

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

DAVID A. KIRKPATRICK, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A., d/b/a
WELLS FARGO HOME MORTGAGE and
HSBC BANK USA, N.A.,

Defendants.

Civil Action No. 5:24-cv-00169

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into by and between (i) Plaintiff David A. Kirkpatrick (“Plaintiff”), individually and as Class Representative on behalf of the Settlement Class, and (ii) Defendants Wells Fargo Bank, N.A. d/b/a Wells Fargo Home Mortgage (“Wells Fargo”) and HSBC Bank USA, N.A. (“HSBC”) (collectively, “Defendants”) and together with Plaintiff, (the “Parties”). The Parties intend and agree to resolve, discharge, and settle fully, finally, and forever the claims of the Settlement Class asserted in the case captioned *Kirkpatrick v. Wells Fargo Bank, N.A.*, Case No. 5:24-cv-00169 (S.D. W. Va) pending in the United States District Court for the Southern District of West Virginia, at Beckley, subject to approval by the Court.

RECITALS

A. On or about February 29, 2024, Plaintiff filed a Class Action Complaint in the Circuit Court of Raleigh County, West Virginia at CC-41-C-78 (the “Action”) against Wells Fargo and HSBC alleging violations of the West Virginia Consumer Credit Protection Act (“WVCCPA”) arising out of the terms of Wells Fargo’s COVID forbearance program. Plaintiff asserted one claim under the WVCCPA on behalf of a class based on alleged representations made to West Virginia borrowers relating to the movement of payments to the end of the loan term as part of Wells Fargo’s COVID forbearance program. Plaintiff asserted a second claim under the WVCCPA on an individual basis arising out of alleged issues during the loan modification process.

B. On or about April 3, 2024, Wells Fargo removed the Action with the consent of HSBC to the United States District Court for the Southern District of West Virginia at Beckley at Case No. 5:24-cv-00169, based on jurisdiction under the Class Action Fairness Act. (ECF Nos. 1 and 2).

C. On or about May 6, 2024, Wells Fargo and HSBC filed Answers. (ECF Nos. 7 and 8).

D. The Parties moved to extend the discovery period on September 13, 2024, which the Court granted on September 19, 2024. (ECF Nos. 24 and 25).

E. The Parties entered into a Stipulated Protective Order (the “Protective Order”), which the Court entered on November 27, 2024. (ECF No. 31). The Protective Order dictates the Parties’ production and use of documents, deposition testimony, and information designated “Confidential” by either Party, the destruction of such material upon the termination of this Action, and the obligations to redact and/or file under seal any documents, deposition testimony, or information designated as “Confidential.”

F. The Parties diligently worked through discovery, including serving and responding to Requests for Production of Documents, Interrogatories, and Requests for Admission. The Parties also completed significant productions of documents, and a Notice of Rule 30(b)(6) Deposition of Wells Fargo was served.

G. On January 24, 2025, the Parties moved to extend the discovery period a second time to allow the Parties to conduct mediation on March 19, 2025. (ECF No. 39).

H. The Court held an in-person status conference on February 4, 2025, where the Court suspended the scheduling order through mediation. (ECF No. 42).

I. The Parties participated in two arm’s length mediation sessions with mediator Stephen Dalesio, Esq. in Pittsburgh, PA on March 19, 2025 and April 9, 2025.

J. The Parties agreed to a settlement in principle at the second mediation and executed a Settlement Term Sheet on April 9, 2024.

K. Based upon their investigation and evaluation of the facts and law relating to the matters in the pleadings, mediation with Stephen Dalesio, Esq., and fruitful, well informed settlement discussions, the Parties have agreed to settle this Action pursuant to the provisions of this Agreement.

L. Defendants have denied and continue to deny each and every allegation of liability, wrongdoing, and damages, as they have factual and legal defenses to all claims and class allegations asserted in the Action. Defendants have always maintained, and continue to maintain, that they have acted in accordance with governing law. Plaintiff likewise maintains the strength of his positions. This Agreement shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of the Parties with respect to any claim by any Class Member, any fault, liability, wrongdoing or damage, or any defenses Defendants asserted. The Parties nonetheless have concluded that continuing the Action would be protracted, expensive, and disruptive to their business and/or lives. They therefore have decided that it is desirable to fully and finally settle the Action on the terms and conditions set forth herein to avoid the further expense, inconvenience, and distraction of the Action and to dispel any related uncertainty.

M. By this Agreement, and recognizing the consideration provided for under this Agreement, the Class Representative and Class Counsel intend to fully and finally resolve the remaining claims against Wells Fargo and HSBC in connection with the Action, as more fully set forth herein.

N. The Class Representative and Class Counsel recognize the expense and length of proceedings necessary to continue the litigation through further discovery, motion practice, trial, and any possible appeals. They have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. They are also aware

of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. Based upon their evaluation, the Class Representative and Class Counsel have determined that the settlement set forth in the Agreement is in the best interests of the Class Representative and the Settlement Class and is fair, adequate, and reasonable, based upon the following substantial benefits that the settlement bestows upon the Settlement Class:

- i. Wells Fargo will pay \$1,300,000 into a Settlement Fund for the benefit of the Settlement Class and for the purposes of implementing this settlement, which will be used to provide monetary relief to Settlement Class Members, as described below, to pay an Incentive Payment to the Class Representative, to pay the Settlement Administrator's costs associated with administration of the Settlement, and to pay Attorneys' Fees and Expenses incurred by the Settlement Class through Class Counsel, all as approved by the Court;
- ii. Settlement Class Members will be entitled to a cash benefit based on an equal share per account of the Settlement Fund after deduction of the Incentive Payment, Settlement Administration costs, and Attorneys' Fees and Expenses;

O. This Agreement and all associated exhibits or attachments are made for the sole purpose of attempting to consummate settlement of this Action on a class-wide basis. This Agreement and the Settlement it evidences are made in compromise of disputed claims. Because the Action is pled as a class action, this Settlement must receive preliminary and final approval by the Court. Accordingly, the Class Representative and Defendants enter into this Agreement and associated settlement on a conditional basis. In the event that Defendants or the Class Representative exercises a right herein to terminate or rescind this Agreement, the Court does not execute and file the Final Approval Order, or the associated Judgment does not become Final for any reason, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation, terms, and entry of this Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state or Federal statutes of a similar nature, and the mediation

privilege. Notwithstanding the foregoing, Defendants may use, offer, admit, or refer to the Agreement and to the Settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding.

P. The Parties expressly reserve all rights, claims, and defenses and do not waive any such rights, claims, or defenses in the event that the Agreement is not approved for any reason.

1. Definitions.

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

1.1. “Account” means a Settlement Class Member’s home mortgage account with Wells Fargo wherein they received a letter relating to COVID forbearance between March and December of 2020 discussing what would happen with missed COVID forbearance payments at the end of the loan period. The number of Accounts in the Class is 2,010.

1.2. “Action” means the matter filed on or about February 29, 2024 in the Circuit Court of Raleigh County, West Virginia at CC-41-C-78 which was later removed to the United States District Court for the Southern District of West Virginia at Beckley at Case No. 5:24-cv-00169.

1.3. “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release and all of its attachments and exhibits, which the Class Representative, Wells Fargo, and HSBC understand and agree sets forth all material terms and conditions of the settlement of the Action between them and which is subject to Court approval. It is understood and agreed that Defendants’ obligations under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date and other conditions set forth in this Agreement.

1.4. “Attorneys’ Fees and Expenses” means such funds as may be awarded to Class Counsel pursuant to Paragraph 15 of the Agreement to compensate them for their fees and expenses incurred in connection with the Action.

1.5. “Class” means the collective group of all (1) borrowers on Wells Fargo home mortgage accounts; (2) with a West Virginia mailing or property address as set forth in Wells Fargo’s system of record; (3) that participated in COVID forbearance; and (4) received a letter between March and December of 2020 discussing what would happen with missed COVID forbearance payments at the end of the loan period. The settlement class shall consist of approximately 2,010 accounts as identified by Wells Fargo.

1.6. “Class Counsel” means, collectively, all counsel of record representing the Class Representative in this Action.

1.7. “Class Member” means a natural person who is a member of the Class according to the Class definition herein.

1.8. “Class Notice” means the Notice that is provided by the Settlement Administrator to potential Settlement Class Members, in substantially the form attached as Exhibit 1 to this Agreement and/or as ultimately approved by the Court. Class Notice shall be provided not less than ninety days before the date set by the Court for the Final Approval Hearing.

1.9. “Class Representative” or “Plaintiff” means David Kirkpatrick, the named Plaintiff and proposed class representative in the Action identified in the first Paragraph of this Agreement.

1.10. “Complaint” and “Class Action Complaint” refer to the class action complaint filed in this Action.

1.11. “Confidential” means pursuant to the Protective Order to be entered in this Action.

1.12. “Court” means the United States District Court for the Southern District of West Virginia.

1.13. “COVID forbearance” means the program offered by Wells Fargo to mortgage borrowers to provide relief from making mortgage payments during the COVID-19 pandemic.

1.14. “Defendant” or “Wells Fargo” refers to Wells Fargo Bank, N.A.

1.15. “Defendants” refers to Wells Fargo and HSBC Bank USA, N.A.

1.16. “Defense Counsel” shall mean Defendants’ counsel of record in the Action.

1.17. “Distribution Date” means 37 days after the Effective Date.

1.18. “Effective Date” means the date when all of the conditions set forth in Section 2 have occurred, provided, however, that Wells Fargo has not exercised its right of termination under Section 13 of this Agreement.

1.19. “Final” means five business days after the latest of: (i) the date of final affirmance on an appeal of the Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Judgment; (iii) if no appeal is filed, the expiration of the date of the time for the filing or noticing any form of valid appeal or writ review from the Judgment. If the Judgment is set aside, modified, or overturned by any court including on appeal and is not fully reinstated on appeal, the Judgment shall not become Final.

1.20. “Final Approval Hearing” means a hearing set by the Court to take place on or about the date which is at least thirty days after the Opt-Out Deadline for the purpose of:

- (i) Determining the fairness, adequacy, and reasonableness of the Agreement and associated Settlement pursuant to class action procedures and requirements;
- (ii) Determining the good faith of the Agreement and associated settlement; and
- (iii) Entering Judgment.

1.21. “Final Approval Order” shall mean an order to be entered and filed by the Court entitled “Final Judgment and Order of Dismissal with Prejudice,” substantially in the form attached hereto as **Exhibit 3**.

1.22. “Judgment” means the Final Approval Order to be rendered by the Court pursuant to this Agreement, in the form attached hereto as **Exhibit 3**, or in a similar form without material changes thereto.

1.23. “Letters” refer to correspondence sent by Wells Fargo to Settlement Class Members between March and December of 2020 related to their participation in Wells Fargo’s COVID forbearance program and discussing what would happen with missed COVID forbearance payments at the end of the loan period.

1.24. “Notice Approval Date” means the date of the Preliminary Approval Order when the Court approves the Notice.

1.25. “Notice List” means a list, to be treated as Confidential pursuant to the terms of the Protective Order, listing the names and addresses of all Class Members, as prepared by Wells Fargo.

