UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:21-cv-61749-SINGHAL

GILMER BAUTISTA, *et al*.,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS

Plaintiffs, Gilmer Bautista, Gilmer's Enterprise LLC, Juan Mendoza, Alejandro Diaz, and Tyler Witter ("Plaintiffs"), for themselves and the Settlement Class Members,[1] and pursuant to the Court's March 1, 2023 Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order") [ECF No. 69] move for (i) an award of attorneys' fees to Class Counsel of $6,625,000, or 24.88% of the $26.625 million Settlement Consideration[2]; and (ii) a service award of $3,000 to each of the Plaintiffs. Defendant, Wells Fargo Bank, N.A. ("Wells Fargo"), does not oppose the relief requested in this Motion. In addition, Corali Lopez-Castro, as Receiver in the related SEC Action and as a party to the Settlement (the "Receiver"), supports the relief requested in this Motion.

---

1 Unless otherwise indicated, all capitalized terms in this Motion shall have the meanings set forth in the parties' Settlement Agreement [ECF No. 67-1].

2 Class Counsel do not seek reimbursement of their out-of-pocket expenses, which totaled $32,449.

INTRODUCTION

After more than a year of litigation against Wells Fargo, Plaintiffs, through Class Counsel, reached a settlement that provides a much-needed recovery to the victims of a Ponzi scheme orchestrated by non-parties MJ Capital Funding, LLC, MJ Taxes and More Inc., and Johanna M. Garcia (collectively, the "MJ Capital Co-Conspirators"). The Settlement requires payment by Wells Fargo of $26.625 million in exchange for a straightforward release by Settlement Class Members. The proceeds of the Settlement will be administered by the Receiver. Plaintiffs therefore anticipate prompt and meaningful relief to the many investors who were duped by the MJ Capital Co-Conspirators.

The Settlement is the product of an uphill battle by Class Counsel. Operating on imperfect information and without formal discovery, Class Counsel prosecuted this action through diligent investigation and analysis, despite legal hurdles that are inherent in this type of case, and despite various challenges raised by Wells Fargo. Plaintiffs brought claims of aiding and abetting fraud, unjust enrichment, and negligence based on Wells Fargo's banking of the MJ Capital Co-Conspirators. To support these claims, Class Counsel engaged in a time-consuming investigation involving witness and claimant interviews, document review, and analysis of banking activity. These efforts led to Class Counsel's understanding of the scheme and the identification of bank employees who may have been involved in the MJ Capital Co-Conspirators' fundraising and who may have knowingly assisted in directing the flow of funds. Class Counsel's efforts are also reflected in the pleadings, motion to dismiss briefing, and opposition to a stay of discovery.

Plaintiffs' prosecution of the case did not end there. As they awaited the Court's ruling on Wells Fargo's motion to dismiss the Amended Complaint, and despite a stay of discovery, Class Counsel continued developing facts and strategies necessary to position the case for success. This involved working with the Receiver in the SEC Action to obtain and review banking and other records. Class Counsel also continued interviewing dozens of potential claimants and Plaintiffs to identify additional conspirators and facts surrounding the investment scheme. They also hired

independent investigators to locate and speak with witnesses. Finally, Plaintiffs negotiated a voluntary production of bank records from Wells Fargo and, upon the Court's approval of a protective order, worked with the Receiver to prepare a reconstruction of relevant account activity.

Plaintiffs also engaged in lengthy mediation efforts with Hunter H. Hughes III, a nationally recognized class action mediator. The first mediation session in May 2022 ended in an impasse, but the Parties continued discussions in the months that followed. The result was a continuing dialogue between Plaintiffs and Wells Fargo and the voluntary exchange of bank account records referenced above. Class Counsel then sought and obtained this Court's appointment as Interim Class Counsel to, among other things, proceed with investigative and settlement efforts on behalf of the putative class.

Plaintiffs continued working through the mediator to exchange damages models and figures in anticipation of a continued mediation session, while also coordinating and keeping the Receiver informed of the developments. The Parties held the second mediation session on September 2, 2022. There, the Parties reached a settlement in the amount of $26.625 million, subject to further negotiation of certain terms and a signed agreement. After months of additional negotiations and drafting, the Parties, along with the Receiver, reached the final Settlement, pending approval by the Court.

Under the circumstances, the Settlement is an achievement for Class Counsel and a significant recovery for the Settlement Class Members. Plaintiffs estimates of victims' damages relating to the Ponzi scheme was approximately $116 million, overall, and $86 million, during the Wells Fargo banking period, specifically. Thus, the settlement represents the recovery of 23% or 31% of victims' total estimated losses depending on the total used.

Class Counsel is entitled to reasonable compensation for this result. Given the complexity, risk, and diligence required to reach the Settlement, Class Counsel seeks 24.88% of the Settlement Consideration (*i.e.*, $6,625,000) for their attorneys' fees. Class Counsel's request is well within the range of reasonable awards in this Circuit. Moreover, it is justified by application of the factors

adopted by the Eleventh Circuit in *Camden I Condominium Association, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991). The Court should therefore grant Class Counsel's request given the obstacles and risks they overcame to obtain the Settlement.

Class Counsel's fee expert, Peter Prieto, Esq., agrees that the Settlement is a significant achievement and justifies Class Counsel's requested award. (*See* attached Expert Declaration of Peter Prieto (Expert Decl.) at ¶7.) Mr. Prieto is a seasoned litigator in the South Florida legal community with considerable class action and mass tort experience. (*Id.* ¶¶4-5.) He is aware of what it takes to reach a sizable settlement with a large corporate defendant like Wells Fargo. (*Id.*). In the attached declaration, Mr. Prieto considers the risks and obstacles facing Class Counsel in a contingency case like this and, after going through the *Camden I* factors, concludes that Class Counsel's request for a 24.88% fee and costs award is reasonable. (*Id.* ¶¶24-37.)

Plaintiffs also ask the Court reserve jurisdiction to award the payment of a $3,000 Service Award to each Plaintiff, for a total of $15,000, pending the Supreme Court of the United States' potential review of the Eleventh Circuit's decision in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020). Plaintiffs ask the Court to defer ruling in the event *Johnson*'s reasoning is revisited before final approval of the Settlement.

I. BACKGROUND

This action follows the SEC Action brought by the U.S. Securities and Exchange Commission against the MJ Capital Co-Conspirators, filed on August 9, 2021. *See SEC v. MJ Capital Funding, LLC*, No. 21-cv-61644-SINGHAL/VALLE (S.D. Fla.). The SEC alleged in that case that Johanna M. Garcia ran a Ponzi scheme through her companies, MJ Capital Funding, LLC and MJ Taxes and More Inc., whereby investors were misled into thinking they were funding loans to small businesses. In the SEC Action, the Court appointed Corali Lopez-Castro as Receiver for the corporate defendants.

On August 20, 2022, Plaintiffs filed this action, alleging Wells Fargo's involvement in the MJ Capital Scheme. [ECF No. 1]. Specifically, Plaintiffs alleged in their initial Complaint that the MJ Capital Co-Conspirators misled Plaintiffs and similarly situated investors into investing in a Ponzi scheme. [*Id.*]. While Plaintiffs thought they were investing in a venture that funded small business loans with high monthly returns, the MJ Capital Co-Conspirators used new investor money to fund purported investor returns, while siphoning off funds for themselves. [*Id.*]. Plaintiffs further alleged that Wells Fargo aided and abetted the MJ Capital Co-Conspirators' fraud and breaches of fiduciary duty by knowingly facilitating the MJ Capital Co-Conspirators' fundraising and failing to stop or impede their wrongful movement of investor funds. [*Id.*].

After bringing this action, Class Counsel continued investigating the nature of the MJ Capital Scheme and Wells Fargo's involvement. (*See attached* Attorney Declaration ("Atty Decl.") at ¶5.)[3] On November 1, 2021, Wells Fargo moved to dismiss Plaintiffs' Complaint. [ECF No. 17]. Instead of responding to the motion, Plaintiffs filed an Amended Complaint on December 13, 2021, reflecting the preliminary results of their continuing investigation. [ECF No. 25]. The Amended Complaint added two Plaintiffs, additional substantive allegations about Wells Fargo's involvement, and a claim for negligence. [*Id.*].

In response, on January 7, 2022, Wells Fargo filed its second Motion to Dismiss, along with a request that the Court stay discovery pending resolution of the Motion to Dismiss. [ECF Nos. 36-37]. The Parties fully briefed both motions. [ECF Nos. 40-41, 44-45]. Meanwhile, the Parties held their scheduling conference and submitted a Joint Scheduling Report. [ECF No 31].

---

[3] Attorney Declarations are attached for each of the Class Counsel – attorneys Jeffrey Schneider and Jason Kellogg (from Levine Kellogg Lehman Schneider + Grossman LLP), attorney Curtis Miner (from Colson Hicks Eidson, P.A.), and attorney Francisco Maderal (from Maderal Byrne + Furst, PLLC). For ease of reference, all citations will be to the Maderal Declaration.

On February 21, 2022, the Court granted Wells Fargo's request to stay discovery pending a ruling on the Motion to Dismiss. [ECF No. 46]. Notwithstanding the stay of discovery, Plaintiffs, through Class Counsel, continued their investigation using the means available to them to further develop their claims. (Atty Decl. ¶8.) This involved working with the Receiver to obtain and analyze relevant records in her possession. (*Id.*). Class Counsel also devoted significant time to communicate with and interview dozens of potential claimants and Plaintiffs to gather more information about the MJ Capital Scheme and Wells Fargo. (*Id.*) Similarly, Plaintiffs hired independent investigators to obtain further witness information and monitored parallel proceedings by the SEC and Department of Justice. (*Id.*)

The Parties selected Hunter R. Hughes, III to serve as their mediator and held their first mediation on May 12, 2022. [ECF No. 42]. The first mediation session ended in an impasse, but the Parties continued discussions over the months that followed. (Atty Decl. ¶¶9-10.) To accommodate the Parties' settlement discussions and Plaintiffs' investigation, the Parties also moved to stay the case. [ECF No. 51]. The Court granted the Parties' request and denied as moot Wells Fargo's Motion to Dismiss. [ECF No. 52].

As a result of the Parties' continued discussions, they negotiated an Agreed Confidentiality Order and Stipulated Protective Order that allowed Plaintiffs access to thousands of bank records. [ECF No 55-58]. With these records, Class Counsel, along with the Receiver, were able to reconstruct the flow of investor funds and estimate the extent of the Ponzi scheme. (Atty Decl. ¶¶10,12.) Such efforts were vital to Plaintiffs' ongoing settlement negotiations with Wells Fargo.

The Parties scheduled a second mediation session with Mr. Hughes for September 2, 2022, and before then, Plaintiffs made an informal presentation in support of their claims and damages, specifically including the results of their forensic reconstruction efforts. (*Id.* ¶¶11-12). The second mediation session was a success. (*Id.*) The Parties reached an agreement to resolve this matter for

$26.625 million and advised the Court accordingly. [ECF No. 59]. To finalize the settlement, however, the Parties and the Receiver had to continue their dialogue and negotiations in the months that followed. (*Id.* ¶ 13). Accordingly, the Court extended the stay through December 16, 2022, to allow the Parties to document and execute the Settlement Agreement. [ECF No. 62, 65].

