

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VANA FOWLER,
Plaintiff,
v.
WELLS FARGO BANK, N.A.,
Defendant.

Case No. 17-cv-02092-HSG

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
GRANTING IN PART AND DENYING
IN PART MOTION FOR ATTORNEYS'
FEES**

Re: Dkt. Nos. 90, 91

I. INTRODUCTION

Pending before the Court are the motions for final approval of class action settlement and for attorneys' fees filed by Plaintiffs Vana Fowler and Michael Peters. Dkt. Nos. 90, 91. The Court held a final fairness hearing on the motion on December 20, 2018. For the reasons stated below, the Court GRANT the motion for approval, and GRANTS IN PART the motion for fees, costs and incentive awards.

II. BACKGROUND

A. Factual Allegations and Procedural History

Plaintiffs allege that Wells Fargo unlawfully and unfairly collected post-payment interest on mortgages insured by the Federal Housing Administration ("FHA")—part of the Department of Housing and Urban Development ("HUD")—by failing to provide proper notice to borrowers. See Dkt. No. 81 ("FAC").

Under HUD regulation 24 C.F.R. § 203.558, banks may collect interest after a borrower repays the full principal on his or her FHA-insured loan if the borrower's repayment is made after

1 the first of the month. See 24 C.F.R. § 203.558(c) (2014).¹ Accordingly, banks may collect
2 interest from the date the loan is paid off through the end of the month. Id. However, the statute
3 specifies that before banks may collect this post-payment interest, they must provide notice to
4 borrowers with “a form approved by the [FHA] Commissioner.” Id. Plaintiffs assert that these
5 HUD regulations are also incorporated into the banks’ promissory notes with borrowers. FAC ¶
6 80.

7 Here, Plaintiffs allege that Defendant collected post-payment interest on their loans. See
8 FAC ¶¶ 8–9, 85. Plaintiffs assert that Defendant did not provide them with the proper notice and
9 instead used its own unauthorized form that “does not fairly disclose the terms under which
10 [Defendant] can collect post-payment interest or properly explain how borrowers can avoid such
11 charges.” FAC ¶ 6. According to Plaintiffs, Defendant’s form suggests that borrowers cannot
12 avoid paying post-payment interest through the end of the month. Id. ¶ 70. Plaintiffs state that as
13 a result, they were charged interest twice—both by Defendant and by their new lenders after
14 refinancing. Plaintiffs seek any applicable damages on behalf of a class of nationwide borrowers.
15 Id. ¶ 74, Relief Requested.

16 On June 28, 2018, Plaintiffs filed a motion for preliminary approval. Dkt. No. 80. The
17 Court granted the motion for preliminary approval on August 22, 2018. Dkt. No. 85.

18 **B. Overview of the Proposed Settlement**

19 Following extensive formal discovery and with the assistance of a mediator, the parties
20 entered into a settlement agreement. Dkt. No. 91 at 3; Dkt. No. 80-1 (“SA”). The key terms are as
21 follows:

22 Class Definition: The Class is defined as the nationwide group, excluding Wells Fargo
23 employees and Judges and staff to whom this action is assigned, “who had an FHA Insured Loan
24 that was originated beginning June 1, 1996 and ending January 20, 2015, where (i) Wells Fargo,
25 its agent, or its predecessor was the mortgagee as of the date the total amount due on the FHA-

27 ¹ Plaintiffs’ proposed class period runs from June 1, 1996, through January 20, 2015. See FAC
28 ¶ 74. Consequently, the earlier 2014 version of the statute, current through January 20, 2015,
applies.

1 Insured Loan was brought to zero, (ii) Wells Fargo collected Post-Payment Interest on the FHA-
2 Insured Loan during the applicable Limitations Period, and (iii) the borrower made a prepayment
3 inquiry, request for payoff figures, or tender of prepayment but did not receive a Payoff Statement
4 containing the verbatim Post-Payment Interest disclosure language in [the] Housing Handbook.”
5 SA ¶ 1.5.

