaintiffs' filing of the foregoing second amended complaint.

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the parties listed below via ECF notification and/or electronic mail on September 25, 2020.

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

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Appendix 1

Wells Fargo's History of Significant Customer Abuses (2011-present)

(a) April 13, 2011 - Wells Fargo's consent order with the OCC.

On March 31, 2011, Wells Fargo entered into a Consent Order with the Office of the Comptroller of Currency ("OCC").[1] The order primarily addressed Wells Fargo's "robosigning"[2] of affidavits and notarizations, and foreclosing on borrowers without the holding the proper chain of title.[3] Amongst other things, Wells Fargo was ordered to comply with bankruptcy law.[4]

(b) April 4, 2012 – The National Mortgage Settlement

On April 4, 2012, the Court in *U.S. v. Bank of America, et al.*, entered a consent order with Wells Fargo as part of the "Mortgage Servicing Settlement" entered into by five big banks, the attorney general, and most of the States.[5] The Mortgage Servicing Settlement requires Wells Fargo to take numerous actions with respect to bankruptcy servicing, including the following: (1) adopting new procedures regarding the preparation and execution of proofs of claim, affidavits, and declarations filed in bankruptcy cases in order to ensure such documents are accurate and properly executed; (2) providing borrowers with certain documents and information, including payment histories, monthly mortgage statements, etc.; (3) remediating inaccuracies in borrowers' account information; (4) applying borrowers' post-petition payments accurately to pre-petition

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[1] *See* https://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47k.pdf.
[2] The term, "robosigning" has been used to describe signatures applied to mass-produced "verifications" purporting to attest to material facts, which appear to have been "executed" by individuals ("robosigners") who did not verify the contents of the documents they executed and/or whose "signature" was applied without their knowledge to fraudulently "verify" the statements in documents that the person did not review.
[3] *See id.* at Art. I(2).
[4] *See id.* at Arts. III(3)(d); VI(1)(e) and (q); V(1) and (1)(c) and (j); and VII(3)(a) and (b).
[5] The original servicers were Ally Financial, Inc., Bank of America Corp., Citigroup, Inc., J.P.Morgan Chase & Co. and Wells Fargo & Co. *See*, https://www.justice.gov/sites/default/files/crt/legacy/2012/04/11/scra_ wellsfargo_settle.pdf

arrearage amounts and post-petition payment amounts; (5) ensuring that proofs of claim and motions for relief from stay filed in debtors' bankruptcy cases are properly documented; (6) conducting quarterly reviews of documents filed in judicial foreclosure and bankruptcy proceedings to ensure compliance with the settlement; (7) taking appropriate steps to oversee third-party service providers, ensuring that documents prepared by third parties comply with the document requirements in the agreement, and conducting appropriate quality assurance reviews of third-party service providers; and (8) timely filing appropriate notices regarding post-petition fees and charges, timely filing replies to notices of plan payment completion, and, if such notices are not timely filed, agreeing not to collect such fees and charges from the borrower.

(c) June 16, 2015 - Wells Fargo's amended consent order with the OCC.

The OCC found that Wells Fargo failed to comply with Articles II, III, IV, VIII and IX of the April 13, 2011 Consent Order, that Wells Fargo "is in continuing noncompliance with and in violation of the Consent Order, and continues to engage in unsafe and unsound practices."[6] The OCC placed severe restrictions on Wells Fargo's ability to obtain servicing rights, among other restrictions.[7]

(d) November 19, 2015 - Wells Fargo's settlement with the United States Trustee regarding Rule 3002.1 payment change notices ("PCN"). $81.6 million.

On November 19, 2015, Wells Fargo entered into a settlement with the United States Trustee ("UST") in the case of *In re Green*, Case No. 11-33377, pending in the United States Bankruptcy Court for the District of Maryland, Greenbelt Division, Docket No. 54.[8] The settlement agreement was implemented by order of the bankruptcy court.

[6] *See* Art. I(1) and (2). https://www.occ.gov/static/enforcement-actions/ea2015-067.pdf.
[7] *Id.* at p. 2.
[8] *See* https://www.justice.gov/opa/file/794841/download.

In the settlement agreement, the UST found that Wells Fargo failed to timely file notice of payment changes ("PCN") or failed to file PCNs at all. Wells Fargo confirmed systemic issues with the filing of PCNs, as well as systemic issues related to the preparation of annual escrow analyses for borrowers in bankruptcy cases and misapplication of escrow shortage payments.[9] In the *Green* agreement, Wells Fargo states that "Wells Fargo has implemented, or will implement, a number of operational enhancements to ensure that all PCNs filed in Bankruptcy Cases going forward are Properly Filed PCNs."[10] "Properly Filed PCNs" is defined as:

> "Properly Filed PCN" shall mean a PCN that is: (1) timely filed with the bankruptcy court that provides the borrower with the correct payment change amount and the correct date that the new payment change will go into effect; and (2) ***otherwise accurate and in compliance with the requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.***
>
> *Id.* at Art. II (emphasis added).

The November 19, 2015 settlement with the UST required Wells Fargo to credit accounts of debtors in bankruptcy and provide refunds of approximately $81.6 million.[11] It required Wells Fargo to make numerous operational enhancements by November 30, 2015, including training, certifications, monitoring and a control process through random selections by a quality assurance and compliance team. It also required the preparation of reports "showing all future changes in the monthly payment amount for customers in bankruptcy, and reviews of the populations identified in those reports," with such reports going to senior management in bankruptcy and

[9] For the time period between December 1, 2011, and March 31, 2015, Wells Fargo identified 84,480 active accounts for which a Payment Change Notice ("PCN") was or should have been filed. Of the 84,480 active accounts, there were 54,837 for which Wells Fargo filed an untimely PCN or missed filing a PCN altogether. Of the 54,837 active accounts, 42,756 accounts had an increase in the payments associated with the untimely filed or missed PCN. *Id.* at Art. III(3). Wells Fargo also described its failures with respect to debtors' escrow accounts. *Id.* at Art. IV.
[10] *Id.* at Art. V(12).
[11] *Id.* at Art. VI and Ex. A thereto.

mortgage servicing.[12] The settlement set up expansive duties for an independent reviewer with reporting duties.[13]

The Independent Reviewer was supposed to assess, among many other aspects of the settlement agreement, whether, subsequent to March 31, 2015, Wells Fargo "has filed Properly Filed PCNs in Bankruptcy Cases involving loan modifications."[14] The Independent Reviewer released two reports on Wells Fargo's progress in complying with the agreement, one in August 2016 and another in May 2017.

(e) May 24, 2016 - Wells Fargo's amended consent order with the OCC – $70 million fine regarding Rule 3002.1 payment change notices (PCN).

On May 24, 2016, Wells Fargo entered into an amended consent order whereby the OCC terminated the 2011 Consent Oder and the 2013 and 2015 Amended Consent Orders, thereby lifting the servicing restrictions of the 2015 Consent Order. However, the OCC required Wells Fargo to pay a $70,000,000.00 civil money penalty for the violations of bankruptcy law (PCNs and escrow accounts) detailed by the UST in the November 19, 2015 settlement in *Green*.[15]

Thus, at this point Wells Fargo had been fined/ incurred damages of ***$155 million*** for its violation of law with respect to bankruptcy payment change notices. Fed. R. Bankr. P. 3002.1(b).

(f) September 8, 2016 - Wells Fargo's settlement with the CFPB, OCC and City of Los Angeles - $185,000,000.

[12] *See id.* at Art. V.
[13] *See id.* at Art. VII.
[14] *Id.* at Art. VII, ¶ 45.k.(b).
[15] The OCC found that Wells Fargo's untimely and missed PCN filing practices on which the UST settlement was based did not comply with Bankruptcy Rules, required Wells Fargo to undertake operational enhancements to achieve compliance, and were unsafe and unsound practices. The OCC also found that between March 2013 and October 2014, Wells Fargo made escrow calculation errors in 76,720 accounts due to an error in a proprietary loan decisioning software tool, that the errors led to escrow overages in 29% of the loan population and escrow shortages in 67% of the loan population, and also led to approximately 184 incorrect loan modification denials.

On September 8, 2016, Wells Fargo entered into a $100 million settlement with the Consumer Financial Protection Bureau ("CFPB") based on the CFPB's findings that Wells Fargo had (1) opened unauthorized deposit accounts for existing customers and transferred funds to those accounts from their owners' other accounts, all without their customers' knowledge or consent; (2) submitted applications for credit cards in consumers' names using consumers' information without their knowledge or consent; (3) enrolled consumers in online banking services that they did not request; and (4) ordered and activated debit cards using consumers' information without their knowledge or consent. The CFPB determined that Wells Fargo took these actions to hit sales targets and receive bonuses. Wells Fargo also agreed to pay $35 million to the OCC and $50 million to the Los Angeles city attorney.

Although Wells Fargo had fired 5,300 employees and blamed them for the fraudulent actions, public outcry led to Senate hearings, the ouster of John Stumpf, the clawback of more than $60 million in compensation from Mr. Stumpf and Carrie Tolstedt.[16] Wells Fargo has also entered into a $142 million settlement with account holders.[17]

(g) November 18, 2016 - New restrictions on Wells Fargo by OCC.

After the abrupt resignation of Mr. Stumpf and the firing of some senior management employees in connection with the fraudulent account scandal, the OCC issued a statement on November 18, 2016 revoking relief granted to Wells Fargo from certain regulatory requirements, particularly with respect to Wells Fargo's ability to change its directors and senior executive officers and offering golden parachute payments.

[16] Stacy Cowley, *Wells Fargo's Reaction to Scandal Fails to Satisfy Angry Lawmakers*, N.Y. Times, Sept. 29, 2016, https://www.nytimes.com/2016/09/30/business/dealbook/wells-fargo-ceo-john-stumpf-house-hearing.html.
[17] *See Jabbari v. Farmer*, No. 18-16213, No. 18-16236, No. 18-12684, No. 18-12685, No. 18-16315, No. 18-16317, 2020 WL 4048683 (9th Cir. July 20, 2020)(overruling objections to approval of class action settlement).

(h) Unauthorized loan modifications in Chapter 13 bankruptcies

Plaintiffs in a class action lawsuit filed in 2017 alleged, and bankruptcy courts in North Carolina and Pennsylvania found in at least three individual cases that Wells Fargo was filing Rule 3002.1(b) mortgage payment change notices in debtors' Chapter 13 bankruptcies that placed debtors in trial loan modification payment plans, without the approval of the debtors, the debtors' bankruptcy counsel, the Chapter 13 Trustees, or the bankruptcy court. Judge Beyer of the United States Bankruptcy Court for the Western District of North Carolina stated in an Order in one of the individual cases that Wells Fargo's actions went "beyond the pale of due process."[18]

(i) April 20-21, 2018 - $1 billion settlement with the CFPB and OCC

0n April 21, 2018, Wells Fargo entered into separate agreements with the CFPB and OCC that required Wells Fargo to pay a total of $1 billion in penalties to settle investigations into Wells Fargo's risk management, compliance management, and mortgage and auto lending practices. The CFPB and OCC penalized Wells Fargo for its conduct in forcing customers to pay for extending the length of an interest rate lock on mortgage applications, even when the bank was responsible for delays in the application process, as well as for Wells Fargo's practices relating to forcing customers to purchase unnecessary insurance policies when purchasing vehicles with loans from Wells Fargo.[19]

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[18] *In re Allen*, Case No. 13-31034, Order Sustaining Objection to Notice of Mortgage Payment Change, Docket No. 29 (Bankr. W.D. N.C. Sept. 19, 2016). *See also In re Roman*, Case No. 15-31462, Order Sustaining Objection to Notice of Mortgage Payment Change, Awarding Fees and Expenses to Debtor's Counsel to be Paid by Wells Fargo, and Setting Compliance Hearing for October 25, 2016, Docket No. 34 (Bankr. W.D. N.C. Oct. 14, 2016); *In re Eyer,* Case No. 12-70985, Memorandum Order Striking Notice of Payment Change, Docket No. 93 (Bankr. W.D. Penn. Dec. 30, 2015)(bankruptcy court entered an order striking a similar notice of mortgage payment change because the notice had "nothing to do with the [d]ebtor's current obligations under its note and/or mortgage with Wells Fargo.").

[19] *See*, https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-settlement-wells-fargo-auto-loan-administration-and-mortgage-practices/ and https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-41.html.