Thus, after months of additional negotiation and due diligence, the Parties presented the Settlement Agreement to the Court for preliminary approval. [ECF No. 67]. On March 1, 2023, the Court entered the Preliminary Approval Order. [ECF No. 69]. In relevant part, the Preliminary Approval Order requires that Class Counsel move for attorneys' fees, reimbursement of expenses, and service awards within 45 days after Preliminary Approval. [*Id.* ¶ 19]. Class Counsel, who brought and prosecuted this case on a contingency basis, have not been compensated for their services or expenses incurred. (*See* Atty Decl. ¶15.) Class Counsel therefore respectfully move for a fee award in the amount of $6,625,000, which constitutes 24.88% of the Consideration under the Settlement Agreement.

II. ARGUMENT

A. Legal Standard for an Award of Attorneys' Fees in Common Fund Cases

The Supreme Court has long recognized that where counsel's efforts have created a "common fund" for the benefit of a class, counsel should be compensated from that fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Such compensation ensures those who benefit are not "unjustly enriched." *Id.* In the Eleventh Circuit, "attorneys' fees awarded from a common fund must be based upon a reasonable percentage of the fund established for the benefit of the class." *See Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Gevaerts v. TD Bank*, 2015 WL 6751061, at *10 (S.D. Fla. Nov. 5, 2015) ("[C]lass counsel is awarded a percentage of the fund generated through a class action settlement."). "There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee

because the amount of any fee must be determined upon the facts of each case." *Camden I*, 946 F.2d at 774; *see also, e.g.*, *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999) (discussing district courts' discretion to fix fee awards based on "individual circumstances of each case"). District courts have substantial discretion in determining the appropriate fee percentage awarded to counsel. *See, e.g.*, *Gevaerts*, 2015 WL 6751061, at *10.

Camden I directs district courts to consider 12 nonexclusive factors when evaluating the reasonable percentage to award class counsel: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *See* 946 F.2d at 772 n.3, 775 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). "Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action." *Id.* at 775. In addition, the Eleventh Circuit encourages district courts to consider any other factors unique to the particular case. *See id.* Most fundamentally, "monetary results achieved predominate over all other criteria." *See id.* at 774.

The lodestar approach to determining a reasonable fee award is inapplicable when calculating class plaintiff "attorneys' fees awarded from a common fund." *Id.* A lodestar cross-check is therefore unnecessary. In fact, "in the Eleventh Circuit, 'the lodestar approach should not be imposed through the back door via a 'cross-check.'" *Wilson v. EverBank*, 2016 WL 457011, at

*13 (S.D. Fla. Feb. 3, 2016) (quoting *In re Checking Account Overdraft Litig.,* 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011)). "The Eleventh Circuit made clear in *Camden I* that percentage of the fund is the *exclusive* method for awarding fees in common fund class actions." *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 (emphasis added). A lodestar approach "encourages inefficiency" and "creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation." *Id.* at 1362-63. Thus, "courts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all." *Id.* at 1363; *see, e.g.*, *In re Takata Airbag Prods. Liability Litig.*, 2017 WL 5706147, at *4-5 (S.D. Fla. Nov. 1, 2017); *Reyes v. AT&T Mobility Servs., LLC*, 2013 WL 12219252, at *6 (S.D. Fla. Jun. 21, 2013).

B. The Requested 24.88% Fee Award is Reasonable

Class Counsel's requested fee award is reasonable because it falls just below the 25% benchmark in this Circuit and is justified by the *Camden I* factors.

1. The fee request falls well within the range of reasonable awards in this Circuit

The Eleventh Circuit acknowledges that fee awards between 20-30% of the common fund are usually reasonable, with 25% being "generally recognized as a reasonable fee award in common fund cases." *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011); *see also Camden I*, 946 F.2d at 775 ("[D]istrict courts are beginning to view the median of this 20% to 30% range, i.e., 25%, as a 'bench mark' percentage fee award which may be adjusted in accordance with the individual circumstances of each case."). Indeed, District Courts view 25% as the "benchmark fee award," which is appropriate absent a justification for a greater award. *See, e.g.*, *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1337 (S.D. Fla. 2001).

Courts thus routinely apply *Camden I* to justify fee awards *in excess* of 25%. *See, e.g.*, *Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *5-6 (S.D. Fla. Sept. 26, 2012) ("The average percentage award in the Eleventh Circuit mirrors that of awards nationwide—roughly one-third"); *see also Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295-98 (11th Cir. 1999) (affirming class action fee award of 33.33% of the total available settlement fund); *Belin v. Health Ins. Innovations, Inc.*, No. 19-61430-cv-SINGHAL/VALLE (S.D. Fla. April 15, 2022) (adopting report and recommendation of 33.33% award on $27.5 million class settlement); *Hanley v. Tampa Bay Sports & Ent. LLC*, 2020 WL 2517766, at *6 (M.D. Fla. Apr. 23, 2020) (awarding a "slight increase from the one-third benchmark"); *Pritchard v. APYX Med. Corp.*, 2020 WL 6937821, at *1 (M.D. Fla. Nov. 18, 2020) (33 1/3%); *George v. Acad. Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (discussing the normality of 33% contingency fees); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (35%); *Swift v. BancorpSouth Bank*, 2016 WL 11529613, at *19 (N.D. Fla. July 15, 2016) (35%); *Reyes*, 2013 WL 12219252, at *3 (awarding "one-third of the total maximum settlement fund"). Awards over 25% of the common fund are also consistent with the nationwide average for class action settlements. *See In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366-67 & nn. 36, 38 (S.D. Fla. 2011) (discussing nationwide averages of approximately one-third of common fund); *see also* Eisenberg, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937, 951 (2017) (showing the median award in Eleventh Circuit is 33%).

Class Counsel's request of $6,625,000 in this action equates to 24.88% of the $26.625 million Settlement Consideration. It is well within the presumptive range of reasonableness (20-30%), below the "benchmark" that guides courts in this Circuit (25%), and below the nationwide average of fee awards in class action settlements (33%). As such, the requested fee award carries with it a preliminary indicator of reasonableness.

2. Class Counsel achieved an excellent result for the Settlement Class despite the complexity of the case and obstacles to recovery

Turning to the *Camden I* factors, the Court should first consider the results obtained by Class Counsel in light of the complexity of the case and the considerable obstacles to recovery. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining "the novelty and difficulty of the questions involved" and "the amount involved and the results obtained," and "any non-monetary benefits conferred upon the class"). This is the primary factor for consideration because "monetary results achieved predominate over all other criteria." *See id.* at 774.

The Settlement in this case constitutes a significant recovery for the Settlement Class that was far from guaranteed. Wells Fargo must pay $26.625 million for the benefit of the Settlement Class, of which $250,000 was funded for administrative expenses following entry of the Preliminary Approval Order. (*See* Settlement Agreement § 4.1). The remainder of the Consideration must be paid within 20 days of the Final Order and Judgment. (*Id.*). The Consideration will result in distributions to the Settlement Class, which is comprised of the aggrieved investors of the MJ Capital Scheme. (*Id.* § 1.37).

Plaintiffs' estimates of victims' damages relating to the Ponzi scheme was approximately $116 million, overall, and $86 million, during the Wells Fargo banking period, specifically. (Atty Decl. ¶12.) Thus, the settlement represents the recovery of 23% or 31% of victims' total estimated losses depending on the total used. (*See id.*). That represents an excellent result given the difficulty of proving Well Fargo's liability in a case of this kind.

The timing of the Settlement is also noteworthy given the relative speed with which the Settlement Class will enjoy its recovery. As the Court is aware, even plaintiffs in successful, complex class actions often have to wait several years and be subjected to multiple appeals before they see a recovery. Here, assuming the Settlement is approved and no administrative matters

arise, Settlement Class Members should receive distributions before the end of the year—roughly two years since the initial filing of this case.

This prompt monetary relief is significant for the Settlement Class and particularly remarkable given the obstacles to recovery in this complex case. To succeed on their claims, Plaintiffs would have to show, among other things, that Wells Fargo knowingly assisted the MJ Capital Co-Conspirators' wrongdoing or that Wells Fargo owed Plaintiffs, as noncustomers, a duty of care. *See, e.g.*, *Cabot E. Broward 2 LLC v. Cabot*, 2016 WL 8740484, at *4 (S.D. Fla. Dec. 2, 2016) (aiding and abetting standard); *Chang v. JPMorgan Chase Bank, N.A.*, 845 F.3d 1087, 1092 (11th Cir. 2017) (negligence standard). These are fact-intensive inquiries that require a strong evidentiary showing, usually through inference and circumstantial evidence due to the complex nature of a years-long investment scheme. Because Plaintiffs were relying on Class Counsel's investigation when they filed the Amended Complaint, they faced a long evidentiary road before liability could be established. And, even then, a full forensic accounting would have been necessary to support a class-wide damages model.

Indeed, Wells Fargo raised colorable arguments in its bid to dismiss this case and successfully stayed discovery pending the Court's ruling on the Motion to Dismiss. [*See* ECF No. 46]. Given the stay, Plaintiffs were unable to engage in discovery to gather further support for their claims. Class Counsel thus had to rely on their own investigative efforts and cooperation from the Receiver to build the case against Wells Fargo. As a result of the pending Motion to Dismiss and the stay of discovery, the Court may have dismissed some or all of Plaintiffs' claims, likely leaving Plaintiffs unable to immediately plead more specific occurrences or conduct by Wells Fargo.

The Rule 23 aspects of this case added more difficulties for Class Counsel. In addition to the burden of proof on the substantive claims, Plaintiffs faced a challenging class certification

stage given the unknown scope of the MJ Capital Scheme. Plaintiffs and Class Counsel thus had the task of developing sufficient evidence to meet the requirements of Rule 23(a). Moreover, even a successful certification motion may have been subject to discretionary, interlocutory appellate review under Rule 23(f). The Settlement is therefore remarkable in light of the obstacles facing Plaintiffs and the many unknown turns that the case could have taken.

Mr. Prieto agrees that Class Counsel faced sizeable hurdles in this case. Based on his extensive experience in complex class actions, Mr. Prieto acknowledges the difficult legal and factual issues that faced Class Counsel. (Expert Decl. ¶¶18-19, 31-32.) Mr. Prieto also acknowledges the very real possibility that Plaintiffs and the Settlement Class would walk away from this case with nothing. (*Id.* ¶30.) As a result, the Settlement is excellent under the circumstances of the case. (*Id.* ¶20.) These *Camden I* factors thus weigh in favor of Class Counsel's requested fee award.

3. The action posed considerable risk to Class Counsel

Relatedly, the Court should place great weight on the risk assumed by Class Counsel in bringing this case on a contingency fee basis. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining "whether the fee is fixed or contingent," "the 'undesirability' of the case," and "the economics involved in prosecuting a class action"). "Where class counsel undertakes such risks on a pure contingency fee basis, as it did here, it 'often justifies an increase in the award of attorney's fees. . . .' In fact, this Court has recognized that the undertaking of such risk alone 'can support a fee award of over 30% of the settlement fund.'" *Cabot East Broward 2 LLC v. Cabot*, 2018 WL 5905415, at *4 (S.D. Fla. Nov. 9, 2018).

Class Counsel brought this case less than two weeks after the filing of the SEC Action. [*See* ECF No. 1]. They brought this complex class action on a pure contingency fee basis, willing to devote the time and resources necessary for a class-wide recovery. (*See* Atty Decl. ¶ 15). A

case like this could have involved tens of thousands of hours in attorney time, hundreds of thousands of dollars in out-of-pocket expenses, many years of litigation, and appellate review on various issues.

