UNITED STATES DISTRICT COURT
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

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Pursuant to the terms of the First Amended Settlement Agreement ("Settlement," ECF No. 240-1 at § II.G) and the Court's Order Preliminarily Approving Settlement (ECF No. 243, *see also* ECF No. 247), plaintiffs Luis and Marisol Castro, Pamela Delpapa, Jenna Doctor, Samara Green Patrick Healy, Barbara Prado, Renrick and Vivian Robinson, Brian Echard, Heather Shimp, and Patricia Foley (collectively, the "Plaintiffs" or "Class Representatives"), on behalf of themselves and all similar situated individuals, respectfully move the Court for an order granting final approval of the class action Settlement. This motion is unopposed by defendants Wells Fargo Bank, N.A., and Wells Fargo & Co. (jointly, "Wells Fargo" or the "Defendants").

A proposed Order Granting Final Approval of Settlement and a separate proposed Judgment are submitted herewith. The proposed Final Approval Order grants final approval of the Settlement, finds that the Notice Plan and Class Notice satisfied due process, finds that the Class Representatives and interim Class Counsel[1] adequately represented the Class Members, approves the Class Releases, approves the Opt-Out List for timely and proper requests for exclusion, reserves exclusive and continuing jurisdiction over the Settlement, and directs that the Class Released Claims be dismissed with prejudice, among other specific provisions listed in Section II.G of the Settlement.

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

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[1] Consistent with filings to date, Class Counsel comprises "Consolidated Counsel" whose cases were initially consolidated in California and "*Echard* Counsel" whose case was initially filed in Washington.

Dated: November 26, 2024 Respectfully submitted,

s/ Robert J. Wagoner
Robert J. Wagoner (0068991)
DITTMER, WAGONER & STEELE, LLC
107 W. Johnstown Road
Gahanna, Ohio 43230
Tel: (614) 471-8181; Fax: (614) 540-7473
bob@dwslaw.com

Derek W. Loeser (*Pro Hac Vice*)
Gretchen Freeman Cappio (*Pro Hac Vice*)
Zachary W. Gussin (*Pro Hac Vice*)
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3400
Seattle, WA 98101
Tel: (206) 623-1900; Fax: (206) 623-3384
dloeser@kellerrohrback.com
gcappio@kellerrohrback.com
zgussin@kellerrohrback.com

Theodore O. Bartholow III ("Thad") (*Pro Hac Vice*)
Karen L. Kellett (*Pro Hac Vice*)
KELLETT & BARTHOLOW PLLC
11300 N. Central Expressway, Suite 301
Dallas, TX 75243
Tel: (214) 696-9000, Fax (214) 696-9001
thad@kblawtx.com
kkellet@kblawtx.com

Abbas Kazerounian
KAZEROUNI LAW GROUP, APC
245 Fischer Avenue, Unit D1
Costa Mesa, CA 92626
Tel: (800) 400-6808; Fax: (800) 520-5523
ak@kazlg.com

Jason A. Ibey
KAZEROUNI LAW GROUP, APC
321 N Mall Drive, Suite R108
St. George, UT 84790
Tel: (800) 400-6808; Fax: (800) 520-5523
jason@kazlg.com

Interim Class Counsel and
Counsel for Consolidated Plaintiffs

s/ Nathan A. Hunter (0096389)
Trial Attorney
Nathan A. Hunter (0096389)
Hunter & Hunter LLC
1491 Polaris Pkwy #21416
Columbus, OH 43240
Tel: (234) 738-4648
nathan@hunterfirm.org

Knoll Lowney (*Pro Hac Vice*)
Claire Tonry (*Pro Hac Vice*)
Marc Zemel (*Pro Hac Vice*)
Alyssa Koepfgen (*Pro Hac Vice*)
Smith & Lowney, PLLC
2317 E. John Street
Seattle, WA 98112
Tel: (206) 860-2883
knoll@smithandlowney.com
claire@smithandlowney.com
marc@smithandlowney.com
alyssa@smithandlowney.com

Interim Class Counsel and Counsel
for Echard Plaintiffs

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 29, 2024, the Court preliminarily certified this proposed class Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure based on the First Amended Settlement Agreement for settlement purposes only, directed that the Notice Plan be implemented, appointed the Class Representatives and a Settlement Administrator, and scheduled a Final Approval Hearing for December 10, 2024. ECF No. 240-1 (the "Preliminary Approval Order).[2] The Class Representatives and appointed interim Class Counsel have complied with the Preliminary Approval Order and now seek final approval of the Settlement.