6 Settlement Benefits: The Net Settlement Fund will consist of \$30,000,000, minus the costs
7 of settlement administration, incentive awards, and attorneys’ fees and expenses. SA ¶¶ 1.36,
8 5.2.1. Each settlement class member will receive a refund of a percentage of the Net Settlement
9 Fund proportional to the amount of post-payment interest collected in connection with that
10 member’s loan as compared to all other class members’ post-payment interest. SA ¶ 5.2.1.

11 Release: All settlement class members will release:

12 any and all claims, defenses, demands, objections, actions, causes of
13 action, rights, offsets, setoffs, suits, damages, lawsuits, costs, relief
14 for contempt, losses, attorneys’ fees, expenses, or liabilities of any
15 kind whatsoever, in law or in equity, for any relief whatsoever,
16 including monetary, sanctions or damage for contempt, injunctive, or
17 declaratory relief, rescission, general, compensatory, special,
18 liquidated, indirect, incidental, consequential, or punitive damages, as
19 well as any and all claims for treble damages, penalties, interest,
20 attorneys’ fees, costs, or expenses, whether a known or Unknown
Claim, suspected or unsuspected, contingent or vested, accrued or not
accrued, liquidated or unliquidated, matured or unmatured, that in any
way concern, arise out of, or relate to allegations that were or could
have been asserted in the Class Action Complaint related to Post-
Payment Interest on each Class Member’s FHA-Insured Loan. It is
the intention of the Class Representatives to provide a general release
of all Released Claims against the Releasees for claims related to
Post-Payment Interest.

21 SA ¶ 1.28.

22 Class Notice: A third-party settlement administrator sent class notices via U.S. mail to
23 each member of the class, using a class list provided by Defendant. SA ¶¶ 7.2, 7.3; Dkt. No. 88 at
24 1. The notice included the nature of the action, a summary of the settlement terms, and
25 instructions on how to object to and opt out of the settlement, including relevant deadlines. SA ¶¶
26 7.1–7.7, Exs. 1, 2.

27 Opt-Out Procedure: Any putative class member who does not wish to participate in the
28 settlement must have signed and postmarked a written request for exclusion to the settlement

1 administrator no later than November 20, 2018. SA ¶¶ 11.1; 1.22; Dkt. No. 88 at 1.

2 Incentive Award: Pursuant to the settlement agreement, Plaintiff Fowler now applies for
3 an incentive award of \$7,500 and Plaintiff Peters applies for an incentive award of \$5,000. Dkt.
4 No. 90 at 1; SA ¶ 15.3. Six class members who prepared but did not file claims are each also
5 seeking a \$500 incentive award. Dkt. No. 90 at 1.

6 Attorneys' Fees and Costs: Pursuant to the settlement agreement, Plaintiffs have filed an
7 application for attorneys' fees in the amount of \$7.5 million (25% of the settlement fund), and
8 litigation expenses of \$70,000. Dkt. No. 90 at 1–2; SA ¶¶ 15.1–15.2.

9 **III. ANALYSIS**

10 **A. Final Settlement Approval**

11 **i. Class Certification**

12 Final approval of a class action settlement requires, as a threshold matter, an assessment of
13 whether the class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and
14 (b). *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019–1022 (9th Cir. 1998). Because no facts that
15 would affect these requirements have changed since the Court preliminarily approved the class on
16 August 22, 2018, this order incorporates by reference its prior analysis under Rules
17 23(a) and (b) as set forth in the order granting preliminary approval. See Dkt. No 85 at 4–8.

