Roland Tellis (SBN 186269)
rtellis@baronbudd.com
David B. Fernandes, Jr. (SBN 280944)
dfernandes@baronbudd.com
BARON & BUDD, P.C.
15910 Ventura Boulevard, Suite 1600
Encino, California 91436
Telephone: (818) 839-2333
Facsimile: (818) 986-9698

Roman M. Silberfeld (SBN 62783)
rsilberfeld@robinskaplan.com
David Martinez (SBN 193183)
dmartinez@robinskaplan.com
Robins Kaplan LLP
2049 Century Park East, Suite 3400
Los Angeles, California 90067
Telephone: (310) 552-0130
Facsimile: (310) 229-5580

Aaron M. Sheanin (SBN 214472)
asheanin@robinskaplan.com
Robins Kaplan LLP
2440 W. El Camino Real, Suite 100
Mountain View, California 94040
Telephone: (650) 784-4040
Facsimile: (650) 784-4041

Plaintiffs' Co-Lead Counsel
** Additional counsel listed on signature page*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

IN RE WELLS FARGO COLLATERAL PROTECTION INSURANCE LITIGATION

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

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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

Hon. Andrew J. Guilford

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 28, 2019 at 10:00 a.m., in Courtroom 10-D of the above-captioned Court, located at the Ronald Reagan Federal Building, United States Courthouse, 411 West Fourth Street, Santa Ana, CA, 92701-4516, the Honorable Andrew J. Guilford presiding, Plaintiffs Angelina Camacho, Odis Cole, Nyle Davis, Duane Fosdick, Regina-Gonzalez Phillips, Brandon Haag, Paul Hancock, Dustin Havard, Brian Miller, Analisa Moskus, Keith Preston, Victoria Reimche, Dennis Small, and Bryan Tidwell ("Plaintiffs" or "Representative Plaintiffs"), on behalf of themselves and all others similarly situated, will, and hereby do, move this Court to:

1. Enter final approval of the settlement described in the Settlement Agreement, which is attached as Exhibit 1 to the Joint Declaration of Plaintiffs' Co-Lead Counsel in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Approval of Class Notice (ECF No. 262-1); and

2. Enter a final judgment to dismiss the action.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement; (3) the Joint Declaration of Roland Tellis, Roman Silberfeld, and David S. Casey, Jr., and exhibits thereto, filed concurrently herewith; (4) the Declaration of Court-Appointed Mediator Eric D. Green, filed concurrently herewith; (5) the Declaration of Cameron R. Azari, Esq., and exhibits thereto, filed concurrently herewith; (6) the Declaration of Professor Brian T. Fitzpatrick, filed concurrently herewith; (7) the Settlement Agreement and attached exhibits thereto; (8) the [Proposed] Order Granting Final Approval of Class Action Settlement; (9) the [Proposed] Judgment; (10) the records, pleadings, and papers filed, and documents produced in, this litigation; and (11) such other documentary and oral evidence or argument as may be presented to the Court at the hearing of this Motion.

///

Dated: August 30, 2019

Respectfully submitted,

By: */s/ Roland Tellis*
Roland Tellis

Roland Tellis (SBN 186269)
David B. Fernandes, Jr. (SBN 280944)
BARON & BUDD, P.C.
15910 Ventura Boulevard, Suite 1600
Encino, California 91436
Telephone: (818) 839-2333
Facsimile: (818) 986-9698

By: */s/ Roman M. Silberfeld*
Roman M. Silberfeld

Roman M. Silberfeld (SBN 62783)
rsilberfeld@robinskaplan.com
David Martinez (SBN 193183)
dmartinez@robinskaplan.com
ROBINS KAPLAN LLP
2049 Century Park East, Suite 3400
Los Angeles, California 90067
Telephone: (310) 552-0130
Facsimile: (310) 229-5580

Aaron M. Sheanin (SBN 214472)
asheanin@robinskaplan.com
ROBINS KAPLAN LLP
2440 W. El Camino Real, Suite 100
Mountain View, California 94040
Telephone: (650) 784-4040
Facsimile: (650) 784-4041

Kellie Lerner (*pro hac vice*)
klerner@robinskaplan.com
Benjamin D. Steinberg
bsteinberg@robinskaplan.com
ROBINS KAPLAN LLP
399 Park Avenue, Suite 3600
New York, New York 10022
Telephone: (212) 980-7400
Facsimile: (212) 980-7499

Plaintiffs' Co-Lead Counsel

Eric H. Gibbs (SBN 178658)
Michael L. Schrag (SBN 185832)
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110
Oakland, California 94612
Telephone: (510)-350-9700
Facsimile: (510 350-9701

Charles E. Schaffer (*Pro Hac Vice*)
LEVIN SEDRAN & BERMAN
510 Walnut Street, Suite 500
Philadelphia, Pennsylvania 19106
Telephone: (215) 592 1500
Facsimile: (215) 592-4663

Paul F. Novak (*Pro Hac Vice*)
WEITZ & LUXENBERG, P.C.
Chrysler House
719 Griswold, Suite 620
Detroit, Michigan 48226
Telephone: (313) 800-4170
Facsimile: (646) 293-7992