This Settlement resolves years of complex litigation brought by customers of Wells Fargo who allege they were harmed by Wells Fargo's practice of placing their mortgage accounts into a forbearance without adequate informed consent, starting in the early months of the COVID-19 pandemic. The non-reversionary common fund of $185,000,000 will be used to compensate more than three hundred thousand Class Members nationwide through an automatic monetary payment and the option to submit a claim for additional compensation; to cover Class notice and administration expenses; and provide an award of attorneys' fees, costs, and Class Representative service awards.

The Class notice via direct email or by postcard was adequately and properly administered. And the Preliminary Approval Order has otherwise been followed to date, including the timely submission of competing motions for an award of attorneys' fees, costs, and Class Representative service awards (ECF Nos. 248 and 249), which motions were posted on the Settlement Website.

The reaction from Class Members has been extremely positive. Indeed, no absent Class Member objected to the proposed Settlement and only 27 individuals have properly requested

[2] Unless otherwise indicated, defined terms have the same meaning as set forth in the First Amended Settlement Agreement ("Settlement", "Settlement Agreement" or "Agr.") at ECF No. 240-1.

exclusion from the Settlement.[3] An additional six individuals have submitted partial requests for exclusion. The deadline to object or request exclusion was November 12, 2024. Although a Claim Form is not required for the automatic payment to Class Members who did not request exclusion, 503 individuals have thus far submitted a Claim Form seeking additional monetary compensation from the common fund. The deadline to submit a Claim Form is January 10, 2025.

Given that this Settlement is fair, adequate, and reasonable, and all the requirements of Fed. R. Civ. P. 23(a) - (e) are satisfied, the Court should grant final approval to this class action Settlement and enter the proposed Final Approval Order and separate Judgment.

II. BACKGROUND AND SUMMARY OF SETTLEMENT

The history of this litigation is known to the Court and also included in the parties' request for preliminary settlement approval. ECF No. 222. Therefore, Plaintiffs set forth herein only a summary of the action to the extent it is relevant to considerations for final Settlement approval.

A. The Related (Now Consolidated) Litigation

Beginning in mid-2020, several lawsuits were filed against Wells Fargo in different parts of the country relating to claims that the mortgage accounts of customers of Wells Fargo were placed into a forbearance without their knowledge or consent. The plaintiffs in these actions alleged that such practice violated state and/or federal law and caused harm to consumers, seeking redress in the form of monetary compensation, declaratory relief and injunctive relief. *Echard et al. v. Wells Fargo Bank N.A., et al*., No. 2:21-cv-5080 was transferred to this court, and, pursuant to the Settlement, *In re Wells Fargo Forbearance Litigation*, No. 2:24-cv-1026 was transferred to this Court. On June 12, 2024, the Court consolidated the related actions and ordered a revision to the case caption. ECF No. 237. That order also appointed interim Class Counsel for settlement purposes only. *Id.*/

[3] Class Representatives Brian Echard, Heather Shimp, and Patricia Foley lodged an objection to the Consolidated Counsel's motion for attorneys' fees. *See* Dkt. 256. Under the express terms of the Settlement, resolution of disputes relating to attorneys' fees is not required before the Court may grant final approval of the Settlement. Agr. § VII.C.

B. Negotiation of the Proposed Settlement

The preliminarily approved Settlement providing for a $185,000,000 Settlement Fund is the result of arm's length negotiations conducted on October 3, 2023, October 24, 2023, with experienced mediator the Honorable Layn Phillips (Ret.) of Phillips ADR Enterprises. 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.

C. The Settlement Agreement

The parties submitted an initial proposed class settlement agreement for consideration by motion to the Court on April 17, 2024. ECF No. 222. Following a status conference held on May 22, 2024 (ECF No. 232), and subsequent direction from the Court (ECF No. 237), the parties revised the settlement agreement and submitted the operative First Amended Settlement Agreement for preliminary approval consideration on July 23, 2024. ECF Nos. 240 and 240-1.

1. Settlement Class Definition

Pursuant to the Settlement Agreement (Agr. § I.8, 54 and 72) and the Preliminary Approval Order (ECF No. 243, PageID 1122-1123), the "Settlement Class" or "Class" means:

> All persons in the United States who: (a) had a mortgage serviced by Wells Fargo that was placed into a COVID mortgage forbearance without adequate informed consent between March 1, 2020, and December 31, 2021 ("At Issue Forbearance"); (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, and 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.

"Without Adequate Informed Consent" means for the purposes of the Settlement only:

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[4]; (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

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.

"Proactive Wells Fargo Business Decision" means for the purposes of the Settlement only:

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.

