

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
AT TOPEKA

JIN NAKAMURA,

Plaintiff,

v.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION d/b/a WELLS FARGO  
DEALER SERVICES, INC.,

Defendant.

Case No. 5:17-cv-04029

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement ("Agreement") is made and entered into September \_\_\_\_, 2018, between: Wells Fargo Bank, National Association ("Defendant") and Plaintiff Jin Nakamura ("Plaintiff"), both individually and on behalf of the Class (defined below). This Agreement is intended by the Settling Parties (defined below) to fully, finally, and forever resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions as set forth in what follows.

WHEREAS, Plaintiff is prosecuting the above-captioned litigation on his own behalf and on behalf of the Class against Defendant;

WHEREAS, Plaintiff alleges, among other things, that since January 1, 2005, Defendant repossessed military servicemembers' motor vehicles in violation of the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. § 3901, *et seq.* and numerous state consumer protection statutes. Plaintiff also alleges common law conversion, negligence, and credit defamation as alleged in Plaintiff's First Amended Complaint, Dkt. No. 20, and proposed Second Amended Complaint Dkt. No. 55-1;

WHEREAS, Defendant denies each and all of the claims and allegations of wrongdoing made by Plaintiff; denies that it has violated any law or other duty; denies that it has engaged in any wrongdoing or any other act or omission that would give rise to liability or cause Plaintiff injuries, damages, or entitlement to any relief; has asserted affirmative defenses to Plaintiff's claims as set forth in its Answer and Affirmative Defenses to Plaintiff's First Amended Complaint, Dkt. No. 30; and would contest certification of a non-settlement Rule 23(b)(3) damages class and/or a Rule 23(b)(1) or Rule 23(b)(2) declaratory and injunctive relief class; and states that it is entering into this Agreement to avoid the further uncertainties, expense, inconvenience, delay, and distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to Plaintiff and the Class and avoid the risks inherent in complex litigation;

WHEREAS, Defendant has provided information to Plaintiff regarding his claims and the claims of the Class through written discovery and voluntarily in advance of and during mediation;

WHEREAS, Plaintiff and Defendant agree that the fact of this Agreement, any of the terms in this Agreement, any documents filed in support of this Agreement, or any statement made in the negotiation thereof shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law, (ii) any liability or wrongdoing by Defendant, (iii) liability on any of the claims or allegations, or (iv) the propriety of certifying a litigation class in any proceeding, and shall not be used by any Person for any purpose whatsoever in the Action (defined below) or any other legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of this Agreement;

WHEREAS, Plaintiffs and Defendant engaged the services of former United States District Court Judge Layn Phillips as a mediator to assist in their negotiations, and starting in February 2018, engaged in extensive settlement negotiations, which included two in-person mediation

sessions with Judge Phillips in California between February and May 2018, before agreeing to the terms of this arm's-length Agreement, which embodies all of the terms and conditions of the Settlement (as defined below) between the Settling Parties, and which has been reached (subject to the approval of the Court) as provided below and which is intended to supersede any and all prior agreements between the Settling Parties; and

WHEREAS, Plaintiff and Plaintiff's Class Counsel (defined below) have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in Plaintiff's First Amended Complaint, Dkt. No. 20, and the proposed Second Amended Complaint Dkt. No. 55-1, the legal and factual defenses thereto and the applicable law, that it is in the best interests of Plaintiff and the Class to enter into this Agreement to avoid the uncertainties of litigation and to assure that the benefits set forth below are obtained for Plaintiff and the Class, and, further, that Plaintiff's Class Counsel consider the Settlement set forth in this Agreement to be fair, reasonable, and adequate and in the best interests of Plaintiff and the Class.

## **AGREEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their attorneys of record, that, subject to the approval of the Court, the Action (defined below) and the Released Claims (defined below), including any Unknown Claims (defined below), against Defendant shall be finally and fully settled, compromised, and dismissed on the merits and with prejudice upon and subject to the terms and conditions of this Agreement, as follows:

### **I. DEFINITIONS**

As used in this Agreement the following terms have the meanings specified below:

1. "Action" means *Jin Nakamura v. Wells Fargo Bank National Association d/b/a Wells Fargo Dealer Services, Inc.* class action lawsuit, Case No. 5:17-cv-04029, filed in the United States District Court for the District of Kansas.
2. "Affiliates" means entities controlling, controlled by, or under common control with a Releasee or Releasor.
3. "Authorized Recipient" means any Settlement Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.
4. "Class" is defined as: All servicemembers who, before the servicemember entered military service, paid a deposit or installment on a motor vehicle loan originated, acquired, and/or serviced by Wells Fargo Bank, N.A., its predecessors, successors, subsidiaries, and assigns ("Wells Fargo"), and whose motor vehicle subject to the loan was repossessed by Wells Fargo while the servicemember was in active

military service without a court order or a waiver pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. 3918, authorizing the repossession between January 1, 2006, and December 31, 2017, and have not already released their claims.