Wells Fargo, as one the nation's largest financial institutions, is well-funded for the defense of this case and hired sophisticated and experienced counsel from a large international law firm for this case. [*See* ECF Nos. 11-14]. Class Counsel, on the other hand, includes local boutique law firms that have a combined headcount of about 35 attorneys. (Expert Decl. ¶¶30, 36.) For these smaller firms, there is a considerable economic impact of bringing such a contingency case. These risks likely explain why, despite the approximately 5,500 investors believed to be involved in the MJ Capital Scheme, this action was the only investor class action against Wells Fargo. In other words, while Class Counsel is honored to represent Plaintiffs and appear before the Court, this action was risky from an economic standpoint. Indeed, for one Class Counsel firm, Maderal Byrne & Furst PLLC, this risk came at a particularly precarious stage—as the firm was founded.

The risks facing Class Counsel were further compounded by the Court's stay of discovery. While a stay of discovery is within the Court's discretion, such a stay often indicates the Court took a "preliminary peek" at the issues raised in a dispositive motion and found matters that may justify dismissal of the entire case. *Cf. Cuhaci v. Kouri Grp., LP*, 540 F. Supp. 3d 1184, 1186 (S.D. Fla. 2021). Class Counsel thus faced a real risk that this case may not survive the pleading stage and appellate review would be Plaintiffs' only recourse.

Mr. Prieto agrees that this case presented significant risks for Class Counsel and could have generated a large economic loss to Class Counsel. (Expert Decl. ¶¶30, 32.) Drawing from his many years of experience, Mr. Prieto understands the significant commitment needed to prosecute a class action case like this against a large corporate defendant. (*Id.* ¶35.) Considering the economics and the above obstacles facing Class Counsel, Mr. Prieto opines that Class Counsel

undertook a serious risk in bringing this case. (*Id.* ¶36.) As a result, the *Camden I* factors pertaining to the risks assumed by Class Counsel thus support the requested fee award. *See Cabot E. Broward 2 LLC*, 2018 WL 5905415, at *4 (finding substantial risk by class counsel because of "novel and difficult issues and . . . several affirmative defenses that could have reduced the value of the case to zero").

4. The Settlement required a significant amount of time and labor

Next, the Court should consider the time and labor devoted by Class Counsel to prosecute this case and reach a settlement. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining "the time required to reach a settlement" and "the time and labor required").

This case was complex and required Class Counsel's immediate and sometimes exclusive attention during various points. In addition to the substantial briefing apparent from the docket, Class Counsel expended significant effort and time investigating Wells Fargo's involvement in the MJ Capital Scheme. (Atty Decl. ¶ 8.) As indicated above, this involved working with, and interviewing, various witnesses and potential claimants, private investigators, and the Receiver. (*Id.*) Class Counsel also obtained and reviewed thousands of bank account records and the Receiver's records to further develop Plaintiffs' allegations and support their damages claim. (*Id.* ¶¶ 10-12.) These efforts paid off during the Parties' months-long mediation discussions, which resulted in the Settlement. (*Id.*) But, even after the Parties reached a settlement in principle, Class Counsel continued for several months to put together a settlement agreement acceptable to all Parties and the Receiver. (*Id.* ¶ 13.) The effort involved in reaching the Settlement thus supports Class Counsel's requested fee award. It is therefore apparent from the record that significant time and effort were required of Class Counsel to obtain the Settlement. (Expert Decl. ¶36.) These

factors weigh in favor of Class Counsel's requested fee award.[4]

5. This case required Class Counsel's high level of skill and a meaningful relationship with the Plaintiffs

Next, the Court should consider Class Counsel's capabilities, reputation, and handling of the action for the Plaintiffs. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining "the skill requisite to perform the legal service properly," "the experience, reputation, and ability of the attorneys," and "the nature and length of the professional relationship with the client").

Class Counsel has significant experience with class action and complex litigation and are well-respected litigators. (*See* Atty Decl. ¶¶18-19; Expert Decl. ¶36.) Class Counsel has served as lead counsel and in leadership positions for similar class or mass claims, as well as receiver or counsel to receivers bringing similar claims. (*See* Atty Decl. ¶¶18-19.) Class Counsel drew on this experience and skill to launch and maintain a fruitful investigative process, address the pleading and stay issues presented in this case, coordinate efforts with the Receiver, create a conceptually sound putative class and damages model, and structure a favorable settlement. Without this persistence and strategy, Plaintiffs' claims may have been dismissed at the outset or still be subject of active litigation.

---

[4] While the Settlement may be considered early because it was reached while the pleadings were open, discovery was stayed, and class certification motions had not been filed, the stage of the proceedings is not controlling when considering the appropriate fee award. *See, e.g.*, *Janicijevic v. Classica Cruise Operator, Ltd.*, 2021 WL 2012366, at *4-*10 (S.D. Fla. May 20, 2021) (granting fee award of approximately 30% of common fund for settlement researched while a motion to compel arbitration was pending and early discovery was ongoing); *Boyd v. Task Mgmt. Staffing Inc.*, 2021 WL 2474433, at *2 (M.D. Fla. Apr. 30, 2021) (awarding one-third of settlement fund as attorneys' fees prior to class certification motion); *Williams v. Reckitt Benckiser LLC*, 2021 WL 8129371, at *18, *38, *44 (S.D. Fla. Dec. 15, 2021) (approving attorneys' fee award of 36% of monetary relief for settlement reached while motion to dismiss was pending and prior to certification proceedings); *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d at 1361-68 (awarding 30% of settlement fund for settlement reached prior to class certification motions and prior to Rule 30(b)(6) depositions).

Class Counsel's opposition in this case must also be considered. *See Williams*, 2021 WL 8129371, at *41 (referencing opposing counsel's capabilities). Wells Fargo hired a large international law firm for the defense of this case. McGuireWoods LLP boasts over 1,000 attorneys in offices around the world and has the resources to provide a strong defense. Class Counsel's skill was therefore necessary to counter a sophisticated defense team. *See Gevaerts*, 2015 WL 6751061, at *12.

Finally, while Class Counsel had not met Plaintiffs before this case arose, they developed a collaborative and productive working relationship for purposes of this case. None of the Plaintiffs had ever participated in a class action lawsuit before. Class Counsel thus worked with Plaintiffs to advance their investigation, pleadings, informal document exchange, and settlement discussions. Based on this collaboration and Class Counsel's skill and reputation in the community, Plaintiffs were able to reach a sizable settlement with Wells Fargo under the circumstances.

As a result, these factors weigh in favor of Class Counsel's requested fee award.

6. Preclusion from other employment and time limits imposed justify the requested fee

Class Counsel's requested fee award is also supported by the *Camden I* factors bearing on Class Counsel's preclusion from other employment as a result of this case and the time limits imposed by the circumstances. *See Camden I*, 946 F.2d at 772 n.3 (examining "the preclusion of other employment by the attorney due to acceptance of the case" and "time limitations imposed by the client or the circumstances").

This action required Class Counsel's immediate and sometimes exclusive attention at various points. (Atty Decl. ¶16.) Given the relative size of Class Counsel's law firms, prosecuting this case took away from their ability to pursue matters with guaranteed compensation from hourly-rate clients, as well as other contingency fee cases. Nonetheless, Class Counsel efficiently

moved this case forward as best they could under the circumstances and positioned it for a favorable settlement. Mr. Prieto, who understands the opportunity costs of pursuing contingency matters and boutique firm management, opines that Class Counsel likely sacrificed other profit-generating matters for a case that, as discussed above, posed a considerable risk to Class Counsel. (Expert Decl. ¶36.) These factors further justify Class Counsel's request for a 24.88% fee award. *See Gevaerts*, 2015 WL 6751061, at *13 ("It is uncontroverted that the attorney time spent on the Action was time that could not be spent on other matters. Consequently, this factor supports the requested fee.").

7. The requested fee award is below customary fees and awards in similar class action cases

Finally, the factors pertaining to fee awards in other class action cases weigh in favor of Class Counsel's requested fee of 24.88% of the Settlement Consideration. *See Camden I*, 946 F.2d at 772 n.3, 775 (examining "the customary fee" and "awards in similar cases"). As discussed, the Eleventh Circuit has found that a 25% fee award from a common fund is the "benchmark" as it falls within the 20-30% range of reasonable awards. *See supra* Part III(B)(1). In fact, fee awards exceeding that range have become quite common. As noted by Judge Scola, a "one-third recovery . . . is a customary fee" for class actions. *Diakos v. HSS Sys., LLC*, 2016 WL 3702698, at *6 (S.D. Fla. Feb. 4, 2016). Courts in this Circuit thus routinely grant fee awards of one-third or more of the class settlement fund. *See, e.g.*, *Belin*, No. 19-61430-cv-SINGHAL/VALLE, at *2 (33.33%); *Swift*, 2016 WL 11529613, at *19 (35%); *Cabot East Broward 2 LLC*, 2018 WL 5905415, at *11 (33.33%); *Dear v. Q Club Hotel, LLC*, 2018 WL 1830793, at *5 (S.D. Fla. Mar. 14, 2018), report and recommendation adopted, No. 15-60474-CIV, 2018 WL 1813565 (S.D. Fla. Apr. 5, 2018) (33.3%); *Fernandez*, 2017 WL 7798110, at *4 (35%); *Wolff*, 2012 WL 5290155, at *7 (33%); *Hanley*, 2020 WL 2517766, at *6 ("slight increase from the one-third benchmark"); *Pritchard*,

2020 WL 6937821, at *1 (33 1/3%); *Reyes*, 2013 WL 12219252, at *3 ("one-third of the total maximum settlement fund"); *Atkinson v. Wal-Mart Stores, Inc.*, 2011 WL 6846747, at *7 (M.D. Fla. Dec. 29, 2011) (33 1/3%); *see also Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1295-98 (11th Cir. 1999) (33 1/3 %); *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1252 (S.D. Fla. 2016) (awarding 33%); *In re Terazosin Hydrochloride Antitrust Litig*., 2005 WL 8181045, *4-5 (S.D. Fla. April 19, 2005) (33 1/3 %); *Gutter v. E.I. Dupont De Nemours & Co.,* 1:95-cv-02152 (S.D. Fla. May 30, 2003) [D.E. 626] (33 1/3 %).

Because Class Counsel seeks an award of less than 25% of the common fund, these factors weigh in favor of the requested fee award. Moreover, Mr. Prieto agrees that a 24.88% fee arrangement with a plaintiff is below the customary rate in complex contingency litigation, including class actions. (Expert Decl. ¶28.) Plaintiffs' arrangement with Class Counsel here was no different. Class Counsel took this case on a contingency fee arrangement and seek compensation below the above-cited awards in class action cases. As a result, these factors weigh in favor of awarding Class Counsel the requested 24.88% fee.

C. The Court Should Reserve Jurisdiction on the Issue of Service Awards

Mindful that service awards to class representatives are **not** permitted in this Circuit following *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020), *en banc hr'g denied,* 43 F.4th 1138 (2002), the Settlement Agreement permits Plaintiffs to seek a Service Award of $3,000 each (*See* SA § 5.7). Plaintiffs therefore ask that the Court reserve jurisdiction to grant the Service Awards **in the event that** the Supreme Court grants review of *Johnson* before final approval of the Settlement. *See Fruitstone v. Spartan Race, Inc.*, No. 20-CV-20836, 2021 WL 2012362, at *13 (S.D. Fla. May 20, 2021) (reserving jurisdiction pending review of *Johnson*).