18 **ii. The Settlement**

19 “The claims, issues, or defenses of a certified class may be settled . . . only with the court’s
20 approval.” Fed. R. Civ. P. 23(e). The Court may finally approve a class settlement “only after a
21 hearing and on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *Officers*
22 *for Justice v. Civil Serv. Comm’n of the City and Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)
23 (“The district court’s role in evaluating a proposed settlement must be tailored to fulfill the
24 objectives outlined above. In other words, the court’s intrusion upon what is otherwise a private
25 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent
26 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties . . .”). To assess whether a
28 proposed settlement comports with Rule 23(e), the Court “may consider some or all” of the

1 following factors: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity, and likely
2 duration of further litigation; (3) the risk of maintaining class action status throughout the trial;
3 (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the
4 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
5 participant; and (8) the reaction of the class members to the proposed settlement. *Rodriguez v.*
6 *West Publ’g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009); see *Hanlon*, 150 F.3d at 1026. “The
7 relative degree of importance to be attached to any particular factor” is case specific. *Officers for*
8 *Justice*, 688 F.2d at 625.

9 In addition, “[a]dequate notice is critical to court approval of a class settlement under Rule
10 23(e).” *Hanlon*, 150 F.3d at 1025. As discussed below, the Court finds that the proposed
11 settlement is fair, adequate, and reasonable, and that class members received adequate notice.

12 **a. Adequacy of Notice**

13 Under Federal Rule of Civil Procedure 23(e), the Court “must direct notice in a reasonable
14 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).
15 Rule 23(c)(2)(B) requires “the best notice that is practicable under the circumstances, including
16 individual notice to all members who can be identified through reasonable effort.” The notice
17 must “clearly and concisely state in plain, easily understood language” the nature of the action, the
18 class definition, and the class members’ right to exclude themselves from the class. Fed. R. Civ.
19 P. 23(c)(2)(B). Although Rule 23 requires that reasonable efforts be made to reach all class
20 members, it does not require that each class member actually receive notice. See *Rannis v.*
21 *Recchia*, 380 F. App’x 646, 650 (9th Cir. May 27, 2010) (noting that “due process requires
22 reasonable effort to inform affected class members through individual notice, not receipt of
23 individual notice”).

24 The Court finds that the notice plan previously approved by the Court, Dkt. No. 85 at 11–
25 12, was implemented and complies with Rule 23(c)(2)(B). As outlined in the settlement
26 agreement, Defendant provided the third-party settlement administrator, Garden City Group, LLC
27 (“GCG”) with names and other identifying information for putative class members. See SA ¶ 6.4;
28 Dkt. No. 91-4 ¶ 8. Prior to sending physical notice, GCG ran mailing address records through the

1 National Change of Address Database. Dkt. No. 91-4 ¶ 9. On October 5, 2018, GCG sent
2 physical notice, id. Ex. C, to 1,112,747 potential class members. Id. ¶ 10. As of November 13,
3 2018, the Postal Service had returned 11,022 short-form notices as undeliverable. Id. ¶ 12. After
4 conducting skip trace searches, 7,434 short-form notices were re-mailed to updated addresses. Id.
5 On October 5, 2018, GCG additionally established a settlement website, which contains a
6 summary of the settlement, copies of certain settlement documents, a long-form notice, and
7 contact information for the settlement administrator. Id. ¶ 14. As of October 17, 2018, 55
8 requests to opt out have been received, and no class member has objected to the settlement.² Dkt.
9 No. 91 at 11. In light of these facts, the Court finds that the parties have sufficiently provided the
10 best practicable notice to the class members.

11 **b. Fairness, Adequacy, and Reasonableness**

12 Having found the notice procedures adequate under Rule 23(e), the Court next considers
13 whether the entire settlement comports with Rule 23(e).

