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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALICIA HERNANDEZ, EMMA WHITE,  
KEITH LINDNER, TROY FRYE,  
COSZETTA TEAGUE, IESHA BROWN,  
JOHN and YVONNE DEMARTINO, ROSE  
WILSON, TIFFANIE HOOD, GEORGE  
and CYNDI FLOYD, DEBORA GRANJA,  
and DIANA TREVINO, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,  
Defendant.

No. C 18-07354 WHA

**ORDER RE MOTION FOR FINAL  
APPROVAL OF CLASS  
SETTLEMENT AND MOTION FOR  
ATTORNEY’S FEES AND  
EXPENSES**

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**INTRODUCTION**

In this class action certified under Rule 23(b)(3), plaintiffs move for final approval of a settlement agreement and for attorney’s fees and costs. Defendant does not oppose. For the following reasons, both motions are **GRANTED**.

**STATEMENT**

The background of this action has been set forth in prior orders and need not be discussed in detail herein (*see* Dkt. Nos. 87, 217). In brief, plaintiffs had their mortgage loans serviced by defendant Wells Fargo Bank, N.A. Although plaintiffs met the Home Affordable Modification Program (HAMP) requirements, the bank failed to offer them loan modification

1 and/or repayment plans due to an algorithmic error in its system that caused certain fees to be  
2 misstated, which then resulted in incorrect mortgage modification denials. As a result,  
3 between 2010 and 2018, the bank denied trial loan modifications to approximately 870  
4 homeowners who should have qualified but were deemed unqualified as a result of the error in  
5 the bank's system. Over 500 of those homeowners then lost their homes in foreclosures.

6 In 2018, the bank publicly admitted the error. By December 2018, plaintiff Alicia  
7 Hernandez had commenced this then-putative class action. The amended complaint then  
8 added fourteen other class representatives, asserting claims for breach of contract, negligence,  
9 wrongful foreclosure, intentional infliction of emotional distress, violation of California's  
10 Homeowners Bill of Rights, violations of California's unfair competition law, and violations of  
11 state consumer protection laws (Dkt. No. 44). Though a prior order initially dismissed the  
12 breach of contract claim, plaintiffs were later allowed to reassert their breach of contract claims  
13 based on evidence obtained through discovery (*see* Dkt. Nos. 136, 137).

14 In January 2020, after two rounds of class certification briefings, a prior order appointed  
15 Debora Granja and Sandra Campos as class representatives and Gibbs Law Group LLP and  
16 Paul LLP as class counsel, certifying the following nationwide class under FRCP 23(b)(3) only  
17 as to the breach of contract claim (Dkt. No. 217 at 4):

18 All persons in the United States who between 2010 and 2018 (i)  
19 qualified for a home loan modification or repayment plan pursuant  
20 to the requirements of government-sponsored enterprises (such as  
21 Fannie Mae and Freddie Mac), the Federal Housing  
22 Administration (FHA), the U.S. Department of Treasury's Home  
23 Affordable Modification Program (HAMP); (ii) were not offered a  
24 home loan modification or repayment plan by Wells Fargo due to  
25 excessive attorney's fees being included in the loan modification  
26 decisioning process; and (iii) whose home Wells Fargo sold in  
27 foreclosure.

28 The bank then filed an interlocutory appeal of the class certification order and requested a  
stay of proceedings pending our court of appeals' decision to either grant or deny the bank's  
petition. The motion to stay was denied (Dkt. No. 259). The bank also filed a partial motion  
for summary judgment and a motion to sever the individual claims from the class claim (Dkt.  
Nos. 231, 252). During the same time, in March 2020, the parties reached a proposed

1 settlement agreement mediated under the supervision of Magistrate Judge Donna M. Ryu.  
2 Accordingly, all other motion hearings were vacated pending preliminary approval of the  
3 proposed settlement.

4 The proposed settlement fund establishes a non-revisionary gross settlement fund of  
5 \$18.5 million. This amount is over and above the fifteen million dollars the bank already paid  
6 to the class members as part of its remediation efforts following its public acknowledgment of  
7 the error. Plaintiffs estimated their total potential damages to be \$65 million. Since the bank  
8 had already paid fifteen million dollars, however, their total recoverable damages at trial would  
9 have been \$50 million. The settlement figure of \$18.5 million thus represents approximately  
10 37% of plaintiffs' maximum recoverable damages.

11 After deducting the costs for class notice and settlement administration, attorney's fees,  
12 and expenses, the remaining amount will be allocated between two funds: (1) the "economic  
13 damages fund" and (2) the "severe emotional distress fund." The fixed amount of one million  
14 dollars will then be placed into the "severe emotional distress fund" for which class members  
15 who suffered severe emotional distress are required to submit claim-forms in order to obtain  
16 damages from that fund.

17 The remaining and majority balance of the fund will then be allocated to the "economic  
18 damages fund" to compensate all class members for the economic harm associated with losing  
19 their homes. Class members need not submit any claim-form to receive damages under this  
20 fund. Rather, each class member will automatically get checks in the mail in an amount  
21 representing their pro rata share of the settlement, taking into account how much the bank  
22 already paid each class member in connection with its remediation efforts.

23 A prior order granted plaintiffs' motion for preliminary approval of the proposed class  
24 settlement; approved, as to form and content, a notice concerning the class settlement  
25 agreement and the final hearing; approved the claim-form for the "severe emotional distress  
26 fund;" and appointed Cathy Yanni as special master for processing class members' claims for  
27 damages under said fund (Dkt. No. 277). That order set July 2, 2020, as the date by which to  
28

1 opt-out of the class, object to the settlement, and to submit claims for relief from the “severe  
2 emotional distress fund.”

3 The class administrator also mailed notice of the proposed class settlement and fee  
4 request to all 510 class members via first-class mail (Keough Decl. ¶ 7, Exh. B). The  
5 envelopes containing the notice letters were conspicuously marked to signify importance. For  
6 the 57 notices that returned as undeliverable, the administrator conducted advanced searches  
7 using multiple databases and re-mailed notices to updated addresses for class members or their  
8 next of kin if the class member is now deceased.

9 At the time of the first hearing for final approval on August 20, however, sixteen class  
10 members had not yet received notice — either because no updated address for them could be  
11 found, or because notices were returned as undeliverable after all attempts (*id.* ¶ 8).

12 Additionally, at that time, out of the 494 class members whose notices had been  
13 delivered, only five had opted out of the class and no class member had objected to the  
14 settlement (*id.* ¶ 15, Exh. C; ¶ 17). Moreover, 121 class members had submitted claims for  
15 damages under the “severe emotional damages fund” and Yanni, the special master, had  
16 allocated all but \$28,500 of the one million dollar fund towards said claims, subject to final  
17 approval of the settlement. Furthermore, Yanni had not yet ruled on fifteen appeals filed by  
18 class members challenging Yanni’s initial decision.

19 During the August 20 hearing, the undersigned expressed concern that, under the terms  
20 of the settlement, the sixteen unfound class members’ emotional distress claims would have  
21 been waived without being afforded an opportunity to file a claim for damages under the  
22 “severe emotional distress fund.” Moreover, under the terms of the settlement, uncashed  
23 checks distributed under the “economic damages fund” would have reverted back to the fund  
24 and been redistributed on a pro rata basis to class members who did cash their checks.

25 In response to these issues, the undersigned ordered (1) additional efforts be made to  
26 locate the sixteen unfound class members; (2) Yanni’s completion of all claims made under the  
27 “severe emotional distress fund” and any appeals thereto; and (3) the preservation of settlement  
28 amounts owed to unfound class members in an appropriate state’s unclaimed property fund.

1           Thereafter, the parties engaged in further efforts to find the previously unfound sixteen  
2 class members. Four of the sixteen are now deceased. One of them had a co-borrower to  
3 whom the class administrator sent notice to. With respect to the other three deceased  
4 members, the parties could not find next of kin information. As to the twelve living members,  
5 ten were re-mailed notice. To date, out of the eleven notices delivered to the previously  
6 unfound class members or their co-borrower, only one returned as undeliverable (Schrag Decl.  
7 ¶ 4); (Keough Decl. ¶ 5). None have objected or opted out.

8           For the remaining six unfound class members “in addition to any class member whose  
9 notice is later returned as undeliverable and remains unfound, and any other class member who  
10 does not cash his or her settlement check,” the parties propose preserving their economic  
11 damages award “in the unclaimed property fund for the state in which they were last known to  
12 reside. This payment will be remitted to the unclaimed property fund within 180 calendar days  
13 after the last stale check on a date for any settlement class member receiving monetary relief”  
14 (Dkt. No. 289 at 4) (citing Dkt. No. 269-2 at §V, ¶ D; Schrag Decl. at ¶ 4). Thus, these class  
15 members will have fully released any claims for economic damages per the settlement  
16 agreement.

17           Moreover, Yanni has now completed all the 121 severe emotional distress claims and all  
18 fifteen requests for reconsideration. The entirety of the fund has now been allocated amongst  
19 the 121 class members. Because the deadline for filing a claim under the “severe emotional  
20 distress fund” had already passed and Yanni had already allocated the entire fund, the parties  
21 further agree and propose that the emotional distress claims of the sixteen previously unfound  
22 class members, “to the extent any such claims are allowed under applicable law, will not be  
23 released” (Dkt. No. 289 at 2).

24           Since the first notices were mailed, moreover, the class administrator maintained a toll-  
25 free number for class members to call and obtain information as well as a website. The  
26 website supplied all the important court documents related to this litigation as well as up-to-  
27 date information about the settlement approval process (Keough Decl. ¶¶ 10, 12). Moreover,  
28

1 the website enabled class members to electronically submit their claim-form through the  
2 website, though class members could also do so via mail or email.

3 Plaintiffs now move for final approval of the proposed class settlement, an award of  
4 \$4,525,000 in attorney’s fees, and \$335,000 in unreimbursed expenses to be paid from the  
5 settlement fund. The bank does not oppose (Dkt. Nos. 280, 281). This order follows full  
6 briefing and oral argument.

7 **ANALYSIS**

8 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses of a  
9 certified class . . . may be settled . . . only with the court’s approval.” When a proposed  
10 settlement agreement is presented, the district court must perform two tasks: (1) direct notice in  
11 a reasonable manner to all class members who would be bound by the proposal, and (2)  
12 approve the settlement only after a hearing and on finding that the terms of the agreement are  
13 fair, reasonable, and adequate.

14 **1. FINAL APPROVAL OF PROPOSED CLASS SETTLEMENT.**

15 **A. ADEQUACY OF NOTICE.**

16 The notice must be “reasonably calculated, under all the circumstances, to apprise  
17 interested parties of the pendency of the action and afford them an opportunity to present their  
18 objections.” *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (citations  
19 omitted). It must also describe “the terms of the settlement in sufficient detail to alert those  
20 with adverse viewpoints to investigate and to come forward and be heard.” *Mendoza v. Tucson*  
21 *Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980).

22 The undersigned judge previously approved the form, content, and planned distribution  
23 of the class notice (Dkt. No. 277). As described above, the claims administrator has fulfilled  
24 the notice plan. Indeed, as of October 7, 2020, all but seven class members have been sent  
25 notice. Of those seven, four are deceased. Notice has been sent to the co-borrower of one of  
26 the deceased members, however. Since 98.82% of the settlement class have been sent notice,  
27 this order accordingly finds that notice to class members was adequate.

**B. SCOPE OF RELEASE.**

1 The proposed settlement class is co-extensive with the class certified in January (*see* Dkt.  
2 Nos. 217 at 4; 269-2 at 3). The proposed settlement agreement contains a release of claims  
3 that exceeds the scope of the certified class claim, however. Specifically, though the Court  
4 certified the class only as to the breach of contract claim, under the proposed settlement, class  
5 members — as well as their spouses, children, heirs, devisees, and so forth — will release the  
6 bank and its officers, directors, legal representatives, successors, subsidiaries, and assigns of  
7 (Dkt. No. 269-2 at ¶¶ 32–33, 47):

8  
9 any and all claims, rights, causes of action, liabilities, actions,  
10 suits, damages, or demands (including Unknown Claims as defined  
11 in Paragraph 47, herein), of any kind whatsoever that arise out of  
12 or are based on the claims set forth in the Action, including claims  
13 based on the subject Loan Modification Denials, damages based on  
14 any failure to modify the Loans and/or damages based on the  
15 foreclosures challenged in this Action.

16 \* \* \*

17 “Unknown Claims” means any Released Claims that Plaintiffs or  
18 any Settlement Class Member does not know or suspect to exist in  
19 his, her or its favor at the time of the release of the Released  
20 Parties, and any Released Parties’ Claims that Wells Fargo does  
21 not know or suspect to exist in his, her or its favor, which, if  
22 known by him, her or it, might have affected his, her or its  
23 settlement with and release of the Class Representatives,  
24 Settlement Class Members, and Class Counsel, or might have  
25 affected his, her or its decisions with respect to the Settlement.

26 In turn, the bank will release class members from any claims related to this litigation or  
27 settlement (*id.* at ¶ 32).

28 Although the undersigned judge usually requires that a release of class claims “be limited  
only to the claims certified for class treatment” and avoid “releasing claims that ‘could have  
been brought’” (*see* Dkt. No. 12 at 3), the release here is anchored to “claims set forth in this  
[a]ction, including claims based on the subject [l]oan [m]odification [d]enials” (Dkt. No. 269-2  
at ¶¶ 32). The scope of the release, therefore, is tailored to the conduct at issue in this action  
— wrongful denials of loan modification — as well as the harm suffered by class members —  
damages stemming from the loss of plaintiffs’ homes. That is, with the exception of the  
intentional infliction of emotional distress claim, the damages plaintiffs alleged for the

1 remaining claims in the operative complaint were the same as the damages for the breach of  
2 contract claim in that they each relate to damages for the loss of class members' homes.

3 As to the emotional distress damages plaintiffs sought as part of their intentional  
4 infliction of emotional distress claim and as a component of their damages for wrongful  
5 foreclosure claims in California and Georgia, this order finds that the one million dollar fund  
6 specifically allocated for this type of harm in the proposed settlement overcomes the  
7 undersigned's admonishment that the scope of the release be limited to claims that were  
8 certified for class treatment.

9 Furthermore, as discussed above, the parties agree to revise the settlement so that the  
10 emotional distress claims of the sixteen class members who had not initially received notice will  
11 not be released. This compromise is fair given that six members of the sixteen remain unfound  
12 and the other ten did not have a practical opportunity to file a claim given that they received  
13 notice late in the game — and because Yanni has already allocated the entire fund.

14 In sum, all class members' economic damages claims will be released. But, as to  
15 emotional distress claims, the claims of all except sixteen of the class members will be released.

16 Accordingly, under the circumstances of this case — only 510 class members, all but six  
17 of whom received notice, with only five opt-outs and zero objections, and a settlement figure  
18 representing 37% of plaintiffs' projected damages — this order finds that the scope of the  
19 release is reasonable.

20 **C. FAIRNESS, REASONABLENESS, AND ADEQUACY OF**  
21 **PROPOSED SETTLEMENT.**

22 A district court may approve a proposed class settlement only upon finding that it is fair,  
23 reasonable, and adequate, taking into account (1) the strength of the plaintiffs' case; (2) the  
24 risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining  
25 class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of  
26 discovery completed and the stage of the proceedings; (6) the experience and view of counsel;  
27 (7) the presence of a governmental participant; and (8) the reaction of the class members to the  
28 proposed settlement. FRCP 23(e); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944



1 (9th Cir. 2015). For the following reasons, this order finds that the proposed class settlement is  
2 fair, reasonable, and adequate under FRCP 23(e).

3 *First*, the settlement terms are fair, reasonable, and adequate. The settlement here will  
4 provide class members with a non-revisionary gross settlement fund of \$18.5 million.  
5 According to plaintiffs' own expert, their total damages amounted to \$65 million. This amount  
6 represents not just lost equity, but lost usage. Because the bank had already paid fifteen  
7 million dollars to class members in remediation, plaintiffs' maximum total recoverable  
8 damages at trial would have been \$50 million (Joint Decl. ¶ 19). The proposed settlement  
9 figure would therefore result in an approximately 37% recovery of the maximum possible  
10 recoverable damages.

11 This percentage of recovery represents an amount greater than those approved by other  
12 courts in this district involving similar claims concerning loan modifications and HAMP. *See*  
13 *e.g.*, *Chao v. Aurora Loan Services*, 2015 WL 294823 (N.D. Cal. Jan. 21, 2015) (Judge  
14 Sandra Brown Armstrong) (approved a settlement representing approximately 19% of the  
15 claimed damages for breach of contract and UCL restitution); *see also Gaudin v. Saxon*  
16 *Mortgage Services, Inc.*, 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015) (Judge Jon S. Tigar)  
17 (approved a settlement representing approximately 13.6% of the claimed damages).

18 The 37% of recovery is particularly significant given the risks involved in protracted  
19 litigation, trial, and appeal. For one thing, the parties sharply contested at what point in time  
20 the value of plaintiffs' foreclosed homes should be appraised for purposes of calculating their  
21 lost equity. As plaintiffs concede, had lost equity been evaluated at the time of foreclosure, as  
22 the bank contended, as opposed to the time of the error, many plaintiffs were "under water"  
23 with their mortgages at that point because their homes were foreclosed on during the most  
24 recent financial crisis wherein home prices had plummeted significantly (Joint Decl. ¶ 20).  
25 Thus, many of the class members risked little to no recovery.

26 For another, class members with Fannie/Freddie contracts faced adverse authorities from  
27 other districts, which found relevant language in those contracts did not require a lender to  
28 notify or offer a loan modification to the mortgagor as a way to cure default (Dkt No. 231 at

1 13–14). That subset of class members, therefore, faced the prospect of not being able to  
2 establish liability for breach of contract — the only certified claim. Given the avoided risks of  
3 surviving summary judgment and proving both liability and damages at trial, this recovery is  
4 reasonable.

5 *Second*, the plan of the allocation of the settlement proceeds is fair and reasonable. The  
6 proposed gross settlement fund consists of \$18.5 million for 510 class members. After  
7 subtracting the attorney’s fees, litigation expenses, and settlement administration costs, the net  
8 settlement fund will be placed into an “economic damages fund” and a “severe emotional  
9 damages fund.” One million dollars of the net settlement amount will be allocated to the latter  
10 fund, and the remaining funds will go into the former. As to the “economic damages fund,”  
11 each class member will automatically receive a check of at least \$14,000 and as much as  
12 \$119,934, based on factors that are designed to represent each member’s proportionate  
13 damages.\*

14 As part of its remediation efforts, the bank already paid class members an average of  
15 38% of the unpaid principal balance of their loans at the time of the decision error.  
16 Accordingly, the allocation plan uses 38% as a benchmark, and will initially provide each class  
17 member with the amount needed to bring the total of their compensation — settlement  
18 payment together with remediation payment — to at least 38%, reduced by five percent for  
19 every six months of delinquency. The allocation plan, however, sets a minimum payment from  
20 the “economic damages fund” of \$14,000. Thus, no matter how long a class member was  
21 delinquent, each will still receive at least \$14,000. Because the bank already paid a minimum  
22 of ten thousand dollars in remediation to class members, each class member will have received  
23 at least \$24,000 in compensation relating to the bank’s error.

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24  
25 \* The allocation plan “recognizes that lost equity varies among [c]lass members, and some have  
26 already received substantial compensation from Wells Fargo for such losses. As such, the  
27 allocation plan uses the [unpaid principal balance] at the time of the error as a proxy for the value  
28 of the modification denied” because, in general, class members with larger unpaid balances “are  
more likely to have suffered more lost equity and, under [p]laintiffs’ theory, more damages as a  
result of the lost modification opportunity” (Dkt. No. 269 at 7) (citing Schrag Decl. at ¶ 21).

1 As to the “severe emotional distress fund,” Yanni has allocated the one million dollar  
2 fund between the 121 class members who submitted claims. Each of the 121 members will  
3 receive either \$6,700 or \$13,400. The Court appreciates the good work of special master  
4 Cathy Yanni in allocating the emotional distress claims.

5 Once distributions under both funds have completed, the residual funds, if any, will be  
6 distributed as follows: if the residual funds exceed \$25,000, they will be distributed to all class  
7 members on a pro-rata basis in accordance with the initial distribution. If, however, there is  
8 less than \$25,000 remaining, NeighborWorks America, a congressionally chartered, non-  
9 partisan, charitable organization focused on affordable housing, will receive any residual as a  
10 *cy pres*.

11 *Third*, this settlement follows the efforts of Magistrate Judge Ryu in facilitating  
12 mediation between the parties. Indeed, Judge Ryu’s mediator made the \$18.5 million  
13 monetary proposal during a March 3 settlement conference. The parties agreed to the amount  
14 two days later, and negotiated the remaining terms over the course of the next three weeks  
15 under Judge Ryu’s supervision. Moreover, the parties began settlement negotiations only after  
16 class certification (Joint Decl. ¶ 11). This background is relevant to whether or not the  
17 proposed settlement agreement appears to be “the product of serious, informed, non-collusive  
18 negotiations.” *See In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078 1079 (N.D. Cal. Apr.  
19 12, 2017) (Chief Judge Vaughn Walker).

20 *Fourth*, the class representatives and class counsel have adequately represented the class.  
21 The parties reached the proposed settlement after one and a half years of litigation involving  
22 extensive discovery, two motions to dismiss, over five submitted discovery disputes, two  
23 motions for class certification, motion for summary judgment, and three settlement  
24 conferences with Judge Ryu. Moreover, the class representatives are not seeking service  
25 awards.

26 Having considered the applicable factors, this order finds the proposed class settlement is  
27 fair, reasonable, and adequate as to warrant final approval. Accordingly, final approval of the  
28 class settlement and plan of allocation is **GRANTED**.

1                   **2.       MOTION FOR ATTORNEY’S FEES AND COSTS.**

2                   **A.       COST AND EXPENSES.**

3                   Class counsel seek to recover from the settlement fund a total of \$335,000 in litigation  
4 costs and expenses. The largest component of these expenses is “Expert Witness Fees” in the  
5 amount of \$139,196.32. Counsel also seek reimbursement for, among other things, transcripts  
6 (\$55,487.71), lodging (\$22,220.57), and travel and transportation (\$36,900.81). These  
7 expenses were all a reasonable and necessary part of the litigation, and are of a type  
8 customarily billed to a fee-paying client. No class member objected to recovery of these costs.  
9 The motion for reimbursement of these costs is therefore **GRANTED**.

10                   **B.       ATTORNEY’S FEES.**

11                   A district court must ensure that attorney’s fees are “fair, adequate, and reasonable,” even  
12 if the parties have entered into a settlement agreement that provides for those fees. *Staton v.*  
13 *Boeing Co.*, 327 F.3d 938, 963–64 (9th Cir. 2003). “In ‘common-fund’ cases where the  
14 settlement or award creates a large fund for distribution to the class, the district court has  
15 discretion to use either a percentage or lodestar method.” Our court of appeals has recognized  
16 25 percent of the common fund as a benchmark award for attorney’s fees. *Hanlon v. Chrysler*  
17 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). The benchmark may, however, be adjusted, or  
18 replaced by a lodestar calculation to account for the specific circumstances of the case. *See Six*  
19 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

20                   Class counsel, Gibbs Law Group LLP and Paul LLP, seek \$4,525,000 — or 25% of the  
21 *net* settlement fund after deduction of litigation cost and expenses (\$335,000) and settlement  
22 administration costs (\$65,000), representing a multiplier of 1.2 of their claimed lodestar of  
23 \$3,758,689. Notably, class counsel provides its billing charts showing that it exercised “billing  
24 judgment” — that is, they cut “excessive, redundant, or unnecessary” billable hours — which  
25 led to the cutting of 2,675 hours that they expended on many of the different tasks throughout  
26 this litigation, including all the time spent briefing the first motion for class certification, which  
27 had to be re-briefed due to counsel’s own error (*see* Joint Decl. ¶¶ 31–32, 66, 74–75). Thus,  
28

1 the stated lodestar above represents \$1.4 million less than what would have otherwise been the  
2 lodestar amount.

3 As class counsel’s motion for attorney’s fees explains, they undoubtedly worked hard on  
4 this suit. For instance, class counsel responded to over fifty discovery requests on behalf of  
5 named plaintiffs; reviewed over 200,000 pages of documents; took seven depositions in Iowa,  
6 Oregon, Minnesota, North Carolina, and California; and defended sixteen named plaintiffs and  
7 eighteen absent class members in depositions taken by the bank (Joint Decl. ¶¶ 7–8, 74).

8 Their representation, however, was not without hiccups. Indeed, due to their snafu at  
9 class certification, the undersigned had to order re-briefing, which led to protracted litigation  
10 and costs. On the other hand, as class certification later proved, the litigation carried  
11 substantial risk for counsel proceeding on a contingent-fee basis, as only the breach of contract  
12 claim was certified, which was a claim a prior order initially dismissed but counsel was able to  
13 revive through discovery and motion practice.

14 Moreover, as stated previously in this order, class counsel negotiated a settlement figure  
15 which brings significant relief to each class member compared to similar settlements in this  
16 district. The requested award of \$4,525,000 (25% of the net settlement fund after payment of  
17 expenses) representing a lodestar multiplier of 1.2 is thus reasonable here. The motion for  
18 attorney’s fees is accordingly **GRANTED**.

19 **CONCLUSION**

20 Accordingly, it is hereby ordered as follows:

21 1. The notice of settlement, as well as the manner in which it was sent to class  
22 members, fairly and adequately described the proposed class settlement, the manner in which  
23 class members could object to or participate in the settlement, and the manner in which class  
24 members could opt out of the class; was the best notice practicable under the circumstances  
25 was valid, due, and sufficient notice to class members; and complied fully with the Federal  
26 Rules of Civil Procedure, due process, and all other applicable laws. A full and fair  
27 opportunity has been afforded to class members to participate in the proceedings convened to  
28 determine whether the proposed class settlement should be given final approval. Accordingly,

1 the undersigned hereby determines that all class members who did not exclude themselves  
2 from the settlement by filing a timely request for exclusion are bound by this settlement order.  
3 The emotional distress claims of the sixteen class members who remain either unfound or who  
4 received late notice, however, are not barred.

5 2. The undersigned also finds that the proposed class settlement is fair, reasonable,  
6 and adequate as to the class, plaintiffs, and defendant; that it is the product of good faith, arms-  
7 length negotiations between the parties; and that the settlement is consistent with public policy  
8 and fully complies with all applicable provisions of law. The settlement and plan of allocation  
9 is therefore **APPROVED**.


10 3. Having considered class counsel's motion for attorney's fees and reimbursement  
11 of expenses, the undersigned hereby awards class counsel attorney's fees of \$4,525,000. Half  
12 of this amount shall be paid after the "effective date" as defined in the settlement agreement.  
13 The other half shall be paid when class counsel certify that all funds have been properly  
14 distributed and the file can be completely closed.

15 4. Class counsel shall also receive \$335,000 as reimbursement for their litigation  
16 expenses, to be paid from the settlement fund.

17 5. The motions (*see* Dkt. Nos. 285, 288) to file the class list under seal are **DENIED**.  
18 The names and the cities they reside in should be public. Their contact information and  
19 addresses can be redacted, however.

20  
21 **IT IS SO ORDERED.**

22  
23 Dated: October 12, 2020.

24  
25   
26 WILLIAM ALSUP  
27 UNITED STATES DISTRICT JUDGE  
28