5. "Class Counsel" means Rex A. Sharp, Ryan C. Hudson, and Scott B. Goodger of Rex A. Sharp, P.A.; Bryce B. Bell and Mark Schmitz of Bell Law, LLC; and A. Scott Waddell of Waddell Law Firm LLC.
6. "Counsel for Defendant" means David Powell, Carolee Hoover, Alicia Baiardo, and Aaron Marienthal of McGuireWoods LLP and Michael Brown of Kutak Rock LLP.
7. "Settlement Class Member" means a Person who falls within the definition of the Class and has not timely and validly elected to be excluded from the Class pursuant to the procedures set forth below.
8. "Court" means the United States District Court for the District of Kansas.
9. "Day" or "Days" has the meaning ascribed to it in Federal Rule of Civil Procedure 6, and all time periods specified in this Agreement shall be computed in a manner consistent with Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 6. All references to days shall be interpreted to mean calendar days, unless otherwise noted.
10. "Distribution Plan" means the plan or formula of allocation of the Gross Settlement Fund whereby the Net Settlement Fund shall in the future be distributed to Authorized Recipients, to be approved by the Court in the form attached hereto as Exhibit A and made a part of this Agreement.
11. "Effective Date" means the first date by which all of the events and conditions specified in § VII(A)(1)-(4) of this Agreement have occurred and have been met.
12. "Exclusion/Objection Deadline" means the deadline for requesting exclusion from the Class or objecting to the Settlement, as set forth in the notice to the Class.
13. "Execution Date" means the latest date associated with a signature on a fully executed Agreement set forth on the signature pages below.
14. "Final" means, with respect to any order of the Court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes "Final" when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further

appeal has expired. For purposes of this Agreement, an "appeal" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order issued with respect to an application for attorneys' fees and expenses consistent with this Agreement shall not in any way delay or preclude the Judgment from becoming Final.

15. "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.
16. "Incentive Award" means the amount awarded, if any, to the Representative Plaintiff upon application as described in § VI of this Agreement.
17. "Judgment" means the order of judgment and dismissal of the Action with prejudice.
18. "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth below in § V(B).
19. "Notice and Administrative Costs" means the expenses incurred by the Settlement Administrator pursuant to the Plan of Allocation and Distribution which is attached hereto as Exhibit A, and the Orders of the United States District Court for the District of Kansas (the "Court") which relate to the administration of this settlement. Such expenses shall include, but are not limited to, costs incurred by the Settlement Administrator in connection with the following:
  - a. Efforts incurred by the Settlement Administrator to identify the names and addresses of Settlement Class members;
  - b. Mailing and publication of Notice of Settlement to the Settlement Class members (including, but not limited to, the cost to print the Notices, mail the Notices, and publish the Notices, and make certain efforts to locate Settlement Class members whose mailings are returned undelivered);
  - c. Maintenance of any website to facilitate communications with Settlement Class members and their access to information;
  - d. Implementation of the Plan of Allocation and Distribution including, but not limited to, the cost to print and mail Distribution Checks;
  - e. Fees and expenses of the Settlement Administrator;
  - f. Costs of preparing and mailing Distribution Checks and tax documentation to members of the Settlement Class at the time specified in this Agreement.

Notice and Administrative Costs will be paid by Defendant, separate and apart from the Gross Settlement Fund.

20. "Settlement Administrator" means the settlement administrator(s) to be selected by Class Counsel and Defendant and approved by the Court. Epiq will be recommended by Class Counsel and Defendant.
21. "Opt-Out" means a Person who falls within the definition of the Class who has timely and validly elected to be excluded from the Class pursuant to the procedures set forth herein. It does not include any Person whose request for exclusion is challenged by Defendant and the challenge is not overruled by the Court or withdrawn by Defendant, any Person whose communication is not treated as a request for exclusion, and/or any Person whose request for exclusion is not valid or is otherwise void.
22. "Person(s)" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives, or assignees of any of the foregoing.
23. "Released Claims" means any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, all from January 1, 2006 until the date of Preliminary Approval, under the laws of any jurisdiction, which Releasers or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising out of or relating in any way to any act or omission of the Releasees (or any of them) that is alleged in Plaintiff's Action or could have been alleged in Plaintiff's Action.
24. "Releasees" means Wells Fargo Bank National Association d/b/a Wells Fargo Dealer Services, and each and every one of its past, present, and future parents, predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders (in their capacity as shareholders), officers, directors,

vendors, employees, members, attorneys and legal representatives, insurers, agents (alleged or actual), heirs, executors, administrators and assigns, and related and affiliated Persons including but not limited to Wells Fargo & Company.

25. "Releasers" means Plaintiff and each and every Class Member, individually or together, and each and every one of their former, present, or future agents, predecessors, successors, heirs, legatees, executors, administrators, insurers, assigns, trustees, spouses, and domestic partners, except those that would otherwise be a Settlement Class Member and excludes him/herself .
26. "Representative Plaintiff" means the named Plaintiff in the Action, Jin Nakamura
27. "Settlement" means the settlement of the Released Claims set forth herein.
28. "Settlement Amount" means the total sum of five million one hundred and twenty-five thousand dollars (\$5,125,000), however, the Settlement Amount may increase in accordance with Section V.C(2), fn. 1.
29. "Settling Parties" means, collectively, Defendant and Plaintiff (on behalf of himself and the Class). (Defendant or Plaintiff separately is a "Settling Party").
30. "Unknown Claims" means any and all Released Claims that Plaintiff and/or a Settlement Class Member does not know or suspect to exist in his or her favor at the time of the release of the Releasees that if known by him or her, might have affected his or her settlement with and release of the Releasees, or might have affected his or her decision not to object to or opt out of this Settlement.
31. As used herein, the plural of any defined terms includes the singular thereof and vice versa, except where the context requires otherwise.

## **II. PRELIMINARY APPROVAL ORDER, NOTICE ORDER AND SETTLEMENT HEARING**

**A. Reasonable Best Efforts to Effectuate This Settlement.** The Settling Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement.

**B. Certification of Class.** For settlement purposes only, the Settling Parties agree to certification of the Class pursuant to Fed. R. Civ. P. Rules 23(a) and 23(b)(3). The Settling Parties' stipulation to the certification of the Class is for purposes of the Settlement set forth in this Agreement only. Defendant's agreement to the certification of the Class solely for the purpose of this Agreement does not, and shall not, constitute, in this or any other proceeding, an admission

by Defendant of any kind or any determination that certification of a class for trial or other litigation purposes in the Action or any other separate action is, or would be, appropriate. If the Settlement is not granted Final Approval or this Agreement is otherwise terminated or rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence or any determination that the requirements for certification of a class for trial or other litigation purposes in this Action or any other action are satisfied; in such circumstances, Defendant reserves all rights to challenge certification of any class or subclass for trial or other litigation purposes in the Action or in any other action on all available grounds as if no class had been certified in this Action for purposes of the Settlement.