14 **1. Strength of Plaintiff's Case, Litigation Risks, and Risks of**
15 **Maintaining Class Action Status**

16 Approval of a class settlement is appropriate when plaintiffs must overcome significant
17 barriers to make their case. *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 851 (N.D.
18 Cal. 2010). Courts “may presume that through negotiation, the Parties, counsel, and mediator
19 arrived at a reasonable range of settlement by considering Plaintiff’s likelihood of recovery.”
20 *Garner v. State Farm Mut. Auto. Ins. Co.*, No. 08-cv-1365-CW, 2010 WL 1687832, at *9 (N.D.
21 Cal. Apr. 22, 2010). Additionally, difficulties and risks in litigating weigh in favor of approving a
22 class settlement. *Rodriguez*, 563 F.3d at 966. “Generally, unless the settlement is clearly
23

24 ² Two individuals, Sergio and MA Norma Rodriguez, filed an objection on December 20, 2018,
25 the same day as the final approval motion hearing. Dkt. No. 92. These individuals did not appear
26 at the hearing, and the Court accepts the parties’ representation made at the hearing that both
27 Sergio and MA Norma Rodriguez had opted out prior to their filed objection. See also Dkt. No.
28 91-4, Ex. D (list of opt-outs including Sergio and MA Norma Rodriguez). A putative class
member who opts out of the settlement does not have standing to object to it. *Glass v. UBS Fin.*
Servs., Inc., No. C-06-4068 MMC, 2007 WL 221862, at *8 (N.D. Cal. Jan. 26, 2007) (“Although
Bavishi has submitted objections to the settlement, he also has opted out. Consequently, as
Bavishi is no longer a class member, he has no standing to object.”), *aff’d*, 331 F. App’x 452 (9th
Cir. 2009) (internal citation omitted).

1 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with
2 uncertain results.” Ching v. Siemens Indus., Inc., No. 11-cv-04838-MEJ, 2014 WL 2926210, at *4
3 (N.D. Cal. Jun. 27, 2014) (quotation omitted).

4 This action reached settlement before the Court had an opportunity to consider the merits
5 of the claims. But Plaintiff would face both factual and legal hurdles were the litigation to
6 proceed. Plaintiff identifies challenges to establishing causation on a class-wide basis at the class
7 certification stage. See Dkt. No. 91 at 8; Miller v. Wells Fargo Bank, N.A., No. 1:16-CV-21145-
8 UU, 2017 WL 698520, at *17 (S.D. Fla. Feb. 22, 2017) (denying motion for class certification
9 brought against Wells Fargo on similar facts for failure to demonstrate predominance). With
10 respect to maintaining class action status, the size of the putative class, which includes over
11 1,000,000 individuals, itself presents complex issues potentially undermining certification.

12 Considering Defendant’s apparent willingness to defend against this action and the
13 uncertain state of the law, Plaintiff was not guaranteed a favorable result. In reaching a settlement,
14 however, Plaintiff ensured a favorable recovery for the class. See Rodriguez, 563 F.3d at 966
15 (finding litigation risks weigh in favor of approving class settlement). Accordingly, these factors
16 support approving the settlement. See Ching, 2014 WL 2926210, at *4 (favoring settlement over
17 protracted litigation).

18 **2. Settlement Amount**

19 The amount offered in the settlement is another factor that weighs in favor of approval.
20 Based on the facts in the record and the parties’ arguments at the final fairness hearing, the Court
21 finds that the \$30,000,000 settlement amount falls “within the range of reasonableness” in view of
22 litigation risks and costs. Participating class members will receive an estimated average initial
23 distribution of \$19.50 after deductions for attorneys’ fees and costs and settlement administration
24 costs. See Dkt. No. 91 at 9. The residual from uncashed checks will then be distributed in a
25 second round of checks to participating class members. Plaintiffs estimate that participating
26 members’ total recovery will be between \$25 and \$33. Id. The settlement fund represents 11.3%
27 of the total post-payment interest collected by Wells Fargo during the class period. Id. The
28 amount is commensurate with recoveries approved by other district courts. Dkt. No. 91 at 9-10

1 (listing values of settlements approved in similar cases against other lenders); see also, e.g., *In re*
2 *Newbridge Networks Sec. Litig.*, No. CIV. A. 94-1678-LFO, 1998 WL 765724, at *2 (D.D.C. Oct.
3 23, 1998) (“an agreement that secures roughly six to twelve percent of a potential trial recovery,
4 while preventing further expenditures and delays and eliminating the risk that no recovery at all
5 will be won, seems to be within the targeted range of reasonableness.”). The Ninth Circuit has
6 cautioned that just because a settlement could have been better “does not mean the settlement
7 presented was not fair, reasonable or adequate.” *Hanlon*, 150 F.3d at 1027 (“Settlement is the
8 offspring of compromise; the question we address is not whether the final product could be
9 prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.”).