The CFPB and OCC determined that Wells Fargo charged more than 800,000 people were charged for auto insurance they did not need, and the expenses of the unnecessary insurance pushed roughly 274,000 Wells Fargo customers into delinquency and resulted in almost 25,000 wrongful vehicle repossessions.[20] However, even after Wells Fargo's practices were exposed, Wells Fargo failed to refund money owed to customers who paid their car loans off early, meaning tens of thousands of customers did not receive proper refunds.[21]

Following the settlement, the *Wall Street Journal* reported that Wells Fargo struggled to effectively remediate customers that were harmed by Wells Fargo's improper conduct. For example, Wells Fargo sent refunds to people that were not Wells Fargo customers, notified those who were harmed of incorrect amounts to eb paid, and told people of coming refunds even though they had never gotten the insurance.[22] Wells Fargo also reportedly proposed a refund request process that required customers to agree to a refund through the mail before sending the money, despite its own estimates that half or fewer of affected customers would take the necessary steps to get the refund.[23] In September 2018, the OCC rejected Wells Fargo's plan for remediation.[24]

(j) July 2018 – Wells Fargo charging consumers for pet insurance, legal services

In July 2018, Wells Fargo was investigated by the CFPB for its practices of charging monthly fees for dozens of add-on products such as pet insurance and legal services that were

[20] Gretchen Morgenson, *Wells Fargo Forced Unwanted Auto Insurance on Borrowers*, New York Times, July 27, 2017, https://www.nytimes.com/2017/07/27/business/wells-fargo-unwanted-auto-insurance.html.
[21] Gretchen Morgenson, *Wells Fargo, Awash in Scandal, Faces Violations Over Car Insurance Refunds*, New York Times, August 7, 2017, https://www.nytimes.com/2017/08/07/business/wells-fargo-insurance.html.
[22] Gretchen Morgenson and Emily Glazer, *Wells Fargo Fumbles Efforts to Repay Aggrieved Customers*, Wall Street Journal, February 10, 2018, https://www.wsj.com/articles/wells-fargo-struggles-to-repay-aggrieved-customers-1518295023.
[23] *Id.*
[24] Patrick Rucker, *Exclusive: U.S. regulators reject Wells Fargo's plan to repay customers - sources*, Reuters, September 11, 2018, https://www.reuters.com/article/us-wells-fargo-insurance-exclusive/exclusive-u-s-regulators-reject-wells-fargos-plan-to-repay-customers-sources-idUSKCN1LR2LG.

added to hundreds of thousands of accounts without customers' full understanding. These charged Wells Fargo allegedly refunded millions of dollars in monthly fees to customers.[25]

(k) December 2018 - $575,000,000 settlement with 50 states and D.C.

On December 28, 2018, Wells Fargo agreed to pay $575 million to resolve claims with 50 states and the District of Columbia relating to Wells Fargo's practice of opening accounts without consumer consent, force-placed collision insurance on auto loans, and excessive fees charged to mortgage borrowers for extending a rate lock.[26]

(l) February 21, 2020 –$3 billion settlement with U.S. Department of Justice

On February 21, 2020, Wells Fargo agreed to pay $3 billion to resolve its potential criminal and civil liability stemming from DOJ allegations that it engaged in a years-long process of pressuring employees to meet unrealistic sales goals that led to the creation of thousands of fake accounts. In connection with the settlement, Wells Fargo admitted that it collected millions of dollars in fees and interest to which it was not entitled, harmed certain customers' credit, and unlawfully misused customers' personal information. https://www.justice.gov/opa/pr/wells-fargo-agrees-pay-3-billion-resolve-criminal-and-civil-investigations-sales-practices.

(m) Other alleged abusive practices

Wells Fargo has also allegedly engaged in a number of other abusive practices:

- In 2015, the OCC found deficiencies in Wells Fargo's internal controls related to the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) rules in the Wholesale Banking Group. The consent order noted that "the Bank has failed to make acceptable substantial progress toward correcting previously identified BSA/AML problems that were previously

[25] Emily Glazer, *Wells Fargo's Latest Challenge: Refunds for Pet Insurance, Legal Services*, Wall Street Journal, July 19, 2018, https://www.wsj.com/articles/wells-fargos-latest-challenge-refunds-for-pet-insurance-legal-services-1532009933.
[26] Rachel Witkowski, "Wells Fargo to pay state regulators $575M over phony accounts, other scandals," American Banker, December 28, 2018, https://www.americanbanker.com/news/wells-fargo-to-pay-state-regulators-575m-over-phony-accounts-other-scandals.

brought to its attention."[27]

- Between January 2008 and July 2015, Wells Fargo repossessed vehicles belonging to 450 members of the military in violation of the Servicemembers Civil Relief Act (SCRA).[28] And a second set of different SCRA violations came to light in a September 2016 settlement with the Department of Justice (DOJ) that brought the total number of servicemembers eligible for relief to 860.[29]

- Wells Fargo acknowledged in SEC filings that, between April 2010 and October 2015, it made "calculation error[s]" that denied loan modifications to hundreds of eligible homeowners, leading to approximately 400 wrongful foreclosures.[30]

- According to a CNN report, between March 2013 and August 2017, Wells Fargo failed to properly compensate certain lower-level employees for legally required break periods. A federal judge ordered the bank to pay more than $97 million in damages.[31]

- Wells Fargo disclosed in March 2018 that federal agencies were looking into the bank's wealth management business.[32] The federal agencies were examining "whether there have been inappropriate referrals or recommendations, including with respect to rollovers for 401(k) plan participants, certain alternative investments, or referrals of brokerage customers to the company's investment and fiduciary services business."[33]

- Wells Fargo employees in the bank's Wholesale Banking Group reportedly changed information on business customers' documents without authorization,[34] and, as a result, the DOJ launched an investigation into whether "there is a pattern of unethical and potentially fraudulent employee behavior tied to management pressure."[35]

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[27] Comptroller of the Currency, In the Matter of Wells Fargo Bank, National Association, Sioux Falls, South Dakota, AA-EC-2015-79, https://www.occ.gov/static/enforcement-actions/ea2015-125.pdf.
[28] Department of Justice, "Justice Department Obtains $5.4 Million in Additional Relief to Compensate Servicemembers for Unlawful Repossessions by Wells Fargo Dealer Services," press release, November 14, 2017, https://www.justice.gov/opa/pr/justice-department-obtains-54-million-additional-relief-compensate-servicemembers-unlawful.
[29] *Id.*
[30] Securities and Exchange Commission, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended June 30, 2018, Wells Fargo & Company, https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/second-quarter-10q.pdf.
[31] Matt Egan, *Wells Fargo owes $97 million to California workers*, CNN Business, May 10, 2018, https://money.cnn.com/2018/05/10/news/companies/wells-fargo-worker-lawsuit-97-million/index.html.
[32] Securities and Exchange Commission, Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended May 31, 2018, Wells Fargo & Company, https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/first-quarter-10q.pdf.
[33] *Id.*
[34] Emily Glazer, *Wells Fargo Employees Altered Information on Business Customers' Documents*, Wall Street Journal, May 17, 2018, https://www.wsj.com/articles/wells-fargo-employees-altered-information-on-business-customers-documents-1526564170.
[35] Emily Glazer, *Justice Department Probing Wells Fargo's Wholesale Banking Unit*, Wall Street Journal, September

- In a February 2018 report, the CFPB found that Wells Fargo charged students three times more than its competitors for financial products marketed to them through agreements with their colleges.[36] The CFPB analysis examined bank fees at 573 colleges and found that the students at the 30 colleges with Wells Fargo products paid more in total bank fees than the students at the other 543 schools served by other banks combined.[37]

- A February 2019 report revealed that employees in the Wholesale Banking division of Wells Fargo "routinely falsified clients' signatures and otherwise doctored paperwork" in order to comply with a legal settlement with the OCC related to violations of anti-money laundering laws.[38]

- In August 2019, reports identified multiple instances of Wells Fargo closing their customers' accounts without authorization and subsequently charging overdraft fees.[39]

6, 2018, https://www.wsj.com/articles/justice-department-probing-wells-fargos-wholesale-banking-unit-1536244490.

[36] Letter from Consumer Financial Protection Bureau to the Department of Education regarding Bureau's Office for Students and Young Consumers college-sponsored deposit and prepaid accounts analysis, February 5, 2018, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_foia_letter-to-department-education_record_2018-02.pdf.

[37] *Id.*

[38] The Capitol Forum, "Wells Fargo: Employees Doctored Signatures, Raising Possibility of Federal Penalties," February 14, 2019. https://thecapitolforum.com/wp-content/uploads/2019/02/Wells-Fargo-2019.02.14.pdf.

[39] Emily Flitter, "Wells Fargo Closed Their Accounts, but the Fees Continued to Mount," New York Times, August 16, 2019, https://www.nytimes.com/2019/08/16/business/wells-fargo-overdraft-fees.html.

EXHIBIT F

SIGNED THIS 22nd day of September, 2020

THIS ORDER HAS BEEN ENTERED ON THE DOCKET. PLEASE SEE DOCKET FOR ENTRY DATE.

Paul M. Black
UNITED STATES BANKRUPTCY JUDGE

Bartholow Ex.F

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 & CO., WELLS FARGO BANK, N.A., Defendants.	Adversary No. 20-07028

AGREED ORDER RESOLVING
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Troy Shannon Harlow, Mark Stephen Estes, Kimberly Porter Fewell, Beatriz Villegas-Rodriguez, and Rodolfo Rodriguez ("Plaintiffs") and Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A. ("Wells Fargo," and, collectively with Plaintiffs, "Party" or

"Parties") have requested that the Court cancel the hearing on Plaintiffs' Motion for Preliminary Injunction (the "PI Motion") (Doc. No. 26) scheduled for October 13, 2020.

In connection with this agreement, Wells Fargo has voluntarily agreed that, until such time as the Court enters an order superseding this order or a final judgment in this matter, that Wells Fargo will not (a) activate a COVID-19 pandemic-related forbearance ("Forbearance") on the mortgage account of any Wells Fargo customer who is currently in Ch. 13 bankruptcy unless the customer (or an authorized representative) requests the Forbearance, which request may be made verbally, in writing or through Wells Fargo's interactive voice recognition system or websites; (b) extend a Forbearance of any Wells Fargo customer who is in Ch. 13 bankruptcy beyond its originally disclosed term unless the customer or customer's authorized representative (i) requests a Forbearance extension, or (ii) requested a Forbearance initially but has not responded to Wells Fargo's written and verbal attempts to contact the customer to determine whether he or she would like to extend the Forbearance; (c) file a notice of Forbearance in any Chapter 13 debtor's bankruptcy case stating that the customer requested a Forbearance, unless the customer actually requested it; (d) file a notice of Forbearance stating that the customer requested an extension of the Forbearance period, unless the customer actually requested it; and (e) prior to January 1, 2021, file a motion for relief from stay in the Chapter 13 bankruptcy case of a customer who was provided a Forbearance without having requested a Forbearance unless: (i) the customer consents to the motion for relief; (ii) the motion is necessary to protect the existence of or priority of Wells Fargo's lien on the property or (iii) the motion is necessary to protect the collateral itself because it is endangered. Nothing in this agreed order prohibits Wells Fargo from delaying or deferring enforcement of any noteholder's rights and remedies under the

applicable mortgage loan documents. The Parties agree that by making this agreement, neither Party concedes any disputed issue related to the pending PI Motion or this adversary proceeding.

Accordingly, based on the parties' agreement as set forth above, it is hereby:

ORDERED that the Parties shall comply with their agreement set forth above, and it is further,

ORDERED that the hearing on Plaintiffs' PI Motion scheduled for October 13, 2020 is cancelled.

END OF ORDER

AGREED TO:

/s/ Theodore O. Bartholow III ("Thad")
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EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

GERALD FORSBURG, JENNA DOCTOR, LUIS CASTRO, MARISOL CASTRO, and BARBARA PRADO,

on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

WELLS FARGO & CO.,

WELLS FARGO BANK, N.A.,

Defendants.

Bartholow Ex.G

Civil Action No.: 5:20-CV-00046

AGREED ORDER RESOLVING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Gerald Forsburg, Jenna Doctor, Luis Castro, Marisol Castro, and Barbara Prado ("Plaintiffs") and Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A. ("Wells Fargo," and, collectively with Plaintiffs, "Party" or "Parties") have reached an agreement on Plaintiffs' Motion for Preliminary Injunction (Doc. No. 23) filed with the Court on September 14, 2020.