Plaintiffs' Steering Committee

David S. Casey, Jr. (SBN 060768)
Gayle M. Blatt (SBN 122048)
CASEY GERRY SCHENK
FRANCAVILLA BLATT & PENFIELD, LLP
110 Laurel Street
San Diego, California
Telephone: (619) 238-1811
Facsimile: (619) 544-9232

Plaintiffs' Liaison Counsel

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

I. INTRODUCTION

Plaintiffs Angelina Camacho, Odis Cole, Nyle Davis, Duane Fosdick, Regina-Gonzalez Phillips, Brandon Haag, Paul Hancock, Dustin Havard, Brian Miller, Analisa Moskus, Keith Preston, Victoria Reimche, Dennis Small, and Bryan Tidwell ("Plaintiffs") move for final approval of the Settlement[1] with Defendants Wells Fargo & Company and Wells Fargo Bank, N.A. ("Wells Fargo") and National General Holdings Corp. and National General Insurance Company ("National General" and collectively, "Defendants"). This Settlement resolves claims that Defendants along with their predecessors, forced millions of unsuspecting consumers to pay for duplicative, unnecessary, and overpriced Collateral Protection Insurance, or "CPI" from October 15, 2005 through September 30, 2016.

On August 5, 2019, this Court granted preliminary approval of the Settlement and ordered dissemination of notice to Settlement Class members. On August 12, 2019, the Settlement Administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq") commenced the court-approved notice program. The notice program will be completed on September 5, 2019.

Under the terms of the Settlement, Defendants have agreed to pay ***at least*** $393.5 million to the Settlement Class. Based on a continued analysis of claims that has taken place since the parties reached the Settlement, the parties now anticipate that Defendants will pay $432.4 million to the Settlement Class, in addition to attorneys' fees and costs. Furthermore, the Settlement provides that all settlement checks will be automatically mailed to each Settlement Class member without the need to submit a claim form.

The Settlement is the result of contentious, prolonged, arm's-length negotiations between the parties who participated in five in-person mediation sessions between May 2018 and March 2019, as well as numerous telephone sessions, with the Court-appointed mediator, Professor Eric D. Green. The Settlement represents an exceptional result for the

[1] The capitalized terms in this brief have the same meanings as the terms defined in the Settlement Agreement (ECF No. 261-1, Ex. 1).

Settlement Class and ensures compensation for millions of Settlement Class members. The Settlement is fair, reasonable, and adequate. Respectfully, Plaintiffs request that this Court grant final approval.

II. BACKGROUND

This Court is familiar with Plaintiffs' allegations, so Plaintiffs do not repeat them here. However, Plaintiffs have filed concurrently with this motion and their motion for attorneys' fees, a comprehensive joint declaration[2] that provides a thorough background and history of the litigation, including (1) the alleged scheme at the heart of this case; (2) the events that occurred prior to this litigation; (3) the discovery and motion practice conducted; (4) the vigorous arm's-length negotiations that resulted in the Settlement; (5) the highly-favorable Settlement terms; (6) the relationship between Class Counsel's negotiations and various actions brought by federal and state regulators concerning the alleged scheme; and (7) the value of the services performed by Class Counsel throughout the litigation. This brief details why this Settlement is fair, reasonable and adequate, and warrants final approval by the Court.

A. The Settlement Class Definition

This Court has certified for settlement purposes the Settlement Class, which consists of Wells Fargo Dealer Services ("WFDS") Customers who had a CPI Policy placed on their account(s) that became effective at any time between October 15, 2005 and September 30, 2016 and Wells Fargo Auto Finance ("WFAF") Customers who had a CPI Policy placed on their account(s) that became effective at any time between February 2, 2006 and September 1, 2011. The Settlement Class excludes Non-Compensable Flat Cancels, which are:

> (a) customers who provided proof of Duplicative Insurance Coverage for the entire CPI Placement Period, resulting in a cancellation of the policy in full before the scheduled CPI Billing Date;

[2] Joint Declaration of Roland Tellis, Roman M. Silberfeld, and David S. Casey, Jr. in Support of Plaintiffs' Motions for Final Approval of Class Action Settlement and For an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards ("Joint Decl.").

> (b) customers who provided proof of Duplicative Insurance Coverage for the entire CPI Placement Period, resulting in a cancellation of the policy in full on or after the scheduled CPI Billing Date but before the payment due date reflected on the customer's first periodic statement reflecting any increased monthly payment amount due to the CPI premium; and
>
> (c) other customers who provided proof of Duplicative Insurance Coverage for the entire CPI Placement Period, resulting in a cancellation of the policy in full, and who did not pay a Duplicative CPI Premium or Duplicative CPI Interest, who were not assessed Assessed Fees during the CPI Impact Period that were not waived at the time, and who did not experience any negative credit reporting as a result of CPI as set forth in Section III(G) of the Settlement Agreement.

