KEVIN F. RUF (#136901)
*kruf@glancylaw.com*
JONATHAN M. ROTTER (#234137)
*jrotter@glancylaw.com*
MELISSA C. WRIGHT (#291120)
*mwright@glancylaw.com*
GARTH SPENCER (#335424)
*gspencer@glancylaw.com*
GREGORY B. LINKH (*pro hac vice*)
*glinkh@glancylaw.com*
GLANCY PRONGAY WOLKE & ROTTER LLP
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150

*Attorneys for the Class Plaintiffs*

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF CALIFORNIA**

THOMAS W. MCNAMARA, as the Court-Appointed Receiver for Triangle Media Corporation, Apex Capital Group, LLC; and their successors, assigns, affiliates, and subsidiaries,

Plaintiff,

v.

WELLS FARGO & COMPANY, a corporation, WELLS FARGO BANKS, N.A., a national banking association,

Defendants.

JOHN MCCRANER, SHARON STIANSEN, JANET POLLARD, MICHAEL DARLINGTON, SUSAN R. LANDREAU, JOHN N. TUFFIELD, individually and on behalf of all similarly situated,

Plaintiffs,

v.

WELLS FARGO & COMPANY, a corporation, WELLS FARGO BANKS, N.A., a national banking association,

Defendants.

Lead Case No. 3:21-cv-1245-TWR-DDL [Consolidated with Case No. 3:21-cv-1246-TWR-DDL]

**DECLARATION OF JONATHAN M. ROTTER IN SUPPORT OF: (1) CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

Date: March 26, 2026
Time: 1:30 p.m.
Crtrm.: 14A

Judge: Todd W. Robinson

# TABLE OF CONTENTS

## TABLE OF EXHIBITS TO DECLARATION

| EXHIBIT | TITLE |
|---|---|
| 1 | Declaration Of John McCraner In Support Of: (1) Class Plaintiffs' Motion For Final Approval Of Class Action Settlement And Plan Of Allocation; And (2) Class Counsel's Motion For An Award Of Attorneys' Fees And Reimbursement Of Litigation Expenses |
| 2 | Declaration Of Sharon Stiansen In Support Of: (1) Class Plaintiffs' Motion For Final Approval Of Class Action Settlement And Plan Of Allocation; And (2) Class Counsel's Motion For An Award Of Attorneys' Fees And Reimbursement Of Litigation Expenses |
| 3 | Declaration Of Janet Pollard In Support Of: (1) Class Plaintiffs' Motion For Final Approval Of Class Action Settlement And Plan Of Allocation; And (2) Class Counsel's Motion For An Award Of Attorneys' Fees And Reimbursement Of Litigation Expenses |
| 4 | Declaration Of John Tuffield In Support Of: (1) Class Plaintiffs' Motion For Final Approval Of Class Action Settlement And Plan Of Allocation; And (2) Class Counsel's Motion For An Award Of Attorneys' Fees And Reimbursement Of Litigation Expenses |
| 5 | Declaration Of Susan Landreau In Support Of: (1) Class Plaintiffs' Motion For Final Approval Of Class Action Settlement And Plan Of Allocation; And (2) Class Counsel's Motion For An Award Of Attorneys' Fees And Reimbursement Of Litigation Expenses |
| 6 | Declaration Of Michael Darlington In Support Of: (1) Class Plaintiffs' Motion For Final Approval Of Class Action Settlement And Plan Of Allocation; And (2) Class Counsel's Motion For An Award Of Attorneys' Fees And Reimbursement Of Litigation Expenses |
| 7 | Declaration Of Cameron R. Azari, Esq. Regarding Implementation And Adequacy Of Notice Plan |
| 8 | Proposed Plan of Allocation |
| 9 | Glancy Prongay Wolke & Rotter LLP Firm Resume |

I, Jonathan M. Rotter, hereby declare and state as follows:

1. I am a Partner with the law firm Glancy Prongay Wolke & Rotter LLP ("GPWR" or "Class Counsel"),[1] attorneys of record for John McCraner, Janet Pollard, Sharon Stiansen, Michael Darlington, Susan R. Landreau, and John Tuffield (collectively "Class Plaintiffs"), and proposed Class Counsel for the Class in the above-captioned consolidated action (the "Action").[2] I am duly licensed to practice law in the State of California and this district court.[3]

2. I make this declaration in support of Class Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation. As set forth in the Class Plaintiffs' Memorandum in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation ("Final Approval Memorandum"), Class Plaintiffs seek final approval of the agreement to settle the Action in exchange for $33 million in cash for the benefit of the Class.

3. I also make this Declaration in support of Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (referred to herein as the "Fee and Expense Application"). The Fee and Expense Application seeks a total award of attorneys' fees, inclusive of the Class and Receiver actions, in the amount of 33⅓% of the Settlement Fund (*i.e.*, $11,000,000, plus interest earned at the same rate as the Settlement Fund), representing only 4.83% above the 28.5%

[1] Class Counsel's name changed from Glancy Prongay & Murray LLP to Glancy Prongay Wolke & Rotter LLP. ECF No. 389.

[2] The Parties to the consolidated action include Class Plaintiffs, Thomas W. McNamara, acting in his capacity as the Court-appointed Receiver for both Apex and related entities and Triangle and related entities (the "Receiver"), and defendants Wells Fargo & Company and Wells Fargo Bank, N.A. ("Wells Fargo" or the "Bank").

[3] Unless otherwise defined herein, all capitalized terms have the same meaning as set forth in the Stipulation and Agreement of Settlement dated June 25, 2025 (the "Class Agreement"). ECF No. 383-2.

fee already approved for the Receiver action (*see infra* Section VI.A). The Fee and Expense Application also seeks reimbursement of Litigation Expenses, inclusive of the Class and Receiver actions, in the total amount of $2,476,461.45, which consists of out-of-pocket litigation expenses in the amount of $2,416,461.45, plus a total of $60,000 to Class Plaintiffs ($12,500 to plaintiff Pollard, $7,500 to plaintiff Darlington, and $10,000 each to plaintiffs McCraner, Stiansen, Landreau, and Tuffield), for their time and efforts representing the Class.

4. On November 4, 2025, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order"). *See* ECF No. 388. Epiq Class Action & Claims Solutions ("Epiq" or the "Settlement Administrator"), the Court-approved Settlement Administrator, implemented a comprehensive notice program presenting notice to potential Settlement Class Members by email and/or by publication, in accordance with the Preliminary Approval Order. *See* Section IV, *infra* (detailing notice program); *see also* Ex. 7 (Declaration of Cameron R. Azari, Esq. Regarding Implementation And Adequacy Of Notice Plan (the "Initial Mailing Decl.")), ¶¶9-36.

5. As of February 18, 2026, notice of the Settlement has been disseminated to over 1 million potential Class Members by email as well as through a thorough publication campaign across various social media platforms. To date, one request for exclusion has been received. *See* Ex. 7 (Initial Mailing Decl.) at ¶39. Moreover, no objections have been filed with Court or received by the Settlement Administrator or counsel to date. *Id*.[4]

## I. INTRODUCTION

6. The proposed Settlement presented to the Court for final approval resolves all claims in the Action in exchange for $33,000,000 in cash for the benefit

[4] Class Plaintiffs and Class Counsel will address any objections in the reply memorandum that will be filed after the objection and exclusion deadline.

of the Class. As detailed herein, the Settlement is an extremely favorable result for the Class considering the significant risks to overcome in the Action.

7. Class Counsel estimates that the best-case scenario for total compensatory damages in this consolidated Action is $658 million.[5] This estimate assumes: (a) the Court certified the Class as defined; (b) Plaintiffs survived summary judgment on each of their remaining claims ***and*** convinced a jury that liability was proven; (c) the Court and jury accepted Plaintiffs' damages theories; and (d) the Court and jury did not reduce the claimed damages due to overlap in Plaintiffs' various damages theories. However, this Action presented substantial litigation risk at every stage. Class Plaintiffs faced material risks in establishing liability on each remaining claim—particularly proving Wells Fargo's knowledge and substantial assistance for aiding-and-abetting, an agreement and shared unlawful purpose for conspiracy, and the statutory predicates and geographic reach of Cal. Penal Code § 496—as well as significant risk that class certification would be denied or narrowed based on damages "fit" and individualized injury issues, which could have substantially reduced or eliminated any recovery for the Class.

8. Thus, the Settlement provides a substantial, certain, and immediate recovery, while avoiding the significant risks and expense of continued litigation, including the risk that the Class could recover less than the Settlement Amount (or nothing) after years of additional litigation and delay.

9. This Settlement was achieved after many years of hard-fought litigation, and during that nearly six-year period (including nearly two years of pre-litigation investigation and mediation), Class Counsel became well informed about the relative strengths and weaknesses of the claims and defenses in the Action. Class Counsel

[5] In addition to compensatory damages, Plaintiffs also argued for pre- and post-judgment interest, punitive damages, treble damages, attorney fees and costs, and recoupment of fees Wells Fargo received from the Enterprises.

expended great efforts and resources prosecuting this Action on behalf of the Class. Class Counsel:

a. conducted an extensive pre-suit investigation beginning in 2018 into Tarr, Apex, and Triangle's business practices, which included reviewing publicly available information regarding the Enterprises and their principals, analyzing voluminous receivership records from Apex and Triangle, reviewing information produced pursuant to a subpoena issued to Wells Fargo, and working with a private investigator who contacted former Wells Fargo employees and other relevant sources;

b. participated in pre-litigation mediation before the Hon. Daniel Weinstein (Ret.) by exchanging substantial mediation statements and attending two full-day, in-person mediation sessions (November 5, 2020 and April 29, 2021), both of which ended without a settlement;

c. commenced the *McCraner* Action by filing an 81-page initial complaint asserting claims for aiding and abetting fraud, conspiracy to commit fraud, violation of Cal. Penal Code § 496, and a UCL claim, and later filing a detailed First Amended Class Action Complaint that added substantial factual allegations supporting Plaintiffs' claims;

d. opposed two rounds of motions to dismiss and to strike nationwide class allegations, including researching and briefing two rounds of motions practice and obtaining an order that denied Wells Fargo's motion to dismiss in part and denied Wells Fargo's motion to strike in its entirety;

e. opposed Wells Fargo's motion to consolidate the *McNamara* and *McCraner* Actions and negotiated and obtained a Court-approved discovery protocol that permitted use of Apex and Triangle discovery from the *McNamara* Action while also allowing limited additional discovery as to Apex and Triangle in fact discovery;

f. vigorously pursued fact discovery, including serving and responding to written discovery, issuing subpoenas to more than 25 third parties, reviewing and analyzing approximately 70,000 pages of documents produced by Wells Fargo and third parties and more than one million documents produced in the *McNamara* Action;

g. prepared for and took numerous fact depositions—including depositions of former Wells Fargo bankers, Enterprise principals,

and third-party representatives—conducted multiple Rule 30(b)(6) depositions of Wells Fargo, and defended the depositions of all Class Plaintiffs (including second depositions for certain plaintiffs);

h. engaged in extensive successful motion practice and proceedings before the Court on discovery issues following lengthy meet-and-confer processes, including disputes concerning privilege objections and expert deposition instructions, production disputes tied to a Wall Street Journal article, Apex-doctrine protective order motions involving former Wells Fargo employees with varying levels of seniority, Rule 30(b)(6) scope and logistics issues, disputes concerning certain plaintiff documents, and issues relating to the length and scope of expert depositions;

i. conducted expert discovery by retaining and working extensively with experts in forensic accounting, banking regulation, and social computing, exchanging opening and rebuttal reports, defending depositions of Plaintiffs' experts, and taking depositions of Wells Fargo's experts in banking regulation, economics/damages, and class certification;

j. fully litigated dispositive and evidentiary motions, including opposing Wells Fargo's motion for summary judgment and Daubert/Rule 702 motions to exclude Plaintiffs' expert testimony, moving to exclude the expert report of Atanu Saha and certain opinions of Carlyn Irwin and briefing that motion through reply, and preparing for and participating in the Court's hearing on the summary judgment, Daubert, and class certification motions;

k. filed Class Plaintiffs' motion for class certification, filed a reply, and litigated certification-related expert issues (including a motion to exclude certain defense expert opinions), with class certification and related motions argued and taken under submission at the time the Settlement was reached;

l. participated in multiple settlement efforts facilitated by the Court, including an Early Neutral Evaluation and court-supervised mediation before Magistrate Judge Leshner, followed by continued arm's-length negotiations that resulted in a settlement in principle to settle the Action for $33,000,000; and

m. negotiated and executed a global settlement resolving the Receiver and Class claims as set forth in the Class and Receiver Agreements and thereafter moving for and obtaining the Court's preliminary approval of the Settlement.