In connection with this agreement, Wells Fargo has voluntarily agreed that, until such time as the Court enters an order superseding this order or a final judgment in this matter, that Wells Fargo will not (a) activate a COVID-19 pandemic-related forbearance ("Forbearance") on the mortgage account of any Wells Fargo customer unless the customer (or an authorized representative) requests the Forbearance, which request may be made verbally, in writing or through Wells Fargo's interactive voice recognition system or websites; and will not (b) extend a Forbearance of any Wells Fargo mortgage customer beyond its originally disclosed term unless

the customer or customer's authorized representative (i) requests a Forbearance extension, or (ii) requested a Forbearance initially but has not responded to Wells Fargo's written and verbal attempts to contact the customer to determine whether he or she would like to extend the Forbearance. Nothing in this agreed order prohibits Wells Fargo from delaying or deferring enforcement of any noteholder's rights and remedies under the applicable mortgage loan documents. The Parties agree that by making this agreement, neither Party concedes any disputed issue related to the pending Preliminary Injunction Motion or Plaintiffs' Complaint.

Accordingly, based on the parties' agreement as set forth above, it is hereby:

ORDERED that the Parties shall comply with their agreement set forth above, and it is further,

ORDERED that except as agreed to herein, Plaintiffs' Motion for Preliminary Injunction (Doc. No. 23) is DENIED without prejudice in light of the Parties' foregoing agreement.

It is SO ORDERED.

ENTERED: October 30, 2020

Michael F. Urbanski
Chief U.S. District Judge
2020.10.30 18:26:41
-04'00'

Michael F. Urbanski
Chief United States District Judge

AGREED TO:

/s/Malissa L. Giles Malissa L. Giles Giles & Lambert, PC P.O. Box 2780 Roanoke, VA 24001 Tel: (540) 981-9000 mgiles@gileslambert.com Theodore O. Bartholow III ("Thad")* Texas State Bar No. 24062602 Karen L. Kellett* Texas State Bar. No. 11199520 O. Max Gardner III* N.C. State Bar No. 6164 Kellett & Bartholow PLLC 11300 N. Central Expressway, Ste. 301 Dallas, TX 75243 Tel.: (214) 696-9000 Fax: (214) 696-9001 thad@kblawtx.com kkellett@kblawtx.com maxgardner@maxgardner.com *Counsel for Plaintiffs Gerald Forsburg, Jenna Doctor, Luis Castro and Marisol Castro* *Admitted Pro Hac Vice	/s/Justin E. Simmons Michael E. Hastings (VSB No. 36090) J. Benjamin Rottenborn (VSB No. 84796) Justin E. Simmons (VSB No. 77319) Woods Rogers PLC P.O. Box 14125 Roanoke, Virginia 24011 Phone: (540) 983-7600 Fax: (540) 983-7711 mhastings@woodsrogers.com brottenborn@woodsrogers.com jsimmons@woodsrogers.com */s/ William C. Mayberry* William C. Mayberry (VSB No. 33584) Troutman Pepper Hamilton Sanders LLP 301 South College Street, Suite 3400 Charlotte, NC 28202 Tel: (704) 916-1501 E-mail: bill.mayberry@troutman.com John C. Lynch (VSB No. 39267) Troutman Pepper Hamilton Sanders LLP 222 Central Pak Ave., Suite 2000 Virginia Beach, VA 23462 Tel: (757) 687-7765 Fax: (757) 687-1504 *Counsel for Wells Fargo & Co. and Wells Fargo Bank, N.A.*

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRIAN ECHARD, Plaintiff, v. WELLS FARGO BANK, N.A., Defendant.	§ § § § § § § § § §	Case No. 2:21-cv-05080-MHW-KAJ **DECLARATION OF THEODORE "THAD" O. BARTHOLOW III IN SUPPORT OF RENEWED MOTION TO INTERVENE** Judge Michael H. Watson Magistrate Judge Kimberly A. Jolson

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. My name is Theodore "Thad" O. Bartholow III. I am over the age of eighteen years, am of sound mind, and am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct. I make this declaration of my personal knowledge in support of the Motion to Intervene to Appear at Status Conference and to Oppose Motion for Preliminary Approval of Settlement. For additional background and context regarding the genesis of this litigation, please see the declaration I submitted in support of Intervenors' earlier Motion to Intervene, Dkt. 76.

2. On November 9, 2021, my partner, Karen Kellett and I had a call with counsel for the Echard plaintiffs, Mr. Knoll Lowney, for the first time. During the call, he acknowledged that K&B "did all the work."

3. This assessment is confirmed by a comparison of the initial Complaint filed by Mr. Lowney to the then-operative (second amended) complaint in *Forsburg v. Wells Fargo*, 5:20-cv-0046-MFU, Dkt. 29, (W.D. Va.), filed on September 25, 2020. Attached as **Exhibit 1** is a document detailing some of the stark similarities between those two documents.

4. During the November 9, 2021 call, Mr. Lowney stated, regarding our mediation with Wells Fargo, which ended without a settlement in August of 2021, that we (meaning counsel for the Intervenors) should have "made a deal [with Lowney so he could have joined us at the mediation]." Mr. Lowney said during that call that he anticipated he "would be in some level of settlement in Ohio," and that our clients should not throw out the possibility of settling in Ohio.

5. This November 9, 2021 call occurred after Intervenors filed their prior motion to intervene and before Mr. Lowney filed his response.

6. Mr. Lowney stated several times during our November 9, 2021 call that he was going to mediation to settle the "entire" case (meaning he intended at that time to settle Intervenors clients' claims, not just those of his military subclass), and that he believed (without explaining why) that Wells Fargo was willing to pay what it would take to settle with him, even though they had been unwilling to settle with Intervenors.

7. Yet, despite expressing his plan to settle the case and without acknowledging any prospect for the need to eventually litigate the case, during the November 9, 2021 call, Mr. Lowney also told us that he didn't have a sense of what the case was worth, and that he would not know its value until he brought in experts. Mr. Lowney also stated that he anticipated his law firm would have to bring in another firm to be its "muscle."

8. Mr. Lowney insisted on the November 9, 2021 call that he felt he needed to "protect his client's interest," by which he claimed he meant the military subclass that his original and first amended complaints described.

9. In a comment Ms. Kellett and I found curious at the time, Mr. Lowney told us that we were ignoring the fundamentals of the "situation," and asked Ms. Kellett and me if we watch the HBO television series, "Succession." At the time, I was unfamiliar with *Succession*, but I have

since watched several episodes, and I now believe Mr. Lowney was implying that he viewed this case as a cut-throat game to see who, among the various putative class plaintiffs (and their counsel) could out-maneuver the other putative class plaintiffs in order to come away with the "prize" of securing a settlement with Wells Fargo.

10. Expressing resentment that Intervenors had not offered to allow him a percentage of the eventual attorney fee award to join Intervenors' team, Mr. Lowney told us that we (Intervenors) put him into this position, and now he / his firm would negotiate and "the case will settle." Then Mr. Lowney added that if he did settle, it would be because it was a "good deal" and not because he was "selling out" anyone.

11. On Friday, November 12, 2021, Ms. Kellett and I had another conference call with Mr. Lowney. He stated that the primary reasons the case could not move to California was because he was "already in settlement negotiations with Wells Fargo." Mr. Lowney told us that that the harder we (Intervenors) pushed, the faster he would settle, and then Intervenors would not be able to move the Echard case back to California for consolidation with the Intervenors' cases.

12. During the November 12, 2021 call, Mr. Lowney specifically told us:

"We will settle the case and the case will be ours."

13. We understood that to mean:

"We [meaning Lowney and his law firm] will settle the [entire] case [including all of the claims asserted in Intervenors' cases, including several claims Mr. Lowney had not asserted on behalf of Mr. Echard] and the case will be ours [meaning only Lowney and his law firm would be compensated for the settlement.]" Ms. Kellett and I took that as a direct threat by Mr. Lowney to settle all claims related to Wells Fargo's unauthorized forbearance practices without involving

Intervenors or their counsel, if we did not agree to grant him a percentage of the attorney fee recovery resulting from a settlement or verdict obtained in Intervenors' cases.

14. Pressing this point further, Mr. Lowney demanded during the November 12, 2021 call that we provide him with a copy of the joint prosecution agreement among Intervenors' counsel, which we understood to be a strategy for entering into negotiations with Intervenors for his firm to receive a 'share' of the attorney fee recovery in connection with the Wells Fargo unauthorized COVID-19 forbearance litigation. Mr. Lowney then specifically suggested that his firm and Intervenors enter a new co-counsel agreement, which we understood as a request to guarantee his firm a percentage of the attorney fee recovery resulting from the Wells Fargo forbearance litigation. At no time during this conversation did Mr. Lowney express to us how or why he believed such an agreement would help to deliver increased value for the class, although we asked.

15. Our November 12, 2021 call with Mr. Lowney was in no way a discussion on how best to serve the interests of the class; it was an ultimatum from Mr. Lowney to Intervenors, in which he was essentially telling us we had to give his firm a cut (without explaining what he would do to earn it), or else he would settle the case on his own and claim all of the fee recovery for himself/his firm.

16. On April 1, 2022, Mr. Lowney filed a notice of supplemental authority in connection with his opposition to Intervenors' prior motion to intervene, referencing a ruling by Judge Urbanski in the Western District of Virginia, declining to transfer a bankruptcy-centered class action (*Harlow v. Wells Fargo*) related to allegations that Wells Fargo filed false forbearance notices and otherwise abused the bankruptcy process in connection with its unauthorized COVID-19 forbearance program's application to borrowers in Chapter 13 bankruptcy. In that notice of

supplemental authority, Mr. Lowney urged this Court not to transfer this case to the Northern District of California on the grounds that it asserted "military-related claims" that are not part of the Intervenors' cases and because it was seeking "certification a separate class of military customers…". Dkt. 104 at p.2. Likewise, in telephone conversation during the summer of 2021, while the Intervenors' cases were stayed while mediation efforts were taking place in those cases, Bill Mayberry, counsel for Wells Fargo, sought to reassure me that I need not worry about progress in the *Echard* case since Wells Fargo considered *Echard* to be 'completely different' because it related to claims by servicemembers and was meritless as Mr. Echard requested a forbearance. Indeed, Wells Fargo relied on similar arguments when it sought to quash Echard's discovery requests while this case was pending in the Northern District of California. *See* Dkt. 47 at *3-4 ("Wells Fargo's MJOP demonstrates that Plaintiff himself affirmatively requested and benefited from payment relief, and therefore his claims are baseless. *See* ECF 19 at 14-15, 17-18.")

17. This justification has now proved illusory, as the proposed Echard settlement contains no separate class of military customers, and it offers no substantive benefit for military customers beyond the benefits available to the putative members of the rest of the proposed class.

18. In late April of 2022, I had further telephone conferences with Mr. Lowney as his scheduled April 28, 2022 mediation date was approaching. In these calls, I requested that Mr. Lowney agree to permit Intervenors to participate in the scheduled mediation sessions with Wells Fargo. During these conversations, I explained to Mr. Lowney my concerns regarding Mr. Echard's standing to represent the class and the potential that he would not have sufficient information to properly value the putative class's claims against Wells Fargo without Intervenors' input and experience, as it was clear to me that Mr. Lowney had not independently developed a theory of damages for this case but had instead merely copied portions of the damages allegations

asserted in Intervenors' previously-filed complaints. Despite my protestations that any settlement he would negotiate without Intervenors would likely be inadequate or un-certifiable due to his client's lack of standing, Mr. Lowney flatly refused to consider involving intervenors with the mediated settlement discussions in Echard, essentially telling me that it was "too late" for that, without explaining why that would be.

19. Around the same time that the Echard plaintiffs and Wells Fargo announced their proposed class settlement, Mr. Lowney contacted me and some of the other attorneys for the Intervenors, offering to mediate a settlement with Intervenors and with us, as their counsel. This communication included a proposal that Intervenors could be added to the proposed class settlement as class representatives and that Mr. Lowney would seek approval of a service award of up to $12,500 for them (despite Intervenors having had no role in negotiating the proposed class settlement in Echard), and compensation for Intervenors' counsel (despite Intervenors' counsel having been totally excluded from the negotiations that resulted in the proposed class settlement in Echard).

20. In that communication, Mr. Lowney represented that if Intervenors or their counsel were to oppose the settlement, "in public and/or before Judge Watson, you would close the door to later signing onto the settlement, which we believe is the most viable and speedy path to getting money into the hands of the Class and getting your clients and their counsel compensated."