B. The Settlement Terms

As a result of this litigation, Defendants are expected to pay $432.4 million to the Settlement Class pursuant to the Settlement Allocation Plan (ECF No. 262-3) and the Settlement Distribution Plan (ECF No. 262-4). (*See* Joint Decl. ¶ 59.) The CPI charges at issue are identifiable from Defendants' records. (*Id.* ¶ 60.) Using those records, and with the assistance of an expert, Defendants will compensate all Settlement Class members according to the circumstances of the CPI placements on their automobile loan accounts. (*Id.*)

Pursuant to the Settlement Allocation Plan, Settlement Class members who had forced-placed CPI policies cancelled in part or in full because they had their own insurance for a portion or the full term of the CPI policy ("Duplicative Coverage Customers") will receive: (a) a refund of the fees assessed to their account during the time period when CPI impacted their account; (b) a refund of the insurance premiums they were assessed for duplicative CPI; (c) a refund of the interest charges they were assessed for duplicative CPI; (d) a payment for the additional interest that accrued on their loan due to the duplicative CPI premiums and interest; (e) a payment to compensate for their inability to use the above funds elsewhere; and (f) adjustments to adverse credit reporting due to CPI.

Five State Customers are defined in the Settlement as Settlement Class members

who had a CPI Policy placed on their accounts in: (1) Arkansas (between July 30, 2012 and September 30, 2016); (2) Michigan (between July 30, 2011 and September 30, 2016); (3) Mississippi (between July 30, 2014 and September 30, 2016); (4) Tennessee (between July 30, 2011 and September 30, 2016); or (5) Washington (between July 30, 2011 and September 30, 2016). Pursuant to the Settlement Allocation Plan, Five State Customers will receive: (a) a refund of the fees assessed to their account during the time period when CPI impacted their account; (b) a refund of the insurance premiums they were assessed for CPI; (c) a refund of the interest charges they were assessed for CPI; (d) a payment for the additional interest that accrued on their loan due to the duplicative CPI premiums and interest; (e) a payment to compensate for their inability to use the above funds elsewhere; and (f) adjustments to adverse credit reporting due to CPI.

Pursuant to the Settlement Allocation Plan, Duplicative Coverage Customers and Five State Customers who had their vehicle repossessed during the time period when CPI impacted their accounts will also receive: (a) $4,000 as an estimate for the out-of-pocket transportation and non-transportation expenses they incurred due to the loss of their vehicle; (b) a refund of the repossession costs they paid to Wells Fargo; (c) a refund of the payments they made on their remaining automobile loan balance after the proceeds from their vehicle's sale were applied to their loan (if applicable); (d) the difference in price between what their vehicle sold for at auction and their vehicle's Kelley Blue Book Lender Value at the time of repossession, to the extent that value is greater than their outstanding loan balance (if applicable); (e) a payment to provide a tax benefit if they previously had a deficiency balance waived and a 1099-C tax document was filed; (f) a payment to compensate for their inability to use the above funds elsewhere; and (g) the option to participate in Wells Fargo's no-cost telephonic mediation program if they are not satisfied with their compensation under the Settlement.

The Settlement Distribution Plan is a "catch-all" category to ensure payment for Settlement Class members who are otherwise not receiving any payment under the Settlement Allocation Plan. Borrowers on whose accounts Defendants force-placed CPI,

but who did not have their own independent insurance policies for some or all of the period in which CPI was effective are included in this group. Their claims are not for the placement of duplicative insurance, but instead that the CPI policies were overpriced. On average, these CPI premiums were inflated by $8 to $10 per month.

Pursuant to the Settlement Distribution Plan, $6,375,000 will be distributed *pro rata* to Settlement Class members who do not receive payments under the Settlement Allocation Plan and who paid for a CPI Policy placed on their automobile loan account that remained in effect, without reversal, for at least 120 days after the CPI Billing Date. The remaining $2,125,000 will be distributed *pro rata* to all other Settlement Class members who would not otherwise receive payment under the Settlement Allocation Plan and who paid for a CPI policy placed on their automobile loan account that remained in effect, without reversal, for less than 120 days after the CPI Billing Date.

The Settlement provides that checks will be automatically mailed to each Settlement Class member without the need to submit a claim form. The settlement administrator will engage in outreach to contact Settlement Class members and remind them to cash their checks. In addition to the amounts paid to the Settlement Class, Wells Fargo has paid all costs of providing notice to the Settlement Class and administration of the Settlement. Subject to this Court's approval, each Class Representative will receive a service award payment of $7,500. Also, subject to this Court's approval, Defendants will pay Class Counsel $36 million in attorneys' fees and $483,489.04 for reimbursement of litigation expenses. Finally, the Settlement ensures that this Court reserves "continuing and existing jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation, and enforcement of this Agreement." (ECF No. 262-1 at § I.F.14.) The enforceability of this Settlement by consumers is additional valuable consideration. (ECF No. 262-1 at Ex. 1.)

In exchange for these significant benefits, Settlement Class members agree to release their claims against Defendants which arise out of the CPI policies placed on WFDS accounts between October 15, 2005 and September 30, 2016 as well as CPI

policies placed on WFAF accounts between February 2, 2006 and September 1, 2011. (*Id.*) Thus, the scope of the release is tailored to the conduct at issue in the operative complaint, is limited to the claims arising only during the Class Period, and was agreed to as part of a highly complex negotiation that took place over 17 months.[3]

C. This Court Has Granted Preliminary Approval

Class Counsel filed Plaintiffs' Motion for Preliminary Approval and Approval of Class Notice on June 6, 2019. (ECF No. 262.) This Court granted preliminary approval and ordered dissemination of class notice on August 5, 2019. (ECF No. 281.) Upon review of the Settlement terms, this Court found the Settlement to be "sufficiently fair, reasonable, and adequate to warrant sending notice of Settlement to the Settlement Class." (*Id.* ¶ 1.) This Court also determined that the Settlement Class, as defined, satisfies the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3). (ECF No. 281 ¶ 2.) The Court designated Plaintiffs as Representative Plaintiffs of the Settlement Class and appointed Baron & Budd, P.C., Robins Kaplan, LLC, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP, Weitz & Luxenberg PC, the Gibbs Law Group, and Levin Sedran & Berman as Class Counsel. (*Id.* ¶¶ 4-5.)