1.26. The “Notice Mailing Date” shall be a date no later than twenty-one days after the Notice Approval Date, when the Notice is mailed to the individuals on the Notice List.

1.27. “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections to the Settlement, if any, in accordance with Section 12 of this Agreement to be able to object to the Settlement. The Objection Deadline shall be thirty days after the Notice Mailing Date and not later than thirty days prior to the Final Approval Hearing.

1.28. “Opt-Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request to Opt Out must be filed or submitted in writing to the Settlement Administrator in accordance with Section 11 of this Agreement in order for a person who would otherwise fall within the definition of Settlement Class to be excluded from the Settlement Class. The Opt-Out Deadline shall thirty days after the Notice Mailing Date and not later than thirty days prior to the Final Approval Hearing.

1.29. “Parties” means the Class Representative, individually and on behalf of all Members of the Settlement Class, Wells Fargo, and HSBC.

1.30. “Preliminary Approval Order” shall mean an order to be executed and filed by the Court entitled “Order Preliminarily Approving Settlement and Providing for Notice” substantially in the form attached hereto as **Exhibit 2**.

1.31. “Protective Order” shall mean the Confidentiality Stipulation and Protective Order entered in the Action for purposes of maintaining Confidentiality of certain information, entered at ECF No. 31.

1.32. “Released Claims” mean any and all claims, defenses, demands, actions, causes of action, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys’ fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, statutory damages, contribution or indemnity, penalties, interest, attorneys’ fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to: allegations

in the Complaint, claims relating to or arising out of the Letters at issue in the case, any and all communications with or representations by Wells Fargo relating to the Letters at issue in the case or what would happen with a settlement class member's missed COVID forbearance payments at the end of the loan period, including any claim for violation of the West Virginia Consumer Credit Protection Act.

1.33. "Releasees," "the Releasees," or "the Released Parties" means (1) Wells Fargo and HSBC; (2) each of their past, present, or future subsidiaries, parent companies (including any and all of its subsidiaries and affiliates), divisions, affiliates, partners or any other organization units of any kind doing business under their names, or doing business under any other names, or any entity now or in the past controlled by, controlling, or under the common control with any of the foregoing and doing business under any other names, and each and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors, and assigns; and (3) each of the present and former officers, directors, partners, shareholders, agents, employees, attorneys (including any consultants hired by counsel), advisors, independent contractors, representatives, beneficial owners, insurers, accountants, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns of any person or entities in subparts (1) or (2) hereof. This definition specifically includes Wells Fargo and Company.

1.34. "Releasers" means the Class Representative, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.

1.35. "Request to Opt Out" means the written request from a Class Member that seeks to exclude that person from the Settlement Class and that complies with the requirements set forth in Section 11 of this Agreement.

1.36. “Settlement” means the settlement terms set forth in this Agreement.

1.37. “Settlement Administrator” means third-party Epiq Class Action & Claims Solutions, an approved vendor of Wells Fargo agreed upon by the Parties, which will act as the Settlement Administrator and assist with implementing and effectuating the terms of this Agreement.

1.38. “Settlement Class” means the collective group of all the Class Members who do not properly and timely exclude themselves from a Settlement, and thus means the collective group of all of the Class Members who will become bound by the Judgment when the Effective Date occurs.

1.39. “Settlement Class Member” means any person who is a member of the Settlement Class.

1.40. “Settlement Fund” means the One Million Three Hundred Thousand (\$1.3MM) that Wells Fargo shall pay pursuant to Section 3 of the Agreement. The Settlement Fund is for the benefit of the Settlement Class and will be used to pay Settlement Class Members.

1.41. “Settlement Website” means the website to be established by the Settlement Administrator as set forth in Section 7.

1.42. “Unknown Claim” mean any Released Claim that any Releasor does not know or suspect to exist in his or her favor at the time of the entry of the Judgment, and which, if known by him or her might have affected his or her settlement with and release of the Releasees, or might have affected his or her decision to opt out of the Settlement Class or to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Class Representatives shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have to the fullest extent allowed by law,

waived the provisions, rights, and benefits of any statute or principle of common law which provides that general releases do not extend to claims which the debtor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the creditor. Each Releasor may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Releasors, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, contract, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material term of the Settlement of which this release is a part.

1.43. The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

1.44. Other terms are defined in the text of this Agreement and shall have the meaning given to those terms in the text. In all documents related to the Settlement, capitalized terms shall have the meanings given to them in this Agreement.

2. Conditions and Effectiveness of Agreement.

2.1 This Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. The Effective Date of this Agreement shall be the date when all of the following actions and events listed below have occurred.

2.2 The Parties have signed the Agreement.

2.3 CAFA. This Settlement shall be administered as if governed by 28 U.S.C. § 1715. Wells Fargo shall work with the Settlement Administrator to provide the notice to government officials under that statute but in no event shall the Final Approval hearing take place prior to the provision of effective notices and the expiration of statutory time. The Final Approval Order shall make a finding that 28 U.S.C. § 1715 was fully complied with.

2.4 Court Approval. The Court approves this Agreement in accordance with the following steps:

2.4.1 Motion for Preliminary Approval. After providing Defense Counsel with a draft for review and comment at least seven (7) days prior to filing, Class Counsel will present a Motion for Preliminary Approval to the Court within twenty days of execution of this Agreement including the Class Notice, in substantially the form of **Exhibit 1** hereto, and the Preliminary Approval Order, in substantially the form of **Exhibit 2** hereto.

2.4.2 Certification of Class for Settlement Purposes. In connection with the proceedings for Preliminary and Final Approval, the Class Representatives shall seek orders (Preliminary and Final, respectively) certifying the Class pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure for purposes of this Settlement only.

2.4.3 Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order in substantially the form of that attached as **Exhibit 2** hereto, which shall among other things:

- a. Preliminarily certify the proposed Class under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure for settlement purposes only;
- b. Preliminarily approve this Agreement as fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure subject to final determination by the Court;
- c. Approve the appointment of the Class Representatives as representatives of the Class for the Settlement and the appointment of Class Counsel as counsel for the Class for the Settlement;
- d. Approve a form of Class Notice substantially in the form of **Exhibit 1** to be sent to the individuals on the Notice List;
- e. Direct the Settlement Administrator, promptly after entry by the Court of the Preliminary Approval Order, to mail the Class Notice to each individual on the Notice List by first-class mail;
- f. Schedule a Final Approval Hearing on final approval of this Settlement;
- g. Establish a procedure for Class Members to exclude themselves and set a date, at least thirty days before the Final Approval Hearing, after which no Class Member shall be allowed to opt out of the Settlement and shall be bound to the terms of the Settlement;
- h. Establish a procedure for Settlement Class Members to appear and/or object to the Settlement and set a date, at least thirty days before the Final Approval Hearing, after which no Settlement Class Member shall be allowed to object;
- i. Require any attorneys representing Settlement Class Members, at the Settlement Class Member's expense, to file a notice of appearance;

- j. Stay all proceedings in the Action against the Defendants, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;
- k. Pending Final Approval, and upon expiration of the Opt-Out Deadline, preliminarily enjoin each Settlement Class Member from maintaining, commencing, prosecuting or pursuing directly, representatively, or in any other capacity any Released Claim subsumed and covered by the Release in this Agreement in any court or arbitration forum;
- l. Contain such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable; and
- m. Authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the terms of this Agreement.

2.5 Class Notice. The Settlement Administrator shall cause the Class Notice to be mailed pursuant to the Preliminary Approval Order and the terms of this Agreement.

2.6 Final Approval Order and Judgment. The Court shall enter the Final Approval Order substantially in the form attached as **Exhibit 3**, which shall among other things:

- a. Find that (i) the Court has personal jurisdiction over the Settlement Class Members, (ii) the Court has subject matter jurisdiction over the claims asserted in the Action, and (iii) venue is proper;
- b. Finally approve the Settlement;
- c. Finally certify the Settlement Class for settlement purposes only;
- d. Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United

States Constitution, and find that the procedures used complied with West Virginia and federal law so as to give full effect to the Settlement;

- e. Enter Final Judgment with respect to the Released Claims of all Settlement Class Members and dismiss the Released Claims with prejudice;
- f. Make the Releases in Section 10 of this Agreement effective as of the date of the Final Judgment;
- g. Permanently bar and enjoin the Class Representatives and all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims;
- h. Permanently bar and enjoin the Class Representatives and all Settlement Class Members from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action in any jurisdiction based on or relating to any of the Released Claims);
- i. Find that, by operation of the entry of the Judgment, the Class Representatives and all of the Settlement Class Members shall be deemed to have forever released, relinquished, and discharged the Released Parties from any and all Released Claims;

- j. Authorize the Parties to implement the terms of this Agreement;
- k. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purposes; and
- l. Issue related orders to effectuate the Final Approval of the Settlement and its implementation.

2.7 No Injunctive Relief. The Final Approval Order and Judgment shall not provide for any injunctive relief against Defendants.

2.8 Finality of Judgment. There is Finality of Judgment when the Final Approval Order has become Final, including expiration of the time for filing any appeal or other form of objection to the Final Approval Order, full and final resolution of any appeal or objection that may be filed, and expiration of the time for seeking review of that disposition through an appeal, *en banc* hearing, or higher level of review.

3. Settlement Consideration.

3.1 In consideration for the Releases set forth in Section 10 and other consideration as stated in the Agreement, Wells Fargo will provide the following benefits.

3.2 Settlement Monetary Consideration. Settlement Consideration under this Agreement includes the following:

3.2.1 Within thirty days after the Court's entry of the Preliminary Approval Order, Wells Fargo will initially fund the Settlement Fund by depositing into an escrow account with the Settlement Administrator, the terms of which shall be subject to Wells Fargo's approval, the sum of Twenty-Five Thousand Dollars (\$25,000) to be applied to the initial costs and expenses for implementing the terms of the Settlement set forth herein, including the Settlement Administrator's costs associated with disseminating the Class

Notice, the Settlement Website, distributing checks to Settlement Class Members, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's distribution of payments. Any balance of this initial funding remaining shall revert to Wells Fargo only in the event that the Settlement is not approved.

3.2.2 Within thirty days of the Effective Date, Wells Fargo will fund the remainder of the Settlement Fund by depositing the sum of One Million Two Hundred Seventy-Five Thousand Dollars (\$1,275,000) into an escrow account with the Settlement Administrator, the terms of which shall be subject to Wells Fargo's approval. The Parties and the Settlement Administrator agreed to provide any information or documentation necessary for Wells Fargo to complete the funding.

3.2.3 The Settlement Administrator's costs associated with disseminating the Class Notice, the Settlement Website, distributing checks or electronic payments to Settlement Class Members, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrators' distribution of payments, as well as the Incentive Payment to the Class Representative and Attorneys' Fees and Expenses awarded by the Court, shall be paid out of the Settlement Fund.

3.2.4 After deducting the Court-approved Incentive Payment to the Class Representative, as set forth in Paragraph 5.2, any Settlement Administration costs, and Attorneys' Fees and Expenses from the Settlement Fund, Settlement Class Members shall be paid from the remaining amount in the Settlement Fund in an equal share of the Settlement Fund on a per Account basis. In the case of Accounts that list more than one borrower, borrowers shall receive a single, shared payment. Settlement Class Members

are eligible for one payment per Account, regardless of whether there was more than one Letter associated with that Account.

