

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Yvonne Becker, Christopher Nobles, Rosa
Ramirez, Valerie Seyler and Jannien
Weiner,

Plaintiffs,

vs.

Wells Fargo & Co.; Employee Benefit
Review Committee; and Wells Fargo
Bank, National Association,

Defendants.

Case No. 0:20-cv-2016 (KMM/BRT)

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
APPROVAL OF ATTORNEYS'
FEES, EXPENSE
REIMBURSEMENT, SETTLEMENT
ADMINISTRATION EXPENSES,
AND CASE CONTRIBUTION
AWARDS**

CLASS ACTION

TABLE OF CONTENTS

I. BACKGROUND..... 1

II. DISCUSSION 2

 A. The Court Approved Notice Program Was Highly Effective. 2

 B. None of the Settlement Class Members Objected to the
 Settlement or the Fee Petition. 5

 C. Class Counsel’s Efforts Since Filing the Fee Petition. 7

III. CONCLUSION 7

Yvonne Becker, Christopher Nobles, Rosa Ramirez, Valerie Seyler, and Jannien Weiner (“Plaintiffs” or “Class Representatives”), and the Class respectfully submit this supplemental memorandum in support of their Motion for Final Approval of Settlement (“Final Approval Motion”), ECF No. 265, and Motion for Attorneys’ Fees, Expense Reimbursement, Settlement Administration Expenses, and Case Contribution Awards (“Fee Petition”), ECF No. 260. The Settlement¹ provides material, immediate benefits to members of the Settlement Class, while avoiding the risks of continued litigation and trial, and was reviewed and approved by an Independent Fiduciary. ECF No. 266, Memorandum in Support of Motion for Final Approval of Settlement (“Memo. ISO Final App.”) at 12-14. Following a fulsome Class notice program, which reached over 99.5% of the Class, not one member of the Settlement Class objected to the Settlement or to Class Counsel’s Fee Petition. The complete absence of objections from the Settlement Class demonstrates the fairness and reasonableness of the Settlement, as well as the reasonableness of the requested amounts in the Fee Petition. For the reasons discussed below, and in the memoranda filed in support of the Final Approval Motion and Fee Petition, these motions should be granted.

I. BACKGROUND

On April 25, 2022, this Court granted Plaintiffs’ motion to preliminarily approve the Settlement. ECF No. 256 (“Prelim. App. Order”). In accordance with the order, Plaintiffs filed their Final Approval Motion, which included details about their successful

¹ Capitalized terms shall have the meaning assigned to them in the Class Action Settlement Agreement & Release (“Settlement Agreement”) (ECF No. 248-1), unless otherwise specified herein.

Notice program, on June 30, 2022. *See* Memo. ISO Final App. at 11-12. The same day, Plaintiffs also filed the Fee Petition, in which they requested: (1) attorneys' fees in the amount of \$10,833,333 (one-third (1/3) of the Gross Settlement Fund) to Class Counsel; (2) reimbursement of \$180,668 in litigation expenses; (3) payments of Settlement Administration Expenses to third parties not to exceed \$416,000; and (4) Case Contribution Awards in the amount of \$15,000 to each of the Class Representatives. ECF No. 261, Memorandum in Support of Motion for Attorneys' Fees, Expense Reimbursement, Settlement Administration Expenses, and Case Contribution Awards ("Memo. ISO Fee Pet."), at 1.

II. DISCUSSION

A. The Court Approved Notice Program Was Highly Effective.

The Settlement Class consists of all Persons who were Participants of the Plan at any time from March 13, 2014 through the date on which the Settlement becomes Final. The court-approved Notice program was highly effective, reaching over 99.5% of the 575,109 Settlement Class members. ECF No. 271, Analytics, LLC Declaration of Jeffrey Mitchell in Support of Plaintiffs' Motion for Attorneys' Fees, Expense Reimbursements, Settlement Administration Expenses, and Case Contribution Awards ("Analytics Decl."), ¶ 13. In addition, the Notice that was sent to Settlement Class members was approved by the Court (Prelim. App. Order), reviewed by the Independent Fiduciary (ECF No. 270-1 § 1), and provided robust information about the proposed terms of the Settlement and the basis for Class Counsel's Fee Petition. *See* ECF No. 271-1 (Class Notice).

In accordance with the Court-approved notice program, the Settlement Administrator sent the long-form notice via email to 507,860 of the 575,109 Settlement Class members, and via first-class mail to 67,249 Settlement Class members, for whom no email address was available. Analytics Decl. ¶ 9.