2. Monetary Compensation to the Class Members

If finally approved, the proposed Settlement will compensate all Class Members who did not timely opt out of the Settlement, through Automatic Payments from the allocation of $69 million of the total $185 million Settlement Fund[5] (Agr. § IV.B.1.), without the need for a Claim Form. Co-borrowers on a mortgage account will be treated as a single Class Member under the Settlement. Agr. § IV.B.1. This automatic payment, in the form of a check, is expected to be

[4] 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.

[5] Defendants have no reversionary interest in the Settlement Fund. ECF. No. 222-2 PageID 357.

approximately $252.[6] *See* ECF No. 222, PageID 258. In addition to the Automatic Payment, each Co-Borrower on a Mortgage that received an At-Issue Forbearance, and who did not exclude themself from the Settlement, will receive an additional $83.33 automatically. ECF No. 222-2, PageID 356.

Additionally, Class Members, who do not exclude themselves are afforded the option to submit a Claim Form and evidence requesting additional compensation for damages proximately caused by the At-Issue Forbearance, including (a) delayed refinancing; (b) increased refinancing costs; (c) denial or reduction of personal credit lines and associated financial consequences; (d) inability to access existing lines of credit and costs for securing alternate funding; (e) lost income and/or lost business opportunity; or (f) any other damages caused by an At-Issue Forbearance. The Settlement Administrator is responsible for validating the Claim Forms and determining the amounts of payments for individualized harms identified by the Class Members. Agr. § IV.B.2.a.; ECF No. 222-2, PageID 356. Further details concerning Settlement payments to Class Members are found in the Allocation Plan (a/k/a "Plan of Allocation") that was filed with the Court on April 17, 2024. ECF No. 222-2.

If the Settlement Fund has Remaining Amounts after paying the Automatic Payments, Co-Borrower Payments, and Supplemental Payments to Class Members, any Fee and Expense Awards, any Service Awards, and the Settlement Administrator's Costs and Expenses, the funds will be distributed on a *pro rata* basis to Eligible Class Members who cashed a previous check, provided the amount is at least $10 each. Agr. § IV.B.3.

3. Release

The proposed Release will relinquish Class Members' claims relating to their forbearances, in exchange for monetary relief. Agr. § III.A.1. It is therefore reasonably tailored to the claims in the action.

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[6] Assuming zero opt outs, there would be approximately 273,000 mortgages at issue. As only 27 individuals have properly opted out of the Settlement, the estimated Automatic Payment remains approximately $252 ($69,000,000 / Approx. 272,973 mortgage accounts of Class Members who have not opted out = Approx. $252.77).

4. Notice Plan

The Notice Plan consists of direct notice to the Class Members (who are mortgage customers of Wells Fargo) via email where available, or by postcard, where no email address is known. Agr. § II.E. Also, the Settlement requires the Administrator to host a Settlement Website to provide detailed information about the Settlement, make important case documents available to the Class, and permit the online submission of Claim Forms. *Id.*

5. The Preliminary Approval Order

The Preliminary Approval Order was signed by the Court on July 29, 2024 (ECF No. 243), and was later amended on August 29, 2024, relating to Class notice (ECF No. 247). That order found that the proposed Settlement preliminarily satisfies all of the requirements of Rule 23(a), including that common issues predominate over any questions affecting individual members of the Class, and satisfies Rule 23(e)(2). ECF No. 243.[7] *Id.* The order also appointed the Class Representatives for settlement purposes. *Id*. Further, the order set various deadlines, including for Class notice, for Class Members to object or request exclusion from the Settlement and submit a claim form for additional compensation, as well as, for example, deadlines to request approval of attorneys' fees, costs and services awards, a motion for final approval of the Settlement, and a declaration from the Administrator concerning Class notice and Settlement administration. *Id*. It also set a Final Approval Hearing that is scheduled for December 10, 2024. *Id.*

III. ARGUMENT

A. Legal Standards for Final Class Action Settlement Approval

Rule 23(e) of the Federal Rules of Civil Procedure governs settlement of class action lawsuits and provides that a "class may be settled, voluntarily dismissed, or compromised only with the court's approval." Approval of a class action settlement generally proceeds through three stages: (1) preliminary approval; (2) notice to the class; and (3) a fairness hearing and final

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[7] The Preliminary Approval Order states that "[t]he Court will address the appointment of Class Counsel pursuant to Federal Rule 23(g) by separate order." ECF No. 243, p. 3, ¶ 7. To date, the Court has not modified its appointment of Class Counsel for settlement purposes under Rule 23(g). *See* ECF No. 237 (appointing interim Class Counsel).

approval. *Lindsey v. Memphis-Shelby Cnty. Airport Auth.*, 229 F.3d 1150, *6 (6th Cir. 2000) The first two stages have been completed and the Court should now grant final approval of the Settlement.