3.3 Under no circumstances shall Wells Fargo's total payment obligation under the Settlement Agreement exceed \$1,300,000.

3.4 Tax Treatment. This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that this Agreement reflects the settlement of disputed legal claims and Wells Fargo makes no representations regarding the Agreement's tax consequences. For each payment made pursuant to this Settlement, Wells Fargo, itself or through the Settlement Administrator, may report each payment to government authorities including the IRS as required by law and consistent with the ordinary course of Wells Fargo's applicable tax accounting practices, and it may make all required deductions and/or withholdings. A Form 1099 may be issued to each Class Member who does not opt out. Settlement Class Members will be solely responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made pursuant to the Settlement. Wells Fargo makes no representations as to the taxability of any portions of the benefits provided to Settlement Class Members herein. The Class Notice will advise Settlement Class Members to seek their own tax advice prior to acting in response to the Notices and that Class Counsel will not provide tax advice.

4. Qualified Settlement Fund.

4.1 The Settlement Fund shall constitute a "qualified settlement fund" ("QSF") within the meaning of Treasury Regulation Section 1.46B-1 promulgated under Section 468B of the Internal Revenue Code of 1986 as amended. The Settlement Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k)(3).

4.2 Upon or before establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4), and shall provide Wells Fargo, through Defense Counsel, with that employer identification number on a properly completed and signed IRS Form W-9.

4.3 If requested by either Wells Fargo or the Settlement Administrator, the Settlement Administrator and Wells Fargo shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1 (j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

4.4 Following its remittance of the Settlement Fund monies as described in Paragraph 3.2.2 of this Agreement, Wells Fargo shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of opt-out letters, payments to Settlement Class Members, payments to the Class Representatives, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and any other taxes, penalties, interest or other charges related to taxes imposed on the QSF or its disbursements, payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such remittance shall fully discharge Wells Fargo's obligation to the Class Representative, Settlement Class Members, Class Counsel and the Settlement Administrator with respect to the disposition of the Settlement Fund.

4.5 The Settlement Administrator shall file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions

of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). Any contract, agreement, or understanding with the Settlement Administrator relating to the QSF shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder.

4.6 All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax liability that may be imposed upon Well Fargo or its counsel with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund. Plaintiff and Class Counsel, and Defendants and Defense Counsel, shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Plaintiff and Class Counsel, and Defendants and Defense Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

5. Payments from the Settlement Fund.

5.1 Payments to Settlement Class Members.

5.1.1 Within thirty-seven days of the Effective Date, and using the Notice List as set forth in Paragraph 7.2, the Settlement Administrator shall remit payment to the Settlement Class Members via check in the amounts set forth in Paragraph 3.2.3 (the “Distribution Date”).

5.1.2 For Settlement Class Members whose checks are returned by the U.S. Postal Service for lack of current correct address, the Settlement Administrator shall seek an address correction via an advanced address search or skip tracing, and then re-send their checks to any subsequently obtained address that the Settlement Administrator reasonably believes to be valid. After one re-mailing, neither the Settlement Administrator nor Wells Fargo shall have any further obligation to locate any particular Settlement Class Member.

5.1.3 Settlement Class Members who are not located or whose checks are not cashed within ninety days after the Distribution Date shall be automatically rendered ineligible for payments and shall be ineligible to share in the cash distribution. The Settlement Administrator may void any checks issued to such Settlement Class Members.

5.1.4 The Settlement Administrator shall notify counsel in writing within one hundred twenty days after the Distribution Date of the number of Settlement Class Members who were sent checks, the number of Settlement Class Members who did not cash their checks, and the total dollar amount of the checks distributed by the Settlement Administrator, and the total dollar amount of uncashed checks.

5.1.5 In the event that the total dollar amount of uncashed checks remaining one hundred twenty days after the Distribution Date is equal to or greater than twenty-five thousand dollars (\$25,000), a second distribution will be made. This second distribution will be allocated and made by sending checks, again in equal amounts per account, to Settlement Class Members who cashed previously issued checks. In the event that not all Settlement Class Members associated with an Account cashed previously issued checks, that account will be excluded from the second distribution. The Settlement Administrator

shall issue the checks for the second distribution within one hundred fifty days of the original Distribution Date.

5.1.6 Following the expiration of ninety days after the date of the second distribution in Paragraph 5.1.5, all second distribution checks that have not been cashed will be deemed void. At that time, any remaining amount based on uncashed checks will be allocated by sending one or more checks to *the cy pres* recipients as set forth in Paragraph 5.4.

5.1.7 The Settlement Administrator and Class Counsel will file a final accounting with the Court within one hundred fifty days after the Distribution Date in the event of no second distribution, or within one hundred twenty days after the second distribution in the event of a second distribution. The final accounting will include a summary of all distributions from the Settlement Fund, and Class Counsel will request Court approval of the final accounting.

5.2 Incentive Payment. Within thirty-seven days after the Effective Date or entry of an order approving the application for the Incentive Award to the Class Representative (whichever is later), and upon the Class Representative's submission of a Form W-9 to the Settlement Administrator, the Settlement Administrator shall remit an incentive award to the Class Representative from the Settlement Fund in the amount awarded by the Court ("Incentive Payment").

5.3 Administration Costs. The Settlement Administrator's costs associated with disseminating the Class Notice, the Settlement Website, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's distribution of payments

shall be paid out of the Settlement Fund. Wells Fargo shall have no further responsibility for paying the costs of administration, except as stated here.

5.4 Cy Pres. As set forth in Paragraphs 5.1.1 through 5.1.6, the residue of the Settlement Fund, if any, shall be distributed equally to *cy pres* recipients (1) the WVU Center for Financial Literacy, for the promotion of financial literacy throughout the state of West Virginia, and (2) the WVU College of Law to benefit the Public Interest Advocates Program, as agreed upon by the Parties and approved by the Court.

6. Retention and Duties of Settlement Administrator.

6.1 The Settlement Administrator shall administer the Settlement pursuant to the terms of this Agreement. The Settlement Administrator shall be responsible for Class Notice (including data standardization and de-duplication of the Notice List including updating addresses through National Change of Address System or similar database (“NCOA”), reasonable efforts to update addresses for undeliverable notices, and printing and mailing the Class Notice), drafting and submitting the CAFA notice with direction from Defense Counsel, status reporting, creating and hosting an informational website with case information, distributing the Incentive Payment to the Class Representative, and distributing payments to Settlement Class Members. The Settlement Administrator shall also be responsible for additional tasks the Parties jointly agree are necessary to accomplish administration of the Settlement.

6.2 The Settlement Administrator shall not have any duties with respect to settlement administration apart from those expressly provided for in this Agreement. All costs of settlement administration will be paid from the Settlement Fund and under no circumstance will Defendants be responsible for any payments outside of the amount of the Settlement Fund.

6.3 Because the information about Settlement Class Members provided to the Settlement Administrator will consist of confidential information, non-public personal

information, and other information protected by privacy laws, the Settlement Administrator will execute a Confidentiality Acknowledgement of the Protective Order and will take all reasonable steps to ensure that any information provided to it by Wells Fargo will be used solely for the purpose of effecting this Settlement and otherwise shall comply with Wells Fargo's vendor and information security requirements. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except as provided for in this Settlement Agreement or by court order.

6.4 The Settlement Administrator shall complete and provide to Wells Fargo any W-9 forms necessary to implement this Settlement.

7. Notice to the Class and Settlement Website.

7.1 Subject to the Court's approval, the form of Class Notice shall be substantially in the form of **Exhibit 1** attached hereto.

7.2 Within seven days of the Court's entry of the Preliminary Approval Order, Wells Fargo shall provide only the Settlement Administrator with the Notice List. This will include the last four digits of the Account number, the names of the Class Members affiliated with each Account, and the last known mailing address of each Class Member. To the extent the Settlement Administrator determines that Social Security Numbers are needed for tax reporting for certain Class Members, Wells Fargo agrees to provide this information to the Settlement Administrator only upon request. The Settlement Administrator shall treat the Notice List as confidential pursuant to the terms of the Protective Order and Paragraph 6.3 of this Agreement. To the extent

that certain Class Member information is needed by Class Counsel to address inquiries, the necessary information will be provided on an as-needed basis.

7.3 If, by entering an order approving the final form of the Class Notice, the Court provides authorization to send the Class Notice to the individuals on the Notice List, the Settlement Administrator will mail the Class Notice to the individuals on the Notice List via first class mail through the United States Postal Service no later than the Notice Mailing Date. Prior to mailing, the Settlement Administrator shall attempt to update the last known addresses of the Class Members set forth on the Notice List through the National Change of Address system or similar database. Class Notice shall be sent separately to co-borrowers in the event that they have a separate address pursuant to the Notice List following the updating of addresses pursuant to this Paragraph. The Agreement and Class Notice shall also be posted on the Settlement Website.

7.4 Following the mailing of the Class Notice, the Settlement Administrator shall provide Class Counsel and Defense Counsel with written confirmation of the mailing.

7.5 Unless the Settlement Administrator receives a Class Notice returned from the United States Postal Service for reasons discussed below in this Paragraph, a Class Notice shall be deemed mailed and received by the individual to whom it was sent five days after mailing. In the event that subsequent to the first mailing of a Class Notice, and prior to seven days before the Opt-Out Deadline, the Class Notice is returned to the Settlement Administrator by the United States Postal Service with a forwarding address for the recipient, the Settlement Administrator shall re-mail the Class Notice to that address, and the Class Notice will be deemed mailed at that point. The Class Notice shall be deemed received by the individual once it is mailed for the second time. Nothing in this Paragraph shall be construed to extend the Opt-Out Deadline for any Class Member.

7.6 No later than thirty days after the Effective Date, the Settlement Administrator, upon the approval of the Court to file under seal pursuant to the Protective Order (to protect the names, addresses, and other personal information of Class Members), will cause to be filed with the Court a list of the names and addresses of all Class Members to whom the Class Notice was sent, along with a list of those Class Members that opted out of the Settlement pursuant to Section 11 below.

7.7 No later than the mailing of the Class Notice, the Settlement Administrator shall establish the Settlement Website, which shall contain copies of this Agreement and Exhibits including the Class Notice as well as the Complaint, the Preliminary Approval Order, applications for Attorneys' Fees and Expenses and Class Representative's Incentive Payment, and the Final Approval Order. The Settlement Website shall remain open and accessible until at least one hundred fifty days after the Distribution Date or one hundred twenty days after any second distribution, if one occurs.

8. Covenants Not to Sue.

8.1 The Class Representative, on behalf of himself and the Settlement Class Members, covenants and agrees: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participating of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing

covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Releasees.

9. Representations and Warranties.

9.1 The Class Representative represents and warrants that he has not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties and further covenants that he will not assign or otherwise transfer any interest in any of the Class Representative's Released Claims.