10. Class Plaintiffs and Class Counsel are well informed of the strengths and weaknesses of the claims and defenses in the Action from the efforts described herein. And based on that knowledge Class Plaintiffs and Class Counsel believe the Settlement represents a highly favorable outcome for the Class. For all the reasons set forth herein and in the accompanying memoranda and declarations, Class Plaintiffs and Class Counsel submit that the Settlement is "fair, reasonable, and adequate" in all respects, and that the Court should grant final approval pursuant to Federal Rule of Civil Procedure 23(e).

11. In addition, Class Plaintiffs seek approval of the proposed Plan of Allocation as fair and reasonable. As discussed in further detail below, Plaintiffs' counsel developed the Plan of Allocation to equitably distribute the Net Settlement Fund to those Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. *See* Section V, *infra* (discussing the proposed Plan of Allocation).

12. Finally, Class Counsel seeks approval of the request for attorneys' fees inclusive of the Class and Receiver actions, and reimbursement of Litigation Expenses, as set forth in the Memorandum of Law in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Fee Memorandum"). The requested 33⅓% fee, representing only 4.83% above the 28.5% fee already approved for the Receiver action, is fair and reasonable in light of fee awards granted by courts in this Circuit in comparable complex actions, and its fairness is confirmed by a lodestar cross-check. The requested Litigation Expenses are also fair and reasonable, as they were necessarily incurred in the prosecution of the consolidated Action. Accordingly, as set forth in the Fee Memorandum and for the additional reasons set forth below, I submit that Class Counsel's request for attorneys' fees and reimbursement of Litigation Expenses should be approved.

## II. PROSECUTION OF THE ACTION

13. In this consolidated Action, Class Plaintiffs assert claims on behalf of themselves and the Class against Wells Fargo. Class Plaintiffs allege Wells Fargo (i) aided and abetted Apex Capital Group, LLC ("Apex"), Triangle Media Corporation ("Triangle"), and Tarr Inc. ("Tarr"), (ii) conspired with Apex, Triangle, and Tarr to commit fraud, and (iii) violated Cal. Penal Code § 496.

14. Class Plaintiffs allege that, with Wells Fargo's assistance, Apex, Triangle, and Tarr, along with their related entities, deposited and laundered money they obtained from consumers through deceptive "sales" of, *inter alia*, nutraceutical products, through Wells Fargo accounts. Class Plaintiffs allege that while Apex, Triangle, and Tarr defrauded consumers into monthly subscriptions and products, Wells Fargo assisted the fraudulent enterprises by opening numerous business deposit accounts for dozens of Apex-, Triangle-, and Tarr-related companies and transferring millions of wrongfully obtained dollars into their third-party bank accounts.

15. Both the Class and the Receiver sought recovery to benefit consumers: the Class directly on behalf of Apex, Triangle, and Tarr consumers and the Receiver on behalf of Apex and Triangle consumers through the FTC's remediation programs.[6] For this reason and because each case asserted both overlapping and unique claims, Class Plaintiffs and the Receiver maximized the efficacy and efficiency of their efforts by utilizing the same counsel to prosecute both cases and pursuing a coordinated litigation strategy.

### A. Underlying FTC Lawsuits, Plaintiffs' Investigation, And Pre-Litigation Mediation Efforts

16. The FTC initiated separate enforcement actions against Tarr, Triangle,

[6] As of February 18, 2026, the FTC remediation programs have returned $2.82 million to Apex consumers, $8.46 million to Triangle consumers, and $5.88 million to Tarr consumers. *See* https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyCase.

and Apex on October 3, 2017, June 25, 2018, and November 14, 2018, respectively.[7] The FTC alleged, among other things, that Tarr, Triangle, and Apex each engaged in unfair and deceptive business practices related to selling nutraceutical products online, improperly upsold unwanted products, employed obstacles to consumers seeking a refund or cancellation, and employed telemarketers to contact consumers who had yet to complete a purchase. While no receiver was appointed in the *Tarr* Action, the courts in both the *Triangle* Action and the *Apex* Action directed and authorized the Receiver to sue for, collect, and receive, all assets for Apex, Triangle, and their related entities. *Triangle* Action, ECF No. 11 at 19; *Apex* Action, ECF No. 41 at 19, 21.

**B. Class Counsel's Investigation And Pre-Litigation Mediation Efforts**

17. Beginning in 2019, Class Counsel conducted an extensive investigation of Tarr, Triangle, and Apex's business practices. This investigation included, among other things: (1) reviewing and analyzing all publicly available information concerning Tarr, Apex, and Triangle and each of their respective principals; (2) reviewing and analyzing voluminous business records obtained from the Triangle and Apex Enterprises in connection with each respective receivership; (3) reviewing and analyzing information received pursuant to a subpoena issued to Wells Fargo; and (4) retaining and working with a private investigator who contacted former Wells Fargo employees and other sources with relevant information.

18. After Class Counsel and the Receiver's counsel (collectively, "Plaintiffs' Counsel") conducted the investigation into potential claims against Wells Fargo, but before initiating litigation, the Parties agreed to participate in private mediation before the Hon. Daniel Weinstein (Ret.). The Parties exchanged substantial mediation

[7] *See FTC v. Tarr Inc., et al.*, No. 3:17-cv-02024-LAB (S.D. Cal.) ("*Tarr* Action"); *FTC v. Triangle Media Corp., et al.*, No. 3:18-cv-01388-TWR (S.D. Cal.) ("*Triangle* Action"); *FTC v. Apex Capital Grp., LLC, et al.*, No. 2:18-cv-09573-JFW (C.D. Cal.) ("*Apex* Action").

statements and participated in two separate full-day, in-person mediation sessions on November 5, 2020 and April 29, 2021. Both sessions ended without an agreement to settle.

### C. Commencement Of The *McNamara* and *McCraner* Actions

19. On July 8, 2021, Class Plaintiffs initiated the *McCraner* Action in the United States District Court for the Southern District of California. *McCraner* Action, ECF No. 1.[8] Class Plaintiffs alleged that Apex, Triangle, and Tarr, along with their related entities, perpetrated a negative option fraudulent scheme on consumers of personal care products, electronic cigarettes, and dietary, health or beauty supplements with Wells Fargo's assistance. *Id.* Class Plaintiffs further alleged that the fraudulent enterprises deposited and laundered the money obtained from the negative option schemes into and through Wells Fargo accounts. *Id.* And finally, Class Plaintiffs alleged that Wells Fargo assisted the fraudulent enterprises by opening numerous business deposit accounts for dozens of Apex-, Triangle-, and Tarr-related companies who then internationally transferred millions of wrongfully obtained dollars into third-party bank accounts. *Id.*

20. Class Plaintiffs' 81-page initial complaint asserted the following claims against Wells Fargo: (1) aiding and abetting fraud; (2) conspiracy to commit fraud; (3) violation of Cal. Penal Code § 496; and (4) violation of California Business and Professions Code § 17200, *et seq* (the "UCL Claim"). *Id.*

### D. Wells Fargo's Motions To Dismiss The Initial Class And *The* Receiver Complaints, Motion to Strike Class Plaintiffs' Nationwide Class Action Claims, And Motion To Consolidate The *McCraner* and *McNamara* Cases

#### 1. Motion To Dismiss The Initial Class Complaint

21. On August 25, 2021, Wells Fargo moved to dismiss Class Plaintiffs' initial complaint and requested judicial notice of seven exhibits. *McCraner* Action,

[8] That same day, the Receiver initiated the *McNamara* Action in the United States District Court for the Southern District of California. *See* ECF No. 1.

ECF Nos. 12, 14.[9] In support of the motion to dismiss, Wells Fargo argued: (1) plaintiffs McCraner, Stiansen, and Pollard lacked standing because they had already received refunds; (2) all claims were time barred; (3) Class Plaintiffs' aiding and abetting fraud claim failed because they failed to allege facts showing Wells Fargo (a) had actual knowledge and (b) substantially assisted the underlying schemes; (4) Class Plaintiffs' conspiracy to commit fraud claim failed because the initial complaint did not allege any actual agreement between Wells Fargo and the fraudulent enterprises; (5) Class Plaintiffs' claim that Wells Fargo violated California Penal Code § 496 failed because (a) the case did not involve "stolen" property as defined by the statute and (b) the initial complaint fails to allege Wells Fargo had actual knowledge it received stolen property; and (6) Class Plaintiffs' UCL Claim failed because (a) the underlying claims failed, (b) Class Plaintiffs lacked standing, (c) the initial complaint admitted an adequate remedy at law existed precluding relief sought, (d) restitution was not an available remedy, and (e) the UCL cannot be applied extra-territorially. *McCraner* Action, ECF No. 12-1.

22. On October 8, 2021, Class Plaintiffs opposed Wells Fargo's motion to dismiss and to strike the nationwide class action claims. *McCraner* Action, ECF Nos. 15-16. In opposing Wells Fargo's motion to dismiss, Class Plaintiffs argued: (1) plaintiffs McCraner, Stiansen, and Pollard had standing because they were not compensated for the loss of use of their money by payment of interest or otherwise; (2) the discovery rule tolled any applicable statute of limitation, making their claims timely asserted; (3) Wells Fargo incorrectly stated the aiding and abetting standard but regardless Class Plaintiffs alleged dozens of specific facts showing that Wells Fargo knew of and substantially assisted in the underlying schemes; (4) the initial complaint adequately alleged a conspiracy to commit fraud based on extensive

[9] That same day, Wells Fargo separately moved to dismiss the Receiver's complaint. ECF No. 14.

allegations of coordinated, joint acts between Wells Fargo and the fraudulent schemes; (5) the initial complaint adequately asserted a penal code § 496 violation based on allegations that Wells Fargo knew the money it received was obtained via a false or fraudulent representation; and (6) the initial complaint adequately alleged a UCL violation because (a) the underlying violations were adequately alleged, (b) standing is satisfied by allegations that Wells Fargo not only knowingly opened accounts for the fraud schemes but allegedly counseled the principals of the fraudulent enterprises on how to conceal certain indicia of fraud, (c) it is premature to assess the adequacy of Class Plaintiffs' remedy at law at the pleading stage, (d) restitution is expressly authorized by the UCL, (e) it is brought against Wells Fargo, a California company and the conduct at issue overwhelmingly occurred in California. *McCraner* Action, ECF No. 15.

**2. Motion To Strike Class Plaintiffs' Nationwide Class Action Claims And Allegations**

23. On August 25, 2021, Wells Fargo moved to strike Class Plaintiffs' nationwide class action claims. *McCraner* Action, ECF No. 13. In support of the motion to strike, Wells Fargo argued: (1) there were no common questions given there were three separate schemes and dozens of companies and products at issue; (2) Class Plaintiffs were not adequate class representatives because (a) three of the six named plaintiffs did not suffer any harm and thus lacked standing, and (b) all named plaintiffs lack standing to represent class members from states other than their own due to differences in state law; (3) variation in state law will predominate over any common issues because (a) California law cannot apply to the entire class, (b) state law variations preclude establishing a claim for aiding and abetting fraud on a nationwide basis under California law, and (c) state law variations preclude establishing a claim for conspiracy to commit fraud on a nationwide basis under California law; (4) predominance is defeated by the highly individualized inquiry that is required to establish the elements of each claim; and (5) a class action is not a superior means of

adjudicating individual claims because the claims derive from underlying wrongdoing by three distinctly separate entities and their hundreds of affiliated companies which may have interacted differently with the putative class and Wells Fargo. *McCraner* Action, ECF No. 13-1.

24. On October 8, 2021, Class Plaintiffs opposed Wells Fargo's motion to strike the nationwide class action claims. *McCraner* Action, ECF No. 16. In support of their opposition, Class Plaintiffs argued: (1) Wells Fargo's motion to strike was premature; (2) claims on behalf of a nationwide class were all governed by California law under the choice of law analysis outline in *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012); and (3) this case was well-suited to class action treatment because (a) California law uniformly applies to all of Class Plaintiffs and nationwide Class members' claims and (b) all four requirements under Fed. R. of Civ. P. Rule 23(a) are satisfied. *McCraner* Action, ECF No. 16.

**3. Order On Motion To Dismiss And Motion To Strike**

25. On March 30, 2022, the Court in the *McNamara* Action entered its order denying in part and granting in part Wells Fargo's motion to dismiss (ECF No. 20),[10] while the Court in the *McCraner* Action entered its order granting Wells Fargo's motion to dismiss in its entirety (*McCraner* Action, ECF No. 22). The Court's order dismissed Class Plaintiffs' claims without prejudice and denied Wells Fargo's motion to strike as moot. *Id*.