D. Implementing the Class Notice Program

The class notice program has successfully commenced pursuant to the Settlement Agreement and this Court's Preliminary Approval Order. The program will continue through September 5, 2019. (Declaration of Cameron R. Azari ["Azari Decl."] ¶ 14.)

An estimated 2,251,956 notice packets will be sent by Epiq to Settlement Class members via USPS first class mail. (*Id.*) To supplement the notice packets, Epiq sent 1,019,408 email notices to Settlement Class members with a valid email address between August 21 and August 30, 2019, and a party-neutral Informational Release was issued on

[3] During the parties' negotiations, it became apparent that Wells Fargo lacked complete data concerning CPI placed on accounts during the period of March 2002 to October 2005. Per the parties' agreement, the Second Amended Class Action Complaint limits the class period to begin on October 15, 2005. The Settlement also tolls until final approval any claims by customers who had a CPI Policy that was effective between March 1, 2002 and October 14, 2005. Thus, the Settlement does not release the claims on behalf of customers during the earlier period.

August 12, 2019 to approximately 5,000 general media (print and broadcast) outlets across the United States and 4,500 online databases and websites. (*Id.* ¶¶ 17, 26.) The class notice program advises Settlement Class members about their rights under the Settlement, including the deadline to object or opt-out, and the Settlement's benefits. (*Id.* at Attachment 2.) It also provides Epiq's toll-free number[4] and the Settlement website address, https://www.WellsFargoCPISettlement.com.[5] (*Id.*) The Settlement website provides extensive information regarding the Settlement, including FAQs for Settlement Class members, and maintains important documents for Settlement Class members to review. (*Id.* ¶ 27.)

Finally, the deadline for opt-outs and objections is October 7, 2019. Thus far, 2 Settlement Class members have opted out and none have objected. (*Id.* ¶ 34.) Plaintiffs will submit updated information regarding the final reaction of Class Members and respond to objections (if any) in their reply brief that is due on October 21, 2019.

III. ARGUMENT

A. The Class Action Fairness Act Notice Requirement Has Been Satisfied

A court is precluded from granting final approval of a class action settlement until the Class Action Fairness Act ("CAFA") notice requirements are met. 28 U.S.C. § 1715(d) ("An order giving final approval of a proposed settlement may be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State officials are served with the notice required under [28 U.S.C. § 1715(b)].").

On June 14, 2019, Epiq sent out notices to 112 officials, including the Attorneys General of each of the 50 states, the District of Columbia and the United States Territories, State Insurance Commissioners, the Attorney General of the United States, the

[4] The automated phone system is available 24 hours per day, 7 days per week. As of August 30, 2019, the toll-free number has handled 19,362 calls representing 133,761 minutes of use and live operators have handled 7,692 incoming calls representing 49,047 minutes of use. (Azari Decl. ¶ 29.)

[5] As of August 30, 2019, there have been 182,372 visits, represented by unique users to the case website and over 231,145 website pages presented. (*Id.* ¶ 28.)

Office of the Comptroller of the Currency ("OCC"), and the Consumer Financial Protection Bureau ("CFPB"). (Azari Decl. ¶ 8.) At this time, no governmental authority has indicated that it will object to the Settlement. *See In re Linkedin User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015) (noting that "CAFA presumes that, once put on notice, state or federal officials will raise any concerns that they may have during the normal course of the class action settlement procedures.").

i. Notice under Rule 23(c) Has Been Satisfied

The Court "must direct to class members the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2). Notice serves to afford class members due process, providing them with the opportunity to be excluded from the class action and not be bound by any subsequent judgment. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974). However, "due process requires reasonable effort to inform affected class members through individual notice, not receipt of individual notice." *Rannis v. Recchia*, 380 Fed. App'x 646, 650 (9th Cir. 2010).

As detailed above, class notice was provided in accordance with the notice program approved by this Court. As detailed in Mr. Azari's declaration, Epiq was able to collect data on virtually all Settlement Class members from Wells Fargo. (Azari Decl. ¶ 9.) An estimated 2,251,956 notice packets will be sent by Epiq to Settlement Class members via USPS first class mail. (*Id.* ¶ 14.) The notice provided to Settlement Class members gives basic information about the case and its allegations, the Settlement's benefits, Settlement Class members' rights, the opt-out and objection deadlines, and identifies the Settlement website address and Epiq's toll-free number. *See, e.g., Hartless v. Clorox Co.*, 273 F.R.D. 630, 636 (S.D. Cal. 2011) (granting final approval of class action settlement where the notice contained a description of the lawsuit and settlement relief, a description of class members' rights, and the settlement website and toll-free number). The Settlement website maintained by Epiq also provides detailed information about the case and the Settlement Agreement, including an FAQ section and a link to important documents. (Azari Decl. ¶ 27.) Based on the foregoing, the notice requirement has been satisfied.