9.2 The Class Representative represents and warrants that he has no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

9.3 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations and mediation sessions among their counsel and with mediator Stephen Dalesio, Esq., that in executing the Settlement Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Settlement Agreement by representations, statements or omissions pertaining to any of the foregoing matters by any Party or by any person representing any party to the Settlement Agreement. Each of the Parties assumes the risk of mistake as to facts or law.

10. Releases.

10.1 On the Effective Date, Releasors, including but not limited to the Class Representative, on his own behalf and on behalf of each Settlement Class Member, by operation of this Release and the Judgment set forth in the Final Approval Order, does hereby and shall be

deemed to have fully, finally, conclusively, irrevocably, and forever released, settled, compromised, relinquished, and discharged any and all of the Releasees of and from any and all Released Claims and, without further action by any person or the Court, will be deemed: (a) to have consented to dismissal of the Action and the dismissal with prejudice of any and all Released Claims; (b) to have released and forever discharged any and all Released Claims; and (c) to be forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever, including but not limited to any state, federal, or foreign court, or regulatory agency, or any arbitration forum, each and every Released Claim. The Parties agree that the Releasees will suffer irreparable harm if any Settlement Class Member takes action inconsistent with this Paragraph, and that in that event, the Releasees may seek an injunction as to such action without further showing of irreparable harm in this or any other forum.

10.2 The Releasors acknowledge and agree that they are aware that they may hereafter discover material or immaterial facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Release, that it is possible that unknown facts, losses, or claims exist, and that known losses may have been underestimated in amount or severity. This was explicitly taken into account in connection with this Agreement. It is the Releasors' intention to, and they do hereby, upon the Effective Date of this Agreement, fully, finally, and forever settle and release each and every one of the Releasees from each and every Released Claim, including any rights, remedies, or benefits available under California Civil Code section 1542 and all similar state, local, or federal statutes and other laws. California Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

10.3 Subject to Court approval, each Settlement Class Member shall be bound by this Agreement and all of their Released Claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Action or its settlement in the form of the Class Notice or otherwise. The Release and agreements contained in this Section 10 shall apply to and bind all Settlement Class Members, including those Settlement Class Members whose Class Notices are returned as undeliverable, and those for whom no current address can be found, if any.

10.4 On the Effective Date, Releasers hereby release the Releasees from each and every Released Claim.

10.5 Promptly after the Effective Date, Settlement Class Members shall dismiss with prejudice all claims, actions, or proceedings that are released pursuant to this Agreement. In the event any such actions or proceedings are not dismissed and Wells Fargo learns of the action, Wells Fargo may provide notice to the Settlement Class Member of this Settlement and request dismissal of the action.

11. Opt-Out Rights.

11.1 A Settlement Class Member who wishes to be excluded from the Settlement Class must do so in writing. To opt out, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

11.2 In order to opt out, the Class Member must complete and send to the Settlement Administrator, at the address listed in the Class Notice and on the Settlement Website for this Settlement, a Request to Opt Out that is postmarked no later than the Opt-Out Deadline, as

specified in the Class Notice. The Request to Opt Out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the Action.” Mass or class opt outs shall be void. A request to opt out by a borrower or co-borrower on an Account shall be deemed to be a request to opt out by all borrowers on the Account.

11.3 Any Settlement Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class upon the expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments.

11.4 Any Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this Section, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative or actual class member in any other class action filed against any of the Released Parties.

11.5 Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

11.6 The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Opt-Out Requests within seven business days after the Opt-Out Deadline.

11.7 Notwithstanding the foregoing, a Class Member shall have the right to revoke a properly and timely submitted request for exclusion if a notice of the Class Member’s election to revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the Opt-Out Deadline.

12. Objections.

12.1 Overview. Any Settlement Class Member may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

12.2 Process. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Clerk of Court and mailed (with the requisite postmark) to Class Counsel and Defense Counsel (at the addresses identified in Section 19) no later than the Objection Deadline.

12.3 Form of Objection. The requirements to assert a valid written objection shall be set forth in the Class Notice and on the Settlement Website, and, to be valid, the written objection must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

12.4 Within seven business days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet the above guidelines. The Court shall have the ultimate determination of whether an Objection has been appropriately made.

12.5 Waiver of Objection. Any Settlement Class Member who does not make his or her objection in the manner provided in this Section shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of

Attorneys' Fees and Expenses to Class Counsel and the payment of an Incentive Payment to the Class Representatives, unless otherwise ordered by the Court.

12.6 Appearance. Subject to approval of the Court, any Class Member who files and serves a written Objection in accordance with this Section and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline ("Notice of Intention to Appear"); and (b) serves the Notice of Intention to Appear on all counsel designated in the Class Notice by the Objection Deadline.

12.7 The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

12.8 Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

13. Termination.

13.1 In the event that the Settlement set forth in this Agreement is not preliminarily or finally approved without material changes by the Court, or if one of the conditions upon which the Agreement is based is not satisfied, or if the Court determines that it lacks jurisdiction to approve the Settlement, or if there is a court order from another court that takes jurisdiction over some or all of the Claims, or if there is a regulator determination that frustrates the purpose of and protection of the Settlement, or in the event that the Effective Date does not occur, Wells Fargo shall have the right (but not the obligation) to terminate the Agreement. In that case, no further payments

shall be made by Wells Fargo to anyone in accordance with the terms of this Agreement, the Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. Reductions in the amount of the requested Attorneys' Fees and Expenses shall not be deemed a substantial change necessitating termination of the Settlement.

13.2 If any material portion of the Agreement or the Final Approval Order is vacated, modified, or otherwise altered on appeal, Wells Fargo or the Class Representative may, in their sole discretion, within fourteen calendar days of such appellate ruling, declare that the Agreement has failed to become effective, and in such circumstances the Agreement shall cease to be of any force and effect.

13.3 In the event that 5% or more Class Members exclude themselves from the Settlement Class, Wells Fargo shall have the absolute discretionary right (but not obligation) to terminate this Settlement and Agreement and in such case, each and every one of Wells Fargo's obligations under this Agreement shall terminate, and this Agreement and any orders entered into in connection therewith shall be vacated (except for any provision included in the Preliminary Approval Order substantially similar to Paragraph 20 of the Preliminary Approval Order attached as **Exhibit 2**). If Wells Fargo exercises this option, the Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement. In addition, in such event, the Agreement and all negotiations, Court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding. Wells Fargo must exercise this option pursuant to this Paragraph within ten days after receiving

the list of timely Opt-Out Requests and at least three days prior to the Final Approval Hearing, by giving written notice of such exercise to Class Counsel.

13.4 If one of the Parties exercises a right herein to terminate or rescind this Agreement or this Agreement is not approved by the Court pursuant to the proposed Final Approval Order, this Agreement, the Settlement proposed herein (including any modifications made with the consent of the Parties), and any action taken or to be taken in connection therewith shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated (except for any provision included in the Preliminary Approval Order substantially similar to Paragraph 20 of the Preliminary Approval Order attached as **Exhibit 2**), the Parties shall be restored to their respective positions existing prior to the execution of this Agreement and the Parties' rights and obligations with respect to the use of this Agreement and the Settlement contemplated hereby will be subject to Section 18 hereof. In addition, neither this Agreement, the preliminary certification of the Class, the Preliminary Approval Order, nor any other document in any way relating to any of the foregoing, shall be relied on, referred to, or used by anyone in any way for any purpose in connection with any further proceedings in this Action and/or any action, lawsuit, arbitration, or proceeding involving a Released Claim. Finally, all evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding.

14. Certification of Settlement Class For Settlement Purposes.

14.1 After the Preliminary Approval Order and no later than fourteen days before the Final Approval Hearing, the Class Representative shall move for Final Approval of the Settlement and entry of Final Judgment and shall request that the preliminary certification of the Settlement Class for settlement purposes be made final. Class Counsel shall provide a draft of the Motion for Final Approval to Defense Counsel for review and comment at least seven days before it is filed.

Any responsive papers shall be filed and served no later than seven calendar days prior to the Final Approval Hearing.

14.2 If the Settlement is not granted final approval and the Final Approval Order is not entered in substantially the form attached hereto as **Exhibit 3**, the certification of the above-described Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for any other purposes in this or any other action can be or have been satisfied. In such circumstances, Wells Fargo reserves and shall have all rights to challenge certification of a Settlement Class or any other class for any other purpose in the Action or any other action on all available grounds as if no Settlement Class had been certified.

15. Attorneys' Fees and Litigation Costs, and Incentive Payment.

15.1 Wells Fargo takes no position on Class Counsel moving the Court for an award of Attorneys' Fees and Expenses in the Action or the amount of any Attorneys' Fees and Expenses award.

15.2 Class Counsel's application for Attorneys' Fees and Expenses shall be filed during the pendency of the Class Notice period, no later than fourteen calendar days prior to the Final Approval Hearing. Class Counsel agree that the amounts of such costs and fees awarded shall compensate them for all legal work in the Action up to and including the date of Final Judgment, including any appeal of the Judgment, as well as for all legal work and costs that may be incurred in the Action after the date of Final Judgment. Any award of Attorneys' Fees and Expenses shall be paid out of the Settlement Fund. In no event shall Wells Fargo be obligated to pay more than that which it will deposit into the Settlement Fund pursuant to Section 3.2.

15.3 Within thirty-seven days after the Effective Date or entry of an order approving the application for Attorneys' Fees and Expenses (whichever is later), the Settlement Administrator

shall make payment of the Attorneys' Fees and Expenses awarded by the Court to Class Counsel, pursuant to payment instructions in writing from Class Counsel. In accepting this payment, the Class Representative and Class Counsel, on behalf of themselves and all Settlement Class Members, acknowledge that the payment are in full satisfaction of any and all claims, rights, and demands that Class Counsel, the Class Representative, or the Settlement Class had, have, or may claim to have in the future for attorneys' fees, costs, expenses, or any other payment in connection with this Action or this Agreement, up to the date of final judgment. Wells Fargo shall have no responsibility for allocation or distribution of the award among Class Counsel.

15.4 Class Counsel shall be entitled, subject to Court approval, to apply to the Court for an Incentive Payment to the Class Representative in an amount not to exceed \$15,000, subject to Court approval. Wells Fargo will not oppose the request for the Incentive Payment provided it is consistent with this Agreement. The Court denying the any or all of Incentive Payment amount requested shall not be grounds to terminate the Settlement.

15.5 Within thirty-seven days after the Effective Date or entry of an order approving the application for the Incentive Award to the Class Representatives (whichever is later), and upon the Class Representatives' submission of a Form W-9 to the Settlement Administrator, the Settlement Administrator shall make payment of the Incentive Award awarded by the Court from the Settlement Fund pursuant to written payment instructions from Class Counsel. Class Counsel shall be responsible for delivering the Incentive Award to the Class Representative after receipt of payment from the Settlement Administrator. A Form 1099 for the payment of any Incentive Award will be filed.