26. More specifically, the Court found the initial complaint's allegations failed to satisfy the knowledge requirement for the aiding and abetting, conspiracy to commit fraud, and California Penal Code § 496 claims. *McCraner* Action, ECF No. 22 at 6-7. The Court made clear that direct factual allegations were not required to survive a motion to dismiss but that actual knowledge could be "inferred from circumstances such that the defendant 'must have known.'" *Id*. at 7. The Court also

[10] On April 27, 2022, Wells Fargo answered the Receiver Complaint. ECF No. 24.

found that because the initial complaint failed to allege that Wells Fargo knew the Enterprises were engaged in any misconduct toward Class Plaintiffs specifically, the UCL claim failed. *Id*. at 9.

### E. Class Plaintiffs' First Amended Complaint, Wells Fargo's Motion To Dismiss And Motion To Strike Nationwide Class Action Claims And Allegations

27. Following the Court's dismissal of the initial class action complaint, Class Plaintiffs filed the First Amended Class Action Complaint (the "Class Complaint") on April 20, 2022. *McCraner* Action, ECF No. 23. The 93-page Class Complaint detailed additional factual allegations that Wells Fargo knew the Enterprises were defrauding consumers. More specifically, Class Plaintiffs alleged Wells Fargo provided atypical banking services to the Enterprises, and consequently, repeatedly reviewed information related to the Enterprises' fraudulent businesses, such as the Enterprises' product websites and billing and refund policies, which revealed the true nature of the Enterprises' fraud. The Class Complaint also included additional specific examples of interactions between Wells Fargo bankers and the Enterprise principals excerpted from Apex and Triangle's business records that further bolstered Class Plaintiffs' allegations.

28. On June 3, 2022, Wells Fargo moved to dismiss the Class Complaint and requested judicial notice of seven exhibits. *McCraner* Action, ECF Nos. 26, 29. Wells Fargo's motion asserted statute of limitation and standing arguments that were similar to those in their first motion to dismiss. Wells Fargo also argued the Class Complaint failed to plead sufficient factual allegations to satisfy the pleading standards for Class Plaintiffs' aiding and abetting, conspiracy, Cal. Penal Code § 496, and UCL claims.

29. That same day, Wells Fargo also moved to strike the Class Complaint's nationwide class action claims and allegations. *McCraner* Action, ECF No. 28. Wells Fargo asserted similar arguments to the motion to strike that the Court denied as moot on March 30, 2022. For example, Wells Fargo asserted arguments about a lack of commonality amongst the various class members given the number of companies and

products at issue, which would require highly individualized inquiries to establish the elements of each claim Class Plaintiffs asserted. Additionally, Wells Fargo again argued Class Plaintiffs were not adequate class representatives because of various standing issues. Finally, Wells Fargo argued that variations in state law precluded establishing claims for aiding and abetting conspiracy on a nationwide basis.

30. On July 15, 2022, Class Plaintiffs opposed both of Wells Fargo's motions to dismiss and to strike. *McCraner* Action, ECF Nos. 30-31. In opposing Wells Fargo's motion to dismiss, Class Plaintiffs argued the Class Complaint sufficiently pled (1) new circumstantial facts supporting an inference of Wells Fargo's actual knowledge of the underlying consumer fraud; (2) factual allegations that Wells Fargo knowingly provided substantial assistance to the Enterprises; and (3) factual allegations supporting the remaining conspiracy, Cal. Penal Code § 496, and UCL claims. Class Plaintiffs also responded to Wells Fargo's renewed arguments challenging standing and any applicable statute of limitation.

31. In opposing Wells Fargo's motion to strike the nationwide class action claims and allegations, Class Plaintiffs responded to Wells Fargo's arguments including by noting that Wells Fargo's motion at the pleading stage continued to be premature and was better suited for class certification and that California law applied to Class Plaintiffs' claims. *McCraner* Action, ECF No. 31. And finally, though premature, Class Plaintiffs outlined the propriety of class wide treatment as required by Rule 23 of the Federal Rules of Civil Procedure.

32. On August 1, 2022, Wells Fargo filed their replies in further support of the motions to dismiss and to strike. *McCraner* Action, ECF Nos. 33-34.

33. On March 30, 2023, the Court denied Wells Fargo's motion to dismiss in part and motion to strike in its entirety. *McCraner* Action, ECF No. 40. While the Court found Class Plaintiffs sufficiently alleged their aiding and abetting, conspiracy, and Cal. Penal Code § 496 claims, the Court dismissed the UCL claim. In dismissing

the UCL claim, the Court found the Class Complaint did not plead the required inadequate legal remedies to proceed with a UCL claim.

34. On May 1, 2023, Wells Fargo filed their answer to the Complaint, which they subsequently amended on June 14, 2023, in response to Class Plaintiffs' motion to strike Wells Fargo's affirmative defenses. *McCraner* Action, ECF Nos. 44, 47, 57.

**F. Wells Fargo's Motion For Consolidation**

35. On May 6, 2023, Wells Fargo moved to consolidate all pre-trial proceedings in the *McNamara* and *McCraner* Actions. In support of consolidation, Wells Fargo argued that both cases were based on similar factual allegations—Wells Fargo employees used "atypical banking procedures" to assist Tarr, Apex, and Triangle in their schemes and would have discovered the fraud if it had followed its "know your customer" and other AML requirements. *McCraner* Action, ECF No. 46. Wells Fargo also argued that consolidation would prevent duplicative discovery thereby promoting efficiency and if all discovery rulings in the *McNamara* Action would apply to the *McCraner* Action through consolidation, then judicial resources would be conserved.

36. Class Plaintiffs opposed the motion for consolidation on May 26, 2023. *McCraner* Action, ECF No. 48. In their opposition, Class Plaintiffs argued: (1) consolidation would prejudice both the Receiver and Class Plaintiffs because the two actions were at completely different litigation stages with the *McNamara* Action nearing the end of fact discovery and the *McCraner* Action just entering fact discovery; (2) discovery in the *McNamara* Action could and should be used in the *McCraner* Action without consolidation; (3) Wells Fargo should not be allowed to use consolidation as a means to limit discovery in the *McCraner* Action, which would unduly prejudice Class Plaintiffs; and (4) there were significant differences between the two cases—the parties, the need for the *McCraner* Action to go through class certification, different claims asserted in each case, and the existence of Tarr in the *McCraner* Action only.

37. Wells Fargo filed their reply in further support of consolidation on June 5, 2023. *McCraner* Action, ECF No. 50.

**G. Pre- And Post-Consolidation Fact Discovery Process**

**1. Pre-Consolidation Fact Discovery In The *McNamara* Action**

38. From March 2022 through June 2023, the Receiver, who was also represented by Class Counsel, conducted extensive fact discovery related to the Apex and Triangle Enterprises. Written discovery included propounding numerous requests for production of documents, written interrogatories, and requests for admission. The Receiver also served many subpoenas on third parties including merchant processors, merchant banks, and other financial institutions. As a result, the Receiver analyzed over a million documents produced throughout the *McNamara* Action. The Receiver also took or defended more than 25 depositions, including three Class Plaintiffs (subpoenaed by Wells Fargo as fact witnesses in the Receiver's case), Triangle principals and former employees, and various former and current Wells Fargo bankers.

39. During fact discovery and continuing after its cut-off deadline in June 2023, the Receiver engaged in numerous discovery disputes which resulted in conferences and hearings before Magistrate Judge Leshner. Topics included, among others, the applicability of the SAR privilege and the scope and contours of Rule 30(b)(6) depositions.

**2. Pre- And Post-Consolidation Fact Discovery In The *McCraner* Action**

40. Following the Court's partial denial of Wells Fargo's second motion to dismiss on March 30, 2023, Class Plaintiffs vigorously pursued fact and expert discovery. Initially, Wells Fargo sought to narrow the scope of Class Plaintiffs' discovery to Tarr only while Wells Fargo's motion to consolidate the *McNamara* and *McCraner* Actions was pending. However, after substantial and prolonged discussion/negotiation, including during the case management conference before

Magistrate Judge Gallo held on July 6, 2023, Class Plaintiffs and Wells Fargo, on July 13, 2023, submitted a joint proposal to the Court allowing, in addition to Tarr-related discovery for (1) the use of Apex and Triangle discovery obtained in the *McNamara* Action, and (2) additional discovery related to Triangle and Apex, which the Court granted the next day. *McCraner* Action, ECF Nos. 71-72.

41. While fact discovery was ongoing, Class Plaintiffs and Wells Fargo participated in an Early Neutral Evaluation under the auspices of Magistrate Judge Leshner on July 18, 2023. The session ended without an agreement to settle, and the Parties continued pursuing fact discovery.

**a) Discovery of Class Plaintiffs**

42. Class Plaintiffs responded to approximately 50 requests for production of documents each, 17 written interrogatories each, as well as requests for admission. In response to Wells Fargo's documents requests, Class Plaintiffs produced nearly 10,000 pages of documents.

43. Each Class Plaintiff was deposed by Wells Fargo, with Plaintiffs McCraner, Stiansen, and Pollard sitting for a second deposition because they received subpoenas for documents and deposition testimony from Wells Fargo in the *McNamara* Action. In each instance, Class Counsel spent significant time preparing each plaintiff in advance of his/her deposition and represented each Class Plaintiff at his/her deposition.

**b) Written Discovery And Documentary Evidence Of Wells Fargo and Relevant Third Parties**

44. Over the course of the approximately one-year discovery period, Class Plaintiffs propounded numerous requests for production and written interrogatories on Wells Fargo. Class Plaintiffs also served document subpoenas on over 25 third parties including the principals of Tarr, credit card networks, and merchant processors, among others. As a result of their efforts, Class Plaintiffs reviewed and analyzed approximately 70,000 pages of additional documents from Wells Fargo and

various third parties. Additionally, because Class Plaintiffs' claims did not overlap entirely with the Receiver's claims, Class Plaintiffs had to analyze evidence (over one million documents) from the *McNamara* Action to obtain required evidentiary support for the Class-specific claims.

45. Class Counsel reviewed the documents to make several analytical determinations as to their importance and relevance. Specifically, we determined the relative importance of specific documents to the litigation, and assessed which specific issues the documents related to, including whether a document supported an element of the aiding and abetting claim, conspiracy to commit fraud claim, or § 496 claim.

46. As the document review process was ongoing, Class Counsel created a central repository of key documents organized by issue. Important documents related to Class Plaintiffs' claims were arranged chronologically and saved electronically on a web-based database platform. This platform was regularly updated as additional key documents were discovered. Creating this repository of key documents allowed attorneys to easily access and analyze information related to any claim in the case without having to independently compile them. This allowed the attorneys to efficiently prepare for depositions and locate evidence for numerous fact-based submissions to the Court.

**c) Depositions Of Wells Fargo Bankers And Third Party Witnesses**

47. Between September 2023 and March 2024, Class Counsel took the depositions of eleven witnesses including five former Wells Fargo bankers, four Tarr principals, and two third-party merchant bank representatives. In March 2024, Class Counsel took four Rule 30(b)(6) depositions of Wells Fargo pursuant to Class Counsel's notice served in February 2024.

48. Each of these depositions involved extensive preparation by Class Counsel, including detailed review of the evidentiary database, prior testimony that

related to the witness, witness-specific research, and a close analysis of the issues in the case. Attorneys also prepared detailed "deposition kits," which included the relevant documents for each witness, as well as detailed "witness memoranda" and analyses specific to each deponent.

**d) Discovery Disputes**

49. Throughout fact discovery, Class Plaintiffs frequently met and conferred with Wells Fargo via letter correspondence, telephone and/or email on various discovery issues. While the Parties made considerable effort to resolve discovery disputes without Court intervention, a number of disputes did require the Court's intervention.

50. The following non-exhaustive list summarizes the discovery disputes that resulted in discovery conferences before Magistrate Judge Leshner. Each involved a lengthy meet and confer process, followed by considerable time preparing for and participating in discovery conferences:

a. Wells Fargo challenged Class Counsel's privilege objections and instructions to not answer certain questions asked during three designated testifying experts' depositions;

b. Class Counsel moved to compel production of documents sought in Class Plaintiffs' second set of requests for production related to a Wall Street Journal article titled "Regulators Say Wells Fargo Isn't Doing Enough to Police Customer Crimes;"

c. Wells Fargo moved for a protective order on three separate occasions under the Apex doctrine in response to Class Counsel's subpoenas for testimony served on three former Wells Fargo employees of varying levels of seniority;

d. Wells Fargo sought the production of plaintiff Stiansen's notes which Class Counsel had partially withheld on the basis of privilege;

e. Wells Fargo moved for a protective order regarding Class Counsel's notice of a deposition pursuant to Rule 30(b)(6);

f. Dispute over the locations of Rule 30(b)(6) depositions; and

g. Dispute over duration of certain expert depositions who previously testified in the *McNamara* Action.