21. On July 20, 2022, and August 11, 2022, I took part in 30(b)(6) depositions of Wells Fargo corporate designees. Proposed class counsel was present as a silent audience member and was not involved in the deposition or its preparation. The corporate designees, at the direction of Wells Fargo, were unprepared and unwilling to answer any questions related to Wells Fargo's EPBO practices or profits. However, Wells Fargo's witnesses did confirm that Wells Fargo &

Co.'s Capital Markets leadership, responsible for its EPBO decisions, were part of the team responsible for the planning and implementation of Wells Fargo's COVID-19 forbearance plans and processes, and they were directly involved in establishing Wells Fargo's credit reporting policies with respect to loans in COVID-19 forbearances.

22. Intervenors have continued to seek deposition testimony regarding the role that EPBO profits might have had on Wells Fargo's decision and the amount of profits that the EPBOs associated with forborne loans garnered for the bank. However, Wells Fargo has refused to designate any witness to discuss those topics, and, to date, Wells Fargo has failed to produce any document production related to its EPBO profits in connection with Intervenors' cases.

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

DATED this 3rd day of October, 2022.

/s/ Theodore "Thad" O. Bartholow III
Theodore "Thad" O. Bartholow III

EXHIBIT 1

***Forsburg* Second Amended Complaint, filed Sept. 25, 2020**	***Echard* First Amended Complaint, filed May 3, 2021**
¶30 "For every Fannie Mae and Freddie Mac mortgage loan Wells Fargo places into forbearance, Wells Fargo stands to receive a minimum of $500 and up to $1,000 in incentive payments, depending which workout option Wells Fargo's borrower accepts at the conclusion of the forbearance term."	¶57 "For every Fannie Mae and Freddie Mac mortgage loan Wells Fargo places into forbearance, Wells Fargo stands to receive a minimum of $500 a nd up to $1,000 in incentive payments, depending on which workout option Wells Fargo's borrower accepts at the conclusion of the forbearance term."
¶31 "With respect to Ginnie Mae loans Wells Fargo places into forbearance, Wells Fargo also is entitled to receive incentive compensation for post-forbearance loan workouts, although the structure for calculating the amount of these incentive payments and the available workout options are different (in immaterial ways) for Ginnie Mae loans, depending on whether the loan was originated by the VA, the USDA, or the FHA."	¶58 "For Ginnie Mae Loans Wells Fargo places into forbearance, Wells Fargo is also entitled to receive incentive compensation for post-forbearance loan workouts, although the structure for calculating the amount of these incentive payments and the available workout options are different (in immaterial ways) for Ginnie Mae loans, depending on whether the loan was originated by the VA, the USDA, or the FHA."
¶40 "So long as Fannie Mae and Freddie Mac loans are placed into a CARES Act forbearance, Wells Fargo is not required to repurchase delinquent Fannie Mae and Freddie Mac loans in order to be allowed to cease making principal and interest advances. Instead, after Wells Fargo makes advances for four monthly principal and interest payments missed by the borrower on a loan that Wells Fargo has placed in a CARES Act forbearance, under applicable Fannie Mae and Freddie Mac servicing guidelines, Wells Fargo no longer has any further obligation to advance principal and interest payments on the loan."	¶60 "So long as Fannie Mae and Freddie Mac loans are placed into a CARES Act forbearance, Wells Fargo is not required to repurchase delinquent Fannie Mae and Freddie Mac loans in order to be allowed to cease making principal and interest advances. Instead, after Wells Fargo makes advances for four monthly principal and interest payments missed by the borrower on a loan that Wells Fargo has placed in a CARES Act forbearance, under applicable Fannie Mae and Freddie Mac servicing guidelines, Wells Fargo no longer has any further obligation to advance principal and interest payments on the loan."
¶41 "Therefore, regardless of whether a loan is backed by Ginnie Mae, Fannie Mae, or Freddie Mac, Wells Fargo benefits from placing loans into CARES Act forbearances by limiting its exposure to principal and interest advance obligations in the event of future defaults."	¶61 "Therefore, regardless of whether a loan is backed by Ginnie Mae, Fannie Mae, or Freddie Mac, Wells Fargo benefits from placing loans into CARES Act forbearances by limiting its exposure to principal and interest advance obligations in the event of future defaults.
¶259 "Wells Fargo made material omissions of fact in failing to disclose to Plaintiffs that it had placed their loans into forbearance without their consent."	¶122 "Wells Fargo made material omissions of fact in failing to disclose to Plaintiff and Class Members that it had placed their loans into forbearance without their informed and legal consent."

***Forsburg* Second Amended Complaint, filed Sept. 25, 2020**	***Echard* First Amended Complaint, filed May 3, 2021**
¶260 "Plaintiffs detrimentally relied upon Wells Fargo's material omissions of fact when they did not inform Plaintiffs promptly that their accounts had been placed in forbearance and Plaintiff Forsburg did not challenge the forbearance to preserve his modification. Moreover, Plaintiffs Doctor and Castro and other class members continued to make their monthly mortgage payments with the understanding and expectation that doing so would result in their loans being serviced in the ordinary course of business without the consequences associated with having a loan characterized as being in forbearance status."	¶125 "Plaintiff and Class Members detrimentally relied upon Wells Fargo's material omissions of fact and the misrepresentations and purposefully misleading statements contained in form letters when Wells Fargo did not inform Plaintiff and Class Members promptly that their accounts had been placed in forbearance and Plaintiff and Class Members did not challenge the forbearance. Where Wells Fargo did inform Plaintiff and Class Members after the fact that accounts had been placed into forbearance, that notice was insufficient to actually place these customers on notice. Moreover, when Plaintiff and Class Members continued to make monthly mortgage payments after learning of the forbearance status, they did so with the understanding and expectation that doing so would result in these loans being serviced in the ordinary course of business."
¶261 "Plaintiffs' reliance on Wells Fargo's material omissions of fact was justified and reasonable, as Plaintiffs were performing under their mortgage loans and had no basis to assume and were not on notice that Wells Fargo would defraud them by placing their loans into forbearance status without authorization, and no common law, statute, or other agreement among Plaintiffs and their mortgage lender and/or Wells Fargo authorized Wells Fargo to place borrowers' loans into forbearance without their consent."	¶126 "Plaintiff's and Class Member's reliance on Wells Fargo's material omissions of fact and the misleading and false statements made in form letters sent to Plaintiff and Class Members were justified and reasonable, as Plaintiff and Class Members had no basis to assume and were not on notice that Wells Fargo would defraud them by placing their loans into forbearance status without authorization or informed consent. Further, no common law, statute, or other agreement among Plaintiff and Class Members and their mortgage lender and/or Wells Fargo authorized Wells Fargo to place these borrowers' loans into forbearance without their informed consent."
¶282 "The forbearance notation on the class members' credit reports clearly indicates to potential creditors or other third parties that the class members experienced some sort of financial hardship. These forbearance notations adversely affect class members' ability to obtain credit."	¶155 "The forbearance notation on the Class Members' credit reports clearly indicates to potential creditors or other third parties that the class members experienced some sort of financial hardship. These forbearance notations adversely affect class members' ability to obtain credit."
¶283 "Wells Fargo knew that the presence of the forbearance notations in the class members' credit reports would damage the class members'	¶158 "Wells Fargo knew that the presence of the forbearance notations in the Class Members' credit reports would damage the Class Members' ability to

***Forsburg* Second Amended Complaint, filed Sept. 25, 2020**	***Echard* First Amended Complaint, filed May 3, 2021**
ability to obtain new credit, which may be essential to a consumer's daily life."	obtain new credit, which may be essential to a consumer's daily life."
¶284 "Wells Fargo's failure to report its receipt of payments made by Plaintiffs and the class members during the period in which Wells Fargo improperly furnished information to the Credit Reporting Agencies indicating that their loans were in forbearance status also adversely affects Plaintiffs' and the class members' ability to obtain credit, including but not limited to preventing and/or significantly impeding borrowers' ability to refinance their home mortgage loans and/or to borrower against the equity in their homes, as experienced by Ms. Doctor and Mr. and Mrs. Castro."	¶159 "Wells Fargo's failure to report its receipt of payments made by Plaintiff and the Class Members during the period in which Wells Fargo improperly furnished information to the Credit Reporting Agencies indicating that their loans were in forbearance status also adversely affects Plaintiff's and the Class Members' ability to obtain credit, including but not limited to preventing and/or significantly impeding borrowers' ability to refinance their home mortgage loans and/or to borrow against the equity in their homes."
¶295 "Wells Fargo failed to fully correct the information it supplied to the Credit Reporting Agencies regarding Ms. Doctor's account."	¶161 "Wells Fargo failed to fully correct the information it supplied to the Credit Reporting Agencies regarding Plaintiff's and the Class Member's accounts."

EXHIBIT H

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

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

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

BAR ADMISSIONS:

State: Texas

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

EDUCATION:

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

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

PROFESSIONAL ASSOCIATIONS & HONORS:

Texas Bar Foundation

Dallas Bar Association

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

Martindale-Hubbell AV Preeminent Peer Review Rating

National Association of Consumer Bankruptcy Attorneys (NACBA)

NACBA Champion of Consumer Rights – 2024

NACBA Distinguish Service Award - 2023

NOTEWORTHY DECISIONS:

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

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



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

NOTEWORTHY DECISIONS (CONT.):

Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez), 421 B.R. 356 (Bankr. S.D. Tex. 2009).
Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez), 2010 WL 3943934 (Bankr. S.D. Tex. Oct. 5, 2010)(slip copy).
Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez), 432 B.R. 671 (Bankr. S.D. Tex. 2010), affirmed by *Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez),* 695 F.3d 360 (5th Cir. 2012).
Rodriguez v. Countrywide Home Loans, Inc. (In re Rodriguez), 2013 WL 1748800 (Bankr. S.D. Tex. Apr. 23, 2013).

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

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

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

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

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

Trevino v. HSBC Mortgage Services, Inc., et al. (In re Trevino), 535 B.R. 110 (Bankr. S.D. Tex. 2015).
Trevino v. Caliber Home Loans, Inc., et al. (In re Trevino), 564 B.R. 890 (Bankr. S.D. Tex. 2017).
Trevino v. HSBC Mortgage Services, Inc., et al. (In re Trevino), 615 B.R. 108 (Bankr. S.D. Tex. 2020).

Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2015 WL 1207012 (Bankr. S.D. Tex. Mar. 12, 2015)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2015 WL 5438850 (Bankr. S.D. Tex. Sept. 24, 2015)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2015 WL 7572097 (Bankr. S.D. Tex. Nov. 24, 2015)(slip copy) leave to appeal denied by *Lopez v. Portfolio Recovery Associates, LLC (In re Lopez)*, 2016 WL 4546884 (S.D. Tex. Sept. 1, 2016)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 2017 WL 3382099 (Bankr. S.D. Tex. Mar. 20, 2017)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC, 2017 WL 3336086 (S.D. Tex. Aug. 4, 2017)(slip copy).
Lopez v. Portfolio Recovery Associates, LLC (In re Lopez), 576 B.R. 84 (Bankr. S.D. Tex. Sept. 28, 2017).

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

Ross v. Convergent Outsourcing, Inc., 323 F.R.D. 656 (D. Co. January 17, 2018).