15.6 A Form 1099 for these payments may be filed by Wells Fargo and/or the Settlement Administrator. Class Counsel shall cooperate with Wells Fargo and the Settlement Administrator

to provide all information necessary to process any such payments including completing any requested tax forms (*e.g.*, IRS Form W-9 and applicable tax identification numbers). Wells Fargo shall have no responsibility for, and no liability whatsoever with respect to, any tax obligations or any allocation among the Class Representative and Class Counsel, and/or any other person who may assert some claim thereto, of any award or payment made in this Action or pursuant to this Agreement, including but not limited to any award or payment pursuant to this Section 15. Class Counsel and the Class Representative shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this Section 15. No party shall be deemed the prevailing party for any other purposes of the Action.

15.7 Neither Wells Fargo nor the Releasees shall have any responsibility for any application of Attorneys' Fees and Expenses and Incentive Payment submitted by Class Counsel. The procedure for and the grant or denial or disallowance by the Court of the application for Attorneys' Fees and Expenses and Incentive Payment is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the applications for Attorney's Fees and Expenses and Incentive Payment or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Finality of Judgment approving the Agreement and the Settlement, except as provided for in Section 13.

16. Stay of Discovery and Other Proceedings.

16.1 To the extent the Action has not already been stayed by the Court, upon execution of this Agreement, the Parties shall discontinue all discovery activity or related proceedings in the Action.

16.2 Upon the Effective Date, and notwithstanding any of the other provisions in this Agreement, the Defendants shall have no obligation to preserve documents and evidence with

respect to Released Claims, and the Class Representative and Class Counsel shall not pursue any spoliation claims or other actions or sanctions against Defendants with respect to documents or evidence related to the Released Claims.

17. Return/Destruction of Discovery Materials.

17.1 The Parties agree that the terms of the Protective Order govern the dealings of the Parties with respect to materials produced in discovery in this Action and shall continue in force after the Effective Date of the Settlement. Accordingly, within thirty days of the Effective Date, the Parties and their counsel of record, and any consultants or experts retained by the Parties or their counsel of record, shall use their best efforts to locate all Protected Material (as the term is defined in the Protective Order) produced in the Action and return such Protected Material to counsel of record for the producing party or properly destroy all originals or reproductions (whether in electronic, hard copy, or other form) of the Protected Material.

17.2 Within sixty days of the Effective Date, counsel of record shall make written certification that they have used their best efforts to search for all Protected Material, that they have instructed the Class Representative, Defendant, and all consultants or experts to return or destroy Protected Material, and that, to the best of their knowledge, they have retained no originals or copies of any Protected Material. The Parties acknowledge that their duty to return or destroy all Protected Material is a continuing duty and the Parties agree to return or destroy any such information found in the future.

17.3 Notwithstanding this Section, the Parties shall be excused from any duty to return or destroy Protected Material to the extent necessary to comply with outstanding court orders or with judicial and non-judicial subpoenas, civil investigative demands or other compulsory process. The Parties are further excused from destroying the materials specifically enumerated in Section II.B of the Protective Order.

17.4 The Court shall retain jurisdiction to ensure compliance with the Protective Order.

18. Media and Confidentiality.

18.1 Plaintiff and Class Counsel agree not to issue any press release, convene any press conference, or initiate any contact with the media regarding this case.

18.2 Plaintiff and Class Counsel agree not to make any direct written solicitations to Class Members to opt out or object to the Settlement, and they shall take no action which would or might have the effect of inducing or encouraging any person included in the Class to seek exclusion from the Class.

19. Notices.

19.1 All notices (other than the Class Notice) required by the Agreement shall be made in writing and communicated by mail and email to the following addresses:

All notices to Class Counsel shall be sent to Class Counsel c/o:

Jason E. Causey
KATZ KANTOR STONESTREET & BUCKNER, PLLC
206 South Walker Street
Princeton, WV 24740
jcausey@kksblaw.com

Patricia M. Kipnis
BAILEY & GLASSER LLP
923 Haddonfield Road, Suite 300
Cherry Hill, NJ 08002
pkipnis@baileyglasser.com

Jonathan R. Marshall
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
jmarshall@baileyglasser.com

All notices to Defense Counsel shall be sent to Defense Counsel c/o:

K. Issac deVyver
Karla L. Johnson
MCGUIREWOODS LLP

260 Forbes Avenue, Suite 1800
Pittsburgh, Pennsylvania 15222
kdevyver@mcguirewoods.com
kjohnson@mcguirewoods.com

20. Miscellaneous Provisions.

20.1 Cooperation. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

20.2 No Admission. The Agreement compromises claims contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. The Parties agree that the amounts paid in settlement and the other terms of the Agreement were negotiated in good faith by the Parties and at arm's length and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. Neither the Agreement nor the Settlement, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Releasees, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Class Representative and Class Counsel agree not to argue that Wells Fargo could not contest (or is estopped from contesting) class certification and/or proceeding collectively on any grounds if this Action were to proceed; this Agreement shall not be deemed an admission by, or ground for estoppel against, Wells Fargo that class certification and/or proceeding collectively in the Action is proper or cannot be contested on any grounds.

20.3 Exhibits. All of the exhibits to the Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

20.4 Amendment/Modification. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement. Class Counsel, on behalf of the Class, are expressly authorized by the Class Representative to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and also are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Class which they deem appropriate.

20.5 Entire Agreement. The Agreement and the related documents entered at this time of this Agreement or referenced herein constitute the entire agreement among the Parties hereto concerning the Settlement of the Action, other than the settlement of Plaintiff's separate, individual claim. No representations, warranties, or inducements have been made to any Party concerning the Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in this Agreement. Except as otherwise provided herein, each party shall bear its own costs and attorney fees.

20.5.1 Individual Settlement. The class settlement set forth in this Agreement shall have no impact on Plaintiff's individual claim against Defendants. Plaintiff settled his individual claim against Defendants separately from the class settlement set forth in this Agreement. Plaintiff's individual settlement will be subject to a separate settlement agreement and will be disclosed to the Court in the Motions for Preliminary Approval and Final Approval.

20.6 Authority. Each person executing the Agreement or any of its exhibits on behalf of any Party hereto hereby warrants that such person has the full authority to do so.

20.7 Counterparts. The Agreement may be executed in one or more counterparts, including by signature transmitted by facsimile or by email in PDF format. All executed counterparts and each of them shall be deemed to be one and the same instrument.

20.8 Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto; but this Agreement is not designed to and does not create any third-party beneficiaries.

20.9 No Third-Party Rights or Beneficiaries. Except as expressly provided for herein, no government agency or official can claim any rights under this Agreement or Settlement, whether with respect to the conduct that is the subject of the Releases, the restrictions in Section 3, or the funds (or remainder of funds) paid or used in the Settlement. There are no third-party beneficiaries created or implied.

20.10 Jurisdiction. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement, and all Parties hereto submit to the jurisdiction of the Court for the sole purposes of implementing and enforcing the Settlement embodied in the Agreement until such time that the Court enters an order dismissing the action with prejudice.

20.11 Governing Law. The Agreement and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of West Virginia, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of West Virginia without giving effect to that State's choice of law principles.

20.12 Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any party and the canon of contract interpretation to the contrary shall not be applied.

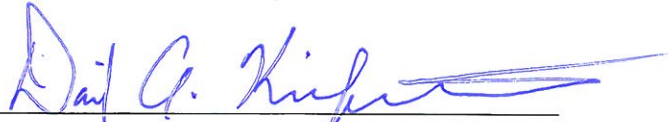
20.13 Recitals. The recitals set forth above shall be and hereby are terms of this Agreement as if set forth herein. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

20.14 No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of Class Notices of the Settlement after the Final Judgment is entered.

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Dated: 10-2-2025, 2025

CLASS REPRESENTATIVE
DAVID KIRKPATRICK


By: DAVID KIRKPATRICK

Dated: _____, 2025

DEFENDANT
WELLS FARGO BANK, N.A.

By: _____

Name: _____

Title: _____

Dated: _____, 2025

DEFENDANT
HSBC BANK USA, N.A.,
by Wells Fargo Bank, N.A. on behalf of HSBC
Bank, USA, N.A., Trustee, as Servicer for Home
Equity Asset-Backed Certificates, Series 2004-2

By: _____

Name: _____

Title: _____

Dated: _____, 2025

CLASS REPRESENTATIVE
DAVID KIRKPATRICK

By: DAVID KIRKPATRICK

Dated: 10/3/2025, 2025

DEFENDANT
WELLS FARGO BANK, N.A.

Signed by: _____
By: Serhat Oztop
649520B1264D438...

Name: Serhat Oztop

Title: Executive Vice President

Dated: 10/3/2025, 2025

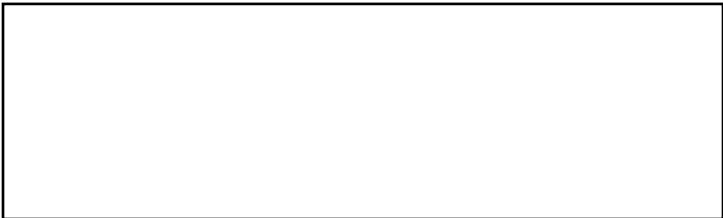
DEFENDANT
HSBC BANK USA, N.A.,
by Wells Fargo Bank, N.A. on behalf of HSBC
Bank, USA, N.A., Trustee, as Servicer for Home
Equity Asset-Backed Certificates, Series 2004-2

Signed by: _____
By: Serhat Oztop
649520B1264D438...

Name: Serhat Oztop

Title: Executive Vice President

Exhibit 1



LEGAL NOTICE

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

David Kirkpatrick, on behalf of himself and all others similarly situated, v. Wells Fargo Bank, N.A., d/b/a Wells Fargo Home Mortgage and HSBC Bank USA, N.A., Case No. 5:24-cv-00169 (U.S.D.C. Southern District of West Virginia)

THIS IS NOT A SUIT AGAINST YOU. The purpose of this Notice is to advise you that a Settlement Agreement has been reached in a class action lawsuit (the “Action”) against Wells Fargo Home Mortgage (“Wells Fargo”) and HSBC Bank USA (“HSBC”) (“Defendants”). The Notice is being sent to you because the Parties’ records indicate that you may be a Class Member under the Settlement Agreement.

A total Settlement Fund of \$1,300,000 (“Settlement Fund”) will be established to provide compensation to Class Members. You may be entitled to receive a share from the Settlement Fund. A portion of the Settlement Fund will also be used to fund payments to Class Counsel and the Class Representative, as well as the costs of administering the Settlement. Your legal rights are affected whether you act or don’t act, so read this Notice carefully.

This Notice describes the case in general and does not address all of the issues in detail. You may review a copy of the Settlement Agreement, Class Action Complaint, and the Court’s Order Preliminarily Approving Settlement at the following website: [\[redacted\]](#) or by requesting copies from the Settlement Administrator, whose contact information appears at the end of this Notice.

What is the Lawsuit About?

In the Action, Plaintiff David Kirkpatrick alleges that the Defendants improperly sent Plaintiff and similarly situated consumers who were part of Wells Fargo’s COVID forbearance program letters relating to the movement of mortgage payments to the end of the loan term as part of the program.

Defendants deny the allegations and contend that neither Plaintiff nor any Class Member is entitled to any relief.

Both sides have agreed to settle the Action solely to avoid the burden, expense, risk, and uncertainty of continuing the Action.

Who is Included in the Settlement?