**H. Pre- And Post-Consolidation Expert Discovery**

51. While the Receiver had previously proffered three experts in the fields of forensic accounting and banking regulations, these opinions related only to Apex and Triangle, and not Tarr. Additionally, because of the timing of certain discovery disputes' resolution, Wells Fargo produced additional information related to Apex and Triangle after the initial exchange of expert reports in the *McNamara* Action. Therefore, Class Plaintiffs retained experts in the fields of forensic accounting and banking regulation to opine on Wells Fargo's conduct as it related to Tarr as well as updated opinions on Wells Fargo's conduct considering the additional Apex and Triangle evidence. Class Plaintiffs also proffered an expert in social computing to render opinions on the nature of the Apex, Triangle and Tarr marketing practices.

52. Given the complex nature of this Action, it was critical for Class Plaintiffs to retain highly-qualified experts to provide support for Class Plaintiffs' claims of Wells Fargo's liability and damages. Class Counsel worked extensively with these experts to inform them of the claims and evidence, analyze the evidence, and assist the experts in the preparation of their reports in this Action. Class Plaintiffs submitted reports from an expert in each of the following fields: forensic accounting, banking regulations, and social computing. Wells Fargo likewise proffered three experts—in the fields of banking regulations, economics/damages, and class certification. Each of the proffered experts produced opening and rebuttal reports and was deposed.

**I. Pre-Consolidation Summary Judgment And Consolidation Order**

53. On November 13, 2023, Wells Fargo filed its motion for summary judgment against the Receiver, which included approximately 100 exhibits. ECF Nos. 187-89. On December 15, 2023, Wells Fargo moved to exclude the testimony of all three of the Receiver's experts. ECF Nos. 201-05. The Receiver opposed Wells

Fargo's motion for summary judgment on December 22, 2023, and in support of that opposition, cited approximately 195 exhibits. ECF No. 211.

54. On January 4, 2024, the Court consolidated the *McNamara* and *McCraner* Actions for all pre-trial purposes (the "Action") and denied Wells Fargo's motions for summary judgment and to exclude expert testimony as moot. ECF No. 220; *McCraner* Action, ECF No. 90.

55. On January 22, 2024, the Parties participated in a Settlement Conference with Magistrate Judge Leshner which ended without an agreement to settle, and the Parties continued to litigate the case.

### J. Post-Consolidation Summary Judgment, Motions To Exclude, And Class Certification

#### 1. Wells Fargo's Motion For Summary Judgment

56. On June 10, 2024, Wells Fargo filed a motion for summary judgment or partial summary judgment in the consolidated action and filed motions to exclude Plaintiffs' three proffered experts on June 10, 2024, including approximately 104 exhibits. ECF No. 305-06. Wells Fargo argued, *inter alia*, that Plaintiffs' claims were based on the overall false premise that all the Enterprises' sales stemmed from consumer fraud resulting from allegedly improperly disclosed risk-free trial offers. Wells Fargo argued that that there was no genuine issue of material fact supporting Plaintiffs' (1) aiding and abetting claim because there was no evidence of: (a) actual knowledge or competent circumstantial evidence that Wells Fargo "must have known," (b) that Wells Fargo knew of the Enterprise principals' agreements with the various straw owners, (c) that Wells Fargo's business decision to decline merchant services does not equate to knowledge of consumer fraud, and (d) that Wells Fargo substantially assisted causing the specific fraud; (2) conspiracy claim because there was no evidence of an agreement between Wells Fargo and the Enterprises; (3) Cal. Penal Code § 496 claim because (a) there is no evidence establishing what, if any, money was stolen, and (b) there is no evidence that Wells Fargo had actual knowledge

of the stolen funds considering the Bank did not handle the credit card processing for the consumer transactions, and instead only handled the Enterprises' money after the credit card processing stage.

57. Wells Fargo challenged Plaintiffs' reliance on the Stipulated Judgments as a form of damages because (a) the Stipulated Judgments were suspended, and (b) Wells Fargo was not a party to any of the Stipulated Judgments and therefore is not legally obligated to pay them. Wells Fargo also argued that punitive damages were not available to Plaintiffs because the conduct at issue was not "outrageous" in nature and therefore did not justify punitive damages.

58. On July 8, 2024, Plaintiffs opposed Wells Fargo's motion for summary judgment and cited approximately 200 exhibits. ECF No. 309. More specifically, Plaintiffs argued, *inter alia*, the Enterprises' businesses overwhelmingly involved fraud evidenced by the fact that once the FTC shut down the Enterprises, the Receiver concluded neither Apex nor Triangle could operate legally and Tarr principals also concluded they had no viable legal business left and ceased sales. Plaintiffs disputed Wells Fargo's assertion that there was no genuine issue of material fact supporting Plaintiffs' aiding and abetting claim with voluminous evidence showing Wells Fargo's knowledge and substantial assistance of the fraud. *See Id*. at 16-27. Plaintiffs further argued that a jury may consider Wells Fargo's motives given that the Bank admitted to crimes in connection with its account opening policies and the imposition of aggressive daily sales quotas (and a fear of firing if not met) financially motived bankers to aid the Enterprises' Principals to open accounts. Plaintiffs also cited evidence disputing Wells Fargo's assertion that there was no disputed material facts establishing that the Apex and Triangle principals breached their fiduciary duties or both care and loyalty. Plaintiffs further argued that the same facts that prove breaches of fiduciary duties also prove their conversion claim. Plaintiffs argued that the same facts that prove the knowledge element for an aiding and abetting claim also can be used to establish the conspiracy claim.

59. Plaintiffs also addressed Wells Fargo's arguments attacking Plaintiffs' various damages theories by offering responses including: (1) Wells Fargo's attack on stipulated judgments in the *Apex* and *Triangle* Actions was inappropriate because it already tried to attack them in the underlying FTC actions, but that attack was rebuffed by the Apex and Triangle courts as untimely (and upheld by the Ninth Circuit); (2) it doesn't matter if the stipulated judgments were suspended because the Receiver's mandate as to both the Apex and Triangle Receiverships was to relinquish dominion of all assets to be used for equitable relief including consumer redress; (3) the Stipulated Judgments provide a measure of damages under Section 19(a-b), 15 U.S.C. § 57(ab); (4) the fraudulent transfer theory is sound because amounts transferred from Wells Fargo bank accounts of Apex and Triangle are properly quantified by Plaintiffs' experts and evidence established that those transfers are made with actual intent to hinder, delay or defraud a creditor under Cal. Civ. Code § 3439.04; (5) punitive damages are recoverable because Wells Fargo's conduct warranted such an award.

**2. Motions To Exclude Expert Testimony**

60. With their motion for summary judgment, Wells Fargo, on June 10, 2024, moved under Federal Rule of Evidence 702 (and Daubert) to exclude (or substantially limit) Plaintiffs' expert testimony—including key opinions offered to establish (i) the scope of consumer-harm proceeds moving through the Wells Fargo accounts and (ii) what "prudent banking" and BSA/AML practice required under the circumstances. Wells Fargo claimed the challenged testimony failed Rule 702's "fit" and reliability requirements because, among other things, the opinions were not grounded in sufficient verified data, reflected speculation or personal standards rather than accepted industry/regulatory standards, and risked confusing the issues the jury must decide.

61. Wells Fargo's motion challenged Plaintiffs' forensic accounting expert (Carey), contending his "Net Transfer" and "Net Consumer Sales" opinions were

unreliable because (a) he did not use the most reliable source data (bank statements), relied instead on "bank roll forwards" created by the Receiver's staff, and failed to independently verify that the balances and deposits he treated as "consumer sales after deductions" in fact reflected that category; and (b) his analysis was not properly tethered to the alleged harm. Wells Fargo also argued Carey's "high chargeback" opinions should not be relied upon because he admitted he was not qualified to opine on chargebacks, and Carey conceded he couldn't identify a chargeback versus a refund from the bank statements.

62. Wells Fargo separately challenged Plaintiffs' banking practices experts (Lindsey and Faulkner), arguing they opined outside their expertise and their conclusions rested on subjective "prudent banking practice" benchmarks which lacked broader endorsement, particularly as it pertained to Faulkner's proffered prudential standard, which she testified was her personal view and not necessarily a consensus standard. Wells Fargo also sought exclusion of Faulkner's "card payment ecosystem" opinions as irrelevant and prejudicial, contending there is no Rule 702 "fit" because Wells Fargo purportedly had no actual role in the "payment ecosystem" as framed by the expert, and further argued that attempts to ground those opinions in BSA/AML standards misapply those standards to the facts of the case. With respect to Lindsey, Wells Fargo argued he was unqualified to offer "merchant processing" and related risk opinions because he admitted he lacked understanding of merchant processing, did not know what an acquiring bank does, and was not apprised of the specific risk standards applicable to acquiring banks—yet sought to offer opinions that (in Wells Fargo's view) necessarily depend on such specialized knowledge. ECF No. 305 at 34-51.

63. On July 8, 2024, along with their opposition to Wells Fargo's summary judgment motion, Plaintiffs opposed Wells Fargo's Rule 702 Motion, arguing the challenged opinions were reliably grounded in identifiable banking standards (including specific BSA/AML and KYC-related requirements) and that the testimony

will assist the trier of fact in understanding the relevant context when evaluating whether Wells Fargo's conduct departed from prudent practice.

64. Plaintiffs further argued that Faulkner's "card payments ecosystem" discussion is not offered as a free-standing liability theory, but rather to provide necessary explanatory context as to how the alleged scheme functioned and how the relevant actors' roles interrelated (including the need to obtain and maintain depository accounts as a practical prerequisite to merchant processing), and to rebut Wells Fargo's anticipated defenses regarding reliance/verification responsibilities and the significance of beneficial-ownership information ECF No. 309 at 46-55.

65. On June 10, 2024, Plaintiffs moved to exclude the expert report of Atanu Saha and certain opinions of Carlyn Irwin contending the challenged testimony failed Rule 702's reliability and "fit" requirements and should be excluded for purposes of summary judgment and trial. More specifically, Plaintiffs argued, *inter alia*, that Dr. Saha's report: (1) contained impermissible legal analysis and conclusions rather an economic analysis helpful to the factfinder; (2) asserted improper conclusions regarding chargeback ratios based on a non-representative dataset; and (3) discussed hypothetical non-fraud reasons for chargebacks which were untethered to evidence in the case.

66. As to Irwin, Plaintiffs moved to exclude two categories of opinions: (1) Irwin's "but-for world" framework because it imposed impermissible legal requirements on Plaintiffs' damages proof—such as requiring Plaintiffs to show the Enterprises could not have replaced Wells Fargo with other banks, or that all class members would have avoided free-trial/negative-option marketing; and (2) Irwin's opinions concerning the Stipulated Judgments because they were irrelevant and based on a applies-to-oranges comparison. ECF No. 302.

67. On July 8, 2024, Wells Fargo opposed Plaintiffs' motion to exclude the expert report of Atanu Saha and certain opinions of Carlyn Irwin. Wells Fargo asserted a number of arguments including, among others: (1) Saha's opinions were

not impermissible legal conclusions; (2) attacks on the source material relied upon is not suited for a Daubert challenge; (3) presentation of contrary evidence does not sustain a challenge to the admissibility of an opinion but to its weight; and (4) opinions about individualized consumer behavior were grounded in economic principles and experience.

68. As to Irwin's "but for world" opinion, Wells Fargo argued that it was not a legal conclusion but a causation analysis which is a widely accepted method for assessing damages. Wells Fargo also argued that Irwin's opinions on the Stipulated Judgments were relevant especially considering Plaintiffs' reliance on the Stipulated Judgments to determine damages. ECF No. 308.

69. On July 22, 2024, Plaintiffs filed their response in further support of their motion to exclude the expert report of Atanu Saha and certain opinions of Carlyn Irwin. ECF No. 315.

**3. Class Plaintiffs' Motion For Class Certification**

70. Although the Court consolidated the *McNamara* and *McCraner* Actions for all pre-trial purposes, Class Plaintiffs still needed to certify the proposed Class. To that end, on September 5, 2024, Class Plaintiffs moved to certify a Rule 23(b)(3) damages class comprised of consumers allegedly enrolled in the Enterprises' recurring billing programs without their consent, and requested appointment of the Class Plaintiffs as class representatives and GPWR as class counsel. In support of certification, Class Plaintiffs argued that common questions about Wells Fargo's conduct were the same with respect to all Class members: whether Wells Fargo had actual knowledge of the fraud and provided substantial assistance to the Enterprises, and whether Wells Fargo had an agreement with the Enterprises as required for the conspiracy claim.

71. Class Plaintiffs further argued that their claimed class wide damages are susceptible to measurement on a common, objective basis using transaction data associated with the Enterprises' banking relationship with Wells Fargo. Specifically,

Class Plaintiffs' theory is that aggregate consumer harm attributable to Wells Fargo's alleged enabling conduct equals "net consumer sales"—*i.e.*, total sales less chargebacks and refunds—reflected on the Enterprises' Wells Fargo account records. Plaintiffs contended that this "net consumer sales" approach was consistent with their liability theory because, in their view, Wells Fargo's alleged provision of "numerous bank accounts" was a substantial component of the Enterprises' ability to operate; thus, absent Wells Fargo's alleged misconduct, the Enterprises could not have carried out the consumer fraud at scale. ECF No. 334.