**C. Motion for Preliminary Approval.** As soon as practicable following the Execution Date, Class Counsel shall submit this Agreement (including all Exhibits) to the Court and shall apply for entry of a preliminary approval order ("Preliminary Approval Order"), requesting preliminary approval ("Preliminary Approval") of the Settlement. The Preliminary Approval Order, and Notice Plan (defined herein) must be agreed to by Defendant before submittal to the Court. The proposed form of Notice to be used pursuant to the Notice Plan is attached hereto as Exhibit B.

**D. Proposed Form of Notice.** As part of the Motion for Preliminary Approval, Class Counsel shall submit to the Court for approval a proposed form of, method for, and schedule for dissemination of notice to the Class (the "Notice Plan"). This Notice Plan shall ask the Court to find that the proposed form of and method for dissemination of notice to the Class constitutes valid, due, and sufficient notice to the Class; constitutes the best notice practicable under the circumstances; and complies fully with the requirements of Fed. R. Civ. P. 23 and constitutional due process. Defendant shall be responsible for providing all notices required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

**E. Motion for Final Approval and Entry of Final Judgment.** Not less than thirty (30) Days prior to the date set by the Court to consider whether this Settlement should be finally approved, Class Counsel shall submit a motion for final approval ("Final Approval") of the Settlement by the Court. Class Counsel shall seek entry of the final approval order ("Final Approval Order") and Judgment, which shall be approved as to form and content by Defendant prior to submission by Class Counsel, containing at least the following:

1. finding that the Court has personal jurisdiction over Plaintiff and all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement and Agreement;
2. certifying the Class, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), solely for purposes of this Settlement;

3. fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and directing its consummation pursuant to its terms and conditions;
4. declaring this Agreement and the Final Approval Order and Judgment to be binding on and to have res judicata and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Released Claims maintained by or on behalf of the Releasors;
5. finding that the notice given to the Settlement Class Members pursuant to the Notice Plan (i) constituted the best notice practicable under the circumstances; (ii) constituted notice that was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action, of their right to object to or exclude themselves from the proposed Settlement as applicable, of their right to appear at the final approval hearing, and of their right to seek relief; (iii) constituted reasonable, due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) complies in all respects with the requirements of Fed. R. Civ. P. 23, due process, and any other applicable law;
6. finding that Class Counsel and the Plaintiffs adequately represented the Settlement Class Members for purposes of entering into and implementing this Agreement and Settlement;
7. directing that the claims for damages be dismissed with prejudice and, except as otherwise explicitly provided for in the Agreement, without costs;
8. discharging and releasing the Releasees from all Released Claims;
9. permanently barring and enjoining the institution and prosecution, by Releasors and/or any other Person, of any and all of the Released Claims;
10. approving the Opt-Out List (defined below) and determining that the Opt-Out List is a complete list of all Persons who have timely and validly requested exclusion from the Class, and accordingly, who shall neither share in nor be bound by the Final Approval Order and Judgment;
11. determining that the Agreement and the Settlement provided for therein and any proceedings taken pursuant to it are not and should not in any event be offered or received as evidence of a presumption, concession, acknowledgment, or an admission of liability or of any wrongdoing by Defendant or any Releasee or of the suitability of these or similar claims to class treatment for litigation, trial, or any other purpose except settlement; provided, however, that reference may be made to

this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the Agreement;

12. reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation, and enforcement of this Agreement;
13. authorizing the Settling Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement as shall be consistent in all material respects with the Final Approval Order and Judgment and not limit the rights of the Settling Parties or Settlement Class Members; and
14. containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

Class Counsel, by separate order(s), also will request that the Court approve an application for Plaintiff's Incentive Award and attorneys' fees and reimbursement of expenses (as described in § VI below).

**F. Stay Order.** Upon the date that the Court enters the Preliminary Approval Order, Plaintiff and all Settlement Class Members shall be barred and enjoined from commencing, instituting, or continuing to prosecute any action or any proceeding of any kind (including, but not limited, to an action for actual damages, statutory damages, and/or exemplary or punitive damages) in any court of law, arbitration tribunal, administrative forum, or other forum of any kind worldwide, based on the Released Claims.

### **III. RELEASES**

**A. Released Claims.** Upon the Effective Date, pursuant to the Court's entry of the Final Approval Order and Judgment, any and all Released Claims against each and all of the Releasees shall be released and dismissed with prejudice and on the merits (without an award of costs to any party other than those provided in § VI *infra*). The Releasors (regardless of whether any such Releasor ever obtains any recovery by any means, including, without limitation, by receiving any distribution from the Net Settlement Fund) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees.

**B. No Future Actions Following Release.** The Releasors shall not, after the Effective Date, seek (directly or indirectly) to commence, institute, maintain, or prosecute any suit, action, or complaint of any kind (including, but not limited to, claims for actual damages, statutory damages, and exemplary or punitive damages) against Defendant or any other Releasees (including

pursuant to the Action), based on the Released Claims, in any forum worldwide, whether on his or her own behalf or as part of any putative, purported, or certified class.