The Parties’ records indicate that you may be a Class Member. The Settlement Class is defined as follows:

All (1) borrowers on Wells Fargo home mortgage accounts, (2) with a West Virginia mailing or property address as set forth in Wells Fargo’s system of record, (3) that participated in COVID forbearance; and (4) received a letter between March and December of 2020 discussing what would happen with missed COVID forbearance payments at the end of the loan period.

The settlement class consists of approximately 2,010 accounts as identified by Wells Fargo.

What Does the Settlement Provide?

(1) Cash Payments to Class Members.

Wells Fargo will establish a Settlement Fund in the amount of \$1,300,000.

Each Class Member may receive a share of the Settlement Fund, however, only one Settlement Payment will be made per account, and will be sent to the coborrowers listed on an account according to Wells Fargo’s records.

After reduction for Administrative Costs as well as any attorneys’ fees, costs, and Incentive Award granted by the Court, the estimated disbursement to you is anticipated to be as much as \$400 per account based on Wells Fargo’s records. Please understand that this is only an estimate and the final figure may vary. These sums may be taxable, and the responsibility for such tax consequences is further described in the Settlement Agreement, and that counsel is not giving you any tax advice. You are encouraged to seek tax advice without delay from a tax professional.

(2) **Service Award.** The Class Representative who brought this lawsuit, David Kirkpatrick, will request an Incentive Award of \$15,000.00, to be paid from the Settlement Fund, for serving as Class Representative.

(3) **Attorney’s Fees and Costs.** Class Counsel are Bailey Glasser, LLP and Katz Kantor Stonestreet & Buckner, PLLC. They will request an award of Attorneys’ Fees and Expenses equal to one-third the total amount of the Settlement Fund plus reasonable litigation expenses. Class Counsel seeks a fee of \$433,333.00 for their services to the Class and reimbursement of out of pocket expenses not to exceed \$10,500.00. All Attorney’s Fees and Expenses awarded by the Court will be paid from the Settlement Fund.

(4) **Opinion of Class Counsel.** Class Counsel considers it to be in the best interest of the Class to enter into this Settlement Agreement on the terms described in light of the potential recovery, Defendants’ defenses, and the uncertainties of continued litigation.

(5) **Release.** Each person who remains in the Settlement Class will, if the Settlement Agreement is approved, release any claims alleged in the lawsuit and those arising from or relating to the Letters at issue in the case, and any and all communications with or representations by Wells Fargo relating to the Letters at issue in the case or what would happen with a settlement class member’s missed COVID forbearance payments at the end of the loan period, as set forth in the Settlement Agreement. A release means you cannot sue or be part of any other lawsuit against Defendants and the Released Parties about the claims or issues in this Action and you will be bound by the Settlement. The specific terms of the release are described in the Settlement Agreement, which can be accessed at the following website: [\[redacted\]](#) or by requesting copies from the Settlement Administrator, whose contact information appears at the end of this Notice.

(6) **Binding Effect of Class Judgment.** Upon conclusion of the Settlement, the judgment of the Court will be binding upon all Class Members who do not successfully opt out of the Settlement Agreement.

The Court's Fairness Hearing

The U.S. District Court for the Southern District of West Virginia will hold a fairness hearing in this case on _____, 202__ at __ a.m./p.m., in the Courtroom of the Honorable Frank W. Volk, United States Courthouse, Robert C. Byrd United States Courthouse, 110 North Heber Street, Room 336, Beckley, WV 25801. The purpose of the hearing will be for the Court to determine whether the proposed Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Class, and to rule on applications for compensation for Class Counsel and an Incentive Award for the Class Representative. Class Members do not need to attend the hearing to benefit from the Settlement Agreement. The hearing date and time may be changed without further notice. If you wish to attend the hearing, you should call the Settlement Administrator in advance to confirm the day and time.

What Are Your Options?

(1) **Do Nothing and Receive Payment.** To accept the Settlement Agreement, **you do not need to do anything.** If the Settlement Agreement is approved, you will be bound by all of its terms, and a check will be mailed to you and/or the first individual listed on the mortgage account based on Wells Fargo's records. If you change your address, please inform the Settlement Administrator at the address below; OR

(2) **Exclude Yourself by the Deadline.** You may "opt out" and exclude yourself from the Settlement Agreement. If you opt out, you will not receive any payment, and you will not release any claims you may have against Defendants. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Defendants at your own risk and expense. To exclude yourself from the Settlement Agreement, you must mail a letter to the Settlement Administrator (address below) stating that you wish to do so. Your letter must include (a) your full name, current address, and a statement that you are seeking exclusion from the David Kirkpatrick v. Wells Fargo & HSBC lawsuit, (b) your personal and original signature, or the signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a valid power of attorney, to act on your behalf; and (c) state unequivocally that you desire to be excluded from the Settlement Class, to be excluded from the Settlement Agreement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. For example, you can state "I hereby request that I be excluded from the proposed Settlement Class in the Action." Mass or class opt-outs shall be void. You must postmark your letter no later than _____, 202__; OR

(3) **Object to the Terms of the Settlement Agreement.** Anyone who has not requested to be excluded from the Settlement Class may object to the Settlement. Your objection must (i) set forth your full name, current address, telephone number, and the name and case number of the lawsuit (David Kirkpatrick v. Wells Fargo & HSBC lawsuit, Case No. 5:24-cv-00169); (ii) contain your personal and original signature, or the signature of your attorney; (iii) state that you object to the Settlement, in whole or in part; (iv) set forth

the complete legal and factual bases for the objection; (v) provide copies of any documents that you wish to submit in support of your position; (vi) state whether you intend on appearing at the Final Approval Hearing either pro se or through counsel and whether you plan on offering testimony at the Final Approval Hearing. Copies of the foregoing and all other papers in support of such objection(s) must be served upon the following and must be postmarked no later than _____, 202__ :

Court:

Clerk of Court
U.S. District Court for the Southern District of West Virginia
Robert C. Byrd United States Courthouse
110 North Heber Street, Room 336
Beckley, WV 25801

Administrator: Address Below

Class Counsel:

Jason E. Causey (WVSB No. 9482)
Katz Kantor Stonestreet & Buckner, PLLC
206 South Walker Street
Princeton, WV 24740
Telephone: (304) 431-4050

Jonathan R. Marshall
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
(304) 345-6555

Defense counsel:

K. Issac deVyver
Karla L. Johnson
MCGUIREWOODS LLP
260 Forbes Avenue, Suite 1800
Pittsburgh, Pennsylvania 15222
kdevyver@mcguirewoods.com
kjohnson@mcguirewoods.com

If you wish to appear at the Final Approval Hearing to object to the settlement, you must file a Notice of Intention to Appear with the Clerk of Court by the Objection Deadline. Any Class Member who fails to object in the manner set forth herein shall be foreclosed from making such objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of the Settlement Agreement upon Final Approval and by all proceedings, orders and judgments, including but not limited to the Release in the Lawsuit.

PLEASE DIRECT QUESTIONS TO:

SETTLEMENT ADMINISTRATOR

Address

Toll-Free Phone Number

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

DAVID A. KIRKPATRICK, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A., d/b/a
WELLS FARGO HOME MORTGAGE and
HSBC BANK USA, N.A.,

Defendants.

Civil Action No. 5:24-cv-00169

**PROPOSED ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, the above-entitled action is pending before this Court (the “Action”);

WHEREAS, the parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order approving settlement of this Action , in accordance with the Settlement Agreement and Release dated _____, 2025 (the “Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Agreement and the exhibits Annexed thereto;

WHEREAS, all defined terms herein have the same meanings as set forth in the Agreement;

WHEREAS, the Court has reviewed Plaintiff’s Motion for Preliminary Approval and supporting brief requesting that this Court: (1) conditionally certify the Settlement Class; (2)

preliminarily approve the parties' proposed class action settlement; (3) appoint David A. Kirkpatrick as Class Representative, his counsel as Class Counsel, and Epiq Class Action & Claims Solutions as the Settlement Administrator; (4) set the deadlines for written exclusion or objections to the Agreement; (5) approve the form of Notice to the Settlement Class; and (6) schedule a hearing on the final approval of the Agreement for _____, 2025.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Nature of the Action.** Plaintiff David A. Kirkpatrick ("Plaintiff") alleges that Defendants Wells Fargo Bank, N.A., d/b/a Wells Fargo Home Mortgage ("Wells Fargo") and HSBC Bank USA, N.A. ("HSBC") (collectively, "Defendants") violated the West Virginia Consumer Credit Protection Act ("WVCCPA") arising out of the terms of Wells Fargo's COVID forbearance program, and brought this Action seeking to represent a class of West Virginia borrowers based on alleged representations made relating to the movement of payments to the end of the loan term as part of Wells Fargo's COVID forbearance program. Defendants dispute and deny all of Plaintiff's claims.

2. **Settlement.** Plaintiff David A. Kirkpatrick (the "Class Representative"), individually and as Class Representative on behalf of the Class, and Defendants (collectively, the "Parties") have negotiated a potential settlement of the Action to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims (as defined in the Agreement) against Defendants and the Releasees.

3. **Review.** At the preliminary approval stage, the Court's task is to evaluate whether the settlement is within the "range of reasonableness." 4 Newberg on Class Actions § 11.26 (4th ed. 2010). "In determining whether a settlement meets the requirements of Rule 23, the Fourth Circuit has developed multifactor standards for assessing whether a class action settlement is 'fair,

reasonable, and adequate’ under Rule 23(e)(2).” *Six v. LoanCare, LLC*, No. 5:21-CV-00451, 2022 WL 16747291, at *2 (S.D.W. Va. Nov. 7, 2022) (citing *In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020); *Scardelletti v. Debarr*, 43 Fed. Appx. 525, 528 (4th Cir. 2002); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991)). “The fairness analysis is intended primarily to ensure that a ‘settlement is reached as a result of good-faith bargaining at arm's length, without collusion.’” *Id.* (citing *Berry v. Schulman*, 807 F.3d 600, 614 (4th Cir. 2015) (quoting *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159)). The Fourth Circuit has identified four factors for determining settlement fairness: “(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of the class action litigation.” *Id.* (citing *Lumber Liquidators*, 952 F.3d at 484 (citing *Jiffy Lube*, 927 F.2d at 159)). “In determining the adequacy of the proposed settlement, the Court must consider the: (1) relative strength of Plaintiff's case on the merits; (2) existence of any difficulties of proof or strong defenses Plaintiff is likely to encounter if the case proceeds to trial; (3) anticipated duration and expense of additional litigation; (4) solvency of defendant and likelihood of recovery of a litigated judgment; and (5) degree of opposition to the settlement.” *Id.* at *3 (citing *Scardelletti*, 43 Fed. Appx. at 528; *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159) (other citations omitted).

The Court has carefully reviewed the Agreement, including the plan of allocation and the release of claims, as well as the files, records, and proceedings to date in the Action. The terms and conditions in the Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized items in this Order shall have the meanings attributed to them in the Agreement.

4. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all of the Class Members, and venue in this Court is proper.