72. On September 26, 2024, Wells Fargo opposed certification on multiple grounds, including that Class Plaintiffs failed to satisfy the "rigorous analysis" required for Rule 23(b)(3) predominance and had not actually proven (as opposed to merely alleged) compliance with Rule 23's requirements. Wells Fargo also claimed that Class Plaintiffs' damages methodology, *i.e.*, their "net sales" approach, was untethered to their liability theories and did not isolate damages attributable to Wells Fargo's alleged conduct which failed the rigorous analysis required under *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013). Wells Fargo also argued that Class Plaintiffs' proposed class definition swept in "great numbers" of uninjured members, including consumers who were allegedly "satisfied with products and recurring billing terms," those allegedly made whole through FTC refund programs, and those who allegedly received full or excess refunds through chargebacks—thereby creating individualized injury issues that would overwhelm common proof.

73. Wells Fargo further argued that choice-of-law considerations independently preclude commonality and predominance, asserting Plaintiffs failed to satisfy their burden under *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012) to apply California law nationwide and contended Class Plaintiffs' attempt to apply Cal. Penal Code § 496 extraterritorially to a nationwide class was improper. ECF No. 343.

74. Class Plaintiffs filed their reply in further support of their class certification motion on October 10, 2024. ECF No. 352. That same day, Class Plaintiffs filed a motion to exclude two expert declarations submitted in connection with Wells Fargo's opposition to class certification certain opinions submitted by Wells Fargo's experts. ECF No. 351.

75. On October 29, 2024, the Court held oral argument on Wells Fargo's Motion for Summary Judgment, Motions to Exclude Expert Testimony, and Class Plaintiffs' Motion for Class Certification. Following oral argument, the Court took the motions under submission. ECF No. 361.

**K. Court-Supervised Mediation and Settlement**

76. On October 30, 2024, the Parties participated in a mediation session under the auspices of Magistrate Judge Leshner. Though the session ended without an agreement to settle, over the course of the next several weeks, the Parties continued to work with Judge Leshner, a process which resulted in a settlement of the Action for $33,000,000.

77. Over the next six months, the Parties negotiated, and executed the Class and Receiver Agreements dated June 25, 2025, which subject to the Court's approval will release all claims asserted against Wells Fargo in the Action in return for a non-reversionary cash payment by or on behalf of Wells Fargo in the amount of $33,000,000 to the Class and Receiver.

**L. The Proposed Settlement Is Approved In The Underlying *Triangle* And *Apex* Actions**

78. On August 11, 2025, the Receiver moved to approve the proposed Settlement with Wells Fargo in both the *Apex* Action and *Triangle* Actions. *Apex* Action, ECF No. 270; *Triangle* Action, ECF No. 186. On September 5, 2025, Judge Walter granted the Receiver's motion in the *Apex* Action. *Apex* Action, ECF No. 271. On September 8, 2025, this Court granted the Receiver's motion in the *Triangle* Action. *Triangle* Action, ECF 189.

**M. Preliminary Approval**

79. Following the Settlement approval in both the *Apex* Action and *Triangle* Actions, Class Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion") on October 2, 2025. ECF No. 383.

80. On November 4, 2025, the Court entered the Preliminary Approval Order. ECF No. 388.

## III. RISKS OF CONTINUED LITIGATION

81. Class Plaintiffs and Class Counsel recognize that continued litigation would have posed significant risks, including the possibility the Class might recover substantially less than the Settlement Amount—or nothing at all—many years in the future. Both the motion to dismiss and summary judgment process highlighted many of the risks associated with continued litigation. The Court dismissed the initial class complaint in its entirety and then partially dismissed the Class Complaint. Additionally, Wells Fargo moved for summary judgment, which was fully briefed and pending a decision prior to settling, giving Class Plaintiffs a front row seat to the numerous challenges before them.

**A. Risks To Establishing Liability And Damages For Each Remaining Claim**

82. The Court's partial dismissal eliminated Class Plaintiffs' UCL claim but allowed the Class Action to proceed on three claims against Wells Fargo: aiding and abetting fraud, conspiracy to commit fraud, and violation of Cal. Penal Code § 496, *i.e.*, receipt of stolen property. Because Class Plaintiffs bear the burden to prove each element at trial, each claim presented different but material risks that could have significantly reduced the Class's potential recovery.

**1. Aiding And Abetting Fraud Claim**

83. Based on the summary judgment briefing and hearing, Plaintiffs were acutely aware of the risks to establishing liability for their aiding and abetting claim. As detailed above, the Parties disputed *how* Wells Fargo's knowledge of the

Enterprises' fraud could be proven and—regardless of the precise formulation of the knowledge standard—Plaintiffs faced the practical difficulty that there were no admissions of knowledge from Wells Fargo bankers. Plaintiffs therefore would be forced to rely almost entirely on circumstantial evidence to prove knowledge to a jury, creating a material risk that a jury could find Plaintiffs' proffered proof insufficient to establish knowledge.

84. Plaintiffs also faced a meaningful risk in proving "substantial assistance"—i.e., that Wells Fargo's conduct meaningfully furthered the fraud—to the jury's satisfaction. Even if Plaintiffs presented evidence they believed supported substantial assistance, there was no guarantee a jury would accept Plaintiffs' characterization of the facts.

85. If litigation continued and either of these risks became reality, the Class's ability to recover damages for their aiding and abetting claim would be foreclosed, thereby significantly reducing their potential recovery.

**2. Conspiracy To Commit Fraud Claim**

86. Throughout this litigation, Wells Fargo consistently argued—at the pleading stage and again on summary judgment—that, whatever the evidence might show about account activity or internal bank process failures, there was no competent evidence of an agreement between Wells Fargo and any Enterprise principal to participate in, or further, a consumer-fraud scheme. If the Court or a jury credited that framing, Plaintiffs faced a meaningful risk that the conspiracy claim would fail for lack of proof of an agreement, even if the jury believed Wells Fargo acted negligently or inadequately in its compliance and account-opening practices.

87. Plaintiffs also faced the risk that Wells Fargo would persuade a jury that the evidence showed—at most—ordinary banking conduct, standard employee incentives, or inconsequential red flags, which a jury could view as insufficient to establish the knowing, intentional, and coordinated participation necessary to impose conspiracy liability.

### 3. Violation Of California Penal Code § 496 – Receipt Of Stolen Property

88. A principal litigation risk to establishing liability under California Penal Code § 496 was that the Court could materially narrow or reject Class Plaintiffs' § 496 theory on choice-of-law and extraterritoriality grounds. Wells Fargo consistently maintained that a § 496 claim could not be applied to out-of-state transactions and injuries on a nationwide basis, and Plaintiffs faced the risk that the Court could conclude California's Penal Code does not reach conduct and harm occurring predominantly outside California. Such a ruling would have substantially limited the scope of the § 496 claim and correspondingly reduced the Class's potential recovery and settlement leverage.

89. Class Plaintiffs also faced the risk that they would be unable to prove, by admissible evidence, the elements of a § 496 claim as applied to the challenged funds—namely, that Wells Fargo "received" money that qualifies as stolen property within the meaning of the statute and that Wells Fargo did so with the requisite knowledge or culpable state of mind. Plaintiffs' proof on these elements depended on building an inferential chain from alleged consumer fraud proceeds to specific account receipts and then to Wells Fargo's awareness of the funds' illicit character. Wells Fargo disputed both the "receipt" nexus and the knowledge component, and Plaintiffs faced the risk that the Court or a jury would find the evidence insufficient to satisfy § 496's statutory requirements, resulting in partial or complete failure of that claim at summary judgment or trial.

## B. Risks To Obtaining And Maintaining Class Action Status

90. At the time the Settlement was reached, Class Plaintiffs' motion for class certification was fully briefed, oral argument had been heard, and the motion was pending under submission. While Class Counsel is confident that certification would be granted, Wells Fargo vigorously opposed class certification, first by challenging Class Plaintiffs' ability to proceed on a classwide basis at the pleading stage through

its motion to strike the nationwide class allegations, *see* ¶23 *supra*, and later by opposing Class Plaintiffs' motion for class certification, *see* ¶¶72-73 *supra*.

91. If the Action had continued to be litigated, one of the most significant risks to Class Plaintiffs on class certification was Wells Fargo's argument—grounded in *Comcast*—that Plaintiffs' proposed classwide damages methodology (*i.e.*, "net consumer sales" reflected in the Enterprises' account records, net of refunds and chargebacks) was not sufficiently tethered to Plaintiffs' liability theories and did not isolate damages attributable to Wells Fargo's alleged conduct. Wells Fargo contended that Plaintiffs' approach aggregated Enterprise revenues rather than measuring classwide injury and damages traceable to the elements of Plaintiffs' claims and argued this purported "mismatch" would defeat Rule 23(b)(3) predominance. If the Court was persuaded by this argument at class certification or if a jury at trial sided with Wells Fargo's argument, any potential recovery for the Class would be drastically reduced or eliminated entirely.

92. Another substantial certification risk was Wells Fargo's contention that the proposed class definition swept in large numbers of persons who suffered no cognizable injury or were made whole (or more than whole) through refunds, chargebacks, and/or FTC-administered redress, thereby creating individualized injury and damages issues that would overwhelm common proof. Wells Fargo argued that identifying injured class members and determining any net loss would require individualized inquiries into consent, satisfaction, refunds and chargebacks, and FTC payments—issues Wells Fargo contended precluded predominance and superiority under Rule 23(b)(3).

93. If the Court found any of the above arguments compelling, class certification could have been denied and any recovery for the Class eliminated. And even if Class Plaintiffs successfully obtained class certification, Wells Fargo could have, and likely would have, sought permission to appeal under Federal Rule of Civil

Procedure 23(f), further delaying or potentially precluding recovery. Thus, class certification was not a forgone conclusion.

**C. Other Risks**

94. Class Counsel knows from personal experience that despite the most vigorous and competent of efforts, attorneys' success in contingent litigation such as this case is never assured. For instance, Class Counsel lost a six-week antitrust jury trial in the Northern District of California after five years of litigation, which included many overseas depositions, the expenditure of millions of dollars of attorney and paralegal time, and the expenditure of more than a million dollars in hard costs. *See In re: Korean Ramen Antitrust Litigation*, Case No. 3:13-cv-04115 (N.D. Cal.).

95. Given the significant risks of continued litigation, I believe that the Settlement represents an excellent result for the Class.

**D. The Settlement Is Reasonable Considering The Above-Described Attendant Risks**

96. In addition to the attendant risks of litigation discussed above, the Settlement is also fair and reasonable considering the potential recovery of available damages. If Plaintiffs had fully prevailed on all claims at summary judgment and after a jury trial, if the Court certified the Class, as defined, if the Court and jury accepted Plaintiffs' damages theories, and the Court and jury did not reduce the claimed damages due to overlap in Plaintiffs' various damages theories—*i.e.*, Plaintiffs' ***best-case scenario***—estimated total compensatory damages in the consolidated Action is approximately $658 million. Thus, the $33 million Settlement Amount represents approximately 5.0% of the total compensatory damages ***potentially*** available in this Action.[11] Of course, less than a complete victory on any aspect of these assumptions

[11] *See* ECF No. 305-8 at Ex. M, pp. 17-18 (Class Plaintiffs' supplemental initial disclosures detailing damages theories and amounts, including $294 million in compensatory damages); ECF No. 305-7 at Ex. 83, pp. 8-17 (Receiver's interrogatory responses detailing damages theories and amounts, including $264 million relating to FTC judgments and $100 million relating to fraudulent transfers). In addition to (footnote continued)

would decrease recoverable damages or eliminate them altogether, and Wells Fargo forcefully contested each element at issue as well as argued Class Plaintiffs and the Receiver sought duplicative recovery.

97. Having evaluated the relative strengths and weaknesses of the Action considering Wells Fargo's arguments, and the stage of the litigation, it is the informed judgment of Class Counsel that the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Class.

## IV. COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER OUTLINING NOTICE PROGRAM

98. On November 4, 2025, the Court entered its Preliminary Approval Order, which, *inter alia*, certified the Class for settlement purposes, preliminarily approved the Settlement, approved the form and manner of notice to the Class, and appointed Epiq as the Settlement Administrator. ECF No. 388. As set forth below, Class Counsel and the Settlement Administrator complied with each directive of the Preliminary Approval Order (the "Notice Program"). The Notice Program details are set forth in the Initial Mailing Declaration, attached hereto as Exhibit 7.