**C. Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with respect to any Released Claims, including Unknown Claims. Releasors shall be permanently barred and enjoined from instituting, commencing, or prosecuting any claims against the Releasees of any kind (including, but not limited to, for actual damages, statutory damages, and exemplary or punitive damages) based on the Released Claims. The Settling Parties contemplate and agree that this Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained preventing any action from being initiated or maintained, in any case sought to be prosecuted on behalf of any Releasors (including, but not limited to, for actual damages, statutory damages, and exemplary or punitive damages) based on the Released Claims.

**D. Waiver of California Civil Code § 1542 and Similar Laws.** In addition to the provisions at § III(A)—(C) supra, the Releasors expressly acknowledge that they are familiar with and, upon Final Approval of this Settlement, waive and release with respect to the Released Claims any and all provisions, rights, and benefits conferred (a) by Section 1542 of the Civil Code of the State of California, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(b) by any law of any and all equivalent, similar, or comparable federal or state rules, regulations, laws, or principles of law of any other jurisdiction that may be applicable herein; and/or (c) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth in the Agreement. The Releasors expressly agree that by executing this Agreement, and for the consideration received hereunder, it is their intention to release, and they are releasing, all Released Claims, including Unknown Claims. The Releasors acknowledge that they may hereafter discover claims or facts other than or different from those which they know, believe, or suspect to be true with respect to the subject matter of the Released Claims, but the Releasors expressly waive and fully, finally, and forever settle and release any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, all from the beginning of the world until the Effective Date, under the laws of any

jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising out of or relating in any way to any act or omission of the Releasees (or any of them) that is alleged in Plaintiff's Action or could have been alleged in Plaintiff's Action. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is contractual and not a mere recital.

**E. Dismissal.** Subject to Court approval, all Releasors shall be bound by this Agreement, and all of their claims shall be dismissed with prejudice and released, even if they never received actual notice of the Action or this Settlement.

#### **IV. SETTLEMENT FUND**

**A. Settlement Payment.** In full, complete, and final settlement of any and all claims in the Action, Defendant shall (1) pay the members of the Settlement Class who have not already accepted Defendant's remediation settlement offer as of the Effective Date the amounts previously calculated in accordance with the DOJ/OCC Consent Orders<sup>1</sup> and (2) pay by wire transfer, in immediately available funds, the Settlement Amount to the Settlement Administrator within ten (10) business Days after the Effective Date. In the event that the foregoing date falls on a Saturday, Sunday, or U.S. bank holiday, the payment will be made on the next business day. The Settlement Amount includes all monetary benefits and distributions to the Settlement Class Members and any class representative incentive award. It does not include attorney's fees and expenses or Notice and Administrative Costs—all of which are to be paid by Defendant separate and apart from the Gross Settlement Fund as set forth in this Agreement.

**B. Disbursements Prior to Effective Date.** The Gross Settlement Fund will remain subject to the jurisdiction of the Court, until such time as it is fully distributed in compliance with the Agreement and Distribution Plan, and any applicable Court order. No amount may be disbursed from the Gross Settlement Fund unless and until the occurrence of the Effective Date.

#### **V. ADMINISTRATION AND DISTRIBUTION OF GROSS SETTLEMENT FUND**

**A. Time to Appeal.** The time to appeal from an approval of the Settlement shall commence upon the Court's entry of the Judgment regardless of whether or not an application for attorneys' fees and expenses has been submitted to the Court or resolved.

**B. Distribution of Gross Settlement Fund.** Upon further orders of the Court, the Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer the Settlement and

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<sup>1</sup> These payments will be made pursuant to Defendant's obligations under the DOJ/OCC Consent Orders and those funds will remain separate from the Settlement Fund. All terms and provisions of DOJ/OCC Consent Orders remain in place, and payments to these individuals are made out of funds allocated under those Consent Orders with any remaining funds to the designated cy pres in the Consent Orders.

shall oversee distribution of the Gross Settlement Fund to Authorized Recipients pursuant to the Distribution Plan. Subject to the terms of this Agreement, the Distribution Plan and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

1. To pay any Incentive Award (defined below) that is allowed by the Court, subject to and in accordance with the Agreement; and
2. To distribute the balance (the Net Settlement Fund) to Authorized Recipients as allowed by the Agreement, the Distribution Plan, or order of the Court.

**C. Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan and such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Settlement Administrator shall distribute the Net Settlement Fund to Authorized Recipients, subject to and in accordance with the following:

1. Each Authorized Recipient shall receive his or her distribution by check;
2. The Net Settlement Fund shall be distributed to Authorized Recipients substantially in accordance with the Distribution Plan. The Net Settlement Fund will be distributed to the Settlement Class members on a pro rata basis, meaning that each of the approximately 410 Settlement Class members will receive an equal share of the Net Settlement Fund, or about \$12,300 to each Settlement Class member. No additional Settlement Class Members may be added following the Preliminary Approval Order, at which point the number of Settlement Class Members will be permanently fixed.<sup>1</sup> No funds from the Net Settlement Fund shall be distributed to Authorized Recipients until after the Effective Date; and
3. All Authorized Recipients shall be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment with respect to all Released Claims, regardless of whether such Authorized Recipients obtain any distribution from the Gross Settlement Fund or the Net Settlement Fund.

**D. No Liability for Distribution of Settlement Funds.** Releasees will make reasonable efforts to facilitate Class Counsel's receipt of records necessary to identify Settlement Class Members entitled to distribution from the Net Settlement Fund. The Releasees, Releasees' counsel, Plaintiff, and Class Counsel shall not have any responsibility for, or liability whatsoever with respect to, the distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration, or calculation of claims; the distribution of the Net Settlement Fund; or any losses incurred in connection with any such matters. In addition to the releases set forth in

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<sup>1</sup> The number of Settlement Class Members may increase prior to Preliminary Approval in the event that the DOJ identifies additional servicemembers that the DOJ believes are entitled to remediation under the Consent Order and who otherwise fit the definition of a Settlement Class Member as set forth in Paragraph I(7).