10 **3. Extent of Discovery Completed and Stage of Proceedings**

11 Class counsel had sufficient information to make an informed decision about the merits of
12 the case. See *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). Plaintiff
13 pursued settlement only after engaging in a significant pre-suit investigation. Dkt. No. 91 at 10.
14 The Court finds that the parties have sufficiently analyzed materials that enabled them to assess
15 the likelihood of success on the merits. This factor weighs in favor of approval.

16 **4. Experience and Views of Counsel**

17 The Court next considers the experience and views of counsel, and finds that this factor
18 also weighs in favor of approval. “[P]arties represented by competent counsel are better
19 positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in
20 litigation.” *Rodriguez*, 563 F.3d at 967 (quotation omitted). Accordingly, “[t]he
21 recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.” *In re*
22 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). The Court has previously
23 evaluated class counsel’s qualifications and experience and concluded that counsel is qualified to
24 represent the classes’ interests in this action. See Dkt. No. 85 at 5–6. As discussed, class counsel
25 initiated settlement discussions only after assessing the risks of continuing the litigation. The
26 Court recognizes, however, that courts have diverged on the weight to assign counsel’s opinions.
27 Compare *Carter v. Anderson Merch., LP*, 2010 WL 1946784, at *8 (C.D. Cal. May 11, 2010)
28 (“Counsel’s opinion is accorded considerable weight.”), with *Chun-Hoon*, 716 F. Supp. 2d at 852

1 (“[T]his court is reluctant to put much stock in counsel’s pronouncements. . . .”). This factor’s
2 impact is therefore modest, but favors approval.

3 **5. Reaction of Class Members**

4 The reaction of class members supports final approval. “[T]he absence of a large number
5 of objections to a proposed class action settlement raises a strong presumption that the terms of a
6 proposed class settlement action are favorable to the class members.” *Nat’l Rural Telecomms.*
7 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004); *In re Linkedin User Privacy*
8 *Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015) (“A low number of opt-outs and objections in
9 comparison to class size is typically a factor that supports settlement approval.”).

10 Class notice, which was served on each class member in accordance with the methods
11 approved by the Court, advised the class of the requirements regarding objections and exclusions.
12 See Dkt. No. 91-4 ¶¶ 5–15, Exs. A–D. The deadline to object or request exclusion was November
13 20, 2018. Dkt. No. 91-4 ¶ 16. 55 class members opted out, and no putative class member who
14 had not already opted out objected to the settlement. *Id.*; Dkt. No. 91 at 11; see also footnote 2
15 *infra*. The absence of objections and the low number of opt-outs suggest support among the class
16 members and weigh in favor of approval. See, e.g., *Churchill Village LLC v. Gen. Elec.*, 361 F.3d
17 566, 577 (9th Cir. 2004) (affirming settlement where 45 of approximately 90,000 class members
18 objected).

19 * * *

20 After considering and weighing the above factors, the Court finds that the settlement
21 agreement is fair, adequate, and reasonable, and that the settlement class members received
22 adequate notice. Accordingly, Plaintiff’s motion for final approval of class action settlement is
23 **GRANTED.**

24 **B. Motion for Attorneys’ Fees and Costs**

25 Class counsel asks the Court to approve an award of \$7,500,000 in attorneys’ fees and
26 \$70,000 in costs. Dkt. No. 90 at 1. Class counsel also seeks a \$7,500 incentive award for Named
27 Plaintiff Vana Fowler, \$5,000 to Plaintiff Michael Peters, and \$500 each to six class members
28 with prepared but unfiled claims for their assistance in this case. *Id.*