99. The Notice Program was designed and implemented to reach the greatest practicable number of Class Members. Because the Class includes consumers who transacted with three separate enterprise groups—Apex, Triangle, and Tarr—the Notice Program employed a multi-pronged approach. For Class Members who transacted with Apex and Triangle, Epiq sent an email notice (the "Short-Form Notice") to those Class Members whose valid email addresses were contained in the Apex and Triangle business records available to counsel, in addition to providing notice by publication. For Class Members who transacted with the Tarr Entities,

---

compensatory damages, Plaintiffs also argued for pre- and post-judgment interest, punitive damages, treble damages, attorney fees and costs, and recoupment of fees Wells Fargo received from the Enterprises.

notice was provided by publication, because no direct contact information was reasonably available for those Class Members. *See* Initial Mailing Decl., ¶¶13–14.

100. On November 6, 2025, Epiq received 98 data files containing 10,690,904 purchase records from Class Counsel, which included names and email addresses tied to individual purchases. After deduplication and consolidation, 1,511,090 unique, potential Class Member records were identified, of which 229,014 records did not contain a valid email address and were accordingly not sent individual notice. *See* Initial Mailing Decl. at ¶11.

101. On December 4, 2025, Epiq established a website dedicated to the Settlement, www.FreeTrialRecurringBillingSettlement.com ("Settlement Website"). The Settlement Website includes relevant documents such as the Class Agreement, Plan of Allocation, Preliminary Approval Order, long-form Notice (in English and Spanish), Claim Form, and the operative Class Complaint. The Settlement Website also includes relevant dates, answers to frequently asked questions, instructions for how Class Members may request exclusion from or object to the Settlement, contact information for the Settlement Administrator, and information on how to obtain other case-related information. Class Members are also able to file a Claim Form directly on the Settlement Website. *See* Initial Mailing Decl. at ¶34.

102. Also on December 4, 2025, a toll-free telephone number (1-888-884-1172) was established for the Settlement and prominently displayed in the Notice and Short-Form Notice. The automated telephone system is available 24 hours per day, 7 days per week and callers can hear an introductory message, access recorded answers to frequently asked questions, and request that a Claim Package be mailed to them. *See* Initial Mailing Decl. at ¶35.

103. As of February 18, 2026, there have been 80,793 unique visitor sessions to the Settlement Website, and 138,496 web pages have been presented as well as 418 calls to the toll-free telephone number, representing 1,088 minutes of use. *See* Initial Mailing Decl. at ¶¶34-35.

104. Simultaneously with the establishment of both the Settlement Website and toll-free telephone number, Epiq began disseminating the Court-approved Short-Form Notice to 1,282,076 potential Class Members who transacted with Apex and Triangle Entities and for whom a valid email address was available on December 4, 2025.[12] If a Class Member had more than one unique, valid email address, a Short-Form Notice was sent to each address. For Short-Form Notices that were returned as undeliverable, at least two additional delivery attempts were made. *See* Initial Mailing Decl. at ¶¶12-13.[13]

105. As of February 18, 2026, the Short-Form Notice was delivered to 1,030,382 of the 1,282,076 unique, potential Class Members who transacted with Apex and Triangle and for whom a valid email address was available, reaching approximately 80% of the identified Class Members for whom email data was available. *See* Initial Mailing Decl. at ¶15.

106. The Notice Program also included a comprehensive digital media campaign. Targeted digital advertising ("Digital Notice") was placed on the advertising networks *Google Display Network* and *Basis Ad Network* and on major social platforms including *Facebook*, *Instagram*, *Reddit*, and *X* (formerly *Twitter*). The Digital Notice appeared nationwide on desktop, mobile, and tablet devices and was re-marketed to those who previously clicked on a Digital Notice. All Digital

[12] Short-Form Notices were drafted and sent in accordance with industry-standard best practices to overcome SPAM filters and ensure readership to the fullest extent reasonably practicable, and included utilizing an embedded HTML text format, sending from an IP address known to major email providers as one not used for bulk "SPAM" emails, transmitting each notice with a digital signature for authentication, and embedding a link to the Settlement Website. Initial Mailing Decl. at ¶12.

[13] Additionally, the Court-approved long-form Notice and Claim Form (together, the "Claim Package") were mailed by request, resulting in 13 Claim Packages being disseminated by mail as of February 12, 2026. *See* Initial Mailing Decl. at ¶14.

Notices linked directly to the Settlement Website. *See* Initial Mailing Decl. at ¶¶17-18, 22.

107. Combined, approximately 63.2 million impressions were generated by the Digital Notices over a 30-day period. *See* Initial Mailing Decl. at ¶¶23-24.

108. Epiq also implemented sponsored search listings on major search engines (Google, Yahoo!, and Bing) triggered by selected settlement-related search terms. As of February 18, 2026, the sponsored search listings generated 39,800 impressions and resulted in 2,938 clicks to the Settlement Website. The sponsored search listings began on December 4, 2025, and will run through March 4, 2026. *See* Initial Mailing Decl. at ¶¶25-26.

109. To build additional reach and extend exposure, the Settlement Administrator issued an informational release, which included the Settlement Website's address and the Settlement's toll-free telephone number (the "Informational Release"), nationwide over PR Newswire's U.S.1 and Hispanic newslines to approximately 13,000 general media outlets, including local and national newspapers, magazines, national wire services, television and radio broadcast media, as well as over 4,000 websites, online databases, internet networks, and social networking media. The Hispanic newsline reached over 1,900 Hispanic U.S. general media contacts and up to 4,840 additional industry-specific Hispanic media contacts. *See* Initial Mailing Decl. at ¶¶27-28.

110. To stimulate claim submissions, on January 30, 2026, Epiq began sending a reminder notice by email to all potential Class Members with a valid email address where the Short-Form Notice was not returned as undeliverable and who had not yet filed a Claim Form or requested exclusion from the Settlement. Additionally, supplemental Digital Notices were placed on *Google Display Network* in English and Spanish, as well as on *Facebook* and *X (Twitter)*, which displayed nationwide on desktop, mobile, and tablet devices. The supplemental Digital Notices are projected

to generate approximately 17 million additional impressions and are running from February 3 through March 4, 2026. *See* Initial Mailing Decl. at ¶¶29-33.

111. The deadline for Class Members to request exclusion from the Settlement or object to the Settlement is March 5, 2026. As of February 18, 2026, Epiq has received one request for exclusion from the Settlement. As of February 12, 2026, Epiq is aware of no objections to the Settlement. *See* Initial Mailing Decl., ¶39.

## V. ALLOCATION OF THE NET PROCEEDS OF THE SETTLEMENT

112. Pursuant to the Class Agreement, after deduction of Court-approved attorneys' fees and reimbursement of Litigation Expenses, including any awards to the Class Plaintiffs, and the costs of notice and administration of the Settlement (the "Net Settlement Fund"), the Net Settlement Fund will be distributed to Authorized Claimants in accordance with the proposed Plan of Allocation ("Plan of Allocation" or "Plan"), or such other plan as the Court may approve.[14] The proposed Plan of Allocation is described in the Notice and is set forth fully in the Plan of Allocation document posted on the Settlement Website and is attached hereto as Exhibit 8.

113. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund to those Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The computations under the Plan of Allocation are a method to weigh the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund. They are not estimates of, nor indicative of, the amounts that Class Members may potentially recover after a trial or the amounts that will be paid to Authorized Claimants pursuant to the Settlement. *See* Ex. 8 at 1.

[14] In connection with the Receiver's request for approval of the Settlement in the underlying *Apex* and *Triangle* Actions, the proposed Plan of Allocation already received court approval in both the *Apex* and *Triangle* Actions on September 5 and September 8, 2025, respectively. *Apex* Action, ECF No. 271; *Triangle* Action, ECF No. 189.

114. Counsel for Plaintiffs developed the Plan of Allocation generally based on (i) Plaintiffs' theory that charges to Triangle, Apex, and Tarr consumers, less refunds of those charges, represent an alleged loss to the consumer; and (ii) the Receiver's theory that Wells Fargo's conduct allegedly caused harm to Apex and Triangle. The Plan is further based on Class Counsel's assessment of the strengths and weaknesses associated with the claims in the Action, including different damages calculation methodologies, potential difficulties of proof with respect to each of the Triangle, Apex, and Tarr Enterprises, and the lack of Receiver claims with respect to Tarr. *See* Ex. 8 at 1.

115. The initial allocation of the Net Settlement Fund shall be 45.17% for charges imposed by Triangle (the "Initial Triangle Allocation"), 32.26% for charges imposed by Apex (the "Initial Apex Allocation"), and 22.57% for charges imposed by Tarr (the "Initial Tarr Allocation"). These allocations are based on the net losses, adjusted by Plaintiffs' assessment of the available causes of action and evidence, associated with each Enterprise. *See* Ex. 8 at 1.

116. The Net Settlement Fund will be allocated and distributed to Class Members through different processes depending on (i) whether they paid money to Triangle, Apex, and/or Tarr, and (ii) whether they have previously received a distribution payment from the FTC in connection with the *Triangle* Action or *Apex* Action. Class Members who previously received payments from the FTC in the *Triangle* Action or the *Apex* Action do not need to submit a claim form to be eligible to receive a distribution in the Settlement. Class Members who did not receive a payment from the FTC, or who were enrolled in recurring billing with Tarr, must submit a claim form to be eligible to receive a distribution. *See* Ex. 8 at 1.

**A. Tarr Consumers**

117. To be eligible to receive a distribution from the Initial Tarr Allocation, a consumer must timely submit a claim form that is accepted by the Settlement Administrator (a "Tarr Claimant"). *See* Ex. 8 at 1-2.

118. Tarr Claimants who do not (or cannot) provide documentation of charges imposed by Tarr, or do not provide documentation acceptable to the Settlement Administrator, may still be eligible to receive a $20.00 distribution (a "Qualifying Tarr Payment"), provided that the Tarr Claimant (i) briefly describes or names the product(s) involved, (ii) describes how they obtained the product(s), (iii) identifies the date when they purchased the product(s), (iv) confirms enrollment in a recurring billing program, (v) confirms they did not receive a refund, chargeback, or reimbursement of any kind, and (vi) attests in a sworn statement under penalty of perjury to the truth of their statements. A Tarr Claimant may only receive one Qualifying Tarr Payment regardless of how many products they were charged for, and no more than 50% of the Initial Tarr Allocation shall be allocated to Qualifying Tarr Payments.[15] *See* Ex. 8 at 2.

119. Tarr Claimants who provide documentation of out-of-pocket losses from Tarr that the Settlement Administrator finds acceptable (which may include credit card statements, bank statements, and/or email receipts) shall have a total Recognized Loss equal to the Tarr Claimant's total documented charges imposed by Tarr, less total refunds received (a "Claimed Tarr Loss"). Distributions with respect to Claimed Tarr Losses shall be made *pro rata* from the available funds (the Initial Tarr Allocation less the Qualifying Tarr Payments Amount). *See* Ex. 8 at 2.

120. If the sum of the Qualifying Tarr Payment Amount plus total of Claimed Tarr Losses is less than the Initial Tarr Allocation, the excess will be added to the Initial Triangle and Initial Apex Allocations in proportion to their respective allocations. The resulting amounts are referred to as the "Post-Tarr Triangle Allocation" and the "Post-Tarr Apex Allocation," respectively. *See* Ex. 8 at 2.

[15] The amount of the Net Settlement Fund allocated for payment of Qualifying Tarr Payments is the "Qualifying Tarr Payments Amount." *See* Ex. 8 at 2.

### B. Triangle/Apex Consumer Who Did Not Receive Payment From The FTC

121. If a Class Member was charged by Apex or Triangle but did not previously receive a payment from the FTC, then the Class Member must timely submit a claim form that is accepted by the Settlement Administrator to be eligible to receive a distribution (a "Triangle/Apex Claimant"). The Settlement Administrator shall distribute to Triangle Claimants and Apex Claimants their respective shares of the Net Settlement Fund, calculated by reference to the respective Post-Tarr Allocations, adjusted for the number of FTC payment recipients and the total number of unique potential Class Members for each Enterprise. *See* Ex. 8 at 2.

122. As with Tarr Claimants, a Triangle/Apex claimant who does not (or cannot) provide acceptable documentation may be eligible to receive a $20.00 distribution (a "Qualifying Triangle/Apex Payment"), provided the claimant satisfies the same attestation conditions applicable to Tarr Claimants described above. No more than 25% of the Initial Triangle/Apex Allocations shall be allocated to Qualifying Triangle/Apex Payments. *See* Ex. 8 at 2-3.

123. A Triangle/Apex claimant who provides acceptable documentation of charges shall have a Recognized Loss equal to the total documented charges, less total refunds received (a "Claimed Triangle/Apex Loss"). Distributions with respect to Claimed Triangle Losses and Claimed Apex Losses shall be made *pro rata* from the respective available funds. *See* Ex. 8 at 4.