§ III, supra, the Releasors hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against the Settlement Administrator based on the distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan, or further orders of the Court.

**E. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Class Counsel shall distribute such balance consistent with the Distribution Plan set forth in Exhibit A.

**F. All Claims Satisfied by Net Settlement Fund.** Each Settlement Class Member shall look solely to the Net Settlement Fund for settlement and satisfaction of all claims released herein. Except as provided by order of the Court pursuant to this Settlement Agreement, no Settlement Class Member shall have any interest in the Gross Settlement Fund, the Net Settlement Fund, or any portion thereof.

## **VI. INCENTIVE AWARD, ATTORNEYS' FEES, AND REIMBURSEMENT OF EXPENSES.**

**A. Fee and Expense Application.** Class Counsel may submit an application or applications (the "Fee and Expense Application") to the Court for payment of: (a) an award of attorneys' fees; plus (b) reimbursement of reasonable expenses incurred in connection with prosecuting the Action. Class Counsel agree that an application for attorneys' fees will not seek an amount in excess of thirty-three percent (33%) of the Settlement Amount. Defendant agrees not to oppose an application for attorney's fees that does not exceed thirty-three (33%) percent of the Settlement Amount.

**B. Payment of Fee and Expense Award.** Any amounts that are awarded by the Court pursuant to the paragraph above (the "Fee and Expense Award") shall be paid by Defendant separate and apart from the Gross Settlement Fund. The Fee and Expenses Award shall be paid within ten (10) days after the Effective Date.

**C. Award of Fees and Expenses Not Part of Settlement.** The procedure for, and the allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award shall constitute grounds for cancellation or termination of this Agreement.

**D. No Liability for Fees and Expenses of Class Counsel.** Neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to any payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may assert some claim thereto or any Fee and Expense Award that the Court may make in the Action, other than as set forth in this Agreement. Similarly, neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

**E. Class Representative Incentive Award Application.** Class Counsel and Representative Plaintiff may submit an application to the Court for an Incentive Award (“Incentive Award Application”). Class Counsel and Representative Plaintiff agree that the Incentive Award Application shall not exceed 1.5% of the Net Settlement Fund. Any amount that is awarded by the Court (the “Incentive Award”) shall be paid from the Gross Settlement Fund consistent with the provisions of this Agreement. Any Incentive Award shall be paid only after the Effective Date.

**F. Final Approval.** In the event that this Agreement fails to receive Final Approval by the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties under any applicable provision herein, the Settling Parties agree that neither Plaintiff nor Class Counsel shall be permitted to introduce in evidence, at any hearing; or in support of any motion, opposition, or other pleading in the Action; or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any information provided by Defendant or the Releasees in furtherance of the performance of this Agreement.

## **VII. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

**A. Effective Date.** The Effective Date of this Agreement shall be conditioned on the occurrence of all of the following events:

1. Defendant no longer has any right to terminate this Agreement, nor is there a possibility of termination of this Agreement, under paragraphs §§ VII(F), VII(G), and VII(H) or, if Defendant does have such right, it has given written notice to Class Counsel that it will not exercise such right;
2. The Court has finally approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Fed. R. Civ. P. 23, and has entered the Final Approval Order and Judgment;
3. The Released Claims are dismissed with prejudice pursuant to the Final Approval Order and Judgment; and
4. The expiration of appeal periods and/or resolution of all appeals:

- a. If no appeal is taken from the Final Approval Order or Judgment, the date after the time to appeal therefrom has expired; or
- b. If any appeal is taken from the Final Approval Order or Judgment, the date after all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing en banc, and petitions for certiorari or any other form of review, have been finally disposed of, such that the time to appeal therefrom has expired, in a manner resulting in an affirmance without material modification of the relevant order or judgment.

**B. Occurrence of Effective Date.** Upon the occurrence of all of the events referenced in the above paragraph, any and all remaining interest or right of Defendant in or to the Gross Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement Fund (less any Incentive Award) shall be transferred from Wells Fargo to the Settlement Administrator within ten (10) Days after the Effective Date or as soon thereafter as is reasonably possible and appropriate under the circumstances.

**C. Failure of Effective Date to Occur.** If all of the conditions specified in § VII(A)(1)-(4) are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with § VII(I) unless the Settling Parties mutually agree in writing to proceed with this Agreement. The effectiveness of the Settlement is expressly conditioned on the Settlement being approved by the Court and any appellate court reviewing the Settlement without this Agreement being rejected or required to be materially modified by any Court ruling or any order resulting from an appeal or other review. If the Settlement is not finally approved by the Court and any appellate court reviewing the Settlement without material modification as set forth in this Agreement, the Agreement shall terminate and cease to have any effect.

**D. Exclusions.** Any Settlement Class Member who wishes to opt out of the Class must do so on or before the Exclusion/Objection Deadline specified in the notice to the Class.

1. In order to become an Opt-Out, a Settlement Class Member must file a request for exclusion with the Court no later than the Exclusion/Objection Deadline. The request for exclusion must include all information specified in the notices. Opt-Outs may opt out of the Class only on an individual basis; so-called "mass" or "class" opt-outs shall not be allowed and shall be of no force or effect.
2. No later than five (5) Days after the Exclusion/Objection Deadline, Class Counsel shall provide to Counsel for Defendant a complete and final list of Opt-Outs. With the Motion for Final Approval of the Settlement, Class Counsel will file with the Court a complete list of Opt-Outs, including the name, city, and state of the person requesting exclusion (the "Opt-Out List").