1 **i. Attorneys’ Fees**

2 “*In a certified class action, the court may award reasonable attorney’s fees and nontaxable*
3 *costs that are authorized by law or by the parties’ agreement.*” Fed. R. Civ. P. 23(h). The Court
4 has discretion in a common fund case to choose either (1) the lodestar method or (2) the
5 percentage-of-the-fund when calculating reasonable attorneys’ fees. *Vizcaino v. Microsoft Corp.*,
6 290 F.3d 1043, 1047 (9th Cir. 2002).

7 Under the percentage-of-recovery method, twenty-five percent of a common fund is the
8 benchmark for attorneys’ fees awards. See, e.g., *In re Bluetooth*, 654 F.3d at 942 (“[C]ourts
9 typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing
10 adequate explanation in the record of any ‘special circumstances’ justifying a departure.”); *Six*
11 *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

12 Under the lodestar method, a “lodestar figure is calculated by multiplying the number of
13 hours the prevailing party reasonably expended on the litigation (as supported by adequate
14 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.”
15 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (citing *Staton v.*
16 *Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003)). Whether the Court awards the benchmark amount
17 or some other rate, the award must be supported “by findings that take into account all of the
18 circumstances of the case.” *Vizcaino*, 290 F.3d at 1048.

19 “[T]he established standard when determining a reasonable hourly rate is the rate
20 prevailing in the community for similar work performed by attorneys of comparable skill,
21 experience, and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008)
22 (quotation omitted). Generally, “the relevant community is the forum in which the district court
23 sits.” *Id.* (citing *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)). Typically, “affidavits of
24 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
25 determinations in other cases . . . are satisfactory evidence of the prevailing market rate.” *United*
26 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). “In addition to
27 affidavits from the fee applicant, other evidence of prevailing market rates may include affidavits
28 from other area attorneys or examples of rates awarded to counsel in previous cases.” *Schuchardt*

1 v. Law Office of Rory W. Clark, 314 F.R.D. 673, 687 (N.D. Cal. 2016).

2 Although “the choice between lodestar and percentage calculation depends on the
3 circumstances, . . . either method may . . . have its place in determining what would be reasonable
4 compensation for creating a common fund.” *Six Mexican Workers*, 904 F.2d at 1311 (internal
5 quotation marks omitted). To guard against an unreasonable result, the Ninth Circuit has
6 encouraged district courts to cross-check any calculations done in one method against those of
7 another method. *Vizcaino*, 290 F.3d at 1050–51.

8 Class counsel here seeks \$7,500,000 in fees, or one quarter (25%) of the settlement
9 amount. See Dkt. No. 90 at 1. That matches the benchmark for a reasonable fee award under the
10 percentage-of-recovery method. See *In re Bluetooth*, 654 F.3d at 942 (typical 25% benchmark).
11 The fee amount requested is significantly greater than class counsel’s fees would be if calculated
12 using the lodestar method. In calculating its lodestar, class counsel contends that it expended a
13 combined 4,072.5 hours. Dkt. No. 90 at 9. With respect to hourly rates, the eight attorneys
14 request rates between \$300 per hour and \$850 per hour. *Id.* According to class counsel, this
15 yields a lodestar of \$2,167,826. *Id.* Counsel suggests that a multiplier of approximately 3.46
16 times the lodestar is appropriate in this case. *Id.*

17 Having reviewed class counsel’s qualifications and supporting documents, the Court finds
18 that the billing rates used are reasonable and generally in line with rates in this District for
19 personnel of comparable experience, skill, and reputation. See, e.g., *In re NCAA Ath. Grant-In-*
20 *Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017 U.S. Dist. LEXIS 201108, at *3, 21–22
21 (N.D. Cal. Dec. 6, 2017) (approving \$41,732,889 in fees, representing 20% of the settlement fund
22 and a 3.66 multiplier); *Buccellato v. AT & T Operations, Inc.*, No. C10-00463-LHK, 2011 WL
23 3348055, at *1–2 (N.D. Cal. June 30, 2011) (approving \$3,125,000 in fees, representing 25% of
24 the settlement fund and a 4.3 multiplier, and collecting cases).

