

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re

**Wells Fargo COVID Forbearance
Settlement Litigation,**

Case No. 2:24-cv-1026

Judge Michael H. Watson

Magistrate Judge Deavers

OPINION AND ORDER

Pamela Delpapa, Renrick and Vivian Robinson, Samara Green, Patrick Healy, Jose Urista, Gerald Forsburg, Jenna Doctor, Luis and Marisol Castro, Barbara Prado, Brian Echard, Heather Shimp, and Patricia Foley (collectively, “Plaintiffs” or “Class Representatives”¹), on behalf of themselves and all others similarly situated (collectively, “Plaintiffs” or “Class Members”), move for final approval of the class action settlement, ECF No. 274. Wells Fargo Bank, N.A., and Wells Fargo & Co. (collectively, “Defendants” or “Wells Fargo”) do not oppose. For the reasons below, Plaintiffs’ motion is **GRANTED**.

I. BACKGROUND

A. Procedural History

Beginning in July 2020, several complaints were filed against Wells Fargo in different district courts, all alleging that Wells Fargo placed residential

¹ The capitalized terms used here and all such terms below are defined according to the Parties’ settlement agreement (“Settlement Agreement” or “Agreement”). See Mot. Ex. A, ECF No. 240-1.

mortgage borrowers into forbearance without their knowledge or consent, thereby violating state or federal law (the “Actions”). One of these cases was transferred to this Court. *Echard v. Wells Fargo Bank, N.A.*, Case No. 2:21-cv-05080-MHW-EPD. In the Fall of 2023, Plaintiffs and Wells Fargo attended global mediation sessions before the Honorable Layn Phillips (Ret.). Judge Phillips made, and the parties accepted, a mediator’s recommendation to settle the Actions. Mot. 3, ECF No. 274. Per those terms, all related cases not yet before this Court were transferred here. Mot. Ex. A § II(A)(1) (hereinafter “Agr.”), ECF No. 240-1. The parties executed the Settlement Agreement on April 16, 2024. *Id.* Plaintiffs moved for preliminary approval, Mot., ECF No. 221, which the Court granted, Order, ECF No. 243. The Court held a fairness hearing on December 10, 2024, and now turns to Plaintiffs’ unopposed motion for final approval of the Settlement. ECF No. 274.

B. Settlement Agreement

The Settlement Class is defined as follows:

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.

Agr. § I(8). For the purposes of the Settlement only, “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 period²; (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.

Agr. § I(72). For the purposes of the Settlement only, “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;

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.

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.

Agr. § I(54).

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. Agr. § IV.B.1. The payments are automatic in that class members need not submit a Claim Form to receive this amount. Co-borrowers on a mortgage account will be treated as a single Class Member. Agr. § IV.B.1. The Automatic Payment, in the form of a check, is expected to be approximately \$252, based on an assumed 272,973 mortgages at issue. See ECF No. 222, PAGEID # 258. On top of the Automatic Payment, each Co-Borrower on a Mortgage that received an At-Issue Forbearance, and who did not exclude themselves from the Settlement, will receive an additional \$83.33 automatically. ECF No. 222-2, PAGEID # 356.

Additionally, Class Members who do not exclude themselves may submit a Claim Form and evidence requesting additional compensation for individualized 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 or lost business opportunity; or (f) any other damages caused by an At-Issue Forbearance. The Administrator will validate any Claim Forms and determine the amounts of payments for individualized harms. Agr. § IV.B.2.a. The Administrator has received and is currently evaluating more than 500 Claim

Forms. See Mot. Azari Decl. ¶ 23. The deadline to submit a Claim Form is January 10, 2025. *Id.*

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 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.

The Settlement Agreement also includes a release that relinquishes Class Members' claims relating to their forbearances. Agr., § IV.A.I.

Further details concerning Settlement payments to Class Members are found in the Allocation Plan (a/k/a "Plan of Allocation"). See ECF No. 222-2.

C. Notice

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, if their email address is unknown. Agr. § II.E. The Settlement also requires the Administrator to host a Settlement Website to provide information about the Settlement, make certain case documents available, and allow Class Members to submit Claim Forms online. *Id.*

As represented by the Parties at the Fairness Hearing and by Plaintiffs in their unopposed Motion, an email or mailed notice was successfully delivered to approximately 99% of the Class. See Mot. Azari Decl. ¶ 17.