- a. With respect to any Opt-Outs, Defendant reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the person qualifies as a Settlement Class Member and/or has standing to bring any claim.
- b. Defendant may challenge the validity of any Opt-Out by filing a motion with the Court within five (5) Days after Class Counsel provides Counsel for Defendant a complete and final list of Opt-Outs. The Court shall have jurisdiction to resolve any disputes regarding the validity of Opt-Outs. Any decision by Defendant not to dispute an Opt-Out shall not be a waiver, determination, or preclusive finding against the Defendant or Releasees in any proceeding.

**E. Objections.** Settlement Class Members who wish to object to any aspect of the Settlement, fees, expenses, or attorneys' fees must file with the Court a written statement containing their objections prior to the Exclusion/Objection Deadline. The written statement must include all information specified in the notices. Because any appeal by an objecting Settlement Class Member to the entire Settlement, Class Counsel fees and/or expenses, or Plaintiff's Incentive Award may delay the payment under the Settlement, each objecting Settlement Class Member must elect within thirty (30) days of the Final Approval Order to (a) not appeal; (b) appeal only the objecting Settlement Class Member's portion of the Settlement, Fees, Expenses, or incentive award which would be severed from the rest of the case and would not delay the final judgment for all other Settlement Class Members; or, (c) if the objecting Settlement Class Member purports to appeal on behalf of the entire Class (for which he has not been appointed to represent and would likely be in conflict with), or does not definitively or timely choose option (a) or (b) above, each such objecting Settlement Class Member that appeals agrees to put up a cash bond to be set by the this Court sufficient to reimburse Defendant's and Class Counsel's appellate fees, Defendant's and Class Counsel's expenses, and the lost interest for one year to the Class caused by the likely delay. Any award or payment of attorneys' fees made to the counsel of an objector to the Settlement shall be made only by Court order and upon a showing of a substantial benefit conferred to the Class. Any award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under penalty of perjury that no payments shall be made to the objector based on the objector's participation in the matter other than as ordered by the Court.

**F. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order, or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, materially modified, or reversed, then this Agreement and the Settlement incorporated therein shall be cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding the Settlement identified by the Court and any appellate court.

**G. Other Orders.** No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense Application, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Settling Party. Without limiting the foregoing, Defendant shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action and the Released Claims.

**H. Termination by Wells Fargo.** This Agreement shall be terminable at the option of Wells Fargo if more than ten percent (10%) of the Settlement Class successfully opts out of the Settlement. Wells Fargo shall exercise the option by the later of twenty (20) days after the events giving rise to the termination right.

**I. Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to become effective for any reason; the Settlement as described herein is not finally approved by the Court; or the Final Approval Order or Judgment is reversed, materially modified, or vacated following any appeal taken therefrom, then:

1. The Settling Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective claims and defenses preserved as they existed on that date;
2. The Settling Parties shall request the Court to vacate any order certifying the Class for purposes of the Settlement;
3. The terms and provisions of this Agreement, with the exception of this paragraph (§ VII(H)), the termination provisions of § II(B) ("Certification of Class"), § VIII(B) ("Federal Rule of Evidence 408"), § VIII(C) ("Use of Agreement as Evidence"), and, § X(G) ("Confidentiality of Settlement Negotiations") (which all shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Action or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and
4. Any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, nunc pro tunc.

## **VIII. NO ADMISSION OF LIABILITY**

**A. Final and Complete Resolution.** The Settling Parties intend the Settlement as described here to be a final and complete resolution of all disputes between them with respect to the Action and Released Claims, including Unknown Claims, and to compromise claims that are contested, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Action.

**B. Federal Rule of Evidence 408.** The Settling Parties agree that this Agreement, its terms, and the negotiations surrounding this Agreement shall be governed by Federal Rule of Evidence 408 and any state-law equivalents and shall not be admissible or offered or received into evidence in any suit, action, or other proceeding, except upon the written agreement of the Settling Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give effect to, declare, or enforce the rights of the Settling Parties with respect to any provision of this Agreement.

**C. Use of Agreement as Evidence.** Whether or not this Agreement becomes final or is terminated pursuant to its terms, the Settling Parties expressly agree that neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, any allegation made in the Action, or any violation of any statute or law or of any wrongdoing or liability of Defendant, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other proceeding; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault, or omission of the Releasees in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement; provided, however, that the Releasees may file this Agreement (including the Exhibits), the Final Approval Order, and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

## **IX. REPRESENTATIONS AND WARRANTIES**

**A.** This Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Fed. R. Civ. P. 23. Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Representative Plaintiff and Defendant represent and warrant that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this

Agreement and to effectuate the Settlement. This includes the obligation to (a) oppose non-meritorious objections and to defend the Agreement and the Settlement before the Court and on appeal, if any; (b) seek approval of this Agreement and of the Settlement by the Court; (c) move for the entry of the orders required to effectuate Preliminary and Final Approval; and (d) join in the entry of such other orders as are necessary to effectuate this Agreement.

B. Any Fee and Expense Award that Representative Plaintiff and Class Counsel may seek upon application to the Court pursuant to this Agreement shall include all attorneys' fees and litigation costs that Representative Plaintiff, Class Counsel, and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Class Counsel, seek or may have any right or claim to in connection with the Action and the Released Claims.

C. Representative Plaintiff represents and warrants that other than Class Counsel, as that term is defined herein, there is no other Person having any interest in any award of attorneys' fees, expenses, or litigation costs in connection with the Action, Agreement, or Settlement.

D. Representative Plaintiff and Defendant represent and warrant that he, she, it, or they have full authorization and capacity to enter into this Agreement and to carry out the obligations provided for herein. Each Person executing this Agreement on behalf of a Settling Party, entity, or other Person(s) covenants, warrants, and represents that he, she, or it has been fully authorized to do so by that Settling Party, entity, or other Person(s). Representative Plaintiff and Defendant represent and warrant that he, she, it, or they intend to be bound fully by the terms of this Agreement.