Before a proposed class settlement may be finally approved under Rule 23(e), the Court must determine that it is "fair, reasonable and adequate". Fed. R. Civ. P. 23(e). This determination is left to the sound discretion of the Court.) *See Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 783 (N.D. Ohio 2010), on reconsideration in part (July 21, 2010) (citing *Bailey v. Great Lakes Canning, Inc.*, 908 F.2d 38, 42 (6th Cir. 1990)). The Sixth Circuit has identified the following factors when considering whether to finally approve a class action settlement: "(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest." *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 754 (6th Cir. 2013). "These factors are considered in light of 'federal law favor[ing the] settlement of complex class actions.'" *Todd S. Elwert, Inc., DC v. All. Healthcare Servs., Inc.*, No. 3:15-CV-2673, 2018 WL 4539287, at *2 (N.D. Ohio Sept. 21, 2018) (quoting *Preston v. Craig Transp. Co.*, No. 3:14 CV 1410, 2015 WL 12766499, at *2 (N.D. Ohio Oct. 29, 2015)).

The 2018 amendments to Rule 23(e) contain specific factors for federal courts to consider in determining whether a class action settlement is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2). These factors include:

- Whether the class representatives and class counsel have adequately represented the class;
- Whether the proposal was negotiated at arm's length;
- Whether the relief provided for the class is adequate, taking into account: (i) the costs, risk, and delay of trial and appeal: (ii) the effectiveness of any proposed method of distributing relief to the class including the method of processing class members claims; (iii) the terms of any proposed award of attorney's fees,

including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and

- Whether the proposal treats class members equitably.

The purpose of these amendments is to "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment. Courts in this Circuit consider both sets of factors when assessing the reasonableness of a settlement and district judges are entitled to "wide discretion in assessing the weight and applicability of these factors." *Doe v. Ohio*, No. 2:91-cv-464, 2020 WL 728276, at * 3 (S.D. Ohio Feb. 12, 2020). "In general, a reviewing court's task 'is not to decide whether one side is right or even whether one side has the better of these arguments … The question is rather whether the parties are using settlement to resolve a legitimate legal and factual disagreement.'" *Brent v. Midland Funding, LLC*, No. 3:11 CV 1332, 2011 WL 3862363, *12 (N.D. Ohio Sept. 1, 2011) (quoting *UAW v. GMC*, 497 F.3d 615, 632 (6th Cir. 2007)).

B. Arm's Length Negotiations with the Assistance of an Experienced Mediator

The proposed Settlement was reached with the assistance of the Honorable Layn Phillips (Ret.), and others, serving as mediator, providing for a common fund of $185 million, which is the product of an adversarial negotiation process conduced at arm's length, and a mediator's recommendation. *See* ECF No. 222; *see also Roland v. Convergys Customer Mgmt. Grp. Inc.*, No. 1:15-CV-00325, 2017 WL 977589, at *1 (S.D. Ohio Mar. 10, 2017) (noting that settlement was "reached after good faith, arm's length negotiations, warranting a presumption in favor of approval"). There should be no doubt that the proposed Settlement was conducted in good faith, without the risk of fraud or collusion, which favors final settlement approval. *See Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2021 WL 757123, at *4 (S.D. Ohio Feb. 18, 2021)) (Concluding that as there is "no evidence – or even a suggestion – that the Settlement was a product of fraud or collusion, … this factor favors approval of the Settlement.").

C. Sufficient Discovery Was Conducted to Make an Informed Settlement Decision

"To confirm that the Plaintiffs 'have had access to sufficient information to evaluate their case and to assess the adequacy of the proposed Settlement,' the Court must consider the amount of discovery engaged in by the parties." *Kapik*, 2021 WL 757123, at *5 (quoting *In re Broadwing, Inc. ERISA Litig*., 252 F.R.D. 369, 374 (S.D. Ohio 2006)). Here, sufficient discovery was conducted prior to the Settlement to permit Plaintiffs and their Counsel to make an informed judgment respecting the fairness and adequacy of the proposed Settlement, taking into consideration the claims and defenses of the parties.