The Administrator also set up a Settlement Website.³ I. ¶ 18. The website provides information about the Settlement, including case documents, including 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 motions for attorneys' fees, costs, and service awards. It also offers an online portal for submission of Claim Forms.

II. APPROVAL OF CLASS CERTIFICATION FOR SETTLEMENT

To grant final approval of a settlement class, the Rule 23 requirements must be satisfied. See Fed. R. Civ. P. 23. The Court has already preliminarily approved the Class for settlement purposes, ECF No. 243, and now finds that the standards required for final approval are satisfied.

A. Numerosity

To satisfy numerosity, the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "There is no strict numerical test for determining impracticability of joinder." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996) (citation omitted). Indeed, "[t]he numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of the Nw., Inc., v. EEOC*, 446 U.S. 318, 330 (1980). Here, the Class contains approximately 376,077

³ <https://wellsfargocovidforbearancelitigation.com>

Class Members. Mot. 14, ECF No. 274. Numerosity is satisfied because it would be impractical, if not impossible, to join all Class Members into one action.

B. Commonality

To establish commonality, there must be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Commonality requires the plaintiff to demonstrate that the Class Members have suffered the same injury.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (internal quotation marks and citations omitted). The claims “must depend upon a common contention[,]” and “[t]hat common contention . . . must be of such a nature that is capable of classwide resolution—which means that determination of its truth or its falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 350.

Here, the lawsuit raised several common questions, including whether:

- A. Wells Fargo negligently or intentionally enrolled customers in forbearance programs without their consent;
- B. Wells Fargo has breached terms implied in its contracts with Plaintiffs and Class Members;
- C. Wells Fargo’s actions or inactions violated the consumer protection statutes invoked herein;
- D. Plaintiffs and Class Members were damaged by Wells Fargo’s conduct and, if so, the appropriate amount of damages;
- E. because of Wells Fargo’s conduct, Plaintiffs and Class Members are entitled to equitable and declaratory relief, and, if so, the nature of such relief.

Amend. Compl. ¶ 210, ECF No. 210. The commonality requirement is therefore satisfied.

C. Typicality

A class representative's "claim is typical if 'it arises from the same event or practice or course of conduct that gives rise to the claims of other Class Members, and if his or her claims are based on the same legal theory.'" *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1082). The typicality requirement "tend[s] to merge" with the commonality requirement. *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

Here, the typicality element is satisfied because the Class claims are based on the same legal theories and the same alleged conduct: Wells Fargo enrolling mortgage customers into forbearance without their consent.

D. Adequacy of Representation

The adequacy inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Products, Inc., v. Windsor*, 521 U.S. 591, 625 (1997) (citing *Falcon*, 457 U.S. 157–58). To determine the adequacy of representation requirement, a court must consider two elements: "1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representative[] will vigorously prosecute the interests of the class through qualified counsel." *Pelzer*

v. Vassalle, 655 F. App'x 352, 364 (6th Cir. 2016) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d at 1083).

Here, the Class Representatives and Class Members share common interests. No conflict exists between the Class Representatives and the Class Members they seek to represent. Plaintiffs' Counsel also represented at the Fairness Hearing that they have extensive experience in class action litigation, and in financial class actions specifically. Thus, adequacy is met.

E. Rule 23(b) Requirements

Plaintiffs seek certification under Rule 23(b)(3), which requires a showing that common questions of fact or law predominate over any individual questions and that a class action is superior to other available methods for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

1. Predominance

"To meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof."

Randleman v. Fid. Nat'l Title Ins. Co., 646 F.3d 347, 353 (6th Cir. 2011) (citing *Beattie*, 511 F.3d at 564).

Predominance is satisfied here. There is one set of operative facts which would render Defendants potentially liable to each potential class member, as evident in the definition of the class. Each class member alleges that Wells Fargo enrolled them into forbearance without their consent. Consequently, the

alleged injuries to Class Members are of the same nature. The Court therefore finds common questions predominate over individual issues.

2. Superiority

Finally, before certifying a class under Rule 23(b)(3), the Court must find that a class action is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). To make this decision, the Court considers:

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Id.