E. Representative Plaintiff and Defendant represent and warrant that they have not, nor will they, unless expressly authorized to do so by the terms of this Agreement, (a) attempt to void this Agreement in any way; (b) Opt-Out of the Settlement under this Agreement; (c) solicit or encourage in any fashion a member of the Class to Opt-Out; or (d) solicit or encourage in any fashion any effort by any Person to object to the Settlement under this Agreement.

F. If any Person breaches the terms of any of the representations and warranties in this section, the Court shall retain jurisdiction over this matter to entertain actions by a Settling Party against such Person for breach and/or any Settling Party's request for a remedy for such breach.

G. Class Counsel represent and warrant that they (a) have no current client with a claim against the Defendant or any of the Releasees of the type alleged in the Action that has not already been filed and served on Defendant and (b) have no present intention to seek out or solicit former or current borrowers with obligations with Defendant, to pursue individual or class claims against the Defendant with respect to matters within the scope of the Release. The Settling Parties understand and agree that nothing in this paragraph imposes or shall be construed to prohibit or restrict Class Counsel from representing persons who seek representation for such claims subsequent to the date of this Agreement.

H. Representative Plaintiffs and Class Counsel represent and warrant that they will not use or seek to use (a) any confidentially designated discovery obtained from Defendant in the Action and/or (b) the fact or content of the Settlement in this Action in connection with any other claim, action, or litigation against any Releasee (excepting only actions to enforce or construe this Agreement).

I. Class Counsel represent and warrant to Defendant that they have the authority to execute this Agreement on behalf of Plaintiffs and themselves, and thereby to bind Plaintiff and themselves, to all terms and conditions of this Agreement, and, subject to Court approval, to bind all Settlement Class Members to the terms and conditions of this Agreement.

## X. MISCELLANEOUS PROVISIONS

A. **Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and the other terms of the Settlement as described herein were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

B. **Subsequent Events Impacting Administration.** In the event that there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Settling Parties, and failing agreement, as shall be ordered by the Court.

C. **Claims in Connection with Administration.** No Person shall have any claim against the Plaintiff, Defendant, Counsel for Defendant, Class Counsel, the Settlement Administrator, or the Releasees or their agents based on administration of the Settlement substantially in accordance with the terms of the Agreement or any order of the Court or any appellate court.

D. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs shall be binding upon all Settlement Class Members.

E. **Authorization to Enter Settlement Agreement.** The undersigned representatives of Defendant represent that they are fully authorized to enter into and to execute this Agreement and any modifications or amendments to the Agreement on behalf of Defendant. Class Counsel, on behalf of Plaintiff and the Class, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of the Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

**F. Notices.** All notices and responses to notices under this Agreement shall be in writing. Each such notice or response shall be given either by email unless otherwise specified herein or in the notice to the Class; and, if directed to any Class Member, shall be addressed to Class Counsel at their email addresses set forth below, and if directed to Defendant, shall be addressed to Counsel for Defendant at the email addresses set forth below or such other email addresses as Class Counsel or Defendant may designate, from time to time, by giving notice to all Settling Parties hereto in the manner described in this paragraph.

If directed to Plaintiff or any Class Member, email address notice to:

Rex A. Sharp, rsharp@midwest-law.com  
Ryan C. Hudson, rhudson@midwest-law.com  
Scott B. Goodger, sgoodger@midwest-law.com  
Bryce B. Bell, bryce@belllawkc.com  
Mark W. Schmitz, ms@belllawkc.com  
A. Scott Waddell, scott@aswlawfirm.com

If directed to Defendant, email address notice to:

David C. Powell, dpowell@mcguirewoods.com  
Alicia A. Baiardo, abaiardo@mcguirewoods.com  
Carolee A. Hoover, choover@mcguirewoods.com  
Aaron R. Marienthal, amarienthal@mcguirewoods.com

**G. Confidentiality of Settlement Negotiations.** The Settling Parties and their counsel shall keep strictly confidential and not disclose to any third party any non-public information regarding the Settling Parties' negotiation of this Settlement and/or this Agreement, unless ordered by the Court to do so. For the sake of clarity, information contained within this Agreement shall be considered public, as well as any information requested by the Court in the approval process and other such information necessary to implement this Settlement, provided such information is filed (and is not under seal) and/or is not considered to be confidential materials under the Settling Parties' protective order in this case.

**H. No Party Deemed to Be the Drafter.** None of the Settling Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, rule of interpretation, or construction that would or might cause any provision to be construed against the drafter hereof.

**I. Choice of Law.** This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Kansas, and the rights and obligations of the Settling Parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Kansas without giving effect to that state's choice of law principles.

**J. Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by Defendant and Plaintiff or Class Counsel, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement. Nothing in the Settlement Agreement (including the fact of Settlement) constitutes or shall be construed as a waiver by Wells Fargo of whatever rights it may have under any arbitration agreement, including with respect to any claim, lawsuit, or judicial proceeding initiated by a member of the Settlement Class who has opted-out of the Settlement.

**K. Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Settling Parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

**L. Integrated Agreement.** This Agreement constitutes the entire agreement between the Settling Parties with respect to the Settlement. This Agreement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by the Settling Parties and their respective counsel. The Settling Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each Settling Party or believed by such party to be true. Each Settling Party therefore expressly assumes the risk of the facts or law turning out to be different, and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

**M. Attorneys' Fees and Costs.** Except as otherwise expressly provided in this Agreement, each party shall bear its own costs and attorneys' fees.

**N. Return or Destruction of Confidential Materials.** The Settling Parties agree to continue to comply with the Protective Order entered in this Action at the conclusion of the case. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Agreement.