5. **Preliminary Settlement Approval.** Based on the review the Court has conducted, as set forth in paragraph 3, the Court does hereby preliminarily approve the Agreement and the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below. The Court finds on a preliminary basis that the Settlement as set forth in the Agreement falls within the range of reasonableness and was the product of informed, good-faith, arms'-length negotiations between the Parties and their counsel, and therefore meets the requirements for preliminary approval. The Court finds and concludes that the assistance of experienced mediator Stephen Dalesio, Esq. in the settlement process supports the finding that the Settlement is non-collusive.

1.1. **Certification of Settlement Class.** Pursuant to Federal Rule of Civil Procedure 23, the Court conditionally certifies, for settlement purposes only, (and for no purposes and with no other effect upon the Action, including no effect upon the Action should the Agreement not receive Final Approval or should the Effective Date not occur), a class defined as the collective group of all (1) borrowers on Wells Fargo home mortgage accounts; (2) with a West Virginia mailing or property address as set forth in Wells Fargo's system of record; (3) that participated in COVID forbearance; and (4) received a letter between March and December of 2020 discussing what would happen with missed COVID forbearance payments at the end of the loan period. The settlement class shall consist of approximately 2,010 accounts as identified by Wells Fargo. The Class does not include any individual who validly opts out of the Settlement pursuant to the procedures set forth herein.

Pursuant to Federal Rule of Civil Procedure 23(a) and b(3), the Court preliminarily finds, for settlement purposes only, that:

- a. The Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Class for the purposes of determining whether the Settlement should be approved;
- c. Plaintiff's claims are typical of the Class claims being resolved through the Settlement;
- d. Plaintiff is capable of fairly and adequately protecting the interests of the Class in connection with the proposed Settlement;
- e. Common questions of law and fact predominate over questions affecting only individual Class Members, and the Class appears to be sufficiently cohesive for settlement of the claims on a class-wide basis; and,
- f. Certification of the Class is superior to other available methods for the fair and efficient resolution of the Class claims.

6. **Designation of Class Representatives and Class Counsel.** The Court finds and concludes that the Class Representative David A. Kirkpatrick has claims typical of and is an adequate representative of the Settlement Class he proposes to represent. The Court hereby appoints David A. Kirkpatrick as the Class Representative for the Settlement Class. The Court finds and concludes that the law firms Katz, Kantor, Stonestreet & Buckner, PLLC and Bailey Glasser, LLP, Jason E. Causey, Jonathan R. Marshall, and Patricia M. Kipnis have extensive experience and expertise in prosecuting consumer class actions. The Court hereby appoints Plaintiff's counsel of record in this case as Class Counsel.

7. **Final Approval Hearing.** A hearing (the "Final Approval Hearing") shall be held before this Court on _____, 202__, at _____ .m., at the Robert C. Byrd U.S. Courthouse, Room 336, 110 North Heber Street, Beckley, WV 25801 to determine, among other things: (i) whether the proposed Settlement of the Action on the terms and conditions set

forth in the Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a Judgment as provided in Paragraph 1.21 of the Agreement should be entered; (iii) whether Settlement Class Members should be bound by the Release set forth in the Agreement; (iv) any amount of fees and expenses that should be awarded to Class Counsel and any award to the Class Representative for his representation and service to the Class; (v) to consider any Settlement Class Member's objections to the Settlement and/or any application of Class Counsel for payment or reimbursement of attorney's fees, costs, and expenses and any application for an award to the Class Representatives; and (vi) to rule upon such other matters as the Court may deem appropriate. The Parties shall include the date of the Final Approval Hearing in the Notice to be mailed to the Settlement Class.

8. **Class Notice.** The Court approves the form, substance, and requirements of the Class Notice (the "Notice") annexed hereto as **Exhibit 1**. The Court further finds that the form, content, and distribution of the Notice, substantially in the manner and form set forth in Paragraph 9 of this Order, meets the requirements of the Federal Rule of Civil Procedure 23 and due process. The Notice fairly, plainly, accurately, and reasonably informs potential Class Members of appropriate information about: (1) the nature of this action, the definition of the Settlement Class, the identity of Class Counsel, and the essential terms of the Settlement, including the plan of allocation for the monetary and other relief, and includes the address for a website maintained by the Settlement Administrator that has links to the notice, motions for approval and for attorney's fees, and any other important documents in this case; (2) Class Representative's forthcoming application for the Class Representative's service award and Class Counsel's attorneys' fees and costs award; (3) how the Settlement Class Members' share of the Settlement Fund will be calculated and distributed; (4) this Court's procedures for final approval of the Settlement; (5) how to Opt-Out or Object to the

Settlement; (6) how to obtain additional information regarding this Action and the Settlement, including instructions on how to access the case docket via the Public Access to Court Electronic Records (“PACER”) or in person at the Courthouse; and (7) the date of the Final Approval Hearing and that the date may change without further notice to the Settlement Class, and that Class Members may check the settlement website or PACER to confirm that the date has not been changed.

The Court further finds and concludes that the proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all individuals who would be bound by the Settlement. Under this plan, prior to distributing the Notice and after receiving a Notice List from Wells Fargo, the Settlement Administrator will update addresses through the NCOA or similar databases. After the Settlement Administrator updates the Settlement Class’s addresses, the Notice will be sent out via first-class mail to the Settlement Class Members. No later than the mailing of the Notice, the Notice will be posted to the Settlement Website. There is no additional method of distribution that is cost-effective and would be reasonably likely to notify potential Class Members who may not receive notice under this proposed distribution plan.

The Court hereby concludes that the proposed Notice and Notice plan are the best practicable under the circumstances and are reasonably calculated, under all the circumstances, to apprise potential Class Members of the pendency of the Action, to apprise persons who would otherwise fall within the definition of the Class of their right to exclude themselves from the proposed Class, and to apprise Class Members of their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing. The Court further finds that the Notice constitutes due and sufficient notice to all persons entitled thereto.

9. **Settlement Administrator.** The Court approves the appointment of Epiq Class Action & Claims Solutions to supervise and administer the notice procedure as more fully set forth below:

- a) No later than twenty-one (21) days from the entry of this Order (the “Notice Mailing Date”), the Settlement Administrator shall cause a copy of the Notice, substantially in the form annexed as Exhibit 1 hereto, to be mailed by first class U.S. mail to the last known mailing address of each individual on the Notice List, after being updated by the Settlement Administrator using the NCOA or similar databases;
- b) No later than the Notice Mailing Date, the Settlement Administrator shall establish a settlement website, and shall post on the website the Agreement and Exhibits, including the Class Notice substantially in the form annexed as Exhibit 1 hereto, as well as this Preliminary Approval Order, applications for attorneys’ fees and class representative’s service award (when available), the Final Approval Order, and the operative Complaint in this Action;
- c) Following the mailing of the Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing and publication via website;
- d) The Settlement Administrator shall otherwise carry out its duties as set forth in the Agreement.
- e) The Notice List shall be treated as Confidential pursuant to Section 17 of the Settlement Agreement.

10. **Qualified Settlement Fund.** The Settlement Administrator is authorized to establish an account at a federally-insured financial institution which satisfies the requirements to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation Section 1.468B-1,

promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. As set forth in the Settlement Agreement, the Settlement Administrator will administer the Settlement Fund and will be the “Administrator” of this Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3). The Settlement Administrator shall establish the Qualified Settlement Fund in accordance with the terms of the Settlement Agreement.

11. **Exclusion from the Class.** Any Class Member may, upon request, be excluded from the Class. Any such Class Member must submit a written Request to Opt Out to the Settlement Administrator at the mailing address listed in the Class Notice no later than thirty (30) days after the Notice Mailing Date. To be valid, the Request to Opt Out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the Action,” as set forth in Section 11 of the Agreement. All Class Members who submit valid, verified, and timely Requests to Opt Out in the manner set forth in this Paragraph shall have no rights under the Agreement and shall not be bound by the Agreement or any Final Judgment. Mass or class opt outs shall not be allowed. A request to Opt-Out by a borrower or co-borrower on an Account shall be deemed to be a request to Opt-Out by all borrowers on the Account. A Class Member who desires to opt out must make timely affirmative written action pursuant to this Order and the Agreement, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Parties.

12. **Copies of Requests to Opt Out.** The Settlement Administrator shall provide Class Counsel and Wells Fargo's Counsel with a list of all timely Requests to Opt Out within seven business days after the Opt Out Deadline.

13. **Entry of Appearance.** Any member of the Class who does not exclude himself or herself from the Settlement Class may enter an appearance in the Action, at his or her own expense, individually or through counsel of his or her own choice. If he or she does not enter an appearance, he or she will be represented by Class Counsel.

14. **Binding Effect on Class.** All Class Members who do not exclude themselves from the Settlement Class by properly and timely submitting a Request to Opt Out shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

15. **Objections.** Any Class Member who does not timely and validly exclude himself or herself from the Settlement Class may appear and show cause, if he or she has any reason to object to the Settlement; provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment to be entered thereon approving the same, or any attorney's fees and expenses to be awarded to Class Counsel or award made to the Class Representative, unless a written objection is sent to the Clerk of Court at the mailing address listed in the Class Notice no later than thirty (30) days after the Notice Mailing Date. The written objection must also be mailed to Class Counsel and Defense Counsel no later than thirty (30) days after the Notice Mailing Date. To be valid, the written objection must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of

his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

Within seven (7) business days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet the above guidelines. The Court shall have the ultimate determination of whether an Objection has been appropriately made. Any Settlement Class Member who does not make his or her objection in the manner provided in this Section shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the Settlement, unless otherwise ordered by the Court.

16. **Appearance of Objectors at Final Approval Hearing.** Any Settlement Class Member who files and serves a written objection in accordance with Paragraph 15 of this Order may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objector files with the Clerk of Court a notice of intention to appear at the Final Approval Hearing and serves the same on all counsel designated in the Class Notice by the Objection Deadline (“Notice of Intention to Appear”). The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

17. **Service of Motion for Final Approval.** The motion in support of final approval of the Settlement shall be filed and served no later than fourteen days prior to the Final Approval Hearing.

18. **Fees, Expenses, and Awards.** Class Counsel's application for Attorneys' Fees and Expenses shall be filed no later than fourteen calendar days prior to the Final Approval Hearing. Neither Defendants nor the Releasees shall have any responsibility for any application for Attorney's Fees and Expenses submitted by Class Counsel. At or after the Final Approval Hearing, the Court shall determine whether to approve Class Counsel's request for Attorneys' Fees and Expenses and whether to approve any request for an award to the Class Representative for his service to the Class.

19. **Releases.** If the Settlement is finally approved, the Releasers shall release the Releasees from the Released Claims.

20. **Use of Order.** Neither this Order, the fact that settlement was reached and filed, the Agreement, nor any other related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Defendants, the Class Representative, or the Settlement Class Members. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only by the Parties in a proceeding to enforce the Agreement.

21. **Continuance of Final Approval Hearing.** The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

22. **Stay of Proceedings.** All proceedings in this Action are stayed until further Order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

23. **Temporary Bar for all Class Members.** Pending final determination of whether the Settlement should be approved, and upon expiration of the Opt-Out Deadline, all Class Members who do not timely and validly exclude themselves from the Settlement Class, and each of them, and anyone who purports to act on their behalf, are barred from directly or indirectly maintaining, commencing, prosecuting, or pursuing directly, representatively, or in any other capacity, any Released Claim subsumed and covered by the Release in the Agreement, including in any court or arbitration forum.