25 Having carefully reviewed the documentation provided by class counsel, the Court finds
26 reasonable the number of hours expended in this action given the length of the case and its
27 procedural posture. The Court finds that class counsel’s requested fees are reasonable in light of
28 the results achieved for the class and finds that a benchmark award of 25% of the settlement fund

1 is appropriate. The Court accordingly GRANTS class counsel’s motion for attorneys’ fees in the
2 amount of \$7,500,000.

3 **ii. Attorneys’ Costs**

4 Class counsel is also entitled to recover “those out-of-pocket expenses that would normally
5 be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (quotation
6 omitted). Class counsel seeks reimbursement of \$70,000 in litigation costs. Dkt. No. 90 at 1.
7 Class counsel has provided itemized documentation demonstrating that the amount requested
8 covers expenses of filing, document delivery, and travel. See Dkt. No. 90-1, Ex. 4. Defendant
9 does not oppose class counsel’s request. The Court finds the amount requested by counsel
10 reasonably incurred, and the Court GRANTS in full the motion for costs in the amount of \$70,000.

11 **iii. Incentive Awards**

12 Class counsel requests an incentive award of \$7,500 to Plaintiff Vana Fowler, \$5,000 to
13 Plaintiff Michael Peters, and \$500 each to six class members with prepared but unfiled claims for
14 their time and service. Dkt. No. 90 at 1. Here, Plaintiffs’ counsel requests that the service awards
15 be paid out of any attorneys’ fees awarded by the Court, so as not to reduce the common fund.
16 Dkt. No. 90 at 12. “[N]amed plaintiffs . . . are eligible for reasonable incentive payments.”
17 *Staton*, 327 F.3d at 977; *Rodriguez*, 563 F.3d at 958 (“Incentive awards are fairly typical in class
18 action cases.”). They are designed to “compensate class representatives for work done on behalf
19 of the class, to make up for financial or reputational risk undertaken in bringing the action, and,
20 sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563
21 F.3d at 958–59. Nevertheless, the Ninth Circuit has cautioned that “district courts must be vigilant
22 in scrutinizing all incentive awards to determine whether they destroy the adequacy of the class
23 representatives” *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1164 (9th Cir.
24 2013). This is particularly true where “the proposed service fees greatly exceed the payments to
25 absent class members.” *Id.* at 1165 (quotation omitted). The district court must evaluate an
26 incentive award using “relevant factors includ[ing] the actions the plaintiff has taken to protect the
27 interests of the class, the degree to which the class has benefitted from those actions, . . . [and] the
28 amount of time and effort the plaintiff expended in pursuing the litigation” *Staton*, 327 F.3d

1 at 977 (quotation omitted).

2 Courts in this district have recognized a \$5,000 incentive award as “presumptively
3 reasonable.” *Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL 362395, at *10
4 (N.D. Cal. Jan. 29, 2016); *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2012 WL 381202,
5 at *7 (N.D. Cal. Feb. 6, 2012) (observing that “as a general matter, \$5,000 is a reasonable
6 amount”). The \$12,500 total in incentive awards requested for Named Plaintiffs is also
7 significantly less than the approximately 1% of the total settlement awarded by some courts. See
8 *Sandoval v. Tharaldson Empl. Mgmt., Inc.*, No. EDCV 08-482-VAP(OP), 2010 WL 2486346, at
9 *10 (C.D. Cal. Jun. 15, 2010) (finding a \$7,500 award, or 1% of the settlement fund, fair and
10 reasonable).