B. The Court Need Not Revisit Class Certification

In its Order Granting Preliminary Approval, this Court determined that the Settlement Class, as defined, satisfies the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3). (ECF No. 281 ¶ 2.) Nothing has changed since the Preliminary Approval Order was entered that would affect the Court's rulings on class certification for settlement purposes. *See Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 887 (C.D. Cal. 2016) (reconfirming the certification set forth in the preliminary approval order "[b]ecause circumstances have not changed" since that order). Therefore, this Court should grant final certification of the Settlement Class.

C. This Court Should Grant Final Approval of the Settlement

"A court can approve a class action settlement that binds class members 'only after a hearing and on finding that it is fair, reasonable, and adequate.'" *Figueroa v. Allied Building Products Corp.*, No. SACV 16-02249 AG (KESx), 2018 WL 4860034, at *1 (C.D. Cal. Sept. 24, 2018) (quoting Fed. R. Civ. P. 23(e)(2)). In doing so, the Court must balance several factors to decide whether to approve a class action settlement. *Id.* (citing *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566 (9th Cir. 2004)). These factors include: "(1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of proceedings; (6) the experience and views of counsel; (7) the presence of a government participant; (8) the reaction of the class members to the proposed settlement; (9) whether the settlement was the product of collusion among the negotiating parties; and (10) notice to the class." *Id.* (citing *Churchill*, 361 F.3d at 575) ("*Churchill* factors"). The importance of any one factor "will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Id.* (quoting *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). As this Court has previously held:

> It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness, and the settlement must stand or fall in its entirety." *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). At any rate, "the decision to approve or reject a settlement is committed to the sound discretion of the trial judge." *Hanlon*, 150 F.3d at 1026. And ultimately, "[s]trong judicial policy favors settlements." *Churchill Vill., LLC v. Seattle*, 361 F.3d 566, 576 (9th Cir. 2004) (omission and quotation marks omitted) (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d at 576).

Id. at *2. As set forth below, the *Churchill* factors weigh in favor of final approval of the Settlement.

i. The Strength of Plaintiffs' Case Balanced with the Risk, Expense, Complexity, and Duration of Continued Litigation, Including Maintaining Class Certification through Trial Weighs in Favor of Final Approval

The first three *Churchill* factors are all satisfied here. In evaluating these considerations, a court must objectively assess "the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach [a settlement]." *Nozzi v. Housing Authority for the City of Los Angeles*, No. CV 07-0380 PA (FFMx), 2017 WL 8775378, at *3 (C.D. Cal. Jul. 29, 2017) (citation and internal quotations omitted). While there is no single formula to be applied, the Court may presume that the parties' counsel and the Court-appointed mediator arrived at a reasonable settlement by considering the plaintiffs' likelihood of recovery. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009).

The risks of continued litigation were substantial here. First, although the parties continually negotiated to extend the deadline for Wells Fargo to file a motion to compel arbitration, as many as half the Settlement Class members were parties to retail installment sales contracts that included arbitration provisions with class action waivers. Second, Defendants repeatedly raised a statute of limitations defense. In light of many factual issues, the Court determined that Plaintiffs' allegations withstood that defense at the motion to dismiss stage, but there is little doubt that Defendants would have asserted

this defense in later proceedings. Had Defendants prevailed on this issue, up to six years of class claims could have been deemed time-barred. Third, National General asserted that it never directed the conduct of the alleged RICO enterprise because it merely served as an outside service provider to Wells Fargo. Although the Court rejected this argument at the pleadings stage, the trier of fact could ultimately have accepted it, which would have undermined Plaintiffs' treble damages RICO claims. Fourth, Plaintiffs' kickback theory was subject to challenge, including the possibility that the Court would have found the unearned commissions to be lawful. Such a finding would have eliminated class claims and undermined Plaintiffs' assertions of fraudulent intent. Fifth, the proposed class may not have been certified for litigation purposes. Had any of these risks come to fruition, they would have greatly diminished the Settlement Class' potential recovery.

The complexity of the litigation also favors approval. Absent the Settlement, Plaintiffs would have needed to certify a contested class, oppose a motion to compel arbitration and other future motions Defendants would likely bring (including a motion for summary judgment and motion for decertification if Plaintiffs were successful at the class certification stage), and then prevail at trial and potential appeals. While Plaintiffs believe that their claims have merit, Defendants raised numerous substantive issues and defenses that present risks to Plaintiffs' case, including those described above.

Furthermore, the additional expenses of ongoing litigation support final approval. *See Chambers*, 214 F. Supp. 3d at 888 ("In assessing the risk, expense, complexity, and likely duration of further litigation, the court evaluates the time and cost required.") (citation omitted). Here, Plaintiffs have shouldered exceedingly high financial risks in pursuing this action. Plaintiffs have spent $483,489.04, and the costs of continued litigation will only grow. This is a class action affecting millions of consumers against one of the nation's largest banks and a major, well-financed insurance company. Continued litigation will further entrench Plaintiffs and Class Counsel in protracted, resource-draining court battles. This weighs in favor of settlement. *See Officers for Justice*, 688 F.2d at 625 ("[I]t is the very uncertainty of outcome in litigation and avoidance of

wasteful and expensive litigation that induce consensual settlements."); *In re Toys 'R' Us FACTA Litig.*, 295 F.R.D. 438, 451 (C.D. Cal. 2014) (observing that the "substantial risk of incurring the expense of a trial without any recovery" supports approval).