The Settlement Administrator also took numerous steps to better ensure that the Notices reached Settlement Class members, including: updating addresses received from Defendants with the United States Postal Service National Change of Address database, Analytics Decl. ¶ 8; sending the Notice by first-class mail to the 40,493 Settlement Class members whose email addresses appeared invalid or their email notice bounced back as undeliverable, *id.* ¶ 10; re-mailing the Notice to 1,678 Settlement Class members whose Notices were returned by the U.S. Postal Service with a forwarding address. *See* Analytics, LLC Supplemental Declaration (“Supp. Analytics Decl.”) ¶ 3. Also, for those Settlement Class members whose Notices were returned by the U.S. Postal Service without a forwarding address, the Settlement Administrator conducted a skip trace to ascertain a valid address, and remailed the Notice to 6,403 Settlement Class members. *Id.* ¶ 4.

In total, out of 575,109 Notices, only 2,444 were ultimately undeliverable as of July 26, 2022. Supp. Analytics Decl. ¶ 5.² As such, through this Notice program, the Class Notice was transmitted to over 99.5% of Class Members.

² The Analytics Declaration filed on June 30, 2022 (ECF No. 271) states that as of June 27, 2022, only 1,585 Notices were ultimately undeliverable. Analytics Decl. ¶ 13. As noted above, the undeliverable amount increased to 2,444 as of July 26, 2022. Supp. Analytics Decl. ¶ 5. The number of undeliverables increased because additional Notices were returned without a forwarding address. *Id.* ¶ 4. While Analytics ran skip traces on the

Further, Analytics LLC—the Settlement Administrator—took additional steps to provide notice to the Settlement Class by: (i) creating and maintaining a website to provide Class Members with information about the Settlement, which has received 45,945 unique visitors as of July 26, 2022; (ii) maintaining a toll-free number for Class Member inquiries, which has received 3,729 calls as of July 26, 2022; (iii) maintaining an email address for Class Member inquiries, which has received 1,802 emails as of July 26, 2022; and (iv) publishing a short-form Class Notice in USA Today and other new outlets via a PR Newswire Press Release. Supp. Analytics Decl. ¶¶ 6-8; Analytics Decl. ¶ 14.

As set forth in the Class Notice, Settlement Class members were required to lodge any objection by a deadline of July 21, 2022. Prelim. App. Order ¶ 5. Despite the extremely effective Notice program, Class Counsel did not receive a single objection to the Settlement or to the amounts requested by Class Counsel in the Fee Petition. The complete lack of objections underscores the reasonableness of the Settlement and the requested attorneys’ fees, expenses, and case contribution awards. *See, e.g., In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005) (district courts should consider the “amount of opposition to the settlement” in connection with approval of a proposed class action settlement); *DeBoer v. Mellon Mortg., Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (“The

additional addresses, no updated addresses were found for many of the addresses, and 647 notices were returned as undeliverable a second time. *Id.* However, the total number of undeliverable notices is small when compared to the size of the class. And the successful transmission rate is still above 99.5%, which is well above the targeted 70% to 95% “reach” for class notices. *See Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*, Fed. Justice Ctr. (2010), <https://www.formalu.com/forms/180563/judges-classaction-notice-and-claims-process-checklist-and-plain-language-guide>.

fact that only a handful of class members objected to the settlement similarly weighs in its favor.”); *Rawa v. Monsanto Co.*, 2018 WL 2389040, at *7 (E. D. Mo. May 25, 2018), *aff’d*, 934 F.3d 862 (8th Cir. 2019) (the fact that only one objection to the settlement was received “weighs in favor of approval”); *see, e.g., Beaver Cnty. Emps.’ Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 WL 2588950, at *3 (D. Minn. June 14, 2017) (“Not a single Class Member has objected to Class Counsel’s motion for attorneys’ fees and expenses The lack of objections is strong evidence that the requested amount of fees and expenses is reasonable.”); *9-M Corp. v. Sprint Commc’ns Co. L.P.*, 2012 WL 5495905, at *3 (D. Minn. Nov. 12, 2012) (“The absence of objections or disapproval by class members to . . . Class Counsel’s fee-and-expense request further supports finding it reasonable.”).

B. None of the Settlement Class Members Objected to the Settlement or the Fee Petition.

Since the issuance of the Class Notice, Class Counsel received twenty-one inquiries directly from Settlement Class members via telephone or by email requesting information about the Settlement. Supplemental Declaration of Michelle C. Yau in Support of Plaintiffs’ Motion for Final Approval of Settlement and Plaintiffs’ Motion for Attorneys’ Fees, Expense Reimbursement, Settlement Administration Expenses, and Case Contribution Awards (“Supp. Yau Decl.”) ¶ 2.