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court (i) award Class Counsel attorneys' fees in the amount of $6,625,000, which constitutes 24.88% of the Settlement Consideration; and (ii) reserve jurisdiction to award each individual Plaintiff a Service Award in the amount of $3,000 in the event the Supreme Court revisits *Johnson v. NPAS Solutions, LLC* before final approval of the Settlement.

Local Rule 7.1(a)(3) Certification: Undersigned counsel conferred with counsel for Wells Fargo, who, pursuant to Section 5.1 of the Settlement Agreement, does not oppose the relief requested herein.

Dated: April 10, 2023.

Respectfully submitted,

LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
100 SE 2nd Street, 36th Floor
Miami, FL 33131
Telephone: 305-403-8788
Facsimile: 305-403-8789
By: */s/ Jason Kellogg*
Jeffrey C. Schneider, P.A.
Florida Bar No. 933244
Email: jcs@lklsg.com
Jason K. Kellogg, P.A.
Florida Bar No. 0578401
Email: jk@lklsg.com
Marcelo Diaz-Cortes
Fla. Bar No. 118166
Email: md@lklsg.com

COLSON HICKS EIDSON
255 Alhambra Circle Suite, Penthouse
Coral Gables, Florida 33134
Telephone: (305) 476-7400
By: /s/ Curtis B. Miner
Curtis B. Miner, Esq.
Fla. Bar No. 885681
Email: curt@colson.com

MADERAL BYRNE & FURST PLLC
2800 Ponce de Leon, Ste. #1100
Telephone: (305) 520-5690
By: /s/ Francisco R. Maderal
Francisco R. Maderal
Fla. Bar. No. 305596
Email: frank@maderalbyrne.com

Class Counsel for Plaintiffs

EXPERT DECLARATION OF PETER PRIETO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Bautista, et al. v. Wells Fargo, N.A., No. 0:21-cv-61749 (S.D. Fla.)

DECLARATION OF PETER PRIETO

I. My Background and Qualifications

1. My name is Peter Prieto.

2. I am over 18 years of age and legally competent to make this Declaration. This Declaration is based on my personal knowledge, my experience in complex litigation, including class actions, and my review of certain court filings in this case provided to me by class counsel.

3. I submit this Declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees and Service Awards.

4. I am a partner at Podhurst Orseck, P.A. I graduated from St. Thomas University in 1982 and the University of Miami School of Law in 1985. I have previously served as a federal prosecutor, first with the United States Attorney's Office for the Southern District of Florida, and later with the Office of Independent Counsel in Washington, D.C. where I served on a team that was tasked with investigating Ronald H. Brown, the then United States Secretary of Commerce. For over a decade, I was also a partner and trial lawyer with the firm of Holland & Knight LLP, where I served as Executive Partner of the firm's Miami office, and as the Chair of the firm's 400-lawyer litigation section. My C.V. is attached as **Appendix 1**.

5. I have been practicing law in South Florida for 38 years and, during this time, have participated in various complex and high stakes matters and tried dozens of cases, including class actions. For example, I currently serve as Plaintiffs' Chair Lead Counsel overseeing both class actions and personal injury actions in *In re: Takata Airbags Product Liability Litigation*, MDL

No. 2599, which is pending in this District. I also serve as the only Florida lawyer on the Plaintiffs' Executive Committee in *In re: General Motors LLC Ignition Switch Litigation*, MDL No. 2543. Through my firm, I currently serve on the Plaintiffs' Executive Committee in *In re: Checking Account Overdraft Litigation*, MDL No. 2036. And I am the Chair of the Experts Committee in *In re: Blue Cross Blue Shield Antitrust Litigation*, MDL No. 2406.

6. As a result of my experience with complex and multi-party litigation, I am familiar with the standards and practices for the recovery of attorneys' fees and costs and can opine on a reasonable award of fees to a plaintiff's attorney in a class action.

7. I have been asked by Class Counsel to opine on whether the attorneys' fees and class representative payments they have requested are reasonable in light of my experience and knowledge of fee awards. To formulate my opinion, I reviewed a number of documents provided to me by Class Counsel. I have attached a list of these documents in **Appendix 2**. As I explain, based on my experience litigating complex class action matters, the significant risk taken by Class Counsel in this case, as well as the applicable Eleventh Circuit law, I believe the fees and payments requested here are reasonable.

II. Case Background

8. On August 9, 2021, according to the pleadings I have reviewed, the U.S. Securities and Exchange Commission (SEC) filed an enforcement action against MJ Capital Funding, LLC and MJ Taxes and More Inc. (the "MJ Capital Co-Conspirators"). *See SEC v. MJ Capital Funding, LLC*, No. 21-cv-61644-SINGHAL/VALLE (S.D. Fla.). The SEC alleged in that case that Johanna M. Garcia ran a Ponzi scheme through her companies, the MJ Capital Co-Conspirators, whereby investors were misled into thinking they were funding loans to small businesses. In that SEC

Action, the Court appointed attorney Corali Lopez-Castro as the receiver for the corporate defendants (the "Receiver").

9. On August 20, 2021, Plaintiffs filed this action alleging Wells Fargo's involvement in the MJ Capital Scheme. Specifically, Plaintiffs alleged that Wells Fargo aided and abetted the MJ Capital Co-Conspirators' fraud and breaches of fiduciary duty by knowingly facilitating the MJ Capital Co-Conspirators' fundraising from investors and failing to stop or impede their wrongful movement of investor funds.

10. On November 1, 2021, Wells Fargo moved to dismiss the Complaint, and Plaintiffs filed an Amended Complaint on December 13, 2021. In response, on January 7, 2022, Wells Fargo filed its second Motion to Dismiss, along with a request that the Court stay discovery pending resolution of the Motion to Dismiss. The Parties fully briefed both motions. On February 21, 2022, the Court granted Wells Fargo's request to stay discovery pending a ruling on the Motion to Dismiss.

11. Normally, a stay of discovery pending a ruling on a motion to dismiss would cause plaintiffs' counsel to halt the investigation of their claims and to pursue relief for their clients. But not Class Counsel in this case. Instead of sitting on their hands or waiting for the stay to be lifted, Class Counsel continued their investigation using whatever means available to them, including: i) working with the Receiver to obtain and analyze relevant records in her possession; ii) communicating with and interviewing dozens of potential claimants and witnesses; iii) working with independent investigators to obtain further witness information; and iv) monitoring parallel proceedings by the SEC and United States Department of Justice.

12. In my opinion, Class Counsel's particular investigatory experience as (i) former federal prosecutors, (ii) lead class counsel, (iii) federal equity receivers and (iv) counsel for federal

equity receivers in similar receiverships was critical to their ability to continue investigating their claims against Wells Fargo despite the stay of discovery in place.

13. On May 12, 2022, the parties mediated to an impasse, but Class Counsel persisted and continued discussions with Wells Fargo over the months that followed. To further ongoing settlement discussions, Class Counsel agreed to stay the entirety of the case. The Court granted the Parties' request and denied as moot Wells Fargo's Motion to Dismiss.

14. In furtherance of their ongoing investigation of their claims, Class Counsel and Wells Fargo negotiated an Agreed Confidentiality Order and Stipulated Protective Order to obtain certain bank records from Wells Fargo. Thereafter, Class Counsel worked with the Receiver to reconstruct the flow of investor funds through Wells Fargo and estimate the extent of, and damages caused by, the Ponzi scheme.

15. A follow-up mediation session scheduled for September 2, 2022, more than a year after filing the action, was preceded by Class Counsel's presentation of their fraud loss reconstruction and damages estimate to Wells Fargo. During that second mediation, the Parties reached an agreement to resolve this matter for $26.625 million in funds to be distributed to victims through the receivership.

16. Over the next couple of months and through December 16, 2022, Class Counsel worked to document and execute the Settlement Agreement. In the Settlement Agreement, Wells Fargo agreed that it would not oppose a motion for attorney's fees of up to 25% of the settlement amount. Importantly, the Settlement Agreement contains no "blow-up" provision that would allow Plaintiffs to rescind the agreement if Class Counsel is not awarded a particular fee.

17. The settlement reflects an arms-length agreement that takes into account the realities of the case. After reviewing the relevant case filings, and based on my experience

representing plaintiffs in complex litigation, I believe Plaintiffs faced considerable challenges and risks in this case.

18. Substantively, aiding and abetting fraud cases against a bank involve the exceedingly difficult burden of showing actual knowledge of the fraud on the part of the bank. In the Eleventh Circuit, "red flags aren't enough" to prove a bank's liability. Practically speaking, it can be difficult to support these cases prior to discovery. Considerable investigation is required in advance of an initial filing. When the usual motion to dismiss is defeated, the challenge then shifts to amassing additional evidence of knowledge to not only survive summary judgment but to prevail at trial. In the absence of a settlement, the best-case scenario is years of protracted litigation with an uncertain outcome.

19. Indeed, because of this difficulty, aiding and abetting cases against banks often settle for cents on the dollar in terms of total investor loss amount, if they are even brought or survive motions to dismiss.

20. In this case, Class Counsel achieved an uncommonly favorable result in an uncommonly short amount of time, all to the benefit of the class members. Plaintiffs' estimates of victims' damages relating to the Ponzi scheme was approximately $116 million, overall, and $86 million, during the Wells Fargo banking period, specifically. Thus, the settlement represents the recovery of 23% or 31% of victims' total estimated losses depending on the total used. That represents an excellent result given the difficulty of proving Well Fargo's liability in a case of this kind.

21. Of note, Corali Lopez-Castro, as court-appointed Receiver in the SEC enforcement action, supports the Settlement. As Ms. Lopez-Castro remained involved in the settlement

discussions and is familiar with the scheme at issue in this case, her support for the Settlement also indicates to me that the Settlement is a favorable and reasonable one.

22. Class Counsel is now moving for an award of fees equal to a little less than one quarter (24.88%) of the settlement fund, or $6,625,000, and reimbursement of litigation expenses. Based on my experience with complex, contingency-fee litigation and my understanding of such fees in the class action context, it is my opinion that the fee request is reasonable.

23. Class Counsel is also moving for the Court to grant service awards to each of the five individual class representatives of $3,000 each. It is my opinion that this request, too, is reasonable with one caveat, the Eleventh Circuit in *Johnson v. NPAS Solutions, LLC,* 975 F.3d 1244 (11th Cir. 2020) has held that such service awards are not appropriate and, therefore, cannot be awarded.

III. Reasonableness of the Requested Fee Award

24. The "customary fee" in class action lawsuits is the "ordinary and customary market rates [charged to] fee-paying clients . . . in the relevant community." *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992) (citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984)); *see also Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547 (S.D. Fla. 1988), aff'd, 899 F.2d 21 (11th Cir. 1990). In a class action such as this one, the customary fee is a contingency fee based on a percentage of the total recovery ("common fund"), because virtually no individual possesses a sufficiently large stake in the litigation to justify paying his attorneys on either an hourly or contingency basis. *See Ressler*, 149 F.R.D. at 654; *see also Norman*, 836 F.2d at 1299.