11 Both Named Plaintiffs participated in the litigation by assisting counsel in obtaining loan
12 documents, and reviewing the complaint as well as relevant motions. Dkt. Nos. 90-4 and 90-5.
13 Named Plaintiff Fowler also assisted her attorneys in responding to discovery. Dkt. No. 90-4 at ¶
14 8. Ms. Fowler flew to San Francisco and stayed overnight to attend the mediation in the case. *Id.*
15 Ms. Fowler participated in the mediation as the settlement negotiations took place, and had
16 follow-up calls and emails with counsel. *Id.* at ¶¶ 6, 8. Ms. Fowler estimates that she spent 40 to
17 50 hours on the case. *Id.* at ¶ 8.

18 Named Plaintiff Peters searched for and produced relevant documents regarding the case.
19 Dkt. No. 90-5 at ¶ 6. He also communicated with counsel before and after the mediation, and
20 discussed the settlement agreement and exhibits with counsel. *Id.* at ¶ 7. Mr. Peters estimates that
21 he spent approximately 20 hours on the case. *Id.* at ¶ 9.

22 Gerald Braxmeyer, Henry Yrlas, Russell Reece, Seth Hawk, Sandra McKenzie, and Dane
23 Yetzer are class members who assisted Class Counsel in obtaining their loan records and in
24 building additional cases against Wells Fargo as part of a multi-state litigation strategy, although
25 the Settlement was reached before their claims were filed. Dkt. No. 90 at 13. These class
26 members spent an estimated five hours each assisting counsel on this case. *Id.*

27 Given the amounts requested, and noting that the incentive awards will be apportioned
28 from the attorneys’ fees, the Court finds the amounts requested by the Named Plaintiffs to be fair

1 and reasonable. The Court therefore GRANTS Plaintiffs’ request for an incentive award of \$7,500
2 to Plaintiff Vana Fowler, and \$5,000 to Plaintiff Michael Peters.

3 The Court declines to award the requested \$500 each to non-Named Plaintiff class
4 members Gerald Braxmeyer, Henry Yrlas, Russell Reece, Seth Hawk, Sandra McKenzie, and
5 Dane Yetzer. The Court has found the settlement to be a good and fair deal for the class members
6 generally, and concludes that it is fair for these class members as well. The Court does not believe
7 it appropriate to award more than fifteen times the maximum recovery projected for other class
8 members to these individuals based on their contributions to claims that were never filed. The
9 Court is of the view that incentive awards should be reserved for named plaintiffs, to avoid
10 creating tiers of differently-treated class members. See, e.g., *Hendricks v. StarKist Co.*, 2016 WL
11 5462423 at * 14 (N.D. Cal. Sept. 29, 2016) (denying request for \$1,000 incentive payments for
12 eight “interested party” class members who filed motion to intervene, assisted with preparation of
13 class action complaint that was never filed, and were on standby to represent statewide classes if
14 necessary), *aff’d*, *Hendricks v. Ference*, 2018 WL 5115482 (9th Cir. October 19, 2018).

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IV. CONCLUSION


For the foregoing reasons it is hereby ordered that:

- a. Plaintiff’s Motion for Final Approval of Class Action Settlement is hereby **GRANTED**, and Plaintiff’s Motion for an Award of Attorneys’ Fees, Reimbursement of Costs to Class Counsel, and Incentive Award is hereby **GRANTED IN PART** and **DENIED IN PART**.
- b. The Court approves the settlement amount of \$1,300,000 including payments of costs in the amount of \$70,000; incentive awards of \$7,500 to Plaintiff Vana Fowler, and \$5,000 to Plaintiff Michael Peters; and attorneys’ fees in the amount of \$7,500,000 (less the incentive awards total).

The parties and settlement administrator are directed to implement this Final Order and the settlement agreement in accordance with the terms of the settlement agreement. The parties are directed to submit a joint proposed judgment by February 1, 2019.

IT IS SO ORDERED.

Dated: 1/25/2019


HAYWOOD S. GILLIAM, JR.
United States District Judge