Of these twenty-one inquiries, four were requests to update their contact information, and Class Counsel provided this information to the Settlement Administrator, who updated its files accordingly. Supp. Yau Decl. ¶ 3. Fifteen individuals wanted to gain a clearer understanding about the lawsuit, including whether they were Class Members,

how to participate in the Settlement and/or how much they would be receiving – and Class Counsel responded to each of their questions. *Id.* ¶ 4. Two individuals, including the one individual who filed a letter with the Court (ECF No. 259), both (1) asked to update their contact information and (2) requested information about the Settlement. Class Counsel spoke with each of them, including the individual who filed a letter with the Court,³ and provided this updated contact information to the Settlement Administrator. *Id.* ¶ 5. None of the individuals with whom Class Counsel communicated objected to the Settlement or expressed any concern with its terms or the Fee Petition. *Id.* ¶ 7. In addition, the Settlement Administrator received no objections to the Settlement or Fee Petition nor did any Class Member express disapproval of the Settlement or Fee Petition. Supp. Analytics Decl. ¶ 10.

The lack of any objection to the Settlement or the Fee Request is extraordinary result and underscores the reasonableness of the Settlement’s terms and the requests in the Fee Petition. *See, e.g., DeBoer*, 64 F.3d at 1178; *Beaver Cnty. Emps.’ Ret. Fund*, 2017 WL 2588950, at *3.

³ The Court received one letter from a class member, Mr. Eric Petty, dated May 31, 2022, which was posted to the docket at ECF No. 259-1. The handwritten letter stated, in relevant part, “I received a letter from you that I’m in a ‘settlement case’ with Wells Fargo . . . how much is my refund[?]” *Id.* In response to this inquiry, Class Counsel spoke with Mr. Petty by phone and answered his questions. Supp. Yau Decl. ¶ 6. Class Counsel also explained the next steps in the settlement process, informed him of the date of the Fairness Hearing, and asked him to call back if he had any additional questions. *Id.* Class Counsel did not receive any further communications from Mr. Petty and thus believe that his questions were sufficiently answered. *Id.*

C. Class Counsel's Efforts Since Filing the Fee Petition.

From the time Class Counsel submitted the Fee Petition, they have expended approximately 97.9 additional hours of attorney and professional time working with the Settlement Administrator, corresponding with the Class Representatives, responding to inquiries from the Settlement Class, and preparing submissions to the Court. Supp. Yau Decl. ¶ 8-9. To date, Class Counsel has expended a total of 10,292 hours and lodestar of over \$6,827,483 in this Action, which reflects a multiplier of 1.59. *Id.* ¶ 10. This multiplier is slightly less than the 1.60 multiplier at the time Plaintiffs filed the Fee Petition. *Id.* As explained in the memorandum in support of the Fee Petition, a multiplier below two is “below the range of multipliers commonly accepted in other cases” and “well within the range of multipliers awarded in this circuit.” *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017); *see also* Memo. ISO Fee Pet. at 27-28.

III. CONCLUSION

For the foregoing reasons and those previously set forth by Class Counsel, Plaintiffs respectfully request that the Settlement be approved, and that their Motion for Attorneys' Fees, Expense Reimbursement, Settlement Administration Expenses and Class Contribution Awards be granted.

Dated: July 29, 2022

By: */s/ Michelle C. Yau*
COHEN MILSTEIN SELLERS & TOLL PLLC
 Michelle C. Yau, *pro hac vice*
 Ryan A. Wheeler, *pro hac vice*
 1100 New York Ave. NW, Suite 500
 Washington, DC 20005
 Tel: (202) 408-4600

myau@cohenmilstein.com
rwheeler@cohenmilstein.com

ZIMMERMAN REED LLP

June P. Hoidal (MN No. 033330X)
Charles R. Toomajian (MN No. 0397879)
1100 IDS Center, 80 South 8th Street
Minneapolis, Minnesota 55402
Tel: (612) 341-0400
June.Hoidal@zimmreed.com
Charles.Toomajian@zimmreed.com

KELLER ROHRBACK, LLP

Erin Riley, *pro hac vice*
1201 Third Ave, Suite 3200
Seattle, WA 98101
Tel: (206) 623-1900
eriley@kellerrohrback.com

Counsel for Plaintiffs and the Settlement Class