25. As a result, in class action cases, the Eleventh Circuit requires application of the percentage of the fund method when determining an award of attorney's fees. *See Camden I*

Condo. Ass'n, Inc. v. Dunkle, 946 F.2d 768, 774 (11th Cir. 1991) ("Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund ...."). Accordingly, I will assess the reasonableness of the fee request here using the percentage method and my experience with class action fee awards.

26. Under the percentage method, courts must 1) calculate the value of the benefits created by class counsel and then 2) select a percentage of that value to award to class counsel as a fee. When calculating the value of the benefits, such calculation should include any cash compensation to class members, cash the defendant must pay to third parties, non-cash benefits that can be reliably valued, attorneys' fees and expenses, and administrative costs paid by the defendant. *See, e.g.*, *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F.Supp.2d 1040, 1080 (S.D. Tex. 2012) (including these items in the denominator of the percentage method). Although "[t]he factors which will impact upon the appropriate percentage . . . in any particular case will undoubtedly vary," the Eleventh Circuit has identified 16 factors that may be "appropriate[]" or "pertinent" to consider. *Camden I*, 946 F.2d at 775. These factors include "[1] the time required to reach a settlement, [2] whether there are any substantial objections . . ., [3] any non-monetary benefits conferred upon the class . . ., and [4] the economics involved in prosecuting a class action," *id.*, as well as the 12 factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974): "[5] the time and labor required; [6] the novelty and difficulty of the questions involved; [7] the skill requisite to perform the legal service properly; [8] the preclusion of other employment by the attorney due to acceptance of the case; [9] the customary fee; [10] whether the fee is fixed or contingent; [11] time limitations imposed by the client or the circumstances; [12] the amount involved and the results obtained; [13] the experience, reputation, and ability of the attorneys; [14] the 'undesirability' of the case; [15] the

nature and length of the professional relationship with the client; [and] [16] awards in similar cases." *Camden I*, 946 F.2d at 772 n.3. In this Declaration, I will follow and discuss the Eleventh Circuit's approach as it applies to Class Counsel.

27. The first step under the percentage method is to calculate the value of the benefits created by Class Counsel. The benefits here are payment by Wells Fargo of $26,625,000 in cash to the receivership. The second step of the percentage of the fund method is to identify the percentage that should be applied to that amount or common fund. Class Counsel is seeking fees of 24.88% of the common fund, or $6,625,000.

28. First, I consider the factors discussing fee awards in other cases: "[9] the customary fee" and "[16] awards in similar cases." To being with, even "one-third recovery . . . is a customary fee" for class actions. *Diakos v. HSS Sys., LLC*, No. 14-61784, 2016 WL 3702698, at *6 (S.D. Fla. Feb. 4, 2016); *see also, e.g.*, *Belin v. Health Ins. Innovations, Inc.*, No. 19-61430-cv-SINGHAL/VALLE (S.D. Fla. April 15, 2022) (33.33%); *Swift v. BancorpSouth Bank*, No. 1:10-CV-00090-GRJ, 2016 WL 11529613, at *19 (N.D. Fla. July 15, 2016) (35%); *Owens v. Met. Life Ins. Co.*, No. 2:14-cv-00074 (N.D. Ga. Nov. 19, 2019) (33.33%); *Cabot E. Broward 2 LLC v. Cabot*, No. 16-61218-CIV, 2018 WL 5905415, at *11 (S.D. Fla. Nov. 9, 2018) (33.33%); *Dear v. Q Club Hotel, LLC*, No. 15-60474-CIV, 2018 WL 1830793, at *5 (S.D. Fla. Mar. 14, 2018) (33.3%); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (35%); *In re Clarus Corp. Sec. Litig.*, No. 1:00-cv-02841 (N.D. Ga. Jan. 6, 2005), D.E. 148 (33.33%); *In re Profit Recovery Group Int'l, Inc.* Sec. Litig., No. 1:00-CV-1416-CC (N.D. Ga. May 26, 2005), D.E. 203 (33.33%); *In re Theragenics Corp., Sec. Litig.*, No. 1:99-CV-0141-TWT (N.D. Ga. Sept. 29, 2004), D.E. 143 (33.33%); *In re Harbinger Corp. Sec. Litig.*, No. 1:99-CV-2353-MHS (N.D. Ga. Oct. 18, 2001), D.E. 38 (33.33%); *In re The Maxim Group, Inc.*

Sec. Litig., No. 1:99-CV- 1280-CAP (N.D. Ga. July 20, 2004), D.E. 143 (33.33%); *In re Medirisk, Inc. Sec. Litig*., No. 1:98-CV-1922-CAP (N.D. Ga. Mar. 22, 2004), D.E. 181 (33.33%). *See also Howes v. Atkins*, 668 F. Supp. 1021, 1026-27 (E.D. Ky. 1987) (40%); *In re Terazosin Hydrochloride Antitrust Litig*., 1:99-MD-01317-PAS, 2005 WL 8181045, *4-5 (S.D. Fla. April 19, 2005) (33 1/3 %); *Gutter v. E.I. Dupont De Nemours & Co.,* 1:95-cv-02152 (S.D. Fla. May 30, 2003), D.E. 626 (33 1/3 % of settlement of $77.5 million); *Waters v. Int'l Precious Metals Corp*., 190 F.3d 1291, 1295-98 (11th Cir. 1999) (33 1/3 % of settlement of $40 million); *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1252 (S.D. Fla. 2016) (awarding 33%); *Grier v. Chase Manhattan Auto. Fin. Co*., No. 99-180, 2000 WL 175126, at *7-8 (E.D. Pa. Feb. 16, 2000) (33.33% of the net settlement fund); *Ratner v. Bennett*, No. 92-4701, 1996 WL 243645, *8-9 (E.D. Pa. May 8, 1996) (35%); *In re Crazy Eddie Sec. Litig*., 824 F. Supp. 320 (E.D.N.Y. 1993) (33.8% of settlement fund); *Zinman v. Avemco Corp*., No. 75-1254, 1978 WL 5686, *2 (E.D. Pa. Jan. 18, 1978) (50%); *Aamco Automatic Transmissions, Inc. v. Tayloe*, 82 F.R.D. 405, 418-20 (E.D. Pa. 1979) (43.87%); *In re Ampicillin Antitrust Litig*., 526 F. Supp. 494, 499-500 (D.D.C. 1981) (45%). Moreover, and based on my experience representing plaintiffs, a one-third contingency fee is a rather reasonable, and common place arrangement at the outset of a case. Here, class counsel is seeking a percentage less than that: 24.88%

29. Next, I consider the factors that go to the results obtained by class counsel in light of the risks class counsel faced: "[4] the economics involved in prosecuting a class action," "[6] the novelty and difficulty of the questions involved," "[10] whether the fee is fixed or contingent," "[12] the amount involved and the results obtained," and "[14] the 'undesirability' of the case." As discussed above, I consider the Settlement and the resulting recovery to be incredibly favorable for the class under the circumstances.

30. Class Counsel represent Plaintiffs on a pure contingency fee arrangement, with all of the risks and expenses borne entirely by counsel. These firms have devoted substantial time, effort, and capital to the class members' cause, all with no guarantee of repayment or recovery. The risks Class Counsel have undertaken to prosecute this case against a well-funded defendant such as Wells Fargo are quite significant.

31. The legal and practical challenges facing Class Counsel also weigh in favor of their requested fee award. First, Plaintiffs "survived" multiple motions to dismiss; their operative pleading was never dismissed. Second, notwithstanding the potentially devastating hurdle of a discovery stay, which precluded any formal discovery from Wells Fargo, pending the motions to dismiss, Class Counsel were able to adequately investigate their claims and gather the facts necessary to support their claims and further a favorable settlement, which included the development and assessment of damages estimates and models for a complex, multi-layer Ponzi scheme. Class Counsel's achievements are all the more impressive when considering the large, sophisticated law firm against which they litigated.

32. Personally, I am not sure I would have taken this case on a contingency fee basis given these risks and the difficult showing required in bank aiding and abetting cases.

33. The next factor, "[3] any non-monetary benefits conferred upon the class," is not relevant here because this is a cash settlement.

34. The following factors relate to the time it took to litigate and resolve these lawsuits: "[1] the time required to reach a settlement" and "[5] the time and labor required." Class Counsel has actively litigated this case for nearly two years, notwithstanding the unavailability of formal discovery. While other counsel may have been dissuaded from pursuing discovery, Class Counsel

was not, and instead obtained the necessary facts to support their claims and assess the potential for settlement by obtaining discovery through alternative means.

35. During this time, they spent substantial attorney and paralegal time and bore the costs of litigation and investigation. This is a complex case with a well-funded defendant and sophisticated counsel that required significant time, effort, creativity and expenditure. These factors support Class Counsel's requested fee award.

36. Finally, I consider the remaining *Camden I* factors. One of these factors is inapplicable at this time—"[2] whether there are any substantial objections"—because the deadline for objections has not yet passed, but the other factors go to the skills of class counsel and their relationship with the Plaintiffs: "[7] the skill requisite to perform the legal service properly," "[8] the preclusion of other employment by the attorney due to acceptance of the case," "[11] time limitations imposed by the client or the circumstances," "[13] the experience, reputation, and ability of the attorneys," and "[15] the nature and length of the professional relationship with the client." Although I was not privy to the attorney-client relationships here, I am aware that counsel at Levine Kellogg Lehman Schneider + Grossman LLP, Colson Hicks Eidson, P.A., and Maderal Byrne & Furst PLLC have significant experience in the class action and complex litigation areas and are all well-respected litigators. All of them are sophisticated, hardworking and creative lawyers with extensive experience in complex litigation, including class actions. As noted above, this case presented difficult legal and practical obstacles, and the litigation and Settlement were hard fought. Class Counsel's devotion of time and tens of thousands of dollars in out-of-pocket expenses (without any guarantee of success) limited their ability to take on other cases. The three firms that have served as Class Counsel are relatively small firms, so the risk and impact of this

case was particularly significant to them, especially when dealing with a large, well-funded defendant like Wells Fargo.

37. For all these reasons, I believe the fee award requested here is reasonable. An attorneys' fee award of 24.88% here is consistent the prevailing view that 25% is "generally recognized as a reasonable fee award in common fund cases." *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011).

IV. Reasonableness of the Requested Service Awards

38. The Eleventh Circuit's opinion in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020) prohibits Service Awards. Plaintiffs ask that the Court reserve jurisdiction to grant the Service Awards in the event the Supreme Court grants review of *Johnson* before final approval of the Settlement. *See Fruitstone v. Spartan Race, Inc.*, No. 20-CV-20836, 2021 WL 2012362, at *13 (S.D. Fla. May 20, 2021) (reserving jurisdiction pending review of *Johnson*). I find this request entirely reasonable but, of course, it will be up to the Court to determine whether it wishes to agree to this request.

39. As I have noted previously, it is my opinion that the service awards requested here would be reasonable. Such awards are commonplace in class action settlements, and the amounts here are not excessive in light of the class representatives' participation in this case. The Plaintiffs here actively participated in the formulation of the complaint, including providing some of the necessary facts to support the claims, and approval of the settlement, and publicly lent their names and credibility toward efforts to recover on behalf of thousands of similar victims. A $3,000 service award to each Plaintiff would therefore be appropriate if at some point *Johnson* is reversed, and service awards are again permissible.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the forgoing is true and correct.