In short, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). Here, the risk of continuing litigation, coupled with increased costs and potential legal hurdles, weighs heavily in favor of settlement.

ii. The Amount Offered in the Settlement Supports Final Approval

The Court must also consider the relief or remedy offered in the Settlement in granting final approval. "'[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.'" *Turner v. Motel 6 Operating L.P.*, No. CV 17-2544 PSG (SSx), 2018 WL 6977474, at *3 (C.D. Cal. Nov. 6, 2018) (quoting *Officers for Justice*, 688 F.2d at 624.) "The Ninth Circuit has explained that, 'the proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.'" *Id.* (quoting *Officers for Justice*, 688 F.2d at 625.) "Rather, any analysis of a fair settlement amount must account for the risks of further litigation and trial, as well as expenses and delays associated with continued litigation." *Id.*

Courts in this Circuit "put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution, and have never prescribed a particular formula by which that outcome must be tested." *See, e.g., Rodriguez*, 563 F.3d at 965 (internal citations omitted). Accordingly, the Ninth Circuit does not require the plaintiff to present speculative measures of the maximum value of the action upon a successful trial. *See, e.g., Lane v. Facebook, Inc.*, 696 F.3d 811, 823 (9th Cir. 2012) (holding that the court "need not include in its approval order a specific finding of fact as to the potential recovery for each of the plaintiffs' causes of action"). Thus, a settlement may be fair, reasonable and adequate even if it provides only a "fraction of the potential recovery." *Mendoza v.*

Hyundai Motor Co., No. 15-cv-01685-BLF, 2017 WL 342059, at *6 (N.D. Cal. Jan. 23, 2017).

Here, the Settlement offers substantial relief to Settlement Class members. Under the Settlement, Defendants have agreed to pay a minimum of $393.5 million to the Settlement Class. However, based on a continued analysis of claims that has taken place since the parties reached the Settlement, the parties now anticipate that Wells Fargo will pay at least $423.9 million to the Settlement Class under to the Settlement Allocation Plan. (Joint Decl. ¶ 59.) And, pursuant to the Settlement Distribution Plan, Defendants will pay an additional $8.5 million to compensate Settlement Class members who are not otherwise receiving any payment under the Settlement Allocation Plan. (*Id.*) In all, Defendants are now expected to pay $432.4 million to the Settlement Class, in addition to attorneys' fees and costs. (*Id.*) Additionally, Settlement Class members will receive adjustments to adverse credit reporting due to CPI, (*id.* ¶¶ 61, 63) and Settlement Class members with CPI-related automobile repossessions can avail themselves of a no-cost telephonic mediation program if they are not satisfied with their compensation under the Settlement. (*Id.* ¶ 64.)

In short, the Settlement provides substantial relief to those injured by Defendants' CPI Program, including full refunds of CPI premiums and interest charged, and additional compensation to Settlement Class members whose vehicles were wrongfully repossessed. The Settlement therefore approaches what Settlement Class members would have obtained had they prevailed at trial. The Settlement amount strongly favors final approval.

iii. The Extent of Discovery and Stage of Proceedings Weighs in Favor of Final Approval

"Consideration of the extent of discovery and the current stage of the litigation allows the Court to evaluate whether the parties are able to make decisions about their claims based on information received during the discovery process." *Eisen v. Porsche Cars North America, Inc.*, No. 2:11–cv–09405–CAS–FFMx, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014). Even a settlement negotiated at an earlier stage in the litigation

will not be denied so long as sufficient investigation has been conducted. *Id.* at *4 (finding that counsel had "ample information and opportunity to assess the strengths and weaknesses of their claims" despite "discovery [being] limited because the parties decided to pursue settlement discussions early on"). Moreover, "[i]n the context of class action settlements, as long as the parties have sufficient information to make an informed decision about settlement, 'formal discovery is not a necessary ticket to the bargaining table.'" *Wilson v. Tesla, Inc.*, No.17-cv-03763-JSC, 2019 WL 2929988, at *8 (N.D. Cal. Jul. 8, 2019) (quoting *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998)). "Rather, the court's focus is on whether 'the parties carefully investigated the claims before reaching a resolution.'" *Id.* (quoting *Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014)). As this Court explained to the parties here: "[A]ll good business people mak[e] decisions on less than perfect information if you were to settle it. If both were to settle it, it might be with less than perfect information on things like the motions to dismiss or the motions to compel arbitration. You know, sometimes it's better to take all of that into account. Uncertainty is opportunity." (Transcript of Proceedings dated Apr. 2, 2018 at 6:14-20.)

Here, Plaintiffs engaged in extensive investigation and discovery, including: (1) a substantive review of almost 4.5 million pages of documents produced by Defendants and third party Oliver Wyman; (2) conducted a nearly full-day interview of one of Wells Fargo's key operations managers for the CPI Program in Charlotte, North Carolina; (3) taking Rule 30(b)(6) depositions of Wells Fargo through four corporate designees; and (4) taking Rule 30(b)(1) depositions of three additional Wells Fargo witnesses and three National General witnesses. (Joint Decl. ¶¶ 18-20, 33-34.) Plaintiffs also served a Rule 30(b)(6) deposition of National General plus deposition notices for an additional 15 defense witnesses—including Wells Fargo's former CEO Tim Sloan—and prepared to take those depositions immediately prior to the mediation sessions that began to achieve a resolution of this case. (*Id.* ¶ 34.) In addition to the substantial discovery conducted to date, the parties engaged in motion practice, including multiple motions to dismiss and

Plaintiffs' successful motion to compel documents from third party Oliver Wyman. (*Id.* ¶¶ 12-17, 27-32, 36-40.)