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SPEAKING ENGAGEMENTS & PUBLICATIONS:

National Association of Consumer Bankruptcy Attorneys (NACBA) 31st Annual Convention 2023 – Discovery and Damages

NACBA Members' Only Meeting, November 2021- Litigating an Adversary Proceeding or Contested Matter

NACBA Annual Meeting, April 2020 – scheduled speaker prior to cancellation due to coronavirus

Northern District of Texas Bankruptcy Bench-Bar – Planning Committee, May 2018

Dallas Bar Association Family Law Section, "Family Law and Bankruptcy," 2016, with Megan F. Clontz

Northern District of Texas Bankruptcy Bench/Bar Conference, "Mortgage Modifications: The New Principal Reduction Mortgage Loan Modifications," 2016

23rd Annual ABI Southwestern Conference, "Avoiding Malpractice in Consumer Cases," Panelist, 2015

Paper, "The Fair Debt Collection Practices Act and Bankruptcy: Can They Co-Exist?," with Theodore O. Bartholow, III, 2015

22nd Annual ABI Southwestern Conference, "New Proof-of-Claim and Disclosure Rules," 2014

American Bankruptcy Institute (ABI) Journal, "Rodriguez Clarifies that Bankruptcy Courts Can Certify Class Actions," December/January 2013

Dallas Debtor's Bankruptcy Bar, "The New Mortgage Proof-of-Claim and Disclosure Rules and the Cases Interpreting Them," 2012

20th Annual American Bankruptcy Institute Southwest Bankruptcy Conference, "Hot Off the Press: First Opinions Analyzing the New Mortgage Proof-of-Claim and Disclosure Rules," 2012

26th Annual American Bankruptcy Institute Winter Leadership Conference, 2010, and included in The Best of 2011 – Consumer Bankruptcy, ABI Press, "The Great Debates Resolved: A Mortgage Servicer Lacks Standing as a Real Party in Interest," with Rudy J. Cerone, 2011

85th Annual National Conference of Bankruptcy Judges, "Emerging Trends in Class Actions in Bankruptcy," 2011

29th Annual American Bankruptcy Institute Spring Meeting, Panelist, "Robosigning Clients, Phantom Notaries, Foreclosure and Bankruptcy Mills, and Other Tales from the Darkside," 2011

National Association of Consumer Bankruptcy Attorneys (NACBA) Fall Members-Only Workshop, Panelist, Track 3, "Here in the Real World: Litigation Bootcamp," 2010

NCLC Consumer Rights Litigation Conference, "Debtor Litigation Strategies for Lender Misconduct, Including Debtor Class Actions," with Gary A. Armstrong and Theodore O. Bartholow, III, 2009

Kansas Bar Association Meeting, "Consumer Remedies for Lender Misconduct," 2009

Advanced Consumer and Commercial Law Course, "Bankruptcy Basics," 2009

Bankruptcy Law Seminar, Corpus Christi Bar Association, "Predatory Lending Practices and Claims Against Lenders in Bankruptcy," 2008

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SPEAKING ENGAGEMENTS & PUBLICATIONS (CONT.):

30th Annual ABI Spring Meeting, Panelist, Consumer Ethics, "Balancing Business and Practice – the Multiple Roles of Consumer Debtor's Counsel: Can you Be a Watchdog, a Counselor and Run Your Law Practice Simultaneously?" 2012

State Bar of Texas Annual Meeting, Consumer & Commercial Law Section Meeting, "The New Bankruptcy Provisions in Practice," with Jennifer P. Garner, 2006

The Conference on Consumer Finance Law, Real Estate Mortgage and Home Equity Finance Conference, "Bankruptcy Issues Concerning Mortgage Loans, Including Update on Current Trends in Litigation," 2002

3rd Annual Texas A&M Bar Association Conference, "Overview of Bankruptcy: Chapter 7, Chapter 13 and Chapter 11," 2002

Advanced Consumer Bankruptcy Course, "Lender Liability Issues in Consumer Bankruptcy Proceedings: HOEPA, Texas Home Equity, and Unfair Debt Collection Practices," 2001

35th Annual William W. Gibson, Jr. Mortgage Lending Institute, "Manufactured Home Repossession and Foreclosure Rules, and Bankruptcy Issues Affecting the Manufactured Home Lender," with Jerald M. Pomerantz, 2001

Rio Grande Valley Bankruptcy Bar Association, "Texas Home Equity Issues and Litigation," 2000

Dallas Bar Association Bankruptcy Section, "Lender Liability Issues in Consumer Bankruptcy Proceedings, Including Class Actions and Texas Home Equity," 2000

Dallas Bar Association Bankruptcy Section, "Treatment of Environmental Liabilities in a Chapter 11 Plan of Reorganization," with Robert W. Jones, 1994

Dallas Bar Association Environmental Law Section, "The Role and Treatment of Environmental Claims in the Bankruptcy Context," with Robert W. Jones, 1993

SMU Bankruptcy Law Institute: Representing Debtors in Bankruptcy – Practice Strategies, "Jurisdictional Stumbling Blocks," with Scotta E. McFarland, 1990

SMU Bankruptcy Law Institute: Representing Debtors in Bankruptcy – Litigating in the Bankruptcy Court, "Attorneys and Experts: The Perfect Couple," with Scotta E. McFarland, 1989

MEDIA COVERAGE:

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

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



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LEGAL EMPLOYMENT HISTORY:

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

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

THE KELLETT LAW FIRM, PC (2000-2010)
Dallas, Texas

THE ASSOCIATES, *Vice President and Assistant General Counsel* (1994-2000)
Dallas, Texas

THOMPSON & KNIGHT LLP (1987-1994)
Dallas, Texas

EXHIBIT I

Kellett & Bartholow PLLC

In re Wells Fargo COVID Forbearance Settlement

Kellett & Bartholow's Lodestar– Inception through October 10, 2024

Timekeeper	Title	Hours Worked	Hourly Rate	Lodestar
Asnake, Mahlet (MA)	Paralegal	114.5	$100	$11,450.00
Bartholow III, Theodore O. (TO3)	Partner	3241.3	$875	$2,836,137.50
Bartholow III, Theodore O. (TO3)	Partner (Travel)	93.6	$437.50	$40,950.00
Daun, Randi D. (RD)	Paralegal	139.4	$250	$34,850.00
Gardner, O. Max (OMG)	Of Counsel	258.3	$500	$129,170.00
Kellett, Karen L. (KLK)	Partner	1391.6	$985	$1,370,726.00
Kellett, Karen L. (KLK)	Partner (Travel)	37.5	$492.50	$18,468.75
Parry, Megan M. (MMP)	Associate	36.9	$480	$17,712.00
Smith, Claude D. (CDS)	Of Counsel	221.9	$800	$177,520.00
Wells, Caitlyn N. (CNW)	Associate	932.7	$300	$279,810
Total		6467.7		$4,916,794.25

Summary of Attorney Timekeepers

Attorney	Position	Year Admitted	Hourly Billing Rates
Bartholow III, Theodore O.	Partner	2005	$875
Gardner III, O. Max	Of Counsel	1974	$550
Kellett, Karen L.	Partner	1987	$985
Parry, Megan M.	Associate	2022	$480
Smith, Claude D.	Of Counsel	2000	$800
Wells, Caitlyn N.	Associate	2010	$300

Time Period	KB Total Hours
Inception - 01/27/2021	1514.4
01/28/2021 - 09/14/2021	972.7
09/15/2021 - 04/25/2022	1045.5
04/26/2022 - 09/08/2022	430.9
09/09/2022 - 07/26/2023	1313.3
07/27/2023 - 11/07/2023	526.8
11/08/2023 - 02/09/2024	140.6
02/10/2024 - 10/10/2024	523.5
Total	6467.7

Class Counsel's Costs – Inception through October 8, 2024

Category	Amount
Airfare	$8,415.18
Common Litigation Fund	$60,075.00
Court Fees & Costs	$1,413.20
Deposition Costs	$15,916.85
Hotels	$8,656.74
Meals	$3,817.38
Mediation Services	$46,323.34
Parking & Ground Transportation	$1,021.41
Postage & Shipping	$143.04
Research & Database Access	$15,650.23
Technology Services	$3,620.68
Total	$165,053.05

EXHIBIT J

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers CLASS ACTION

DECLARATION OF MALISSA LAMBERT GILES IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

I, MALISSA LAMBERT GILES, an attorney with the firm of Giles & Lambert, PC, hereby declare as follows:

1. I am one of the attorneys for the Plaintiffs Jenna Doctor, Luis Castro, Marisol Castro, and Barbara Prado, who are named plaintiffs of the Consolidated Plaintiffs in the above-entitled action ("Action").

2. I am over the age of 18 and am fully competent to make this declaration.

3. If called as a witness, I would competently testify to the matters herein from personal knowledge.

4. The declaration is based upon my personal knowledge, except where expressly noted otherwise.

5. I submit this Declaration in support of the Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards.

6. I am an attorney admitted to the Bar of the Commonwealth of Virginia since 1992, and I have been a member in good standing since admission.

BRIEF SUMMARY OF PARTICIPATION IN THE LITIGATION

7. My law firm first became involved in representing the above plaintiffs in their claims against Wells Fargo in July of 2020.

8. I am primarily a bankruptcy attorney, and my firm focuses upon consumer and small business bankruptcies and related consumer litigation.

9. The Giles & Lambert, PC partners' experience in this litigation arises primarily out of events starting in 2020 during the Covid Pandemic. Beginning in May of 2020, we discovered that Wells Fargo was filing notices of forbearance in several of our clients' bankruptcy cases stating that the clients had requested forbearance. However, our clients told us that they had not requested forbearance and did not know that their loans had been placed into forbearance.

10. Given the volume of Wells Fargo notices of forbearance our clients did not actually request in just our own cases, we started checking with colleagues, including attorneys and Chapter 13 Trustees statewide, on the issue. Additionally, I started reaching out to colleagues who have a volume of cases in other states whom I knew professionally to inquire if they were encountering the issue, as well as posting on the National Association of Consumer Bankruptcy's list serve to solicit more information.

11. We quickly realized what a wide-spread issue this represented. The filing of false notices in the U.S. Bankruptcy Courts was disrupting confirmed Chapter 13 bankruptcy plans, causing confusion and administration issues in many bankruptcy courts and trustees' offices nationwide, and creating uncertainty and risk to debtors' cases.

12. We enlisted the help of O. Max Gardner, Kellett & Bartholow PLLC, and Limon Law, and on June 26, 2020, we filed the first nationwide class action against Wells Fargo for imposing forbearances on Chapter 13 bankruptcy debtors, *Harlow, et al. v. Wells Fargo & Co.,*

Adv. P. No. 20-07028 (Bankr. WDVA). After almost four years of litigation, we settled the *Harlow* case for $15,000,000.00. The U.S. District Court for the Western District of Virginia entered an order of final approval of the settlement on Oct. 11, 2024. (Case 7:24-cv-00424.)

13. In the early stages of the *Harlow* litigation, we, and co-counsel, identified issues with non-bankruptcy consumer clients whose loans had been wrongly placed into forbearance by Wells Fargo, which led us to file *Forsberg v. Wells Fargo & Co., et al.* Case 5:20-cv-00046 (W.D. Va.) on July 23, 2020 ("*Forsburg*").

14. The *Forsburg* case resulted in a nationwide preliminary injunction entered on Nov. 2, 2020, stopping the practice of unrequested forbearances. *Forsburg*, Docket No. 54.

15. Following vigorous litigation in Virginia, *Forsburg* was subsequently transferred to California and consolidated with other class actions to form the Consolidated Plaintiffs' case against Wells Fargo, *In re Wells Fargo Forbearance Litigation.* That case ultimately was transferred to this Court where it was consolidated again and renamed *In re Wells Fargo Forbearance Settlement Litigation.* (ECF 237).

16. Since the inception of our representation in *Forsburg*, my firm has maintained detailed billing records for all time spent by myself, my partner Tracy A. Giles, and our associate Heather Parsons for all work performed by my firm in litigating this case.

17. I have personally reviewed the time entries for all work performed to ensure reasonableness of all hours billed and to ensure only recoverable work performed is being billed.

18. Where appropriate, we have omitted from the billable hours any entries that appeared to be clerical/administrative.

19. The detailed billing records statement can be made available upon request for the Court's review.

20. With respect to Client and Co-Counsel Communications to prepare the case for prosecution, to discuss legal issues involved in the litigation, and to discuss case status updates, my firm has billed approximately 39.6 hours.

21. With respect to Pleadings, including researching causes of action, drafting and filing of our pleadings, reviewing pleadings filed against us and researching and preparing oppositions thereto, my firm has billed approximately 221.6 hours.

22. With respect to attending Court Hearings, including preparing for court hearings, my firm has billed approximately 17.9 hours.

23. With respect to Discovery, including reviewing defense discovery requests served on us, preparing responses to discovery requests served on us, working with co-counsel to propound discovery requests to the defense, reviewing defense responses and documents produced to us, and conducting meet and confer efforts with defense regarding discovery disputes, my firm has billed approximately 28.6 hours.

24. With respect to Settlement Discussions and Mediation, my firm has billed approximately 73.9 hours.

25. With respect to expenses, my firm has incurred $800.00 in court fees for a total of $800.00. These expenses are itemized in the table below:

Date	Activity	Description	Cost	Quantity	Line Total
7/23/2020	Filing Fee	Filing fee in US District Court	$400.00	1	$400.00
7/29/2020	Filing Fee	Filing fee for pro hac vice admission for T. Bartholow, K. Kellett, O. Gardner	$100.00	3	$300.00
10/23/2020	Filing Fee	Filing fee for pro hac vice admission for A. Limon	$100.00	1	$100.00
				Total Expenses:	**$800.00**

26. To date, my firm has not been paid anything for our time and expenses incurred in the litigation, as the representation of the above-named plaintiffs was on a contingency fee basis.

27. For this Action, my hourly rate is $500.00 per hour, my partner Tracy A. Giles's rate is $500 per hour and our associate Heather Parsons is also set at $500.00 per hour. Thus, my firm's total lodestar for this matter as of approximately October 21, 2024 is $259,750.00 based on 329.4 hours incurred by myself, 176.60 hours incurred by Tracy A. Giles, and 13.5 hours incurred by Ms. Parsons.