Dated: April 10, 2022

_____/s/ *Peter Prieto*___________
Peter Prieto

Appendix 1

Appendix 2

Documents Reviewed:

1. Docket for *Bautista, et al. v. Wells Fargo, N.A.*, No. 0:21-cv-61749 (S.D. Fla.)
2. Plaintiff's Amended Class Action Complaint [D.E. 25]
3. Defendant's Motion to Dismiss Amended Class Action Complaint [D.E. 36]
4. Plaintiffs' Motion for Preliminary Approval of Settlement Agreement, Confirmation of Class, Approval of Class Notices and Scheduling of a Fairness Hearing, and Incorporated Memorandum of Law [D.E. 67] (including all exhibits)
5. Order Preliminarily Approving Settlement and Providing for Notice [D.E. 69]

Peter Prieto

Partner

305.358.2800

pprieto@podhurst.com

Bio

Peter Prieto received a Bachelor's Degree, summa cum laude, from St. Thomas University, and his Juris Doctorate, cum laude, from the University of Miami School of Law. While in law school, he served as a member of the Moot Court Board and as an articles and comments editor for the Law Review. Peter is a Fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers.

For more than twenty-five years, Peter has focused his practice on complex commercial litigation, including class actions, and white collar criminal defense. He has represented clients—both plaintiffs and defendants—in a wide array of civil litigation, including business disputes, healthcare, antitrust, products liability, RICO, legal and accounting malpractice, and class action litigation. Over the last several years, Peter has focused his defense practice on defending law and accounting firms from claims of professional malpractice. Peter has also represented clients in criminal investigations and prosecutions involving public corruption, business, banking and healthcare fraud, aviation, environmental violations, antitrust and money laundering.

Some of Peter's most significant engagements in his civil litigation practice have involved 1) successfully representing – at trial and at summary judgment – former executives of a pharmaceutical company who brought claims for securities fraud after the company's merger; 2) as Chair Lead Counsel, successfully representing and obtaining settlements in excess of over $1.5 billion on behalf of classes of millions of vehicle owners who purchased vehicles with defective Takata airbags; 3) obtaining dismissal of claims of malicious prosecution and abuse of process on behalf of national law firm; 4) successfully obtaining summary judgment on behalf of an international athletic and footwear company against claims that the company had stolen the "idea" of using a famous singer as its spokesperson.

Peter also has significant white collar criminal engagements have included 1) conducting internal investigation for, and subsequently representing, a public company in connection with possible violations of the Foreign Corrupt Practices Act ("FCPA"); 2) representing a cargo airline and its principals in a criminal investigation involving allegations that airline had falsified maintenance records; and 3) conducting internal investigation for Fortune 100 company in connection with allegations of price-fixing.

Peter also has significant experience in multidistrict litigation proceedings ("MDL"). He currently serves as Plaintiffs' Chair Lead Counsel overseeing both class actions and personal injury actions in In Re: Takata Airbags Product Liability

Recognition

2022 Best Lawyers in America, 2022
2021 Best Lawyers in America, 2021
2021 Chambers USA, Litigation, 2021
2020 Best Lawyers in America, 2020
2020 Chambers USA, Litigation, 2020
2019 Best Lawyers in America, 2019
2019 Chambers USA, Litigation, 2019
2018 Best Lawyers in America, 2018
2018 Chambers USA, Litigation, 2018
2017 Florida Trend Magazine, "Florida's Legal Elite" 2017
2017 Chambers USA, Litigation 2017
2017 Best Lawyers in America, 2017
2016 Best Lawyers in America, 2016
2016 Florida Trend Magazine, "Florida's Legal Elite" 2016
2016 Chambers USA, Litigation 2016
2015 Best Lawyers in America, 2015
2015 Florida Trend Magazine, "Florida's Legal Elite" 2015
2015 South Florida Legal Guide, "Top Lawyers" 2015
2015 Chambers USA, Litigation 2015
2014 South Florida Legal Guide, "Top Lawyers", 2014
2014 "The Best Lawyers in America", 2014
2014 Florida Trend Magazine, "Florida's Legal Elite" 2014
2013 "The Best Lawyers in America", 2013
2012 "America's Leading Lawyers for Business 2012", Chambers & Partners
2012 "The Best Lawyers in America", 2012
2012 South Florida Legal Guide, "Top Lawyers", 2012
2011 "The Best Lawyers in America", 2011

Litigation, MDL No. 2599, which is considered the largest product defect case in United States history. He also serves as the only Florida Lawyer on the Plaintiffs' Executive Committee in In Re: General Motors LLC Ignition Switch Litigation MDL No. 2543. Through the firm, he currently serves on the Plaintiffs' Executive Committee in In Re: Checking Account Overdraft Litigation, MDL No. 2036. He is also Chair of the Experts Committee in In Re: Blue Cross Blue Shield Antitrust Litigation, MDL No. 2406.

During his career, including his several years as a federal prosecutor, Peter has obtained substantial trial and appellate experience. He has tried 30 criminal and civil cases and has argued over a dozen appeals before the Eleventh Circuit Court of Appeals. For his litigation skills, he has been recognized as one of the "Top Lawyers in South Florida," according to the South Florida Legal Guide, and is listed in The Best Lawyers in America, Florida's Legal Elite, and Chambers USA, which has praised Peter for being "extremely strategic and thoughtful", as well as "highly skilled, practical, timely and terrific in court." In 2018, Peter was recognized as one of three "Attorney of the Year" finalists by the Daily Business Review.

Peter was admitted to the Florida Bar in 1985, and is also a member of various other Bars, including the Supreme Court of the United States, Eleventh Circuit Court of Appeals, United States District Court for the Southern District of Florida Trial Bar, the Dade County Bar, the American Bar Association and the Cuban-American Bar Association.

Peter recently served as the Eleventh Circuit's representative on the America Bar Association's Standing Committee on the Federal Judiciary, the committee responsible for assessing the professional qualifications of all federal judicial nominees. Additionally, from 2006-2014, he was a member of the Judicial Nominating Commission for the Third District Court of Appeal, and previously served, pursuant to appointments by Governors Lawton Chiles and Jeb Bush, as a Commissioner on Florida's Commission on Ethics. He serves on the Advisory Board of the University of Miami School of Law's Center for Ethics & Public Service and on the Alumni Advisory Board of the University of Miami Law Review. Peter is also a member of the Board of Trustees of St. Thomas University.

Prior to joining the firm, Peter was a federal prosecutor, first with the United States Attorney's Office for the Southern District of Florida, and later with the Office of Independent Counsel in Washington, D.C. where he worked on the criminal investigation of the late Secretary of Commerce Ronald H. Brown. For over a decade, he was also a partner and trial lawyer with the firm of Holland & Knight LLP, where he served as Executive Partner of the firm's Miami office, and as the Chair of the firm's 400-lawyer litigation section.

2011 "America's Leading Lawyers for Business 2011", Chambers & Partners

2011 South Florida Legal Guide, "Top Lawyers", 2011

2010 Florida Trend Magazine, "Florida's Legal Elite" 2010

2010 "America's Leading Lawyers for Business 2010", Chambers & Partners

2010 Ten Podhurst Orseck attorneys named Florida Super Lawyers

2009 "The Best Lawyers in America", 2009

2009 "America's Leading Lawyers for Business", Chambers & Partners, 2009

2009 Florida Trend Magazine, "Florida's Legal Elite" 2009,

2009 South Florida Legal Guide, "Top Lawyers", 2009

2008 "The Best Lawyers in America", 2008

2008 "America's Leading Lawyers for Business", Chambers & Partners, 2008

2008 Florida Trend Magazine, "Florida's Legal Elite" 2008,

2008 South Florida Legal Guide, "Top Lawyers", 2008

2007 "The Best Lawyers in America", 2007

2007 "America's Leading Lawyers for Business", Chambers & Partners, 2007

2007 Florida Trend Magazine, "Florida's Legal Elite" 2007,

2007 South Florida Legal Guide, "Top Lawyers", 2007

About Us:

While our main offices are located in South Florida, a significant amount of our litigation occurs in other states, countries and jurisdictions. Our firm, founded in 1967, has over 50 years of trial and appellate advocacy experience assisting clients in a broad range of substantive and procedural topics.

Legal

Cases

Privacy Policy

© Copyright 2023 Podhurst Orseck, P.A. All Rights Reserved.

DECLARATION OF FRANCISCO R. MADERAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 0:21-cv-61749-SINGHAL

GILMER BAUTISTA, *et al.*,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

_______________________________/

DECLARATION OF FRANCISCO R. MADERAL, ESQ.

Pursuant to 28 U.S.C. § 1746, I, Francisco R. Maderal, declare as follows:

1. I am an individual over the age of 21. I submit this declaration in support of Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Service Awards in the above-captioned case.

2. I am a shareholder at Maderal Byrne & Furst PLLC, formerly, Maderal Byrne PLLC, ("MBF"). I make this declaration based on my personal knowledge and my review of the books and records of MBF, and if called upon to do so, I could and would testify competently to these facts.

3. At all relevant times, Levine Kellogg Lehman Schneider+Grossman LLP ("LKSG"), Colson Hicks Eidson, and MBF, PLLC (collectively, the "Firms") served at putative class counsel, Interim Class Counsel, and/or Class Counsel for the Settlement Class.[1] The Firms have done considerable work and undertaken considerable risk to prosecute this action and obtain the Settlement with Defendant, Wells Fargo Bank, N.A. ("Wells Fargo").

---

[1] Unless otherwise indicated, all capitalized terms shall have the meanings set forth in the parties' Settlement Agreement [ECF No. 67-1].

4. On August 20, 2021, LKLSG filed this action class action lawsuit against Wells Fargo. Colson Hicks Eidson and MBF later joined as co-counsel for Plaintiffs.

5. Thereafter, the Firms continued investigating the scope and nature of the MJ Capital Scheme and Wells Fargo's involvement therein. As a result of their investigation, on November 1, 2021, the Firms filed an Amended Complaint while Wells Fargo's initial motion to dismiss was pending.

6. Wells Fargo then moved to dismiss the Amended Complaint and moved for a stay of discovery pending resolution of that motion. The Firms fully briefed both motions.

7. On February 21, 2022, the Court entered a stay of discovery pending its ruling on Wells Fargo's motion to dismiss the Amended Complaint.

8. Despite the stay of discovery, the Firms continued their investigation to further develop their claims against Wells Fargo. This involved working with Corali Lopez-Castro, as Receiver in *SEC v. MJ Capital Funding, et al.*, No. 21-cv-61644-SINGHAL/VALLE (S.D. Fla.) (the "Receiver"), to obtain and analyze records in her possession. The Firms had extensive communications with dozens of potential claimants and Plaintiffs to gather more information about the MJ Capital Scheme and Wells Fargo. The Firms also hired independent investigators to obtain further witness information and monitored parallel proceedings by the SEC and the Department of Justice.

9. The Parties held their first mediation with Hunter R. Hughes III on May 12, 2022. The Firms expended substantial time to prepare for and attend this mediation in the hopes of an early settlement. However, the session ended in an impasse.

10. The Parties continued discussions in the months that followed. These discussions resulted in an Agreed Confidentiality Order and Stipulated Protective Order that allowed Plaintiffs

access to thousands of bank records from Wells Fargo. The Firms, along with the Receiver, used these records to reconstruct the flow and estimate the extent of the MJ Capital Scheme.