Here, Plaintiffs and Defendants engaged in almost four years of extensive, formal and informal discovery, permitting each side to fully assess the strengths and weaknesses of their respective claims and defenses, which included reviewing over 44,000 documents, analyzing millions of data points, taking eight depositions, and engaging several experts. ECF No. 222, PageID 265. Additional information was exchanged during mediation sessions. Therefore, this factor favors final approval. *See Kritzer v. Safelite Sols., LLC*, No. 2:10-CV-0729, 2012 WL 1945144, at *7 (S.D. Ohio May 30, 2012) ("In light of the discovery that took place prior to settlement taking place, the Court deems it appropriate to 'defer to the judgment of experienced trial counsel' with regard to the evaluation of the strength of the case and the desirability of settlement at this stage of the proceeding.") (internal citation omitted).

D. The Complexity, Expense, and Likely Duration of Litigation

"Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *Brent v. Midland Funding, LLC*, No. 3:11 CV 1332, 2011 WL 3862363, at *16 (N.D. Ohio Sept. 1, 2011) (quoting *In re Austrian & German Bank Holocaust Litig*., 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000)). As noted in the joint motion for preliminary approval (Dkt. No. 222, PageID 265), avoiding the delay, risks, and costs of continued litigation against a defendant is a valid reason for counsel to recommend and for the court to approve a settlement. *See In re Nationwide Fin. Servs. Litig.*, No. 2:08-CV-00249, 2009 WL 8747486, at *4 (S.D. Ohio Aug. 19, 2009).

Plaintiffs continue to believe that the claims asserted are meritorious, however, Defendants also continue to deny that Plaintiffs are entitled to any form of damages or relief based on the alleged conduct. Defendants further continue to contest the pleadings and had fully briefed a motion to dismiss the Consolidated Plaintiffs' Fourth Amended Complaint prior to reaching a settlement. In light of the parties' positions on this case and considering the related litigation that has taken place since at least mid-2020, continued litigation would be protracted, unduly burdensome, and expensive. The Class Representatives and interim Class Counsel have carefully balanced the risks of engaging in protracted and contentious litigation against the benefits to the Class and believe the monetary relief obtained now outweighs the risks of proceeding with litigation. Without this settlement, contentious litigation would likely continue for years. *See Bert v. AK Steel Corp.,* No. 1:02-cv-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) ("The Court has no doubt that … a complete resolution of the case would not be reached for several more years. This factor clearly weighs in favor of the proposed settlement.").

Accordingly, this factor weighs in favor of final approval.

E. Likelihood of Success on the Merits

The likelihood of success on the merits has been identified by the Sixth Circuit as the most important factor a district court must evaluate in assessing the fairness of a class action settlement. *Poplar Creek Dev. Co. v. Chesapeake Appalachia, LLC*, 636 F.3d 235, 245 (6th Cir. 2011). A district court must weigh the likelihood that the class ultimately will prevail "against the amount and form of the relief offered in the settlement." *Carson v Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also UAW*, 497 F.3d at 631. However, when reviewing a settlement, courts "should be hesitant to engage in a trial on the merits or substitute their judgment for that of the parties who negotiated the proposed settlement." *In re Nationwide Fin. Servs. Litig.*, No. 2:08-CV-00249, 2009 WL 8747486, at *5-6 (S.D. Ohio Aug. 19, 2009).

Prior to the Settlement, Defendants had prevailed in dismissing some of Consolidated Plaintiffs' claims, yet some of the claims were found to be sufficiently pled. *See* ECF No. 222, PageID 265. Nevertheless, Defendants filed yet another motion to dismiss Consolidated Plaintiffs'

claims that has not been ruled on. Defendants also filed a motion to dismiss and a motion for judgment on the pleadings relating to the claims of Mr. Echard. Even if the Consolidated Plaintiffs had prevailed on the most recent motion to dismiss, there remained for all Plaintiffs the matter of class certification and potential motions for summary judgment, with likely appeals following decisions on these important motions.

While Plaintiffs are confident that they would ultimately prevail on the merits of at least some of their claims, there are risks inherent in all litigation, especially class action litigation. Indeed, unique risks are present in this particular litigation stemming from Defendants' actions during the COVID-19 pandemic, when the CARES Act was enacted, and its application was novel. *See e.g.*, *Connectivity Sys. Inc. v. Nat'l City Bank*, No. 2:08-CV-1119, 2011 WL 292008, at *6 (S.D. Ohio Jan. 26, 2011) (finding settlement is favored where the "Named Plaintiffs' likelihood of success on the merits is uncertain.").

Therefore, this factor weighs in favor of final approval.