28. The cooperative efforts of all counsel representing the Consolidated Plaintiffs, including the original Plaintiffs named above, resulted in an early injunction in favor of the Plaintiffs and stopped the harm incurred by the Plaintiffs and then after years of work resulted in a substantial $185 million settlement being paid by Defendants on behalf of a large class of persons allegedly harmed by Wells Fargo's conduct.

29. I fully support as fair and reasonable the request for a class representative service award of $12,500 for the nine Consolidated Plaintiffs, specifically, Luis Castro, Pamela Delpapa, Jenna Doctor, Samara Green, Patrick Healy, Barbara Prado, Renrick Robinson and Vivian Robinson.

30. I fully support the request of Counsel for Consolidated Plaintiffs for an award of attorneys' fees of up to $46,250,000 (representing 25% of the Settlement Fund) and also reasonable litigation expenses, all to be paid from the Settlement Fund of $185,000,000. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many thousands of hours of dedicated and diligent work of Counsel for Consolidated Plaintiffs to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

BACKGROUND AND EXPERIENCE

31. I have been licensed to practice law in the Commonwealth of Virginia since 1992 and am a member of the Mississippi State Bar (inactive), U.S. Bankruptcy Court Western District of Virginia, U.S. District Court Western District of Virginia, and Fourth Circuit Court of Appeals.

32. I graduated from the University of Mississippi in 1987 and from the University of Mississippi School of Law in 1991. I then clerked for Justices James L. Robertson and Edwin L. Pittman of the Mississippi Supreme Court.

33. I and my partner Tracy A. Giles opened our firm in Roanoke Virginia in 1993, and have specialized in the area of bankruptcy law, both for individuals and businesses, and related consumer claims since that time.

34. I have taught at numerous bankruptcy and consumer seminars statewide, regionally and nationally including presenting for the National Association of Consumer Bankruptcy Attorneys (NACBA), American Bankruptcy Institute, the Mid-Atlantic Institute on Bankruptcy and Reorganization and for the Virginia State Bar, the Virginia Bar Association, Virginia CLE, and the Commonwealth of Virginia's annual statewide Legal Aid Conference. I have served as editor of the Virginia State Bar's *Bankruptcy Law News,* and have served as chair of the Board of the Virginia State Bar's Bankruptcy Section. I am currently on the council of the Virginia Bar Association's Bankruptcy Law Section and I currently serve as a board member for the Virginia International Women's Insolvency & Restructuring Confederation.

35. Over the past three decades I, and my partner Tracy A. Giles, have represented thousands of consumers successfully in the U.S. Bankruptcy Court and in related consumer federal litigation in the U.S. District Court since the firm opened its doors.

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

Executed this 21st day of October 2024 in Roanoke, Virginia.

Respectfully Submitted

Malissa L. Giles

Malissa Lambert Giles, Esq.

EXHIBIT A

GILES & LAMBERT, P.C.
ATTORNEYS AT LAW
P.O. BOX 2780 • ROANOKE, VA 24001

MALISSA LAMBERT GILES
Email: mgiles@gileslambert.com

BAR ADMISSIONS:

State:	State Bar of Mississippi, 1991
	State Bar of Virginia, 1992
Federal:	Western District of Virginia U.S. Bankruptcy Court, 1993
	Western District of Virginia U.S. District Court, 1993
	Fourth Circuit Court of Appeals, 1997

EDUCATION

University of Mississippi School of Law, Oxford, Mississippi. Juris Doctorate (J.D.), May 1991
University of Mississippi, Oxford, Mississippi. Bachelor of Arts in Journalism (B.A.), May 1987

LEGAL EMPLOYMENT HISTORY

Partner, Giles & Lambert, PC. April 1993- present. The firm of Giles & Lambert, PC, has three offices in Southwest Virginia and specializes in bankruptcy law and consumer related issues such as Fair Debt Collections Act and Fair Credit Reporting Act. The firm has successfully represented thousands of debtors in the U.S. Bankruptcy Courts over the past 31 years and has a reputation for excellence.

Law Clerk to Justice Edwin L. Pittman, Mississippi Supreme Court, 1992
Law Clerk to Justice James L. Robertson, Mississippi Supreme Court, 1991-1992

HONORS, AWARDS
Western District Virginia US Bankruptcy Court, Clerk Selection Committee, Member, 2017
Fourth Circuit Merit Selection Panel, Member, 2012
Virginia Super Lawyers, 2011-2024
US News and World Report Tier 1, 2011-2024
Best Lawyer of the Year: Roanoke Bankruptcy and Creditor/ Debtor Rights/Insolvency and Reorganization, Best Lawyers, 2012, 2017, 2020, 2021, 2024
The Roanoker, Platinum ranking as top attorney in Roanoke Valley, 2012

PRESENTER, RECENT LEGAL EDUCATION SEMINARS:
Richmond Bar Association, 2023, Discharging Student Loans (Guidance)
Virginia Bar Association, 24th Annual Bankruptcy Law Conference, 2023 (Discharging Student Loans)
Stretto Online National Seminar, 2023 (Discharging Student Loans DOJ Guidance)
National Association of Consumer Bankruptcy Attorneys, 2023 National Conference (Jury Trials in Bankruptcy)
Mid-Atlantic Institute on Bankruptcy and Reorganization, 2006-2014, 2017, 2021, 2022, 2023, 2024
Western District of Virginia Bankruptcy Conference, 2017, 2019, 2020, 2021, 2022, 2023, 2024
Virginia CLE, Domestic Relations Section, 2022 (The Intersection of Bankruptcy & Divorce: How to Avoid Collisions)
Forbearance, CARES Act and Wells Fargo, NACBA, 2020
Annual Bankruptcy Practice Seminar, Virginia CLE, 2020

PROFESSIONAL AFFILIATIONS

Virginia State Bar, 1992
8th District, Disciplinary Committee, 2012-2021
Past President, Bankruptcy Law Section
Past Editor, Bankruptcy Law News
Mississippi State Bar, 1991 (inactive)
Virginia Bar Association
Council , Bankruptcy Law Section, 2024-
International Women's Insolvency & Restructuring Confederation
Board, Virginia Chapter, 2024
Roanoke Bar Association
American Bar Association
American Bankruptcy Institute
Member, National Association Consumer Bankruptcy Attorneys

NOTEWORTHY CASES:
Johnston v Speedway, 2021 US Dist. LEXIS 80891 (W.D. Va. 2021) (denying motion to dismiss and finding there is a private right of action under 11 U.S.C. 525(b))
Harlow v Wells Fargo & Co., 608 F.Supp. 377 (W.D. Va. 2022) (successful defense of Motion to Dismiss with remaining counts referred back to US Bankruptcy court) (Case settled for $15,000,000, 7:24-dv-00424.)
In re Comer, 2019 Bankr. LEXIS 3599 (Bankr. WD Va. 2019) (successful prosecution of violation of stay action)
Pence v. Carr, 2017 Bankr. LEXIS 3605 (Bankr. WD Va 2017) (successful defense of dischargeabilty complaint)
In re Cooke, 455 B R 503 (Bankr. WD Va 2011) (successful defense of dischargeabilty and assertion of debt as domestic support obligation)
Smith Mountain Building Supply LLC vs. Shreve, 386 BR 602 (Bankr. WD Va 2008) (successful defense of dischargeabilty complaint)

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	Case No. 2:24-cv-01026-MHW-EPD Judge Michael H. Watson Magistrate Judge Elizabeth A. Preston Deavers CLASS ACTION

DECLARATION OF ABELARDO LIMON IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEY'S FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

Abelardo Limon hereby declares:

1. My name is Abelardo Limon. I am over the age of eighteen years, am of sound mind, and am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct. If called to testify, I would testify to the facts of this Declaration from personal knowledge. I make this declaration in support of Plaintiffs' Motion for Attorneys' Fees.

2. My curriculum vitae is attached hereto as Exhibit A.

3. I graduated with a degree in journalism from the University of Texas at Austin in 1983. Thereafter, I graduated from a joint degree program at the University of Texas at Austin in 1987, receiving a law degree from the University of Texas School of Law and a Master's degree in Public Affairs/Public Administration from the Lyndon B. Johnson School of Public Affairs.

4. I have been practicing predominantly consumer bankruptcy law since 1988. I became a solo practitioner in 2002. My practice also involves real estate transactions, selected

real estate litigation, and general probate matters.

5. I am a member of the Texas State Bar, the Texas Bar Foundation, the Rio Grande Valley Bankruptcy Bar Association, the National Association of Consumer Bankruptcy Attorneys, and the American Bankruptcy Institute.

Procedural History Of Mr. Limon's Involvement In This Case

6. I, along with my team, represent Jenna Doctor, Luis Castro, Marisol Castro, and Barbara Prado, and others similarly situated as class plaintiffs in this case.

7. I first became aware of the practices of Wells Fargo granting unsolicited home mortgage loan forbearances under the CARES ACT on a nationwide basis in early May of 2020 when Wells Fargo filed a false notice in a bankruptcy case where I am the debtor's counsel. Wells Fargo's notice alleged that the Rodriguezs had agreed to an unsolicited home mortgage forbearance when in actuality the Rodriguez's were not behind on their monthly home mortgage payments and had not agreed to such a forbearance.

8. Thereafter I became part of a team of attorneys that filed a class action lawsuit against Wells Fargo for damages caused the Rodríguezes and others similarly situated in active chapter 13 bankruptcy cases, *Harlow, et al. v. Wells Fargo & Co., et al.,* Adv. P. No. 20-10074 (Bankr. WDVA)

9. Soon after my team and I filed the *Harlow* class action, major media outlets began running news stories about Wells Fargo's alleged practices. This generated a high volume of calls from non-bankruptcy individuals who had also been involuntarily placed into forbearance.

10. I and my team started documenting these calls and related follow-up emails.[1] These callers complained about Wells Fargo and its similar practices for consumers outside of

[1] My team is led by Karen Kellett and Thad Bartholow of the Kellett & Bartholow firm of Dallas, Texas and Tracy and Malissa Giles of the Giles & Lambert firm of Roanoke, Virginia.

bankruptcy. These practices were causing damage to their credit scores, their mortgage accounts, their escrow accounts, and their ability to get new credit, among other damages.

11. On July 23, 2020, my team and I filed a second class action lawsuit against Wells Fargo for their forbearance practices, this time on behalf of the non-bankruptcy consumers. *Forsburg, et al. vs. Wells Fargo & Co., et al.,* Case No. 20-cv-00046 (WDVA). The *Forsburg* case has since been consolidated into this proceeding.

12. I participated actively in the *Forsburg* litigation since it was filed, drafting and reviewing pleadings, helping in discovery matters, attending hearings when necessary, and participating in attorney meetings that discussed the prosecution of the case.

13. I have kept time records of my time spent by myself for all work performed by me in litigating this case. I have personally reviewed my time records to ensure that the time billed has been reasonable.

14. If necessary, I can make available my detailed billing records upon request for the Court's review.

15. With respect to administrative matters in this case to draft and review retainer agreements, co-counseling agreements, joint prosecution agreements, division of case duties and responsibilities, I have billed 26.7 hours.

16. With respect to client communications to prepare the case for prosecution and to discuss legal issues with my clients, I have billed 1.7 hours during the time the case was consolidated into the Forsburg case.

17. With respect to co-counsel communications to discuss legal issues and case status issues and updates, I have billed 30.1 hours.

18. With respect to court appearances including preparing for hearings, I have billed

7.7 hours.

19. With respect to discovery matters, including review of depositions, interrogatories, requests for production of documents, working with my co-counsel to propound similar discovery, I have billed 27.2.

20. With respect to document review of letters and communications, I have billed .5 hours.

21. With respect to review of expert reports, I have billed 4.9 hours.

22. With respect to discussing litigation strategies with my team, I have billed 35.8 hours.

23. With respect to the drafting or the review and editing of pleadings and motions, I have billed 90.3 hours.

24. With respect to conducting research into similar cases that were being filed early on in the *Forsburg* case and with respect to conducting research into Wells Fargo's home mortgage practices as well as research into Wells Fargo's financial gains as a result of the alleged practices, I have billed 17.7 hours.

25. With respect to participating with my team in settlement negotiations or settlement strategy discussions, I have billed 42.9 hours.