24. **Termination of Settlement.** If: (a) the Agreement is terminated as provided in Section 13 of the Agreement; or (b) any specified material term or condition of the Settlement as set forth in the Agreement is not satisfied as provided in Section 13 of the Agreement, then this Order may not be introduced as evidence or referred to in any actions or proceedings by any person or entity and shall be treated as vacated, *nunc pro tunc* (except Paragraph 20 of this Order shall remain in effect), and each party shall be restored to his, her, or its respective position in this Action as it existed prior to the execution of the Agreement.

25. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this Action.

26. **Authority.** The Court hereby authorizes the Parties to take such further steps as necessary and appropriate to establish the means necessary to implement the terms of the Agreement.

27. **Jurisdiction.** The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Agreement and the Settlement.

28. **Summary of Deadlines.** Consistent with the parties' Agreement, the dates for performance are as follows:

- Class Notice Mailed by: Twenty-One (21) days after entry of this Order;
- Objection or Exclusion: Thirty (30) days after the Notice Mailing Date;
- Final Approval Submissions, including applications for a service award and attorneys' fee and costs: Fourteen (14) days prior to the Final Approval Hearing;
- Final Approval Hearing: _____, which date is Ninety (90) days or more after mailing of the Class Notice.

IT IS SO ORDERED.

BY THE COURT:

Hon. Frank W. Volk, Chief Judge

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

DAVID A. KIRKPATRICK, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A., d/b/a
WELLS FARGO HOME MORTGAGE and
HSBC BANK USA, N.A.,

Defendants.

Civil Action No. 5:24-cv-00169

**[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE**

This matter came before the Court for hearing pursuant to the Order of this Court dated _____, 202_, on the application of the Parties for approval of the Settlement as set forth in the Settlement Agreement and Release dated _____, 2025 (the “Agreement”). On _____, 2025, this Court granted preliminary approval to the proposed class action settlement set forth in the Agreement between Plaintiff David A. Kirkpatrick (“Plaintiff” or “Class Representative”), individually and as Class Representative on behalf of the Class and Defendants Wells Fargo Bank, N.A., d/b/a Wells Fargo Home Mortgage (“Wells Fargo”) and HSBC Bank USA, N.A. (“HSBC”) (together, “Defendants”) (collectively the “Parties”). This Court also provisionally certified the Class for settlement purposes, approved the procedure for giving Notice to members of the Class, and set a Final Approval Hearing to take place on _____, 202_. The Court finds that due and adequate notice was given to the Settlement Class as required in the Court’s Order Preliminarily Approving Settlement and Providing for Notice.

The Court has reviewed the papers filed in support of the Motion for Final Approval, including the Settlement Agreement and exhibits thereto, memoranda, and arguments submitted on behalf of the Settlement Class, and supporting affidavits.

On _____, 202____, this Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Agreement are fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing the Settlement Class Members' Released Claims on the merits and with prejudice; (3) whether and in what amount to award attorneys' fees and expenses to Class Counsel; and (4) any award to the Class Representative for his representation of the Class.

Based on the papers filed with the Court and the presentations made to the Court by the Parties and by other interested persons at the Final Approval Hearing, it appears to the Court that the Settlement Agreement is fair, adequate, and reasonable, and in the best interests of the Settlement Class.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. **Definitions.** This Judgment incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Settlement Agreement.

2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and over the Parties, the Class, and the claims asserted in this Action, and venue in this Court is proper.

3. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

4. **Settlement Class.** Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the settlement of this Action, as embodied in the terms of the Settlement Agreement, is hereby finally approved as a fair, reasonable, and adequate settlement, in the best interests of the

Settlement Class, in light of the factual, legal, practical and procedural considerations raised by this case, with the Settlement Class comprised of the collective group of all:

- (1) borrowers on Wells Fargo home mortgage accounts;
- (2) with a West Virginia mailing or property address as set forth in Wells Fargo's system of record;
- (3) that participated in COVID forbearance; and
- (4) received a letter between March and December of 2020 discussing what would happen with missed COVID forbearance payments at the end of the loan period.

The settlement class shall consist of approximately 2,010 accounts as identified by Wells Fargo.

The Class does not include any individual who validly opts out of the Settlement pursuant to the procedures set forth herein.

Having considered the Parties' briefing and hearings before the Court, the Court finds, for settlement purposes only, that class certification under Federal Rule of Civil Procedure 23(a) and (b)(3) is appropriate in that, in the settlement context: (a) the Settlement Class Members are so numerous that joinder of all Settlement Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual question; (c) the claims of the Class Representative are typical of the claims of the Class; (d) the Class Representative will fairly and adequately represent and protect the interests of the Class Members because their interests are co-extensive with those of the Class Members, and they have retained experienced counsel to represent them and the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. **Designation of Class Representatives and Class Counsel.** The Court confirms the prior appointments of the Plaintiff David A. Kirkpatrick as Class Representative for the Class and the counsel of record representing the Class Representative in the Action as Class Counsel.

6. **Settlement Approval.** Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Agreement and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Parties. The Court further finds that the Settlement set forth in the Agreement is the result of a good faith arm's-length negotiation between experienced counsel representing the interests of the Parties, with the assistance of Stephen Dalesio, Esq. through mediation. Accordingly, the Settlement embodied in the Agreement is hereby finally approved in all respects, there is no just reason for delay, and the parties are hereby directed to perform its terms. The terms and conditions of the Settlement Agreement are fully incorporated as through fully set forth in this Order.

7. **Settlement Fund and Distribution.** A Settlement Fund has been created consisting of the \$1,300,000 Settlement Amount. The Settlement Fund shall be used to pay Settlement Class Members, an Incentive Payment to the Class Representative, Settlement Administrator's costs associated with administration of the settlement, and Attorneys' Fees and Expenses incurred by the Settlement Class through Class Counsel as set forth herein and in the Settlement Agreement. All unclaimed and excess monies in the Settlement Fund shall be distributed to *cy pres* recipient(s) _____ pursuant to the timetable set out in Section 5 of the Settlement Agreement. Following Wells Fargo's payment to the Settlement Fund and such potential amounts as described in this Paragraph, Wells Fargo shall have no responsibility, financial obligation or liability with respect to the Settlement Fund, the notice process, the distributions to Settlement Class Members, the request and award of Attorneys' Fees and Expenses, or any other aspect of implementing the Settlement Agreement.

8. **Dismissal with Prejudice.** Final Judgment is hereby entered with respect to the Released Claims of all Settlement Class Members, and the Released Claims in the Action are hereby dismissed in their entirety with prejudice and without costs consistent with the terms of the Class Action Settlement Agreement and Release. All claims in the Action are dismissed, and the case shall be closed pursuant to Paragraph 23 of this Order. Nothing herein is intended to waive or prejudice the rights of any Class Members who have timely excluded themselves from the Class. This matter will remain open solely to ensure an orderly administration process.

9. **Releases.** The releases as set forth in Section 10 of the Agreement together with the definitions relating thereto in Paragraphs 1.29, 1.32, 1.33, and 1.34 are expressly incorporated herein in all respects and made effective by operation of this Judgment. The Court hereby approves the release provisions as contained and incorporated in Section 10 of the Agreement, including but not limited to the definitions of Released Claims, Releasors, Releasees, and Unknown Claims. The Releasors shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims and Unknown Claims against the Releasees.

10. **Permanent Bar.** Consistent with the terms of the Class Action Settlement Agreement and Release, the Releasors, including the Class Representatives and all Settlement Class Members, and anyone claiming through or on behalf of any of them, are forever barred from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims. The Releasors further are forever barred from organizing the Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Member but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or

counterclaim to include class allegations, or seeking class certification in a pending action in any jurisdiction based on or relating to any of the Released Claims).

11. **Permanent Injunction Regarding Releases.** The terms of the Settlement Agreement and of this Order shall be forever binding on the Class Releasors and Defendants, and those terms shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve the Released Claims.

12. **Approval of Class Notice and CAFA Notice.** Upon the Affidavit of _____ of _____, the Settlement Administrator, the Court finds that the form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort. Said Notice provided the best notice practicable under the circumstances of the proceedings and the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution. The Settlement Administrator has served the CAFA Notice of Proposed Settlement and Defendants have complied in all respects with their obligations under 28 U.S.C. § 1715.

13. **Attorneys' Fees and Expenses.** Plaintiffs and Class Counsel have moved for an award of attorneys' fees, costs, and expenses in the amount of \$ _____. The Court finds that an award of \$ _____ in attorneys' fees and \$ _____ for reimbursement of expenses is fair and reasonable, and the Court approves of Class Counsel's attorney's fees and

expenses in this amount. The Court directs the Settlement Administrator to disburse these funds as provided in the Settlement Agreement.

14. **Class Representatives Service Awards.** The Court further finds that a service award for the Class Representative in the amount of \$ _____ is fair and reasonable, and the Court approves of the service award in this amount. The Court directs the Settlement Administrator to disburse this award to the Class Representative as provided in the Settlement Agreement.

15. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Defendants, the Class Representative, or the Settlement Class Members. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Agreement.

16. **Continuing Jurisdiction.** Without affecting the finality of this Judgment in any way, the Court hereby specifically retains exclusive jurisdiction over the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purpose, including to ensure compliance with the Protective Order entered in this Action.

17. **Termination of Settlement.** In the event that the Settlement does not become effective in accordance with the terms of the Agreement, or the Agreement is terminated pursuant to Section 13 of the Agreement, the Parties shall be restored to their respective positions in the Action prior to the execution of the Agreement, the certification of the Settlement Class shall be automatically vacated, and this Judgment shall be rendered null and void (except Paragraph 15 of this Order shall remain in effect) to the extent provided by and in accordance with the Agreement and shall be vacated and, in any such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

18. **Implementation of the Agreement.** The Parties are hereby authorized to implement the terms of the Agreement.

19. **Reasonable Extensions.** Without further order of this Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement.

20. **Class Notice List.** Within 30 days after the Effective Date, Wells Fargo, with the assistance of the Settlement Administrator, shall file with this Court, *ex parte* and under seal (in order to protect the names, addresses and other personal information of Class Members), a list of the names and addresses of all Members of the Class to whom Notice was sent, along with a list of all Class Members who excluded themselves from the Settlement pursuant to the opt-out provisions provided herein.

21. **Final Accounting.** The Settlement Administrator will provide to Class Counsel, and Class Counsel will file with the Court, a final accounting within 150 days after the Distribution Date, as defined in the Agreement, in the event there is no second distribution, or within 120 days after the second distribution in the event of a second distribution. The final accounting will include a summary of all distributions from the Settlement Fund.

22. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed.

23. **Action Closed.** All claims against the Defendant are hereby dismissed with prejudice. This case shall remain open for administrative matters only. The District Court Clerk is hereby directed to close the Action.

IT IS SO ORDERED.

BY THE COURT:

Hon. Frank W. Volk, Chief Judge