11. On September 2, 2022, the Parties held a second mediation session with Mr. Hughes. Before that session, the Firms made an informal presentation in support of their claims and damages, including the results of their forensic reconstruction efforts. At this mediation session, the Parties reached a settlement in the amount of $26.625 million, subject to a final, executed agreement.

12. Plaintiffs' estimates of victims' damages relating to the Ponzi scheme was approximately $116 million, overall, and $86 million, during the Wells Fargo banking period, specifically. Thus, the settlement represents the recovery of 23% or 31% of victims' total estimated losses depending on the total used.

13. The Firms thus continued working with Wells Fargo and the Receiver in the months that followed to structure a mutually agreeable settlement agreement. This involved various discussions and the preparation and revision of the settlement documents.

14. On December 23, 2022, Plaintiffs presented the settlement to the Court for preliminary approval.

15. MBF's representation in this matter is on a contingency fee basis, and it has not received any compensation for its services in connection with this action.

16. During the life of this case, MBF was newly formed and has had between 3 and 4 attorneys. As one of two founding partners of MBF, I permanently staffed this matter, and at certain points, was required to devote my immediate and exclusive attention to this case.

17. MBF has devoted significant hours and expended $5,650 in out-of-pocket, unreimbursed expenses in the prosecution of this matter.

18. MBF's attorneys have acted as lead trial counsel in complex commercial cases representing both plaintiffs and defendants, including:

a. Serving as co-chair lead counsel of the class action arising from the 2021 collapse of the Champlain Towers South Condominium Complex, in Surfside, Florida (Case No. 2021-015089) in Miami-Dade Circuit Court, which resulted in a certified settlement class, and the distribution of over $1.1 in settlement proceeds;

b. Serving as the court-appointed liaison counsel in the 2021 *In re January 2021 Short Squeeze Trading Litigation*, Case No. 21-2989-MDL, multi-district litigation in the Southern District of Florida relating to the trading restrictions imposed by Robinhood and other brokers in late January 2021 in response to a dramatic rise in trading and share prices for a group of so-called "meme stocks."

c. Serving as the court-appointed liaison in the *In re Zantac (Ranitidine) Product Liability* litigation, MDL No. 2924, pending in the Southern District of Florida.

d. Serving as a court-appointed member of the Plaintiffs' Steering Committee in the *In re Elmiron (Pentosan Polysulfate Sodium) Products Liability* Litigation, MDL No. 2973, pending in the District of New Jersey.

e. Serving as class counsel for a certified class of car owners alleging breaches of warranty and violations of under the deceptive trade practices act statutes in eight states, *Tershakovec v. Ford Motor Co.*, Case No. 17-21087- (S.D. Fla.);

f. Representation of certified class of consumers against a self-storage company for deceptive practices involving the sale of self-storage insurance, *Coleman v. CubeSmart*, 328 F. Supp. 3d 1349, 1353 (S.D. Fla. 2018);

g. Representation of class of car owners in case alleging breaches of warranty and violations of under the Florida Deceptive and Unfair Trade Practices Act, *Vazquez v. Gen. Motors, LLC*, Case No. 17-22209-CIV (S.D. Fla.);

h. Representation of class of investors in case against TD Bank arising from a viatical life insurance scheme, *Gevaerts v. TD Bank*, N.A., Case No. 11:14-CV-20744-RLR (S.D. Fla.); and

i. Representation of certified class of consumers against a self-storage company for deceptive practices involving the sale of self-storage insurance, *Bowe v. Pub. Storage*, Case No. 1:14–cv–21559–UU (S.D. Fla.).

19. I have also served as an Assistant United States Attorney for the Southern District of Florida for six years, during which time I served as the lead Department of Justice attorney in multiple, successful multi-billion-dollar, complex white-collar prosecutions.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 10, 2023.

Francisco R. Maderal, Esq.
Francisco R. Maderal, Esq.
Maderal Byrne & Furst PLLC

DECLARATION OF JEFFREY C. SCHNEIDER

DocuSign Envelope ID: E335749A-90FD-4169-890D-C811BD34AC8F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 0:21-cv-61749-SINGHAL

GILMER BAUTISTA, *et al.*,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

_______________________________/

DECLARATION OF JEFFREY C. SCHNEIDER, ESQ.

Pursuant to 28 U.S.C. § 1746, I, Jeffrey C. Schneider, declare as follows:

1. I am an individual over the age of 21. I submit this declaration in support of Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Service Awards in the above-captioned case.

2. I am a shareholder at Levine Kellogg Lehman Schneider + Grossman LLP ("LKLSG"). I make this declaration based on my personal knowledge and my review of the books and records of LKLSG, and if called upon to do so, I could and would testify competently to these facts.

3. On July 25, 2022, the Court appointed me Interim Class Co-Counsel along with my law partner Jason Kellogg. Curtis B. Miner of Colson Hicks Eidson and Francisco R. Maderal Jr., who is now with Maderal Bryne & Furst, PLLC, were also appointed Interim Class Co-Counsel. [D.E. 58].

4. As part of our representation of Plaintiffs, we worked closely with Corali Lopez-Castro, the Receiver in *SEC v. MJ Capital Funding, et al.*, No. 21-cv-61644-SINGHAL/VALLE (S.D. Fla.) (the "Receiver"), and I was able to apply what I have learned through extensive

experience both acting as, representing, and working with, federal equity receivers in SEC enforcement actions.

5. The following outlines some of the receivership experience I have gained in more than 30 years of practicing law

a. *Jay Peak*: Represented federal equity receiver in action brought against Jay Peak principals, Raymond James, and various law firms that represented investors, Jay Peak, and its principals. Worked in conjunction with lead class counsel, which brought similar claims against the same parties. Recovered well over $200 million in favor of class/victims of the receivership estate.

b. *In re Woodbridge Investments Litigation*: Represented both trustee and class plaintiffs in action brought against Comerica Bank arising out of $1.7 billion Ponzi scheme. Recovered $54.5 million in favor of class/victims of the trust estate.

c. *Pension Fund of America*: Represented federal equity receiver in action brought against principals of entity sued by the Securities and Exchange Commission. Worked in conjunction with lead class counsel and recovered $20 million from financial institution with which entity in receivership had banking and lending relationship.

d. *Mutual Benefits*: Represented putative class in enforcement action brought by the Securities and Exchange Commission. Helped to recover over $100 million in favor of class deemed not to be part of the receivership estate.

e. *Philip Milton*: Appointed by the Commodity Futures Trading Commission to serve as a federal equity receiver in a $25 million fraud. The action was pending in the U.S. District Court for the Southern District of Florida. Testified at the CFTC's trial on damages, and had recommendations accepted by the District Court Judge.

f. *Trade-LLC*: Appointed by the Securities and Exchange Commission to serve as a federal equity receiver. The action was pending in the U.S. District Court for the Southern District of Florida. Brought a number of fraudulent transfer and "claw-back" lawsuits and located, marshalled, secured, seized, and liquidated homes, apartments, cars, jewelry, and other valuables.

g. *Inbound Call Experts*: Appointed by the Federal Trade Commission and the Office of the Attorney General to serve as a federal equity receiver. The entities in receivership generated over $100 million from thousands of consumers. At the time of appointment, Inbound Call employed over 500 employees from two locations in South Florida and provided technical support services in the Philippines, the Dominican Republic, and Honduras. Thereafter appointed as a Federal Monitor for two years to monitor compliance with Permanent Injunction.

h. *Troth Solutions, Inc.*: Appointed by the Federal Trade Commission and the Office of the Attorney General to serve as a federal equity receiver. The action was filed in the U.S. District Court for the Northern District of Alabama.

i. *PC Help Desk US*: Appointed by the Federal Trade Commission and the Office of the Attorney General to serve as a federal equity receiver. The action was filed in the U.S. District for the Northern District of Illinois.

j. *Go Ready Calls Marketing*: Appointed by the Office of the Attorney General to serve as state court receiver. Helped to recover over $7 million from Bank of America Merchant Services, representing a full recovery to all affected consumers.

k. *Learn More Media*: Appointed by the Office of the Attorney General to serve as state court receiver. The action is currently pending in Broward County, Florida.

l. *American Precious Metals*: Lead trial counsel to the receiver of a precious metals boiler room. The action was filed in the U.S. District Court for the Southern District of Florida. The action was initiated by the Federal Trade Commission.

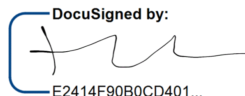
m. *The Dolce Group*: Lead trial counsel to the receiver of a fraudulent boiler room. The action was filed in the U.S. District Court for the Southern District of Florida. The action was initiated by the Federal Trade Commission.

n. *Amante*: Lead trial counsel to the receiver of a fraudulent boiler room. The action was filed in the U.S. District Court for the Southern District of Florida. The action was initiated by the Securities and Exchange Commission.

o. *USA Beverages, Inc.*: Lead trial counsel to the receiver in an action filed in the U.S. District Court for the Southern District of Florida. The action was initiated by the Federal Trade Commission

I declare under penalty of perjury that the foregoing is true and correct.

April 10, 2023.



Jeffrey C. Schneider, Esq.
Jeffrey C. Schneider P.A.

DECLARATION OF JASON K. KELLOGG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 0:21-cv-61749-SINGHAL

GILMER BAUTISTA, *et al.*,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

_______________________________/

DECLARATION OF JASON K. KELLOGG, ESQ.

Pursuant to 28 U.S.C. § 1746, I, Jason K. Kellogg, declare as follows:

1. I am an individual over the age of 21. I submit this declaration in support of Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Service Awards in the above-captioned case.

2. I am a shareholder at Levine Kellogg Lehman Schneider + Grossman LLP ("LKLSG"). I make this declaration based on my personal knowledge and my review of the books and records of LKLSG, and if called upon to do so, I could and would testify competently to these facts.

3. At all relevant times, LKLSG, Colson Hicks Eidson, and Maderal Bryne & Furst, PLLC (collectively, the "Firms") served at putative class counsel, Interim Class Counsel, and/or Class Counsel for the Settlement Class.[1] The Firms have done considerable work and undertaken considerable risk to prosecute this action and obtain the Settlement with Defendant, Wells Fargo Bank, N.A. ("Wells Fargo").

---

[1] Unless otherwise indicated, all capitalized terms shall have the meanings set forth in the parties' Settlement Agreement [ECF No. 67-1].

4. On August 20, 2021, LKLSG filed this action class action lawsuit against Wells Fargo. Colson Hicks Eidson and Maderal Byrne & Furst, PLLC later joined as co-counsel for Plaintiffs.

5. Thereafter, the Firms continued investigating the scope and nature of the MJ Capital Scheme and Wells Fargo's involvement therein. As a result of their investigation, on November 1, 2021, the Firms filed an Amended Complaint while Wells Fargo's initial motion to dismiss was pending.

6. Wells Fargo then moved to dismiss the Amended Complaint and moved for a stay of discovery pending resolution of that motion. The Firms fully briefed both motions.

7. On February 21, 2022, the Court entered a stay of discovery pending its ruling on Wells Fargo's motion to dismiss the Amended Complaint.

8. Despite the stay of discovery, the Firms continued their investigation to further develop their claims against Wells Fargo. This involved working with Corali Lopez-Castro, as Receiver in *SEC v. MJ Capital Funding, et al.*, No. 21-cv-61644-SINGHAL/VALLE (S.D. Fla.) (the "Receiver"), to obtain and analyze records in her possession. The Firms had extensive communications with dozens of potential claimants and Plaintiffs to gather more information about the MJ Capital Scheme and Wells Fargo. The Firms also hired independent investigators to obtain further witness information, and monitored parallel proceedings by the SEC and the Department of Justice.