Here, class treatment is superior to other available methods. The Class Members have little interest in individually controlling separate actions as the amount of individual damages is likely to be small and far outweighed by the cost of litigation. “[S]mall awards weigh in favor of class suits.” *Pipefitters Loc. 636 Ins. Fund v. Blue Cross Blue Shield of Mich.*, 654 F.3d 618, 631 (6th Cir. 2011) (citing cases). The Court is unaware of any litigation about this controversy that is currently pending, by or against the Class Members. It is desirable to concentrate the litigation in this forum as the Parties and, to a lesser extent, the Court has already expended time and resources on this case. Last, the

difficulties in managing a class action do not outweigh the benefits of certifying a class. Accordingly, a class action is clearly the superior method of adjudicating this case.

For these reasons, the Class is **CERTIFIED** for purposes of the Settlement, and the Court **APPOINTS** interim Class Counsel, see ECF No. 237, as Class Counsel.

III. APPROVAL OF THE PROPOSED CLASS SETTLEMENT

When deciding whether to approve a proposed settlement, the Court must consider whether the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2).

In making this determination, the Court considers the following factors:

(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.

Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C., 636 F.3d 235, 244

(6th Cir. 2011) (citations and internal quotation marks omitted). The Court

“enjoys wide discretion in assessing the weight and applicability of these factors.”

Granada Invs., Inc. v. DWG Corp., 962 F.2d 1203, 1205–06 (6th Cir. 1992)

(citation omitted). For the reasons below, the Court concludes that the

Settlement is fair, adequate, and reasonable.

A. The Risk of Fraud or Collusion

First, the Court finds that there is no evidence—or even a suggestion—that the Settlement was the product of fraud or collusion. See *IUE-CWA v. Gen. Motors Corp.*, 238 F.R.D. 583, 598 (E.D. Mich. 2006) (“Courts presume the absence of fraud or collusion unless there is evidence to the contrary.” (citation omitted)). Rather, the Settlement is the result of arm’s-length, well-researched, and protracted negotiations with the assistance of the Honorable Layn Phillips (Ret.), and others, serving as mediator. The Court concludes that this factor favors approval of the Settlement.

B. Complexity, Expense, and Likely Duration of Litigation

Generally, “[m]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them.” *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001) (quoting *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D. N.Y. 2000)).

Here, the difficulty Plaintiffs would encounter in proving their claims, the substantial litigation expenses, and the possibility of further delay in recovery due to the appellate process weigh in favor of approving the Settlement. Continued litigation would have required substantial time, effort, and expense, both to retain qualified experts and to conduct record review and depositions. Settling the case now saves time and money for the Parties and the Court.

Accordingly, this factor favors approving the Settlement. It secures a substantial benefit for the Class Members, undiminished by further expenses and without the delay, cost, and uncertainty of protracted litigation.

C. Amount of Discovery

To confirm that 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. *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 374 (S.D. Ohio 2006) (citations omitted). “In considering whether there has been sufficient discovery to permit the plaintiffs to make an informed evaluation of the merits of a possible settlement,” courts “should take account not only of court-refereed discovery but also informal discovery in which parties engaged both before and after litigation commenced.” *UAW v. Gen’l Motors Corp.*, No. 05-CV-73991-DT, 2006 WL 891151, at *19 (E.D. Mich. Mar. 31, 2006) (citation omitted). In this consideration, “the absence of formal discovery is not unusual or problematic, so long as the parties and the court have adequate information in order to evaluate the relative positions of the parties.” *Id.* (citing cases).

In this case, the Parties engaged in significant informal discovery and engaged in extensive settlement negotiations, such that both sides have been able to analyze the strengths and weaknesses of their positions and determine that the Settlement is fair and reasonable under the circumstances. Plaintiffs and Defendants engaged in almost four years of formal and informal discovery, which

included reviewing over 44,000 documents, analyzing millions of data points, taking eight depositions, and engaging several experts. ECF No. 222, PAGEID # 265. The Court finds that both sides made well-informed decisions to enter into the Settlement. This factor weighs in favor of approving the Settlement.

D. The Likelihood of Success on the Merits

“The most important of the factors to be considered in reviewing a Settlement is the probability of success on the merits. The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured.” *Poplar Creek*, 636 F.3d at 245 (quoting *In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984)).