F. The Experience and Views of Interim Class Counsel, and Recommendations of the Class Representatives

Interim Class Counsel are highly experienced in class action litigation and fully support final approval of the proposed Settlement as fair, adequate, and reasonable, providing for meaningful monetary relief to hundreds of thousands of Class Members across the nation. Such recommendations of experienced interim Class Counsel under the circumstances are entitled to deference. *See Williams v. Vukovich*, 720 F.2d 909, 922 (6th Cir. 1983). In a similar way, the recommendations of the several Class Representatives favors final approval of the Settlement, who also fully support final approval. *See Gascho v. Global Fitness Holdings, LLC*, No. 2:11-cv-436, 2014 WL 1350509, at *18 (S.D. Ohio Apr. 4, 2014) ("Not insignificantly, the Class Representatives have also approved the Settlement Agreement").

G. Significant and Reasonable Monetary Compensation to the Class Members

The reasonableness and adequacy of the individual Settlement recovery was previously explained in the joint motion for preliminary approval. ECF No. 222, PageID 262 to 263. Also, as

noted above, the proposed Settlement provides $69 million for Automatic Payments to Class Members who do not opt out of the Settlement, with the initial individual payment estimated to be approximately $252 per mortgage account. Agr. § IV.B.1; ECF No. 222, PageID 258. An additional $83.33 will be added to the Automatic Payments for Co-Borrowers on the Mortgage subject to an At-Issue Forbearance. Agr. § IV.B.1; ECF No. 222, PageID 356. The Automatic Payments provide reasonable compensation for Class Members' alleged harm stemming from allegedly being placed into a mortgage forbearance without adequate informed consent, without the need to submit a Claim Form.

For Class Members who believe they have suffered concrete harm such as, for example, harm to their credit or denial of a credit application, they are afforded the option to submit a Claim Form for additional monetary compensation from the Settlement Fund. Agr. § IV.B.2 and V.A.; ECF No. 222, PageID 356.

Thus, the amount of monetary compensation to Class Members under the Settlement is fair and reasonable, taking into consideration the risks of continued litigation and the benefits of settlement without additional years of contested litigation, and the nature of the claims asserted. This Settlement is an amicable compromise between the parties reached after more than four years of litigation, warranting a finding that the Settlement compensation is fair and reasonable.

H. Overwhelmingly Positive Reaction of the Absent Class Members

The reaction to the Settlement by Class Members has been overwhelmingly favorable, as there are *no objections* to the Settlement and the Administrator reports receiving only 27 adequate requests exclusion from the Settlement out of more than three hundred thousand Class Members. Azari Decl., ¶ 21; Exhibit 6 thereto (the Exclusion Report). The Administrator reports that an additional 6 individuals submitted timely but deficient requests for exclusion. *Id.* at ¶ 21.[8] Additionally, as of November 25, 2024, the Administrator has received 503 Claim Forms seeking

[8] The deficiency is based on either a missing statement of exclusion or missing phone number, or both. Azari Decl., ¶ 21; Exhibit 6 thereto.

additional compensation above the Automatic Payments. *Id.* at ¶ 23. The deadline to submit a Claim Form has not yet passed.

The low number of opt outs and zero objections to the Settlement is a strong indication of approval by the absent Class Members. *See e.g.*, *Moore v. Medical Financial Services, Inc*., No. 2:20-cv-02443, 2021 WL 6333304, at *4 (W.D. Tenn. Nov. 30, 2021) (granting final approval when "no objections were filed and only five members requested to be excluded. Accordingly, it is recommended that the reaction of the absent class members supports final approval."); *BleachTech LLC v. United Parcel Service, Inc*., No. 14-12719, 2022 WL 2835830, at *3 (E.D. Mich. July 20, 2022) (noting that no objections to the class action settlement "was a clear indication that the Settlement Class Members support the Settlement.").

Therefore, this factor favors final approval.

I. Settlement is in the Public Interest

Final approval of this proposed Settlement serves the public interest through resolution of related complex litigation and provides reasonable monetary benefits now, as opposed to additional years of protracted litigation, including further expensive discovery and motion practice. *See Whitlock v. FSL Mgmt. LLC*, 843 F.3d 1084, 1094 (6th Cir. 2016) (noting the "particularly muscular presumption in favor of settlement in class-action litigation") (internal quotation marks and citation omitted); *In re Telectronics Inc*., 137 F. Supp. 2d 985, 1025 (S.D. Ohio 2001); *see also Hainey v. Parrott*, 617 F. Supp. 2d 668, 679 (S.D. Ohio 2007) (noting that "[p]ublic policy generally favors settlement of class action lawsuits") (superseded by statute on other grounds) (citing *Whitford v. First Nationwide Bank,* 147 F.R.D. 135, 143 (W.D.Ky. 1992)).