9. The Parties held their first mediation with Hunter R. Hughes III on May 12, 2022. The Firms expended substantial time to prepare for and attend this mediation in the hopes of an early settlement. However, the session ended in an impasse.

10. The Parties continued discussions in the months that followed. These discussions resulted in an Agreed Confidentiality Order and Stipulated Protective Order that allowed Plaintiffs access to thousands of bank records from Wells Fargo. The Firms, along with the Receiver, used these records to reconstruct the flow and estimate the extent of the MJ Capital Scheme.

11. On September 2, 2022, the Parties held a second mediation session with Mr. Hughes. Before that session, the Firms made an informal presentation in support of their claims and damages, including the results of their forensic reconstruction efforts. At this mediation session, the Parties reached a settlement in the amount of $26.625 million, subject to a final, executed agreement.

12. The Firms thus continued working with Wells Fargo and the Receiver in the months that followed to structure a mutually agreeable settlement agreement. This involved various discussions and the preparation and revision of the settlement documents.

13. On December 23, 2022, Plaintiffs presented the settlement to the Court for preliminary approval.

14. LKLSG represents Plaintiffs on a contingency fee basis and has not received any compensation for its services in connection with this action.

15. During the life of this case, LKLSG has had between 16 and 18 attorneys. No less than three of those attorneys have been staffed on this matter at all times and, at certain points, LKLSG attorneys were required to devote their immediate and exclusive attention to this case.

16. LKLSG has devoted significant hours and expended $21,010 in out-of-pocket, unreimbursed expenses in the prosecution of this matter.

17. LKLSG's attorneys have acted as lead trial counsel in complex commercial cases representing both plaintiffs and defendants. These include the following class actions on behalf of plaintiffs:

a. *In re Woodbridge Investments Litigation*: Co-lead counsel for Plaintiffs in nationwide class action in U.S. District Court for the Central District of California against Comerica Bank arising out of $1.7 billion Ponzi scheme. Obtained $54.5 million settlement.

b. *Belin v. Health Ins. Innovations, Inc.*: Co-lead counsel for Plaintiffs in nationwide class action in U.S. District Court for the Southern District of Florida arising out of deceptive sale of medical discount plans and limited benefit indemnity plans. Obtained $27.5 million settlement on behalf of consumers.

c. *Thaxton v. Collins Asset Group, LLC*: Co-lead counsel for Plaintiffs in class action in U.S. District Court for the Northern District of Georgia arising out of a $23 million investment scheme. Obtained $15.755 million settlement on behalf of investment victims.

d. *Fernandez v. Merrill Lynch*: Co-lead counsel for Plaintiffs in ERISA class action in the U.S. District Court for the Southern District of Florida against Merrill Lynch on behalf of the trustees of 39,000 small business retirement plans. Obtained $25 million settlement representing 177% of class members' out-of-pocket losses, even after deduction of attorney's fees and costs.

e. *Da Silva Ferreira v. EFG Bank*: Co-lead counsel in multidistrict litigation consolidated in the U.S. District Court for the Southern District of New York, for class of Latin American investors against Swiss bank and its Miami-based affiliate arising out of Bernard Madoff Ponzi scheme. Obtained $7.8 million settlement.

f. *In re J&J Investment Litigation*: Currently appointed interim co-lead counsel in action brought in the U.S. District Court for the District of Nevada arising out of the J&J Investment Ponzi scheme.

g. *Melchior v. Vagnozzi*: Currently appointed interim co-lead counsel in action brought in the U.S. District Court for the Eastern District of Pennsylvania arising out of the Par Funding Ponzi scheme.

h. *Cash 4 Titles*: Co-lead counsel for Plaintiffs in class action against Bank of Bermuda in the U.S. District Court for the Southern District of Florida arising from the collapse of a Ponzi scheme. Net class recovery after settlement was more than $60 million.

i. *Cash 4 Titles II*: Co-lead counsel for Plaintiffs in class action in the U.S. District Court for the Southern District of Florida against Leadenhall Bank & Trusts arising out of the collapse of a Ponzi scheme. Final judgment in favor of class in the amount of $325 million. To date, Plaintiffs have recovered more than $15 million for the Class.

j. *Mutual Benefits*: Putative lead counsel for Plaintiffs in class action in the U.S. District Court for the Southern District of Florida arising out of the collapse of the

Mutual Benefits viatical scheme. Recovered more than $100 million in favor of class, representing a 100% recovery.

18. I serve as Co-Chair of the American Bar Association's Class Action and Derivative Suits Committee ("ACADS"), and since 2005 I have been an editor of the ABA's annual Survey of State Class Action Law, which is published as a supplement to the *Newberg on Class Actions* treatise. I have received a *Chambers USA* ranking and a Preeminent AV Peer Review Rating from Martindale-Hubbell.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 10, 2023.

Jason Kellogg, Esq.
Jason K. Kellogg P.A.

DECLARATION OF CURTIS B. MINER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:21-cv-61749-SINGHAL

GILMER BAUTISTA, *et al.*,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

_______________________________/

DECLARATION OF CURTIS MINER, ESQ.

Pursuant to 28 U.S.C. § 1746, I, Curtis B. Miner, declare as follows:

1. I am an individual over the age of 21. I submit this Declaration in support of Plaintiffs' Motion for Award of Attorneys' Fees and Service Awards in the above-captioned case.

2. I am a partner at the law firm of Colson Hicks Eidson, P.A. ("CHE"). I make this Declaration based on my personal knowledge, and if called upon to do so, I could and would testify competently to these facts.

3. At all relevant times, Levine Kellogg Lehman Schneider + Grossman LLP ("LKLSG"), Maderal Byrne & Furst, PLLC ("MBF"), and CHE (collectively, the "Firms") served at putative class counsel, Interim Class Counsel, and/or Class Counsel for the Settlement Class.[1] The Firms have done considerable work and

[1] All capitalized terms in this Declaration have the meanings set forth in the parties' Settlement Agreement [ECF No. 67-1].

undertaken considerable risk to prosecute this action and obtain the Settlement with Defendant, Wells Fargo Bank, N.A. ("Wells Fargo").

Procedural Background

4. On August 20, 2021, LKLSG filed this action class action lawsuit against Wells Fargo. CHE and MBF later joined as co-counsel for Plaintiffs.

5. Thereafter, the Firms continued investigating the scope and nature of the MJ Capital Scheme and Wells Fargo's involvement therein. As a result of their investigation, on November 1, 2021, the Firms filed an Amended Complaint while Wells Fargo's initial motion to dismiss was pending.

6. Wells Fargo then moved to dismiss the Amended Complaint and moved for a stay of discovery pending resolution of that motion. The Firms fully briefed both motions. On February 21, 2022, the Court entered a stay of discovery pending its ruling on Wells Fargo's motion to dismiss the Amended Complaint.

7. Despite the stay of discovery, the Firms continued their investigation to further develop their claims against Wells Fargo. This involved working with Corali Lopez-Castro, the Court-appointed Receiver in *SEC v. MJ Capital Funding, et al.*, No. 21-cv-61644-SINGHAL/VALLE (S.D. Fla.) (the "Receiver"), to obtain and analyze records in her possession. The Firms had extensive communications with dozens of potential claimants and Plaintiffs to gather more information about the MJ Capital Scheme and Wells Fargo and individuals potentially involved. The Firms also hired independent investigators to obtain further witness information and monitored parallel proceedings by the SEC and the U.S. Department of Justice.

Mediation & Settlement

8. The Parties held their first mediation with Hunter R. Hughes III on May 12, 2022. The Firms expended substantial time to prepare for and attend this mediation in the hopes of an early settlement. However, the session ended in an impasse.

9. The Parties continued discussions in the months that followed. These discussions resulted in the submission to the Court and entry of an Agreed Confidentiality Order and Stipulated Protective Order that allowed Plaintiffs access to thousands of bank account records from Wells Fargo. The Firms, along with the Receiver, used these records to reconstruct the flow of investor funds and estimate the extent of the MJ Capital Scheme.

10. On September 2, 2022, the Parties held a second mediation session with Mr. Hughes. Before that session, the Firms made an informal presentation in support of their claims and damages, including the results of their forensic reconstruction efforts. At this second mediation session, the Parties reached a settlement in the amount of $26.625 million, subject to a final, executed agreement.

11. The Firms thus continued working with Wells Fargo and the Receiver in the months that followed to structure a mutually agreeable settlement agreement. This involved numerous discussions and the preparation and revision of the settlement documents.

12. On December 23, 2022, Plaintiffs presented the settlement to the Court for preliminary approval.

CHE's Representation of Plaintiffs

13. CHE's representation of Plaintiffs in this matter is purely on a contingency fee basis. CHE has not received any compensation for its services in connection with this action.

14. CHE is a boutique litigation firm with 14 attorneys. During the course of this litigation, I personally handled the case from the inception and, at certain points in the litigation, was required to devote my immediate and exclusive attention to this case to the preclusion of work on other matters.

15. CHE has devoted significant hours and expended $5,789 in out-of-pocket, unreimbursed expenses in the prosecution of this matter.

The Undersigned's Relevant Experience

16. I have been an attorney for 29 years. Since serving as an Assistant U.S. Attorney in this District from 1999 to 2004, I have been a partner at CHE for the last 19 years, where I focus on complex civil litigation and class actions. I have been inducted as a Fellow in both the American College of Trial Lawyers and the International Academy of Trial Lawyers.

17. I have served as lead trial counsel in numerous complex commercial cases and class actions representing plaintiffs, and federal and state judges have appointed me to serve on plaintiffs' steering committees on complex and significant multidistrict litigation. By way of example, Judge Federico A. Moreno appointed me to serve as lead counsel of the personal injury track in the long-running Takata airbag multidistrict litigation, in which a number of class actions were consolidated in this District (*In re Takata Airbags Products Liability Litigation*). And, more recently,

Judge Michael Hanzman appointed me to serve as liaison counsel for the wrongful death class in the class action arising from the 2021 collapse of the Champlain Towers South Condominium Complex, in Surfside, Florida (*In re Champlain Towers South Collapse Litigation*) in Miami-Dade Circuit Court, which resulted in a certified settlement class, and the distribution of over $1.1 billion in settlement proceeds.

18. I also have substantial experience in Receivership-related matters from all perspectives. I have served as a federal court-appointed Receiver on several occasions in FTC enforcement actions in this District (e.g., *FTC v. Digital Income Systems, Inc.*; *FTC v. Premier Precious Metals, Inc.*; *FTC v. American Student Loan Consolidators, LLC).* I have served as counsel for court-appointed receivers, including in the Mutual Benefits Corp. receivership in this District (*SEC v. Mutual Benefits Corp.)*, which resulted in the recovery and distribution of approximately $110 million for victim investors in a viatical settlement Ponzi-type scheme. And, I have served as counsel for victim investors or creditors in a number of Receivership matters, ranging from the Bernard L. Madoff Ponzi-scheme to the Stanford Financial Ponzi-scheme to the Rothstein, Rosenfeldt & Adler, P.A. Ponzi.

***

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 10, 2023.

/s/ *Curtis B. Miner*
Curtis B. Miner, Esq.
COLSON HICKS EIDSON, P.A.