124. To avoid potential double recovery to Class Members with respect to charges imposed by Triangle or Apex, Class Counsel will provide the Receiver with a list of Class Members receiving distributions from the Settlement Administrator with respect to Triangle or Apex, and the Receiver will provide that list to the FTC. *See* Ex. 8 at 3.

**C. Triangle/Apex Consumers Who Received Payment From The FTC**

125. Class Members who previously received a payment from the FTC in the *Triangle* or *Apex* Action do not need to submit a claim form to the Settlement Administrator to be eligible to receive a distribution in the Settlement. The remaining portions of the Post-Tarr Triangle Allocation and the Post-Tarr Apex Allocation, after distributions to Triangle/Apex Claimants, shall be provided to the Triangle Receivership and the Apex Receivership, respectively, for transmission to the FTC, for ultimate distribution to Triangle and Apex consumers pursuant to the FTC's established refund programs. *See* Ex. 8 at 5.

**D. Generally Applicable Provisions**

126. Claims and distributions under the Plan of Allocation are subject to verification and anti-fraud checks established by the Settlement Administrator. All Claim Forms will be submitted under penalty of perjury, and claimants must specifically attest to the accuracy of the information provided and specifically aver whether they did or did not receive refunds, chargebacks, or other forms of reimbursement, of any kind. Claims and distributions may be rejected if they contain significant indicators of fraud, are untimely, or are incomplete, to ensure the integrity of the claims process. *See* Ex. 8 at 2, 4.

127. The payments made to Class Members are likely to be subject to a minimum threshold (typically $10.00 or greater), as is routinely done by settlement administrators and the FTC because it is not economically feasible to send checks for lower amounts. The Net Settlement Fund will be allocated among all Authorized Class Members/Claimants whose prorated payment is above the minimum threshold. If the prorated payment to any Authorized Class Member/Claimant calculates to less than the threshold, no distribution will be made to that Authorized Class Member/Claimant, and such amounts will instead be included in the pool distributed to those whose prorated payments are above the threshold. *See* Ex. 8 at 5-6.

128. After the initial distribution of the Net Settlement Fund to Tarr Claimants and Triangle/Apex Claimants, the Settlement Administrator shall make reasonable and diligent efforts to have such claimants cash their distribution checks. If any monies remain nine months after the initial distribution, they shall be provided to the Triangle Receivership and the Apex Receivership for ultimate transmission to the FTC and distribution to consumers, pursuant to the FTC's established refund programs in the *Apex* and *Triangle* Actions in proportion to the Triangle/Apex Receivership Allocations, and as approved by the Court. *See* Ex. 8 at 5.

129. Class Counsel submits the proposed Plan of Allocation is fair and reasonable. The Plan is based on Class Counsel's informed assessment of the relative strengths of the claims associated with each Enterprise—including differences in available causes of action, evidentiary support, and damages methodologies. The Plan accounts for the dual tracks by which consumers were harmed (through Tarr, on the one hand, and through Triangle and Apex, on the other), the overlapping claims in the *McNamara* and *McCraner* Actions, and the existing FTC remediation programs that already returned millions of dollars to consumers. The Plan is designed to equitably compensate Class Members in proportion to their losses while avoiding double recovery, and Class Plaintiffs request that the Court approve the Plan of Allocation.

## VI. CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

130. In addition to seeking final approval of the Settlement and Plan of Allocation, Class Counsel is applying for a fee award, inclusive of fees in the Receiver action, of 33⅓% of the Settlement Fund (*i.e.*, $11,000,000.00, plus interest accrued thereon). Class Counsel also requests reimbursement in the amount of $2,416,461.45 for out-of-pocket expenses incurred by Class Counsel in connection with the prosecution and resolution of the Action, inclusive of expenses in the Receiver action, and awards to each Class Plaintiff in the following amounts: $12,500 to Plaintiff Pollard, $7,500 to Plaintiff Darlington, $10,000 to Plaintiffs McCraner, Stiansen,

Landreau, and Tuffield for their time and efforts spent, in connection with their roles as representative plaintiffs in the Action. The requested Litigation Expenses of $2,476,461.45 are below the maximum amount of $2,967,000 set forth in the Notice.

**A. Procedural Background Relating To The Fee Application**

131. By order dated November 16, 2018, Judge Walter approved the Receiver's appointment in the *Apex* Action, authorizing him to, *inter alia*: (i) "engage, and employ attorneys . . . as the Receiver deems advisable"; (ii) "[m]ake payments and disbursements from the receivership estate that are necessary or advisable . . . and to incur, or authorize the making of, such agreements as may be necessary and advisable"; and (iii) "[i]nstitute, compromise . . . or otherwise become party to any legal action . . . as the Receiver deems necessary and advisable to preserve or recover the Assets of the Receivership Entities." *Apex* Action, ECF No. 16 at 20-22.

132. Judge Anello's order dated June 29, 2018 approved the Receiver's appointment in the *Triangle* Action, authorizing him to, *inter alia*: (i) "engage, and employ attorneys . . . as the Receiver deems advisable"; (ii) "[m]ake payments and disbursements from the receivership estate that are necessary or advisable . . . and to incur, or authorize the making of, such agreements as may be necessary and advisable"; and (iii) "[i]nstitute, compromise . . . or otherwise become party to any legal action . . . as the Receiver deems necessary and advisable to preserve or recover the Assets of the Receivership Entities." *Triangle* Action, ECF No. 11 at 19-21.

133. On October 22, 2019, the Receiver moved in the *Triangle* Action for authorization to engage GPWR and McNamara Smith LLP as contingency fee counsel to pursue claims against Wells Fargo on behalf of the Receiver. *Triangle* Action, ECF No. 136-1. The motion explained, among other things that the Receiver and GPWR agreed to a "total contingent fee is equal to 28.5% of the gross recovery up until a ruling on summary judgment, and 33.3% contingent fee on gross recovery received after a ruling on summary judgment." *Id.* at 6. By order dated November 19, 2019, Judge Burns granted the motion. *Triangle* Action, ECF No. 142.

134. Similarly, on February 4, 2020, the Receiver moved in the *Apex* Action for authorization to engage GPWR and McNamara Smith LLP as contingency fee counsel to pursue claims against Wells Fargo on behalf of the Receiver. *Apex* Action, ECF No. 144-1. The motion explained, among other things that the Receiver and GPWR and McNamara Smith LLP agreed to "a contingent fee equal to 28.5% of the gross recovery up until a ruling on summary judgment, and 33.3% contingent fee on gross recovery received after a ruling on summary judgment." *Id.* at 5-6. By order dated March 9, 2020, Judge Walter granted the motion. *Apex* Action, ECF No. 153.

135. On August 11, 2025, the Receiver moved in both the *Triangle* and *Apex* Actions for approval of the proposed global settlement among the Receiver, the Class, and Wells Fargo. *Triangle* Action, ECF No. 186-1; *Apex* Action, ECF No. 270-1. Those motions advised that:

> The agreement negotiated with contingent-fee counsel provided for a contingent fee equal to 28.5% of the gross recovery up until a ruling on summary judgment for representing the Receiver. In addition to representing the Receiver, Class Counsel have separately represented the class. Class Counsel have indicated that when they present a fee motion in the Class Action in connection with their motion for final class action settlement approval, they will likely request an additional amount, not to exceed 4.833% of the gross recovery, which, if approved, would fix total attorney compensation at one-third of the settlement fund.

*Triangle* Action, ECF No. 186-1 at 15; *Apex* Action, ECF No. 270-1 at 15. By order dated September 5, 2025, Judge Walter granted the motion in the *Apex* Action and approved the settlement. *Apex* Action, ECF No. 271. By order dated September 8, 2025, this Court granted the motion in the *Triangle* Action and approved the settlement. *Triangle* Action, ECF No. 189.

136. Shortly thereafter, on October 2, 2025, Class Counsel filed their motion for preliminary approval of the Settlement in the instant action, which similarly advised that, "[a]s disclosed in the Notice, Class Counsel will be applying for a

percentage of the common fund fee award in an amount not to exceed 33⅓% (the total attorney fee for the *McCraner* and *McNamara* actions)." ECF 383 at 15.

137. Consistent with Class Counsel's agreement with the Receiver and the court filings and orders referenced in this Section VI.A, Class Counsel are now applying for total attorneys' fees, inclusive of the Class and Receiver actions, in the amount of 33⅓% of the Settlement Fund, representing only 4.83% above the 28.5% fee already approved for the Receiver action.

**B. The Outcome Achieved Is The Result Of Significant Time And Labor That Class Counsel Devoted To The Action**

138. The work undertaken by Class Counsel in investigating and prosecuting the Action and arriving at the present Settlement in the face of substantial risks has been time-consuming and challenging. At all times throughout the investigation and pendency of the Action, for a period of approximately six years, Class Counsel's efforts were driven and focused on advancing the Action to bring about the most successful outcome for the Class, whether through settlement or trial. That work is summarized in ¶9 above.

139. As reflected in the chart below, GPWR's total lodestar is $13,096,298.00,[16] consisting of $12,763,288.00 for attorney time and $333,010.00 for professional staff time:

| TIMEKEEPER/CASE ATTORNEYS: | STATUS | HOURS | RATE | LODESTAR |
|---|---|---|---|---|
| Kevin F. Ruf | Partner | 779.50 | 1,300.00 | 1,013,350.00 |
| Jonathan M. Rotter | Partner | 2,884.20 | 1,100.00 | 3,172,620.00 |
| Greg Linkh | Partner | 577.10 | 1,150.00 | 663,665.00 |
| Leanne Solish | Partner | 148.40 | 1,000.00 | 148,400.00 |
| Garth Spencer | Partner | 1,744.30 | 1,000.00 | 1,744,300.00 |
| Melissa Wright | Partner | 1,798.30 | 950.00 | 1,708,385.00 |
| Pavithra Rajesh | Partner | 140.80 | 875.00 | 123,200.00 |
| Erika Shapiro | Of Counsel | 82.70 | 900.00 | 74,430.00 |
| Chase Stern | Senior Associate | 83.20 | 650.00 | 54,080.00 |

[16] The lodestar figure contains only the time of GPWR attorneys and professional staff that billed more than twenty (20) hours to the consolidated Action.

| | | | | |
|---|---|---|---|---|
| Rebecca Dawson | Associate | 39.30 | 500.00 | 19,650.00 |
| Holly Nye | Associate | 111.00 | 475.00 | 52,725.00 |
| Amir Soleimanpour | Associate | 105.20 | 425.00 | 44,710.00 |
| Kim H. Nguyen | Staff Attorney | 2,405.70 | 395.00 | 950,251.50 |
| Tania D. Horton | Staff Attorney | 2,363.50 | 450.00 | 1,063,575.00 |
| Merlyne Jean-Louis | Staff Attorney | 374.90 | 380.00 | 142,462.00 |
| Felicia M. Gordon | Staff Attorney | 496.80 | 450.00 | 223,560.00 |
| Uju Ezejiofor Obasi | Staff Attorney | 313.50 | 425.00 | 133,237.50 |
| Peter Rabinov | Staff Attorney | 1,084.20 | 425.00 | 460,785.00 |
| Carl E. Ekberg | Staff Attorney | 545.10 | 395.00 | 215,314.50 |
| Mary Jane Fait | Staff Attorney | 771.80 | 925.00 | 713,915.00 |
| Marcus Dalzine | Staff Attorney | 95.70 | 425.00 | 40,672.50 |
| **TOTAL ATTORNEY** | **TOTAL** | **16,945.20** | | **12,763,288.00** |
| **PARALEGALS:** | | | | |
| Harry Kharadjian | Senior Paralegal | 247.20 | 350.00 | 86,520.00 |
| Paul Harrigan | Senior Paralegal | 115.60 | 325.00 | 37,570.00 |
| Alexia Shiri | Senior Paralegal | 144.30 | 350.00 | 50,505.00 |
| Jack Ligman | Research Analyst | 35.70 | 400.00 | 14,280.00 |
| John D. Belanger | Research Analyst | 187.50 | 365.00 | 68,437.50 |
| Michaela Ligman | Research Analyst | 73.80 | 400.00 | 29,520.00 |
| Jason Helgeson | Research Analyst | 34.50 | 325.00 | 11,212.50 |
| Karla Vazquez | Admin Clerk | 233.10 | 150.00 | 34,965.00 |
| **TOTAL PARALEGAL** | **TOTAL** | **1,071.70** | | **333,010.00** |
| **TOTAL LODESTAR** | **TOTAL** | **18,016.90** | | **13,096,298.00** |

140. The above chart sets forth the amount of time GPWR attorneys and professional support staff billed through and including February 18, 2026, and the lodestar calculation for those individuals based on GPWR's current billing rates. For personnel who are no longer employed by Class Counsel, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by Class Counsel.