**O. Intended Beneficiaries.** No provision of this Agreement shall provide any rights to, or be enforceable by, any Person that is not one of the Plaintiffs, a Class Member, Defendant, one of the Releasees, Class Counsel, or Counsel for Defendant, except that this Agreement will be binding upon and inure to the benefit of the successors and assigns of the Settling Parties. No

Plaintiff, Class Member, or Class Counsel may assign or otherwise convey any right to enforce any provision of this Agreement.

**P. Regular Course of Business.** The Settling Parties agree that nothing in this Agreement shall be construed to prohibit communications between Defendant and the Releasees, on the one hand, and Settlement Class Members, on the other hand, in the regular course of business.

**Q. Tax Consequences.** No representations or advice regarding the tax consequences of this Agreement have been made by any Settling Party. The Settling Parties further understand and agree that each Settling Party, each Settlement Class Member, each of Class Counsel, and Plaintiff shall be responsible for his, her, its, or their own taxes, if any, resulting from this Agreement and any payments made pursuant to this Agreement.

**R. Bankruptcy Proceedings.**

1. The Settling Parties agree that any Settlement Class Member who is in active bankruptcy proceedings or previously was a party to bankruptcy proceedings during the period of time covered in the Class definition may only participate in the Settlement subject to applicable bankruptcy law and procedures. Defendant is under no obligation to notify any bankruptcy court that has, had, or may have jurisdiction over such Settlement Class Member's bankruptcy proceedings or any trustee or examiner appointed in such Class Member's bankruptcy proceedings of this Agreement or the benefits conferred by the Agreement and the Settlement.
2. The Settling Parties agree that any disputes concerning the rights of the bankruptcy estate to the proceeds of any payment under the Settlement or Incentive Award shall be adjudicated by the Bankruptcy Court. The Settlement Administrator shall follow any direction of the Bankruptcy Court with respect to the proceeds of any payment or Incentive Award.

**S. No Conflict Intended; Headings.** Any inconsistency between this Agreement and the exhibits attached hereto shall be resolved in favor of this Agreement. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

**T. Settlement Class Member Obligations.** Under no circumstances shall the Settlement or Agreement or any release herein be deemed to alter, amend, or change the terms and conditions of any account or loan to which any Settlement Class Member is or was a party, or to provide a defense to any such loan, nor shall the Settlement or the Agreement or the Release be deemed to have any effect in any bankruptcy case, in any foreclosure proceeding, or in any other action involving a Settlement Class Member hereto, nor shall the Settlement Agreement create or be construed as evidence of any violation of law or contract. In the event

this Agreement is so construed as to a particular Settlement Class Member, it can be declared by Defendant to be null and void as to that Settlement Class Member only (and in such latter event, the Release as to that Settlement Class Member shall also be void).

**U. Press Release.** Plaintiff and Class Counsel shall not issue, or otherwise cause to be issued, any press release or advertisement, concerning the Action and/or the facts and circumstances that were the subject of, or disclosed in discovery in, the Action, excepting only such documents created and disbursed as part of the Notice Plan. However, only after the Final Approval Order, Class Counsel may list the case name, the fact of settlement, and the settlement amount on their firm websites. Plaintiff and Class Counsel shall not seek media interviews concerning: (i) the Action; (ii) the facts and circumstances that were the subject of, or disclosed in discovery in the Action; and/or (iii) the Settlement of the Action, excepting only that such statements may be made to individual Settlement Class members in one-on-one communications or as part of the Settlement Class notice. Under no circumstance shall Plaintiff or Class Counsel disclose to any third party (1) any confidentially designated discovery obtained from Defendant in the Action and/or (2) any non-public information regarding the Settling Parties' negotiation of this Settlement and/or this Agreement, except as may be otherwise permitted in this Agreement. Specifically, this paragraph does not alter the scope of any confidentiality provisions or provisions regarding the use of non-public information set forth in this Agreement.

**V. Non-Disparagement.** Plaintiff's Counsel and Representative Plaintiff agree to refrain from intentionally disparaging Wells Fargo and its parent company, subsidiaries, affiliates, successors or assigns publicly or in the media with respect to any issue related to the Action. Plaintiff's Counsel and Representative Plaintiff agree to refrain from taking any action designed to harm the public perception of Wells Fargo and its parent company, subsidiaries, affiliates, successors or assigns regarding any issue related to this Action, except they may provide sworn testimony if required by an order from a court of competent jurisdiction. Failure to abide by this provision will constitute a breach of this Settlement Agreement.

**W. Mediator's Declaration.** The parties agree that the Mediator may file a declaration in support of any approval motions.

**X. Further disputes:** If any disputes arise out of the finalization of the settlement documentation, said disputes are to be resolved by Judge Layn R. Phillips and/or Michelle Yoshida first by way of expedited telephonic mediation and, if mediation is unsuccessful, then by way of final, binding, non-appealable determination.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.  
DATED: September \_\_, 2018.

PLAINTIFF

By:



\_\_\_\_\_  
Jin Nakamura

Date: September 2, 2018

DEFENDANT WELLS FARGO BANK, NATIONAL ASSOCIATION

By:

\_\_\_\_\_

Title: \_\_\_\_\_

Date: September \_\_, 2018

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.  
DATED: August \_\_, 2018.

PLAINTIFF

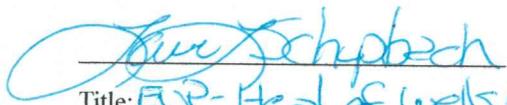
By:

\_\_\_\_\_  
Jin Nakamura

Date: August \_\_, 2018

DEFENDANT WELLS FARGO BANK, NATIONAL ASSOCIATION

By:

  
\_\_\_\_\_  
Title: ERP-Head of Wells Fargo Auto

Date: August \_\_, 2018

Sept 25, 2018