Given the work done by both sides in this action, the parties entered the settlement discussions with a comprehensive understanding of the factual and legal issues from which they could advocate their respective positions.

iv. Views of Counsel Should Be Accorded Substantial Weight

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995); *see also Brulee v. DAL Global Services, LLC*, No. CV 17-6433 JVS(JCGx), 2018 WL 6616659, at *6 (C.D. Cal. Dec. 13, 2018) (same). Where "'[b]oth Parties are represented by experienced counsel,' the recommendation of experienced counsel to adopt the terms of the proposed settlement 'is entitled to great deal of weight.'" *Beaver v. Tarsadia Hotels*, No. 11-cv-01842-GPC-KSC, 2017 WL 4310707, at *6 (S.D. Cal. Sept. 28, 2017) (citation omitted). "In particular, '[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness.'" *Id.* (citation omitted).

Here, Plaintiffs are represented by experienced counsel with significant experience in handling class actions and complex litigation. Based on that experience and their thorough investigation in this case, Class Counsel believes that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay and uncertainty, and the defenses asserted by Defendants.

v. The Presence of a Government Participant

On April 20, 2018, approximately six months after this MDL was created and about nine months after the first consumer class action was filed against Defendants regarding the conduct at issue in this litigation, the OCC and CFPB (collectively, the "Regulators") issued Consent Orders identifying deficiencies in Wells Fargo's compliance risk management program and accusing Wells Fargo of violating Federal Consumer Financial

Law with respect to, among other things, its practices for force-placing CPI on automobile loans that it originated or acquired. (Joint Decl. ¶ 88.) The Regulators fined Wells Fargo for the identified practices, and ordered Wells Fargo to submit for review "a comprehensive written plan to develop and implement a program for remediation activities conducted by [Wells Fargo] (Remediation Program)" by August 18, 2018. (*Id.*)

However, the Consent Orders did not order Wells Fargo to pay consumers any specific dollar amount. (*Id.* ¶ 89.) Nor did the Consent Orders identify the individuals for whom remediation would be available, the methodology for determining who would qualify for remediation, the total dollar amount of the remediation, the amounts available per person, the process and procedures for providing redress to consumers, or a mechanism by which consumers could enforce their rights to redress. (*Id.*) Rather, the scope and extent of remediation were the subject of ongoing discussions and negotiations not only between Wells Fargo and the Regulators, but also between Wells Fargo and Class Counsel to establish a settlement structure that would be acceptable to all stakeholders and enforceable by consumers through a Rule 23 class action settlement subject to the jurisdiction of this Court. (*Id.*)

The Consent Orders also contemplated consumer litigation and required Wells Fargo to provide the Regulators with any proposed consumer remediation plan that would be implemented "pursuant to a legal judgment, court order, or negotiated settlement of any legal proceeding," at least 30 days in advance of its implementation. (*Id.* ¶ 91.) Consistent with these provisions, in connection with the parties' Memorandum of Understanding preceding the Settlement Agreement in this case, Wells Fargo insisted that the Settlement terms be conditioned on approval by the Regulators. (*Id.*) The Settlement also provides that "Wells Fargo is obligated to compensate the Settlement Class in accordance with the terms of this Settlement Agreement irrespective of any obligations undertaken by entering into the aforementioned Consent Orders." (*Id.*)

It is important to note that before Plaintiffs commenced this litigation, the Regulators were investigating Wells Fargo's CPI practices and, during the pendency of

such investigations, Wells Fargo announced a so-called "remediation" program which was deeply flawed. As part of the program, Wells Fargo did not offer any compensation to pre-2012 consumers; Wells Fargo informed borrowers that if they submit proof of insurance, they "may be eligible for a refund," Wells Fargo offered no compensation for its scheme to apply unnecessary, unauthorized and inflated CPI premiums, and Wells Fargo's remediation program offered no relief for the unearned commissions it received from consumers. Each of these flaws was remedied in the Settlement, which further demonstrates its reasonableness and adequacy. *See, e.g.*, *In re TracFone Unlimited Service Plan Litig.*, 112 F. Supp. 3d 993, 1001 (N.D. Cal. 2015) (holding that coordination of a consumer settlement with an FTC settlement "weigh[ed] in favor of final approval.").