141. The hourly rates for GPWR's attorneys and professional support staff are similar to rates that have been accepted in other complex litigations in this District in the context of a lodestar cross-check. Additionally, the rates billed by Class Counsel's attorneys (ranging from $875 to $1,300 per hour for partners and $425 to $900 per

hour for non-partners) are comparable to peer plaintiff and defense firms litigating matters of similar magnitude. *See* Ex. 11 (table of peer law firm billing rates).

142. Class Counsel reviewed these daily time records in connection with the preparation of this declaration. The review's purpose was to confirm both the accuracy of the records, as well as the necessity for, and reasonableness of, the time committed to the litigation. As a result, Class Counsel made reductions to certain of the firm's time entries such that the time included in ¶139 above reflects that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of Class Counsel attorneys and staff reflected in ¶139 above was reasonable and necessary for the effective and efficient prosecution and resolution of the Action. No time expended on the Fee and Expense Application has been included.

143. The total number of hours reflected in ¶139 is 18,016.90 hours. While much of this work furthered the actions on behalf of both the Receiver and the Class, a significant portion of Class Counsel's total hours and lodestar were spent in representing the Class. For example, work uniquely related to representation of the Class included, *inter alia*: drafting the Class complaints, opposing the motions to dismiss the Class complaints, opposing the motions to strike the Class complaints' class allegations, defending the Class Plaintiffs' depositions, conducting discovery relating to the Tarr enterprise, providing expert discovery regarding the Class's theories of damages and fraud against consumers, and moving for Class certification. This substantial work on behalf of the Class, above and beyond Class Counsel's equally substantial commitment of time to representing the Receiver, more than justifies a modest additional fee of 4.83% of the Settlement Fund, in addition to the 28.5% fee agreement already made with the Receiver and approved by this Court, Judge Burns, and Judge Walter. *See* Section VI.A., *supra.*

144. In addition, McNamara Smith LLP, as counsel for the Receiver, in coordination with GPWR, expended significant time and efforts in prosecuting the consolidated Action. Ex. 10 (Declaration of Logan Smith, "McNamara Smith Decl.")

at 1. McNamara Smith's total lodestar billed through and including February 17, 2026 is $3,292,895.50, consisting of $3,101,703.00 for attorneys' time and $191,192.50 for professional support staff time. *See* Ex. 10 at ¶2; Ex. 10-A.[17]

145. As set forth below, Plaintiffs' Counsel dedicated a total of 23,311.40 hours to the investigation, prosecution, and resolution of the consolidated Action, with a resulting total lodestar of $16,389,193.50.

| | **LODESTAR** |
|---|---|
| Glancy Prongay Wolke & Rotter LLP | $13,096,298.00 |
| McNamara Smith LLP | $3,292,895.50 |
| **TOTAL LODESTAR** | **$16,389,193.50** |

146. The requested fee amount of 33⅓% of the Settlement Fund equals $11,000,000.00 (plus interest earned at the same rate as the Settlement Fund), and therefore represents a fractional multiplier of 0.67 on Plaintiffs' Counsel's lodestar. In other words, the fee sought is substantially less than Plaintiffs' Counsel's fee calculated based on an hourly rate.

147. Moreover, Class Counsel will continue to work towards effectuating the Settlement, in the evert grants final approval. Among other things, Class Counsel will continue working with the Settlement Administrator to resolve issues with Class Member claims, will respond to any inquiries, and will oversee the distribution

[17] As detailed in the McNamara Smith Decl., the firm's lodestar figure does not include the fees and expenses the Receiver incurred in performing his duties as receiver, which includes time spent assisting counsel with this Action; those fees and expenses will be partially offset by funds recovered by the Receiver separate from the recovery in this Action and will be submitted to the Court in the *Apex* and *Triangle* Actions for approval at the time the receiverships are wound down and the Receiver submits final reports and applications for discharge and approval of final fee applications. These additional non-offset expenses will, together with the expenses sought in Class Counsel's motion for an award of attorneys' fees and litigation expenses, not exceed the total expense amount disclosed in the Notice. Ex. 10 at ¶8.

process. No additional compensation will be sought for this work. Thus, the multiplier will be smaller by the time the case concludes.

148. As detailed above, throughout this case, Class Counsel devoted substantial time to the prosecution of the Action. I personally devoted substantial time to this case and was involved in drafting, reviewing, and editing pleadings and other court filings, conducting discovery, arguing various motions, participating in the mediation process, negotiating the terms of the Stipulation, communicating with other lawyers about the case on a regular basis, and other matters. Other experienced attorneys were also involved in drafting, reviewing and/or editing pleadings, court filings, and the mediation submissions, arguing various motions, participating in the mediation process, negotiating the terms of the Stipulation, and other matters. Throughout the litigation, Class Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this litigation.

149. Based on the work performed and the quality of the results achieved, Class Counsel respectfully submits that a 33⅓% fee is fully merited under the "percentage of the fund" methodology. Furthermore, as shown in Class Counsel's accompanying Fee Memorandum, I also submit that the requested fee is fully supported by a "lodestar multiplier cross-check" because the requested fractional (or "negative") multiplier is below the range of multipliers that courts often award in comparably complex class actions, which is a strong indication that the percentage request is fair and reasonable.

### C. The Risks Of Litigation And The Need To Ensure The Availability Of Competent Counsel In High-Risk Contingent Cases

150. This prosecution was undertaken by Class Counsel on a pure contingency fee basis. From the outset, Class Counsel understood this would be a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require.

In undertaking that responsibility, Class Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, that funds were available to compensate attorneys and staff, and to cover the considerable litigation costs required by a case like this one.

151. With an average lag time of many years for complex cases like this case to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Here, Class Counsel received no compensation during more than four years of litigation and incurred $2,416,461.45 in out-of-pocket expenses in prosecuting the consolidated Action.

152. Class Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever. Despite the most vigorous and competent of efforts, success in contingent-fee litigation like this one is never assured. As set forth above, Class Counsel knows from experience that the commencement of a class action does not guarantee a recovery. On the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels. And, even when that effort is put forth, sometimes we lose.

### D. The Experience And Expertise Of Class Counsel, And The Standing And Caliber Of Wells Fargo's Counsel

153. As demonstrated by Class Counsel's firm resume, Class Counsel has extensive and significant experience in the complex class action litigation. *See* Ex. 9. The attorneys who were principally responsible for leading the prosecution of this case collectively have decades of experience prosecuting class actions throughout their careers and have recovered tens of millions of dollars on behalf of class members. This experience allowed Class Counsel to develop and implement litigation strategies to address the complex obstacles that are inherent in class actions and those

specific to this case that were raised by Wells Fargo. I believe the recovery achieved here for the Class reflects the high quality of Class Counsel's representation.

154. Additionally, the quality of the work performed by Class Counsel in obtaining the Settlement should also be evaluated considering the quality of the opposition. Here, Wells Fargo has been vigorously represented by McGuireWoods LLP, which is a well-respected law firm. In the face of this experienced and formidable opposition, Class Counsel was nonetheless able to persuade Wells Fargo to settle the case on terms that I believe are favorable to the Class.

**E. The Class's Reaction Supports Class Counsel's Fee Request**

155. The deadline for Class Members to object to the Settlement, Plan of Allocation, and/or to the application for attorneys' fees and expenses, or to request exclusion from the Settlement Class is March 5, 2026. As of February 18, 2026, only one request for exclusion has been received. Ex. 7 (Initial Mailing Decl.) at ¶39. Epiq will file a supplemental affidavit after the deadline addressing whether any additional requests for exclusion have been received. Moreover, to date, no objections have been entered on this Court's docket or received by Class Counsel. If there are any objections, Class Counsel will address them in the forthcoming reply papers.

156. In sum, Class Counsel accepted this case on a fully contingent basis, committed significant resources to it, and prosecuted the case for more than six years without any compensation or guarantee of success. Based on the result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Class Counsel respectfully submits that a fee award of 33⅓%, resulting in a fractional multiplier of 0.67, is fair and reasonable, and is supported by the fee awards courts have granted in other comparable cases.

**F. Class Plaintiffs Support Class Counsel's Fee Request**

157. As set forth in the declarations submitted by each of the Class Plaintiffs, Class Plaintiffs have concluded that Class Counsel's requested fee is fair and reasonable based on the work performed, the recovery obtained for the Settlement

Class, and the risks of the Action. *See* Ex. 1 (McCraner Decl.) at ¶¶5-8; Ex. 2 (Stiansen Decl.) at ¶¶5-8; Ex. 3 (Pollard Decl.) at ¶¶5-8; Ex. 4 (Tuffield Decl.) at ¶¶5-8; Ex. 5 (Landreau Decl.) at ¶¶5-8; and Ex. 6 (Darlington Decl.) at ¶¶5-8. Class Plaintiffs have been intimately involved in this case since its early stages, and their endorsement of Class Counsel's fee request supports the reasonableness of the request and should be given weight in the Court's consideration of the fee award.

### G. Reimbursement Of The Requested Litigation Expenses Is Fair And Reasonable

158. Class Counsel seeks a total of $2,476,461.45 in Litigation Expenses to be paid from the Settlement Fund. This amount includes $2,416,461.45 in out-of-pocket expenses reasonably and necessarily incurred by Class Counsel in connection with commencing, litigating, and settling the claims asserted in the consolidated Action, as well as a total of $60,000 broken down as follows: $12,500 to Plaintiff Pollard, $7,500 to Plaintiff Darlington, $10,000 to Plaintiffs McCraner, Stiansen, Landreau and Tuffield directly related to their representation of the Class.[18] I submit that the request for reimbursement of Litigation Expenses is appropriate, fair, and reasonable and should be approved in the amounts submitted herein.

159. The litigation expenses incurred in the Action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. The expenses set forth below are the expenses actually incurred in prosecuting this consolidated Action:

| CATEGORY | TOTAL |
|---|---|
| COURIER AND SPECIAL POSTAGE | $3,178.08 |
| COURT FILING FEES | $3,778.75 |
| DOCUMENT MANAGEMENT | $427,152.20 |
| EXPERTS | $1,450,535.40 |

[18] Class Counsel is seeking varying awards based on the amount of time required for each plaintiff to fulfill their duties to the Class.

| | |
|---|---|
| INVESTIGATIONS | $25,300.55 |
| MEDIATORS | $54,856.00 |
| ONLINE RESEARCH | $122,057.12 |
| PHOTOIMAGING | $3,735.09 |
| SERVICE OF PROCESS | $16,867.05 |
| TRANSCRIPTS | $239,858.22 |
| TRAVEL AIRFARE | $15,685.52 |
| TRAVEL AUTO | $11,705.09 |
| TRAVEL HOTEL | $33,645.24 |
| TRAVEL MEALS | $7,389.78 |
| TRAVEL PARKING | $562.04 |
| WITNESS FEES | $155.32 |
| **GRAND TOTAL:** | **$2,416,461.45** |

160. Of the total $2,416,461.45 in expenses incurred, McNamara Smith incurred $64,221.84 in out-of-pocket expenses. Ex. 10-B.

161. Class Counsel understood that, even assuming that the case was ultimately successful, an award of expenses would not compensate for the lost use of the funds advanced to prosecute this Action. Thus, Class Counsel was motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

162. As set forth in the chart above, a substantial percentage of the expenses ($2,239,602.94, or approximately 92.6%) were for experts ($1,450,535.40), court reporting transcription services ($239,858.22), document management ($427,152.20), as well as online research ($122,057.12). Each of these expenses was critical to Class Counsel's success in achieving the Settlement and, like the other categories of expenses for which counsel seek reimbursement, are the types of expenses routinely charged to clients who pay hourly. In my opinion, the expenses paid were necessary and appropriate for the prosecution and resolution of this Action.

163. Finally, Class Plaintiffs seek awards for their time and efforts in connection with representing the Class in the total amount of $60,000 broken down as follows: $12,500 to Plaintiff Pollard, $7,500 to Plaintiff Darlington, $10,000 to Plaintiffs McCraner, Stiansen, Landreau and Tuffield. The substantial efforts devoted

to this Action by Class Plaintiffs are detailed in their accompanying declarations. *See* Exs. 1-6. Based on the time and effort expended by Class Plaintiffs for the benefit of the Class, I request that the Court grant Class Plaintiffs' requests in full.

## VII. CONCLUSION

164. Considering the significant recovery for the Settlement Class under the circumstances and the substantial risks of this Action, as described herein and in the accompanying Final Approval Memorandum, I submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should be approved as fair and reasonable. I further submit that the requested fee in the amount of 33⅓% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of total Litigation Expenses in the amount of $2,476,461.45 (which includes $60,000 for Class Plaintiffs) should also be approved.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed February 19, 2026, in Los Angeles, California.

*/s/ Jonathan M. Rotter*
Jonathan M. Rotter