Here, Plaintiffs allege, among other things, that Wells Fargo was negligent in enrolling mortgage customers in forbearance without their consent. The unique circumstances of the COVID-19 pandemic and the novel CARES Act inject Plaintiffs’ case with uncertainty. Given the nature of the proposed settlement, the Court finds the benefits of settlement are proportionate to Plaintiffs’ likelihood of success on the merits. 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.”). This factor therefore weighs in favor of approving the Proposed Settlement.

E. Opinions of Class Counsel and Class Representatives

The recommendation of Class Counsel, skilled in class actions and corporate matters, that the Court should approve the Settlement is entitled to deference. See e.g., *Williams v. Vukovich*, 720 F.2d 909, 922–23 (6th Cir. 1983) (“The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs [T]he deference afforded counsel should correspond to the amount of discovery completed and the character of the evidence uncovered.”); see also *Kritzer v. Safelite Solutions, LLC*, No. 2:10-cv-0729, 2012 U.S. Dist. LEXIS 74994, at *7 (S.D. Ohio May 30, 2012) (“The Court gives weight to the belief of experienced counsel that a settlement is in the best interests of the class.”). The Court also considers the approval of the Class Representatives, particularly where they are significantly involved in the discovery and settlement negotiation process. See e.g., *Gascho v. Glob. Fitness Holdings, LLC*, Case No. 2:11-cv-436, 2014 WL 1350509, at *18 (S.D. Ohio Apr. 4, 2014), *R&R adopted*, No. 2:11-CV-00436, 2014 WL 3543819 (S.D. Ohio July 16, 2014), *aff’d*, 822 F.3d 269 (6th Cir. 2016).

Here, Class Counsel has represented that they have significant experience in class and complex litigation. Thus, their recommendation that the Court approve the Settlement is entitled to deference. Further, Class Representatives have approved the Settlement. Accordingly, this factor supports approving the proposed Settlement.

F. The Reaction of Absent Class Members

The Court must also consider the reaction of the Class Members. *Poplar Creek*, 636 F.3d at 244; *In re Broadwing*, 252 F.R.D. at 376. Here, as described above, from a pool of almost 400,000 Class Members, none objected and only 27 have opted out after 99% received notice. See Mot. 12, ECF No. 274. This positive response from the Class Members supports approving the Settlement. See, e.g., *Moore v. Medical Fin. 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.”).

G. The Public Interest

“Public policy generally favors settlement of class action lawsuits.” *Hainey v. Parrott*, 617 F. Supp. 2d 668, 679 (S.D. Ohio 2007) (citation omitted). In this case, the Settlement confers immediate benefits on the Class Members, avoids the risks and expenses of further litigation, and conserves judicial resources. The Court therefore finds that this factor favors approving the Settlement.

In sum, after considering the relevant factors, the Court concludes that the Settlement provides a substantial benefit to the Parties and is fair, reasonable, and adequate. See Fed. R. Civ. P. 23(e)(2).

IV. ATTORNEYS' FEES AND SERVICE AWARDS

A. Attorneys' Fees

Class Counsel seeks an attorneys' fees award of not more than 25% of the Settlement Fund. Agr. § VII.A. "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). Rule 23 authorizes a court to "award reasonable attorney's fees and non-taxable costs that are authorized by law or by the parties' agreement." See Fed. R. Civ. P. 23(h).

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 Dec. 31, 2007). First, the Court must determine the appropriate method to calculate the fees, using either the percentage of fund or the Lodestar approach. *Id.* 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. Second, the Court must consider six factors to assess the reasonableness of the fee. See *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009).

Here, the Court applies the percentage of the fund method. See, e.g., *Gascho v. Glob. Health Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016) (indicating that the district court must make a “clear statement” as to which calculation method is being applied (citation omitted)). Accordingly, the Court will consider the following factors in determining whether the fee request is reasonable under the circumstances:

(1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee 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.

Moulton, 581 F.3d at 352 (internal quotation marks and citations omitted).

Under the circumstances of this specific case, particularly where neither Defendant nor any Class Member opposes the fee request and the Class has received a “substantial benefit,” the Court concludes that all these factors favor approving the requested award of attorneys’ fees. As to the first factor, the Court has already described the benefit conferred to the Class Members through Settlement. See above Part I.B. This factor therefore weighs in favor of approving the requested award.