vi. The Reaction of Class Members to the Proposed Settlement

The objection and opt-out deadline is October 7, 2019. Per the Preliminary Approval Order, Plaintiffs will file a reply memoranda in support of their Motions for Final Approval & Attorneys' Fees, Reimbursement of Expenses and Service Awards on October 21, 2019. Plaintiffs' reply brief will include responses to objections and will provide a full report on the number of opt-outs. As of August 30, 2019, only 2 Settlement Class members, out of the 1,687,557 notice packets sent, have chosen to opt out and none have objected. (Azari Decl. ¶ 14, 34.) This small percentage of exclusions and objections demonstrate that Class Members have reacted favorably to the Settlement, supporting final approval. *See, e.g.*, *Eisen*, 2014 WL 439006, at *5 ("Although 235,152 class notices were sent, only 243 class members have asked to be excluded …."); *Milligan v. Toyota Motor Sales, U.S.A.*, No. C 09–05418 RS, 2012 WL 10277179, at *7-8 (N.D. Cal. Jan. 6, 2012) (finding favorable reaction where 364 individuals opted out [0.06%] following a mailing of 613,960 notices).

vii. The Settlement Is the Product of Good Faith, Informed, and Arm's-Length Negotiations

As this Court has already concluded, the Settlement was reached after significant arms-length negotiations with the Court-appointed mediator, Professor Eric Green. (ECF No. 281 at 2.) According to Professor Green:

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

Declaration of Professor Eric D. Green ¶ 16.

A settlement process facilitated by a court-appointed mediator weighs heavily in favor of approval. *Rosales v. El Rancho Farms*, No. 1:09–CV–00707–AWI, 2015 WL 4460635, at *16 (E.D. Cal. Jul. 21, 2015), *report and recommendation adopted*, 2015 WL 13659310 (E.D. Cal. Oct. 2, 2015) ("[T]he 'presence of a neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness.'") (citation omitted)); *Pierce v. Rosetta Stone, Ltd.*, No: C 11–01283 SBA, 2013 WL 5402120, at *5 (N.D. Cal. Sept. 26, 2013) (same). It would be an understatement to say that the parties benefitted from the assistance of Professor Green, as he played a crucial role in supervising numerous settlement negotiations and in helping the parties bridge what were at times significant differences in order to reach the Settlement.

Moreover, the Settlement was reached after the parties engaged in significant discovery including two months of confirmatory discovery while the parties were finalizing the Settlement Agreement. (Joint Decl. ¶ 54.) Class Counsel's analysis of the enormous volume of discovery material indisputably provided them sufficient information to enter into a reasoned and well-informed settlement. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding "significant investigation,

discovery and research" supported "district court's conclusion that the Plaintiffs had sufficient information to make an informed decision about the Settlement.")

IV. CONCLUSION

The Parties have negotiated a fair, adequate, and reasonable settlement. Accordingly, Plaintiffs respectfully move the Court to enter an order: (1) finally approving the Settlement Agreement and finally certifying the Settlement Class; and (2) for entry of the final judgment concurrently filed herewith.

Dated: August 30, 2019

Respectfully submitted,

By: */s/ Roland Tellis*
Roland Tellis

Roland Tellis (SBN 186269)
David B. Fernandes, Jr. (SBN 280944)
BARON & BUDD, P.C.
15910 Ventura Boulevard, Suite 1600
Encino, California 91436
Telephone: (818) 839-2333
Facsimile: (818) 986-9698

By: */s/ Roman M. Silberfeld*
Roman M. Silberfeld

Roman M. Silberfeld (SBN 62783)
rsilberfeld@robinskaplan.com
David Martinez (SBN 193183)
dmartinez@robinskaplan.com
ROBINS KAPLAN LLP
2049 Century Park East, Suite 3400
Los Angeles, California 90067
Telephone: (310) 552-0130
Facsimile: (310) 229-5580

Aaron M. Sheanin (SBN 214472)
asheanin@robinskaplan.com
ROBINS KAPLAN LLP
2440 W. El Camino Real, Suite 100
Mountain View, California 94040
Telephone: (650) 784-4040
Facsimile: (650) 784-4041

Kellie Lerner (*pro hac vice*)
klerner@robinskaplan.com
Benjamin D. Steinberg
bsteinberg@robinskaplan.com
ROBINS KAPLAN LLP
399 Park Avenue, Suite 3600
New York, New York 10022
Telephone: (212) 980-7400
Facsimile: (212) 980-7499

Plaintiffs' Co-Lead Counsel

Eric H. Gibbs (SBN 178658)
Michael L. Schrag (SBN 185832)
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110
Oakland, California 94612
Telephone: (510)-350-9700
Facsimile: (510 350-9701

Charles E. Schaffer (*Pro Hac Vice*)
LEVIN SEDRAN & BERMAN
510 Walnut Street, Suite 500
Philadelphia, Pennsylvania 19106
Telephone: (215) 592 1500
Facsimile: (215) 592-4663

Paul F. Novak (*Pro Hac Vice*)
WEITZ & LUXENBERG, P.C.
Chrysler House
719 Griswold, Suite 620
Detroit, Michigan 48226
Telephone: (313) 800-4170
Facsimile: (646) 293-7992

Plaintiffs' Steering Committee

David S. Casey, Jr. (SBN 060768)
Gayle M. Blatt (SBN 122048)
CASEY GERRY SCHENK
FRANCAVILLA BLATT & PENFIELD, LLP
110 Laurel Street
San Diego, California
Telephone: (619) 238-1811
Facsimile: (619) 544-9232

Plaintiffs' Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2019, I electronically filed the foregoing document entitled **PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** with the Clerk of the Court for the United States District Court, Central District of California using the CM/ECF system and served a copy of same upon all counsel of record via the Court's electronic filing system.

/s/