J. The Class Notice Satisfies Due Process

In class actions certified under Federal Rule of Civil Procedure 23(b)(3), including for settlement purposes, notice must satisfy Rule 23(c)(2), requiring the "best notice that is practicable under the circumstances." Rule 23(c)(2).

Pursuant to the Settlement, the Administrator timely commenced sending direct Class notice via email where available, or by postcard where not an email was not available, on August

28, 2024. Azari Decl., ¶¶ 7, 11–16. Such direct notice is presumptively reasonable. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *see also Shy v. Navistar Int'l Corp*., No. 3:92-CV-00333, 2022 WL 2125574, at *5 (S.D. Ohio June 13, 2022) (direct notice provided by mail or email, a publication in PRNewswire, and long-form notice on the settlement website).

An email or mailed notice was successfully delivered to 375,770 of the 376,077 unique, identified Class Members, or approximately 99% of the Class, Azari Decl. ¶ 17, "which is an excellent result." *Fields v. KTH Parts Indus., Inc.*, No. 3:19-CV-8, 2022 WL 3223379, at *3 (S.D. Ohio Aug. 9, 2022).

A Settlement Website was also timely established on August 28, 2024.[9] Azari Decl. at ¶ 18. That website provides detailed information about the Settlement, including several important documents such as the Long Form Notice, Claim Form, the operative Settlement Agreement, the Fourth Amended Consolidated Class Action Complaint and Third Amended Echard Complaint, the Preliminary Approval Order, and the respective motions for attorneys' fees, costs and service awards. It also offers an online portal for submission of electronic Claim Forms. As noted above, the Administrator has received and is currently evaluating more than 500 Claim Forms. *Id.* at ¶ 23. The deadline to submit a Claim Form is January 10, 2025. *Id.*

The direct Class notice was clear and concise and summarized the main aspects of the proposed Settlement. Class Members were afforded a reasonable 70 days to exercise their right to either object to the Settlement or opt out, as that deadline was November 12, 2024. *Id*. Also, the Administrator issued CAFA notices on April 26, 2024, pursuant to 28 U.S.C. § 1715 and Agr. § II.F. Azari Decl., ¶ 8.

Therefore, the direct Class notice constitutes the best notice that is practicable under the circumstances and was designed to be easily understood and reasonably informative of rights under the proposed Settlement.

[9] The Settlement Website address is: https://wellsfargocovidforbearancelitigation.com

K. The Requirements of Rule 23(a) and 23(b)(3) Remain Satisfied

In the Preliminary Approval Order, the Court preliminarily found that the requirements of Rule 23(a) of the Federal Rules of Civil Procedure were satisfied. ECF No. 243, PageID 1123. Although Rule 23(b)(3) was not explicitly referenced, the Court also stated in the order that "there are questions of law and fact common to members of the Class that predominate over any questions affecting only individual members of the Class." *Id.* Those requirements remain satisfied and there is no reason to revisit the Court's preliminary assessment of those requirements for settlement purposes, as the circumstances that warranted preliminary approval have not changed. Furthermore, in the settlement context, a showing of manageability at trial is not required. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). And finally, the superiority requirement under Rule 23(b)(3) is satisfied by resolving related litigation involving substantially similar claims of hundreds of thousands of absent class members nationwide.

L. Other Rule 23(e) Factors are Satisfied

The remaining Rule 23(e) factors, to the extent not addressed above, are also satisfied and support final approval of the Settlement.

1. Fair Allocation of Settlement Compensation and Distribution Process

The method of distributing the relief through Automatic Payments was chosen to make the Settlement compensation process simple and easy. Agr. §§ IV.B.1-3; *see* Rule 23(e)(2)(C)(ii). Even Co-Borrowers on the Mortgage are entitled to receive compensation. ECF No. 222-2, PageID 355-356. The Settlement further calls for a Supplemental Payment Fund to be utilized to distribute Supplemental Payments to Eligible Class Members based on an Allocation Plan, following distribution of the Automatic Payments, deduction of any Fee and Expense Award and Service Awards approved by the Court, and payment of the Settlement Administrator's Costs and Expenses. Agr. §§ I.67 and IV.B.2. Thereafter, to the extent any amounts remain undistributed from the Settlement Fund, a further payment to Eligible Class Members who cashed a previous Settlement check will be made unless the amount of the check would be less than $10. Agr. §§

I.56 and IV.B.3. Otherwise, remaining funds (if any) will be distributed to a *cy pres* recipient approved by the Court or treated to state unclaimed funds procedures. Agr. § IV.B.3.