Second, the value of the services on an hourly basis, multiplied by the hourly rate, favors the proposed fee award. In their motions for attorneys’ fees, both sets of plaintiffs’ counsel explain how a cross-check of their lodestar reveals the reasonableness of their fee award proposals. See *Echard* Pl. Mot. 18–19,

ECF No. 248; Consolidated Pl. Mot. 4; ECF No. 249. Although the precise amount to be allocated to each set of counsel remains in dispute, their analysis shows that this factor favors granting a total award of up to 25% of the fund.

Third, Class Counsel represents that they took on this case pursuant to a contingency fee agreement. See *Echard* Pl. Mot. 18, ECF No. 248; Consolidated Pl. Mot. 4; ECF No. 249. In doing so, Class Counsel assumed a real risk in taking on this case, preparing to invest time, effort, and money with no guarantee of recovery. This factor favors approving the requested fee award. See, e.g., *In re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litig.*, 268 F. Supp. 2d 907, 936 (N.D. Ohio 2003) (“Absent this class action, most individual claimants would lack the resources to litigate a case of this magnitude.”).

The Court next considers whether the fourth factor, society’s stake in rewarding attorneys who produce such benefits, militates in favor of an award of the requested attorney’s fees. Class actions such as this have a “value to society more broadly, both as deterrents to unlawful behavior—particularly when the individual injuries are too small to justify the time and expense of litigation—and as private law enforcement regimes that free public sector resources.” *Gascho*, 822 F.3d at 287 (citing cases). Without a class action, the individual plaintiffs would not have had a strong incentive to pursue recovery because any monetary award would have been severely outweighed by the costs to litigate their case.

The remaining two factors, the complexity of the litigation and the professional skill and standing of the attorneys involved, also support granting the requested award. This is a complex case with nuanced issues and significant litigation.

Class Counsel have extensive experience in class action litigation and specifically with financial class actions, as they represented at the fairness hearing. The lodestar cross-checks (discussed above) underscore Class Counsel's competency and efficient handling of this matter, favoring approval.

For these reasons, the Court **APPROVES** the fee award of up to 25% of the Settlement Fund, inclusive of expenses and costs, to Class Counsel. See *Dillow v. Home Care Network, Inc.*, No. 1:16-cv-612, 2018 WL 4776977, at *5 (S.D. Ohio Oct. 3, 2018) (“[W]hether 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.”). The precise distribution among Class Counsel will be determined by this Court in a subsequent order.

B. Class Representative Awards

Service 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*, 322 F.3d at 897. “[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Dillworth v.*

Case Farms Processing, Inc., No. 5:08-cv-1694, 2010 WL 776933, at *7 (N.D. Ohio Mar. 8, 2010) (internal quotation marks and citations omitted).

Here, Plaintiffs move to award the Class Representatives service awards of \$12,500 each. See *Echard* Pl. Mot. 5, ECF No. 248; Consolidated Pl. Mot. 20; ECF No. 249. Class Counsel report that the Class Representatives significantly assisted in the prosecuting and settling of the litigation, including reviewing court filings and the Settlement Agreement, and participating in negotiations. *Id.* In light of this service, the Court **APPROVES** service awards to each Class Representative in the requested amount.

V. CONCLUSION

For these reasons, the Court **GRANTS** final approval of the Settlement and enters final judgment as follows:

1. The Court incorporates by reference the Settlement Agreement, including its exhibits (the “Settlement Agreement”), and the definition of words and terms contained therein. The Court also incorporates by reference the terms of this Court’s Preliminary Approval Order.
2. This Court has subject-matter jurisdiction over the Litigation and personal jurisdiction over the Parties, including all members of the following Class from this Court’s Preliminary Approval Order.
3. The Court finds that the Settlement Agreement is the product of arm’s-length settlement negotiations between Plaintiffs and Class Counsel, and Wells Fargo and its counsel.

4. The Court finds and concludes that Notice was disseminated to members of the Class in accordance with the terms set forth in the Settlement Agreement and that the Notice and its dissemination complied with this Court's Preliminary Approval Order.

5. The Court further finds and concludes that the Notice set forth in the Settlement Agreement fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, provided individual notice to all Class Members who could be identified through reasonable effort, and supports the Court's exercise of jurisdiction over the Class as contemplated in the Settlement Agreement and this Opinion and Order.