26. I have not incurred any expenses in this case.

27. I am aware that this case has been aggressively litigated by counsel for two major groups of plaintiffs. It is my belief that the good faith efforts of the Consolidated Plaintiffs' team, of which *Forsburg* is a part, have added substantially to the final mediated outcome in this case. These efforts substantially doubled the amount of the initial settlement. A large class of consumers that were damaged by Wells Fargo will now be able to share in the $185 million result. I support

the $12,500 award for each of the nine Consolidated Plaintiffs.

28. I also fully support the request for attorneys' fees by Consolidated Counsel in an amount of up to $46,250,000.00, in addition to the reasonable litigation expenses that have been expended thus far. I believe such request is fair and reasonable based on the results obtained by counsel for the consolidated plaintiffs.

SUMMARY OF HOURLY RATE, BACKGROUND AND EXPERIENCE

29. I have billed the amount of $500.00 as my hourly rate. My firm's total lodestar in this present case as of October 1, 2024, is $143,750.00 which represents a total of 287.5 hours of work.

30. I have been involved actively in consumer home mortgage issues and litigation, primarily in bankruptcy cases, for more than 30 years.

31. I have handled close to 7,000 consumer bankruptcy cases since 1988, many involving home mortgage issues and litigation. Over the course of such time, I have also been counsel for local chapter 7 trustees and our local chapter 13 trustee on selected cases.

32. I, as well as Kellett & Bartholow and another co-counsel, were appointed class counsel pursuant to Fed. R. Civ. P. 23(g) in *Cotton et.al. vs. Wells Fargo Bank, N.A.*, Adv. Proceeding No. 17-03056 (USBK WDNC), Case No. 18-00499. This case involved the practice by Wells Fargo of unilaterally placing mortgagees who were in active chapter 13 bankruptcy cases into unsolicited mortgage modifications, a practice which caused damages to these consumers in their chapter 13 reorganization efforts. I and my team successfully negotiated a settlement in that case for $13,460,000.

33. I, as well as Kellett & Bartholow and the Giles & Lambert firm were appointed class counsel pursuant to Fed. R. Civ. P. 23(g) in the aforementioned *Harlow* case. I and my team

successfully negotiated a settlement in that case for $15 million, which was approved on a final basis on October 11, 2024. *Harlow, et. al., v. Wells Fargo Bank, N.A.*, Case No.7:24-cv-00424 (WDVA), Dkt. 18.

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

Executed this 27th day of October 2024 in Brownsville, Texas.

Respectfully submitted

Abelardo Limon

EXHIBIT A

ABELARDO ("ABE") LIMON
890 W. Price Rd.
Brownsville, Texas 78520
Email: alimon@limonlaw.com

BAR ADMISSIONS:

State: State Bar of Texas, 1987
Federal: Southern District of Texas (Bankruptcy and District Courts), 1988

EDUCATION

The University of Texas at Austin School of Law, Austin, Texas. Juris Doctorate (J.D.), May 1987.

The University of Texas at Austin Lyndon B. Johnson School of Public Affairs, Masters of Public Affairs (M.P.A), May 1987.

The University of Texas at Austin, Austin, Texas. Bachelor of Journalism (B.J.), May, 1983.

Texas Southmost College, Brownsville, Texas. Associate of Arts (A.A.), May 1981.

LEGAL EMPLOYMENT HISTORY

Solo Practitioner, The Limon Law Office, January 2002 to present. The practice handles primarily consumer debtor/creditor cases, consumer real estate transactions, wills and probate matters, and advising churches and church-related entities regarding legal and organizational matters.

Ch. 13 Hearing Officer for Cindy Boudloche, Chapter 13 Bankruptcy Trustee, 2006 to 2010. Presided over Chapter 13 creditor meetings and attended chapter 13 matters for the Chapter 13 trustee as needed.

Staff Attorney, The Law Office of John Ventura. 1995 to 2001. Handled primarily consumer and business bankruptcy cases as well as some probate cases. This included court appearances, adversary matters, contested chapter 13 confirmations, and appearances at creditor meetings.

Staff Attorney, Paul Lee Wiley & Associates. 1990 to 1995. Handled a mix of consumer and business bankruptcy cases, including chapter 11 cases. Also handled real estate matters. Also represented creditors, banks, and bankruptcy trustees.

Staff Attorney, Ford & Ventura, April 1988 to 1990. Handled a mix of consumer and business bankruptcy cases.

PROFESSIONAL AFFILIATIONS AND CERTIFICATIONS

Licensed to practice law by the Supreme Court of the State of Texas, 1987.

Admitted to practice before the Southern District of Texas, May 1988.

Admitted to practice before the 5th Circuit Court of Appeals, May 1997.

Member, Texas Bar Foundation since 1998.

Member, South Texas Bankruptcy Bar Association since 1998.

Member, American Bankruptcy Institute, 1999 to 2024.

Certified in Probate/Guardianship Ad Litem Attorney Program, since May 2006.

Member, National Association Consumer Bankruptcy Attorneys since March 2007.

NOTEWORTHY OPINIONS OR CASES:

In re Shank, 569 B.R. 238 (Bankr. S.D. Tex., 2017)

Wright v. Csabi, 578 B.R. 570 (Bankr. S.D. Tex., 2017)

Served as co-counsel for the Class Plaintiffs in Adversary Proceeding No. 17-03056, styled *Cotton et.al. v. Wells Fargo Bank, N.A.*, a national class action filed in the United States Bankruptcy Court for the Western District of North Carolina, Charlotte Division, which after extensive litigation, reached a final settlement to the class claimants, plus attorneys' fees in May, 2019. The success of the case for consumers was demonstrated by the fact that no one objected to the terms and conditions of the Consumer Class Action Settlement Agreement. The case involved damages caused to Plaintiffs for allegedly unilaterally placing Chapter 13 Debtors into unsolicited mortgage modifications.

Currently serving as co-counsel for the Class Plaintiffs in Adversary Proceeding No. 20-07028, styled *Harlow et.al. v. Wells Fargo Bank Co. and Wells Fargo Bank, N.A.*, a national class action filed in the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division, which after extensive litigation, reached a mediated settlement to the class claimants, plus attorneys' fees in December of 2023. Preliminary and final motions to approve the settlement are pending. The case involves damages caused to Plaintiffs for allegedly unilaterally placing Chapter 13 Debtors into unsolicited mortgage forbearances during the 2020 COVID pandemic.

OTHER AFFILIATIONS

Chairman of the Board and Past President, World Radio Network dba Inspiracom, 2010 to present.

Member, Board of Directors, World Radio Network, 1993 to 2010.

Lay Pastor, Iglesia Cristiana del Principe de Paz, Brownsville, TX. since 2018.

Radio Host/Instructor, Academia Cristiana Del Aire, a 15 minute daily Bible correspondence radio program that airs via FM and Shortwave Radio to prisoners internationally, 1995 to present.

Radio Host of Prayer Program/Volunteer, KBNR Radio, 1988 to present.

EXHIBIT L

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re:	Case No. 2:24-cv-01026-MHW-EPD
WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	**DECLARATION BARBARA PRADO IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS**
	Judge Michael H. Watson
	Magistrate Judge Elizabeth Preston Deavers
	Class Action

DECLARATION OF BARBARA PRADO
IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS
REPRESENTATIVE SERVICE AWARDS

I, Barbara Prado, declare:

1. My name is Barbara Prado. I am over the age of eighteen years, am of sound mind, and am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct.

2. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.

3. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards (the "Motion").

4. I have been appointed as one of the Class Representatives for purposes of this Settlement.

5. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 278,000 mortgages, and for loans with co-borrowers, each co-borrower will receive an additional $83.33, which will be added to the initial automatic payment check. Additionally, it is my understanding that Settlement Class Members who believe they have other damages stemming from Wells Fargo's actions may submit a claim for additional compensation from an Additional Claims Fund included in the settlement. I understand that funds remaining in the Additional Claims Fund after satisfying any allowed claims will be re-distributed on a per-loan basis to class members who cashed their initial automatic payment under this settlement.

6. I believe that Wells Fargo placed my residential mortage into a forbearance in or around April 1, 2020, without an informed request from me for that forbearance and without my consent. I have participated through this litigation in the belief I was helping all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

7. On July 23, 2020, my attorneys filed a putative class action complaint against Wells Fargo for alleged violations of various federal statutes and common law claims relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit was filed in the Western District of Virginia and assigned Case Number 5:20-CV-00046. Subsequently, an amended complaint was filed on September 1, 2020, asserting additional federal and state statutory causes of action against Wells Fargo. A second amended complaint was filed

on September 25, 2020, in which I was added as a plaintiff, and which included California statutory causes of action. A third amended complaint was filed on April 14, 2022. Ultimately, our case was transferred to the Northern District of California on May 16, 2022, and consolidated with certain other cases in California were consolidated into *In re Wells Fargo Forbearance Litigation* under Case No 3:20-cv-06009-JD on August 19, 2022. The Consolidated Plaintiffs filed their Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

8. I have been actively involved in this litigation against Wells Fargo and have kept in communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

9. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I reviewed the initial complaint as well several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In November and December of 2020, and again in January of 2023, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of informal information requests in connection with the first mediation, as well as formal responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided hundreds of pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

10. I have been in frequent contact with my attorneys throughout this litigation, including through numerous of calls and emails concerning the status of discovery and numerous

motions that were filed, related lawsuits, several mediations and related settlement efforts, as well as the transfer of the case in the Northern District of California to this present Court in the Southern District of Ohio.

11. My attorneys kept me informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

12. On April 13, 2024, after conferring with my attorney, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of $185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

13. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

14. Since July of 2020, I estimate that I have spent at least 50 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

15. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

16. In filing the lawsuit, I understood that there was potential risk that I might have to pay some of Defendants' costs if I lost the lawsuit. I also recognize that by filing a lawsuit that I was exposing myself to potential public scrutiny.

17. I understand that my attorneys intend to request that I be awarded $12,500 as a

service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

18. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

19. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Kazerouni Law Group, APC, Keller Rohrback L.L.P, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of up to $46,250,000 and reasonable litigation expenses. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

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

Executed on October 26, 2024.

/s/ Barbara Prado
ID NnAXxDfMHxKRPiNpE2XZ8z7z
Barbara Prado

eSignature Details

Signer ID:	**NnAXxDfMHxKRPiNpE2XZ8z7z**
Signed by:	Barbara Prado
Sent to email:	Barbara.Prado@cafebonappetit.com
IP Address:	73.231.17.243
Signed at:	Oct 26 2024, 7:06 pm CDT

EXHIBIT M

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re:	Case No. 2:24-cv-01026-MHW-EPD
WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	**DECLARATION JENNA ANDERSON DOCTOR IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS**
	Judge Michael H. Watson
	Magistrate Judge Elizabeth Preston Deavers
	Class Action

DECLARATION OF JENNA ANDERSON DOCTOR IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

I, Jenna Anderson Doctor, declare:

1. My name is Jenna Anderson Doctor. I am over the age of eighteen years, am of sound mind, and am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct.

2. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.

3. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards (the "Motion").

4. I have been appointed as one of the Class Representatives for purposes of this Settlement.

5. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 278,000 mortgages, and for loans with co-borrowers, each co-borrower will receive an additional $83.33, which will be added to the initial automatic payment check. Additionally, it is my understanding that Settlement Class Members who believe they have other damages stemming from Wells Fargo's actions may submit a claim for additional compensation from an Additional Claims Fund included in the settlement. I understand that funds remaining in the Additional Claims Fund after satisfying any allowed claims will be re-distributed on a per-loan basis to class members who cashed their initial automatic payment under this settlement.

6. I believe that Wells Fargo placed my residential mortage into a forbearance at some point prior to June 29, 2020, likely in April of 2020, without a request from me for that forbearance and without my consent. I have participated through this litigation in the belief I was helping all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

7. On July 23, 2020, my attorneys filed a putative class action complaint against Wells Fargo for alleged violations of various federal statutes and common law claims relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit was filed in the Western District of Virginia and assigned Case Number 5:20-CV-00046. Subsequently, an amended complaint was filed on September 1, 2020, asserting additional federal and state statutory causes of action against Wells Fargo and adding me as a plaintiff along with

Florida statutory claims. A second amended complaint was filed on September 25, 2020. A third amended complaint was filed on April 14, 2022. Ultimately, our case was transferred to the Northern District of California on May 16, 2022, and consolidated with certain other cases in California were consolidated into *In re Wells Fargo Forbearance Litigation* under Case No 3:20-cv-06009-JD on August 19, 2022. The Consolidated Plaintiffs filed their Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

8. I have been actively involved in this litigation against Wells Fargo and have kept in communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

9. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I reviewed the initial complaint as well several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In November and December of 2020, and again in January of 2023, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of informal information requests in connection with the first mediation, as well as formal responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided hundreds of pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

10. I have been in regular contact with my attorneys throughout this litigation, including through dozens of calls and emails concerning the status of discovery and numerous

motions that were filed, related lawsuits, several mediations and related settlement efforts, as well as the transfer of the case from the Western District of Virginia to the Northern District of California and later, to this Court in the Southern District of Ohio.

11. My attorneys kept me informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

12. On April 14, 2024, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of $185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

13. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

14. Since July of 2020, I estimate that I have spent at least 40 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

15. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

16. In filing the lawsuit, I understood that there was potential risk that I might have to pay some of Defendants' costs if I lost the lawsuit. I also recognize that by filing a lawsuit that I was exposing myself to potential public scrutiny.

17. I understand that my attorneys intend to request that I be awarded $12,500 as a

service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

18. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

19. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Kazerouni Law Group, APC, Keller Rohrback L.L.P, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of up to $46,250,000 and reasonable litigation expenses. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

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

Executed on October 25, 2024.

/s/ ID zegEd8LzRo1BsaQF97aG8My8
Jenna Anderson Doctor

eSignature Details

Signer ID:	**zegEd8LzRo1BsaQF97aG8My8**
Signed by:	Jenna Doctor
Sent to email:	jennak803@gmail.com
IP Address:	68.202.194.173
Signed at:	Oct 25 2024, 4:07 pm CDT

EXHIBIT N

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re: **WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION**	Case No. 2:24-cv-01026-MHW-EPD **DECLARATION OF LUIS CASTRO IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS** Judge Michael H. Watson Magistrate Judge Elizabeth Preston Deavers Class Action

DECLARATION OF LUIS CASTRO IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

I, Luis Castro, declare:

1. My name is Luis Castro. I am over the age of eighteen years, am of sound mind, and am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct.

2. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.

3. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards (the "Motion").

4. I have been appointed as one of the Class Representatives for purposes of this Settlement.

5. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 278,000 mortgages, and for loans with co-borrowers, each co-borrower will receive an additional $83.33, which will be added to the initial automatic payment check, meaning that borrowers like my wife and me, who are both co-borrowers on our Wells Fargo loan, will receive an initial payment of $414.86 ($248.20 + ($83.33x2)). Additionally, it is my understanding that Settlement Class Members who believe they have other damages stemming from Wells Fargo's actions may submit a claim for additional compensation from an Additional Claims Fund included in the settlement. I understand that funds remaining in the Additional Claims Fund after satisfying any allowed claims will be re-distributed on a per-loan basis to class members who cashed their initial automatic payment under this settlement.

6. I believe that Wells Fargo placed my residential mortage into a forbearance in late March of 2020, without a request from me for that forbearance and without my consent. As a result, for months, my wife and I were unable to refinance our mortgage loan. I have participated in this litigation out of a desire to help all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

7. On July 23, 2020, my attorneys filed a putative class action complaint against Wells Fargo for alleged violations of various federal statutes and common law claims relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit was filed in the Western District of Virginia and assigned Case Number 5:20-CV-00046.

Subsequently, an amended complaint was filed on September 1, 2020, asserting additional federal and state statutory causes of action against Wells Fargo and adding me and my wife as plaintiffs along with Texas statutory claims. A second amended complaint was filed on September 25, 2020. A third amended complaint was filed on April 14, 2022. Ultimately, our case was transferred to the Northern District of California on May 16, 2022, and consolidated with certain other cases in California were consolidated into *In re Wells Fargo Forbearance Litigation* under Case No 3:20-cv-06009-JD on August 19, 2022. The Consolidated Plaintiffs filed their Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

8. I have been actively involved in this litigation against Wells Fargo and have kept in communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

9. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I reviewed the initial complaint as well several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In November and December of 2020, and again in January of 2023, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of informal information requests in connection with the first mediation, as well as formal responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided hundreds of pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

10. I have been in regular contact with my attorneys throughout this litigation, including through dozens of calls and emails concerning the status of discovery and numerous motions that were filed, related lawsuits, several mediations and related settlement efforts, as well as the transfer of the case from the Western District of Virginia to the Northern District of California and later, to this Court in the Southern District of Ohio.

11. My attorneys kept me informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

12. On April 13, 2024, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of $185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

13. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

14. Since late June of 2020, I estimate that I have spent at least 40 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

15. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

16. In filing the lawsuit, I understood that there was potential risk that I might have to pay some of Defendants' costs if I lost the lawsuit. I also recognize that by filing a lawsuit that I

was exposing myself to potential public scrutiny.

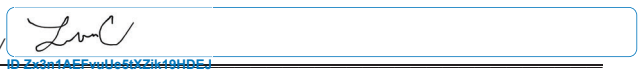
17. I understand that my attorneys intend to request that I be awarded $12,500 as a service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

18. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

19. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Kazerouni Law Group, APC, Keller Rohrback L.L.P, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of up to $46,250,000 and reasonable litigation expenses. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

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

Executed on October 26, 2024.

/s/ 
ID: Zw2e1AEFwuUe5tXZiIr10UDEJ
Luis Castro

eSignature Details

Signer ID:	**Zx3n1AEFvuUe5tXZik19HDEJ**
Signed by:	Luis Castro
Sent to email:	dallasthenics@gmail.com
IP Address:	177.241.40.247
Signed at:	Oct 26 2024, 6:37 pm CDT

EXHIBIT O

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)

In re:	Case No. 2:24-cv-01026-MHW-EPD
WELLS FARGO COVID FORBEARANCE SETTLEMENT LITIGATION	**DECLARATION MARISOL CASTRO IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS**
	Judge Michael H. Watson
	Magistrate Judge Elizabeth Preston Deavers
	Class Action

DECLARATION OF MARISOL CASTRO IN SUPPORT OF CONSOLIDATED PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

I, Marisol Castro, declare:

1. My name is Marisol Castro. I am over the age of eighteen years, am of sound mind, and am competent to make this statement. I have personal knowledge of the facts set forth below, which I state are true and correct.

2. I am one of the Consolidated Plaintiffs in the above-captioned action against defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (the "Defendants" or "Wells Fargo"). If called as a witness, I would competently testify to matters herein from personal knowledge.

3. I am filing this declaration in support of Consolidated Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Class Representative Service Awards (the "Motion").

4. I have been appointed as one of the Class Representatives for purposes of this Settlement.

5. I have agreed to a class action settlement with Defendants with the assistance of my attorneys. It is my understanding that Defendants have agreed to provide Settlement Class Members with monetary relief from a Settlement Fund of $185,000,000. Specifically, I understand that the Settlement Fund will be used to provide automatic payments of approximately $252 to Settlement Class Members concerning an estimated 278,000 mortgages, and for loans with co-borrowers, each co-borrower will receive an additional $83.33, which will be added to the initial automatic payment check, meaning that borrowers like my husband and me, who are both co-borrowers on our Wells Fargo loan, will receive an initial payment of $414.86 ($248.20 + ($83.33x2)). Additionally, it is my understanding that Settlement Class Members who believe they have other damages stemming from Wells Fargo's actions may submit a claim for additional compensation from an Additional Claims Fund included in the settlement. I understand that funds remaining in the Additional Claims Fund after satisfying any allowed claims will be re-distributed on a per-loan basis to class members who cashed their initial automatic payment under this settlement.

6. I believe that Wells Fargo placed my residential mortage into a forbearance in late March of 2020, without an informed request from me and without my informed consent. As a result, for months, my husband and I were unable to refinance our mortgage loan. I have participated in this litigation out of a desire to help all other persons similarly situated to me whose residential mortgage loan was placed into a forbearance without informed consent.

7. On July 23, 2020, my attorneys filed a putative class action complaint against Wells Fargo for alleged violations of various federal statutes and common law claims relating to Wells Fargo having placed consumers into a mortgage forbearance without their consent. That lawsuit was filed in the Western District of Virginia and assigned Case Number 5:20-CV-00046.

Subsequently, an amended complaint was filed on September 1, 2020, asserting additional federal and state statutory causes of action against Wells Fargo and adding me and my husband as plaintiffs along with Texas statutory claims. A second amended complaint was filed on September 25, 2020. A third amended complaint was filed on April 14, 2022. Ultimately, our case was transferred to the Northern District of California on May 16, 2022, and consolidated with certain other cases in California were consolidated into *In re Wells Fargo Forbearance Litigation* under Case No 3:20-cv-06009-JD on August 19, 2022. The Consolidated Plaintiffs filed their Fourth Amended Consolidated Complaint Class Action filed on February 29, 2024.

8. I have been actively involved in this litigation against Wells Fargo and have kept in communication with my attorneys about the progress of the lawsuit and related lawsuits that were filed in different courts.

9. As a brief summary of my efforts in representing the best interests of the class members, I communicated with my attorneys for the initial consultation before the lawsuit was filed, as well as participated in several calls regarding factual support for my legal claims. I reviewed the initial complaint as well several amended complaints before they were filed, and I discussed the factual allegations with my attorneys. In November and December of 2020, and again in January of 2023, I assisted my attorneys in responding to written discovery requests from Wells Fargo in the form of informal information requests in connection with the first mediation, as well as formal responses to interrogatories and requests for documents. As part of discovery, I searched for, gathered and provided several relevant documents and other evidence to my attorneys. I understand that my attorneys provided hundreds of pages of documentation to Wells Fargo relating to my specific legal claims, and several thousand pages of documentation collectively from the Consolidated Plaintiffs.

10. I have been in regular contact with my attorneys throughout this litigation, including through dozens of calls and emails concerning the status of discovery and numerous motions that were filed, related lawsuits, several mediations and related settlement efforts, as well as the transfer of the case from the Western District of Virginia to the Northern District of California and later, to this Court in the Southern District of Ohio.

11. My attorneys kept me informed of the competing lawsuit filed by plaintiff Brian Echard and the prior inferior settlement reached by counsel for Mr. Echard in the amount of $94,000,000 that was not given preliminary approval.

12. On April 13, 2024, after conferring with my attorney at his office, I reviewed, approved and signed the initial proposed class action settlement agreement, which proposed Settlement would create a Settlement Fund of $185,000,000. Further, I approved of amendment to the settlement agreement after discussing it with my attorneys.

13. My attorneys have updated me on the recent progress of settlement administration, including that the settlement was preliminarily approved and when class notices were sent out. I personally received a class notice that was sent to me via email by the Settlement Administrator.

14. Since July of 2020, I estimate that I have spent at least 40 hours working on this litigation against Wells Fargo, including the tasks mentioned above. I anticipate spending additional time on this case through the time of the final approval hearing scheduled for December 10, 2024, for the Court to decide whether to give final approval to this proposed Settlement.

15. At all times, I have exercised reasonable and diligent effort to represent the interests of the class members and to prosecute the claims through my experienced attorneys.

16. In filing the lawsuit, I understood that there was potential risk that I might have to pay some of Defendants' costs if I lost the lawsuit. I also recognize that by filing a lawsuit that I

was exposing myself to potential public scrutiny.

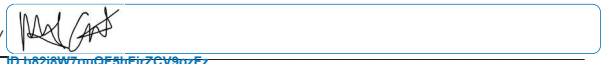
17. I understand that my attorneys intend to request that I be awarded $12,500 as a service award for my efforts in this litigation to represent the class members. I approve of that request as fair and reasonable. I understand that any such award has to be approved by the Court.

18. In connection with the lawsuit, I entered into a written agreement with my attorneys to represent me on a contingency fee basis. It is my understanding that my attorneys have not been paid anything to date for their time and expenses in representing me in this litigation.

19. I have reviewed a written draft of my attorneys' request for an award of attorneys' fees and costs. I fully support the request of my attorneys at Kazerouni Law Group, APC, Keller Rohrback L.L.P, and Kellett & Bartholow, PLLC, for an award of attorneys' fees of up to $46,250,000 and reasonable litigation expenses. I believe such requests are fair and reasonable based on, for example, the benefits of the proposed Settlement, the many thousands of hours of dedicated and diligent work of my attorneys to prosecute the claims against Wells Fargo, and the risks and uncertainties of class action litigation.

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

Executed on October 26, 2024.

/s/ 
ID: tj82i8W7ouQF5hFjrZCV9ozFz
Marisol Castro

eSignature Details

Signer ID:	**b82i8W7ouQF5hFjrZCV9ozFz**
Signed by:	Marisol Castro
Sent to email:	mgcastro789@gmail.com
IP Address:	162.205.90.199
Signed at:	Oct 26 2024, 6:44 pm CDT