A Claim Form is only required for additional monetary compensation that may be sought by Class Members from the common fund to the extent they believe that being placed into a forbearance without adequate informed consent caused a credit application, or refinance, to be denied or delayed or caused other harm. Agr. §§ V.A; *see* Rule 23(e)(2)(D). Class Members may submit a Claim Form via the Settlement Website or by mail. Agr. § V.A.

Thus, Class Members are treated equitably relative to each other under the Settlement. *See* ECF No. 222, PageID 263.

2. The Request for Attorneys' Fees Does Not Exceed 25% of the Settlement Fund

The Settlement Agreement itself limits an award of attorneys' fees to not more than 25% of the Settlement Fund. Agr. § VII.A. The percentage of the Settlement Fund requested as attorneys' fees (by separate and competing motions) is well within the range of reasonableness for fees in a case of this complex nature and will not be paid until the Effective Date and resolution of any appeal of the fee award(s). *See* Agr. §§ I.30 and VII.A-C; *see also* Rule 23(e)(2)(C)(iii); *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."). Additionally, the determination and timing of an award of attorneys' fees and expenses, addressed by separate order, shall not impact the effectiveness of the Settlement Agreement. Agr. VII.C.

3. Agreements in Connection with the Proposed Settlement

Interim Class Counsel confirm there is no undisclosed agreement made in connection with the proposed Settlement. *See* ECF No. 240-1 and ECF No. 254, PageID 2762-2763; *see also* Rule 23(e)(2)(C)(iv).

In sum, each of the factors to be considered when determining whether to grant final Settlement approval weighs in favor of a finding that this Settlement is fair, reasonable, and

adequate. Therefore, all the requirements for final approval of the proposed class action Settlement are satisfied.

IV. CONCLUSION

For the foregoing reasons, the Class Representatives and interim Class Counsel respectfully request that the Court finally approve the Settlement as fair, adequate and reasonable, and enter the proposed Final Approval Order and separate Judgment submitted herewith.

RESPECTFULLY SUBMITTED this 26th day of November, 2024.

DITTMER, WAGONER & STEELE, LLC

s/ Robert J. Wagoner
Robert J. Wagoner (0068991)
107 W. Johnstown Road
Gahanna, Ohio 43230
Tel: (614) 471-8181; Fax: (614) 540-7473
bob@dwslaw.com

KELLER ROHRBACK L.L.P.
Derek W. Loeser (*Pro Hac Vice*)
Gretchen Freeman Cappio (*Pro Hac Vice*)
Zachary W. Gussin (*Pro Hac Vice*)
1201 Third Ave., Suite 3400
Seattle, WA 98101-3052
(206) 623-1900, Fax (206) 623-3384
dloeser@kellerrohrback.com
gcappio@kellerrohrback.com
zgussin@kellerrohrback.com

KAZEROUNI LAW GROUP, APC
Abbas Kazerounian (*Pro Hac Vice*)
245 Fischer Avenue, Suite D1
Costa Mesa, CA 92626
(800) 400-6808
ak@kazlg.com

KAZEROUNI LAW GROUP, APC
Jason A. Ibey (CA Bar # 284607)
321 N. Mall Drive, Suite R108
St. George, Utah 84790
(800) 400-6808
jason@kazlg.com

KELLETT & BARTHOLOW PLLC
Theodore O. Bartholow III ("Thad") (*Pro Hac Vice*)
Karen L. Kellett (*Pro Hac Vice*)
11300 N. Central Expressway, Suite 301
Dallas, TX 75243
(214) 696-9000; Fax (214) 696-9001
thad@kblawtx.com
kkellett@kblawtx.com

Interim Class Counsel and
Counsel for Consolidated Plaintiffs

s/ Nathan A. Hunter (0096389)
Trial Attorney
Nathan A. Hunter (0096389)
Hunter & Hunter LLC
1491 Polaris Pkwy #21416
Columbus, OH 43240
Tel: (234) 738-4648
nathan@hunterfirm.org

Knoll Lowney (*Pro Hac Vice*)
Claire Tonry (*Pro Hac Vice*)
Marc Zemel (*Pro Hac Vice*)
Alyssa Koepfgen (*Pro Hac Vice*)
Smith & Lowney, PLLC
2317 E. John Street
Seattle, WA 98112
Tel: (206) 860-2883
knoll@smithandlowney.com
claire@smithandlowney.com
marc@smithandlowney.com
alyssa@smithandlowney.com

Interim Class Counsel and
Counsel for Echard Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 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