6. This Court finds and concludes that the notice provided by Wells Fargo to the appropriate state and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

7. The Court hereby finally approves the Settlement Agreement and the Settlement contemplated thereby, and finds that the terms constitute, in all respects, a fair, reasonable, and adequate settlement as to all Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure and directs its consummation pursuant to its terms and conditions. Each Class Member who has not submitted a valid request to opt out of the Settlement is hereby bound by the Settlement Agreement.

8. The Court hereby finds that the Class Representatives and Class

Counsel have adequately represented the Class Members.

9. The Court approves of a service award to the Class Representatives, as defined in this Final Approval Order, in the amount of \$12,500 each for their respective efforts in this litigation, which amounts shall be paid to the Class Representatives from the Settlement Fund in accordance with the terms of the Settlement Agreement.

10. The Court finds that Class Counsel have adequately represented the Class and therefore approves an award of up to 25% of the Settlement Fund for attorney's fees inclusive of any litigation expenses.

11. This Court hereby dismisses, with prejudice and without leave to amend and without costs to any party, the Litigation, and all claims against Wells Fargo in the Litigation by Plaintiffs and the Class Members.

12. Plaintiffs and each and every one of the Class Members, as well as their respective assigns, heirs, executors, administrators, successors, representatives, agents, partners, and attorneys fully, finally and forever release, relinquish and discharge all Released Claims as against all Released Persons based on, arising out of, or in any way related to the At-Issue Forbearances. The Released Claims specifically extend to claims that Plaintiffs and Class Members do not know or suspect to exist in their favor at the time that the Settlement Agreement and the release contained therein becomes effective. This release shall be interpreted to the fullest extent of res judicata principles. In addition, any rights of the Plaintiffs and each and every one of the Class Members to the protections

afforded under Section 1542 of the California Civil Code and/or any other similar, comparable, or equivalent laws, are terminated.

13. Plaintiffs and each and every Class Member, as well as their respective assigns, heirs, executors, administrators, successors, representatives, agents, partners, and attorneys are hereby permanently barred and enjoined, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the Settlement as provided herein) in which any of the Released Claims is asserted. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Order, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

14. The Settlement Agreement (including, without limitation, its exhibits), and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, of any liability or wrongdoing, by Wells Fargo, or of the truth of any of the claims asserted by Plaintiffs in the Litigation. Further, the Settlement Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission by Wells Fargo that the Litigation is properly brought on a class or representative basis, or that classes may be certified for any

purpose. To this end, the settlement of the Litigation, the negotiation and execution of the Settlement Agreement, and all acts performed or documents executed pursuant to or related to the Settlement Agreement: (i) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Wells Fargo or of the truth of any of the allegations in the Litigation; (ii) are not and will not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Wells Fargo in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; and, (iii) are not and will not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification. Further, evidence relating to the Settlement Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the Litigation or in any other action or proceeding, except for purposes of enforcing the terms and conditions of the Settlement Agreement, the Preliminary Approval Order, and/or this Order.

15. If for any reason the Settlement Agreement terminates, then certification of the Class shall be deemed vacated. In such an event, the certification of the Class for settlement purposes or any briefing or materials submitted seeking certification of the Class shall not be considered in connection with any subsequent class certification issues, and the Parties shall return to the status quo ante in the Litigation, without prejudice to the right of any of the Parties to assert any right or position that could have been asserted if the Settlement


Agreement had never been reached or proposed to the Court.

16. In the event that any provision of the Settlement Agreement or this Order is asserted by Wells Fargo as a defense in whole or in part (including, without limitation, as a basis for a stay) in any other suit, action, or proceeding brought by a Class Member or any person actually or purportedly acting on behalf of any Class Member(s), Wells Fargo and Class Counsel may seek an immediate stay of that suit, action or other proceeding, which the Class Member shall not oppose, until the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion. This provision is necessary to protect the Settlement Agreement, this Order, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgment.

17. Finding that there is no just reason for delay, the Clerk of the Court is directed to enter this Order on the docket and enter final judgment pursuant to Rule 54(b) forthwith.

18. The Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement.

IT IS SO ORDERED.



MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT