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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

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17 IN RE WELLS FARGO COLLATERAL
18 PROTECTION INSURANCE
19 LITIGATION

Case Number: 8:17-ML-2797-AG-KES

**DECLARATION OF COURT-
APPOINTED MEDIATOR ERIC D.
GREEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND APPROVAL OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND COSTS**

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24 Date: October 28, 2019
25 Time: 10:00 am
26 Courtroom: 10D

27 Hon. Andrew J. Guilford

1 **DECLARATION OF ERIC D. GREEN**

2 I, Eric D. Green, declare as follows:

3 1. I am a full time mediator with Resolutions, LLC, an ADR firm located in
4 Boston, Massachusetts. In December 2017, the Court appointed me to serve as the
5 Mediator in the above-referenced matter to facilitate potential settlement discussions.
6 (ECF No. 35.) My experience and qualifications are set forth in the Declaration I filed
7 with this Court in support of Plaintiffs’ Motion for Preliminary Approval. (ECF No.
8 262-8.)

9 2. The first mediation session in which I was involved took place on May 8,
10 2018 in San Francisco. Altogether, the parties participated in five in-person mediation
11 sessions which occurred throughout 2018 and early 2019 in New York, Los Angeles and
12 Dallas in addition to numerous telephone conferences with all counsel and with
13 individual counsel for the parties. At these sessions, calls and meetings, the parties were
14 represented by a multitude of lawyers and client representatives. Based on my
15 observations and first-hand experience, counsel for all parties involved in these
16 mediation sessions are among the most knowledgeable, sophisticated and accomplished
17 attorneys in the fields of class actions and complex litigation. The level of advocacy for
18 all parties throughout this process was exceptionally informed, vigorous, engaged,
19 ethical, adversarial, and effective.

20 3. I submit this declaration to provide the Court with my observations on Class
21 Counsel’s role in achieving the Settlement with Wells Fargo and National General in light
22 of the April 30, 2018 Consent Orders issued by the Consumer Financial Protection Bureau
23 (“CFPB”) and the Office of the Comptroller of the Currency (“OCC”) (collectively, the
24 “Consent Orders”). Based on my personal observations, Class Counsel’s vigorous
25 representation of the Class in these negotiations is responsible for the successful
26 resolution of this action.

1 4. The parties' settlement negotiations were hard fought and adversarial, though
2 professional, with respect to virtually every issue, including but not limited to the amount
3 and scope of customer compensation, the methodology for determining who would
4 qualify for compensation, and a mechanism by which customers could enforce their right
5 to redress. Throughout the course of these mediated negotiations, neither the OCC nor the
6 CFPB was represented or participated in any way.

7 5. One of the major points of negotiation was Class Counsel's insistence on
8 expanding the breadth and scope of the remediation plan originally announced by Wells
9 Fargo in July 2017. That proposed remediation plan provided some compensation to class
10 members who had CPI policies dating back to 2012; however, Class Counsel learned
11 through discovery that the Wells Fargo CPI program began years earlier. During the
12 mediated negotiations, Class Counsel repeatedly demanded that Wells Fargo expand the
13 compensation to class members who had CPI policies dating back to 2005 and preserve
14 claims for class members who had CPI polices dating back to 2002. Eventually, Wells
15 Fargo agreed to include both in the Settlement Agreement that is currently before the
16 Court.

17 6. I first met with the parties and counsel in person on May 8, 2018. Prior to
18 that first session, the parties submitted mediation briefs that disclosed a substantial
19 number of areas of disagreement, dispute and differing points of view. At that first
20 session, there was disagreement about the size and scope of the class, credit damage and
21 its consequences and effects, potential damages, remediation, repossessed vehicles, and
22 the length of the CPI Program at issue.

23 7. The parties did not reach agreement on these issues at the first mediation
24 session. Rather, there was agreement that the defendants would produce to Class Counsel,
25 for mediation purposes, additional information, including:

- 26 ○ The total number of CPI policies issued during the relevant time
27 period;

- 1 ○ The total premium dollars charged on CPI policies;
- 2 ○ The average premium charged to an individual customer;
- 3 ○ The interest income earned on CPI revenue;
- 4 ○ The commissions earned by Wells Fargo on CPI policies;
- 5 ○ The percentage of “flat cancels”;
- 6 ○ The percentage of “partial cancels”;
- 7 ○ The number of vehicles repossessed;
- 8 ○ The CPI claims rate; and
- 9 ○ The dollar value of all fees charged to customers.

10 8. In addition, topics and deponents for depositions were identified and
11 discussed in the course of our mediation sessions.

12 9. Following months of litigation, a further mediation occurred in New York on
13 September 12, 2018. The parties reported on the progress of their informal and formal
14 discovery efforts and further deponents were identified including the CEO of Wells Fargo,
15 and seven other key Wells Fargo witnesses. Deponents from National General – nine
16 witnesses in all – were also identified. A detailed discussion took place about Class
17 Counsel’s demand for loan level data from Wells Fargo. This critical information was
18 provided at a later point in time.

19 10. At the session in New York, the parties also stated and argued their
20 respective and opposing positions on the following issues:

- 21 ○ Plaintiffs’ proposed settlement structure;
- 22 ○ The 2002-2005 time period as it affected the Class Period;
- 23 ○ Compensation for consumers who paid allegedly unlawful
24 commissions;
- 25 ○ The discovery or voluntary disclosure of a credit reporting modeling
26 expert; and
- 27 ○ The setting of further mediation sessions.

1 The parties agreed then that they would work to establish a settlement structure that would
2 be acceptable to all stakeholders.

3 11. The parties and counsel met again with me on December 13, 2018 in Los
4 Angeles. A detailed review of the parties' positions was undertaken but the issues
5 previously identified remained as points of disagreement and contention. The parties
6 reported their views to me on the deposition discovery that had occurred in the
7 intervening time. As of this point in time, it appeared to me that a partial, but not a global,
8 settlement was possible and achievable. This development led to the careful consideration
9 of a myriad of new issues and potential effects were there to be a partial settlement. The
10 issue of contractual and equitable indemnity and contribution, among other matters,
11 dominated this mediation session.

12 12. Throughout January of 2019, I encouraged counsel for all parties to engage
13 with me in separate, but parallel mediation sessions in the hope that we could still achieve
14 a global settlement. To this end, I conducted a further mediation on January 22, 2019 in
15 Dallas, Texas. At that session, the mediation discussions were separate as between Class
16 Counsel and Wells Fargo on the one hand and Class Counsel and National General on the
17 other. This mediation resulted in a draft term sheet for a potential global settlement. But,
18 the term sheet contained two key aspects of additional work to be completed by the parties
19 – confirmatory discovery of certain aspects of the proposed deal and key disclosures that
20 Class Counsel demanded which Wells Fargo and National General agreed to, all subject
21 to the approval of defendants' client representatives.

22 13. Subsequently, disagreements arose over the draft term sheet, certain financial
23 terms, the scope of the voluntary disclosures, and the scope and breadth of the previously
24 agreed upon confirmatory discovery. I was involved in trying to resolve these matters in
25 multiple separate calls with counsel for the parties.

26 14. A further mediation session took place on March 26, 2019 with all parties
27 and their counsel. Because the parties had been unable to effectuate the terms of the draft
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1 term sheet, a potential existed for a negotiation-ending impasse on that day. As the
2 discussions progressed, however, we were able to further negotiate and agree in principle
3 upon the eight separate deal terms that were still in dispute. Ultimately, and late into that
4 evening, an agreed upon solution for a global settlement was reached and it is this
5 Settlement which the Court has preliminarily approved.

6 15. Throughout our negotiations, Class Counsel sought a comprehensive
7 settlement structure that would be acceptable to all stakeholders, including the OCC and
8 CFPB, and one that was enforceable by class members through a Rule 23 class action
9 settlement subject to the jurisdiction of this Court. While regulatory pressure may have
10 been present, this outcome and Settlement are also due to the efforts of Class Counsel,
11 defense counsel and their clients who worked with me to achieve this result.

12 16. In my opinion, the outcome of these mediated negotiations is the result of a
13 thorough and fully-informed arms-length process between highly capable, experienced
14 and informed parties and counsel. The final settlement represents the parties' and
15 counsels' best professional effort and judgment about a fair, reasonable and adequate
16 settlement after thoroughly investigating and litigating the case for years, taking into
17 account the risks, strengths and weaknesses of their respective positions on the
18 substantive issues of the case, the risks and costs of continued litigation, and the best
19 interests of their clients.

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21 I declare under penalty of perjury that the foregoing is true and correct. Executed
22 on August 29, 2019 at Boston, Massachusetts.

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Eric D. Green