IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LANCE W. SLAUGHTER, MICHAEL SMITH, ERIKA WILLIAMS, LUCIEN PHILIPPE, KATRINA EVERETT, and KEITH SPELMON, on behalf of themselves and all others similarly situated, Plaintiffs, v. WELLS FARGO ADVISORS, LLC, Defendant.	Case No. 13-cv-06368 Judge Harry D. Leinenweber

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, SERVICE AWARDS, AND ATTORNEYS' FEES AND COSTS

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Racial inequities have long existed on Wall Street, and not just at Wells Fargo Advisors, LLC ("Wells Fargo").[1] In 2013, Class Representative Lance Slaughter, an African American Financial Advisor ("FA") employed by Wells Fargo, retained Class Counsel to prosecute a race discrimination class action against Wells Fargo. (Dkt. 1.) Five other named plaintiffs later joined the lawsuit to support the effort for reform. (Dkt. 23, 98.) After lengthy negotiations, the six Class Representatives were able to reach an outstanding settlement that will provide significant programmatic relief, an end to mandatory arbitration of race discrimination claims during the settlement period, and a $35.5 million settlement fund to benefit the class. No class member has objected to the settlement or to the requested service awards, attorneys' fees, and costs, and Class Counsel request their approval.

Argument

I. The Settlement Will Deliver Outstanding Relief to the Class and Should Be Approved.

Negotiated at arm's length and with the assistance of two professional mediators, this Settlement is fair, reasonable, and adequate, and it meets all the criteria for final approval under Federal Rules of Civil Procedure 23(a), (b), and (e). Courts in the Seventh Circuit consider several factors in determining whether a class action settlement is fair, reasonable and adequate: "(1) the strength of the class's case, (2) the complexity and expense of further litigation, (3) the amount of opposition, (4) the reaction of class members to the settlement, (5) the opinion of competent counsel, and (6) the stage of the proceedings and the amount of discovery that was completed." *Martin v. Reid*, 818 F.3d 302, 306 (7th Cir. 2016); *accord EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985); *Isby v. Bayh*, 75 F.3d 1191, 1198-99 (7th Cir. 1996). Each of these factors supports final approval of this proposed Settlement.

[1] Portia Crowe and Andy Kiersz, *These charts show just how white and male Wall Street really is*, BUSINESS INSIDER (Aug. 25, 2015), http://www.businessinsider.com/wall-street-bank-diversity-2015-8.

A. The Settlement Provides Exceptional Programmatic and Monetary Relief.

The most important factor in evaluating a settlement is how it compares to the value of the plaintiffs' case, taking into account the risk of losing at or before trial. *Martin*, 818 F.3d at 306-07; *Hiram Walker*, 768 F.2d at 889. The programmatic relief provided in this Settlement is innovative, and some of it is ground-breaking.

Class Counsel retained Harvard Professor Frank Dobbin, noted scholar on the effectiveness of diversity programs, to advise the parties in designing meaningful and effective programmatic relief. (Ex. 1, Friedman Decl. ¶ 26.) After analyzing 30 years of corporate data, Professor Dobbin found that programs like mandatory diversity training are not only ineffective but can actually make things worse: "laboratory studies show that . . . force-feeding can activate bias rather than stamp it out." Professor Dobbin discovered that "mentoring programs, self-managed teams, and task forces," on the other hand, are effective because they engage senior executives and encourage them to work voluntarily with minorities in a non-adversarial setting to eliminate harmful practices and boost diversity.[2] With the benefit of Professor Dobbin's research, the parties crafted programmatic relief that targets the policies that the Plaintiffs challenged as being the root causes of racial disparities in compensation and attrition on Wall Street (and not just at Wells Fargo), including teaming and related account distributions, and bank and territory assignment. By inviting all parties to work together toward a common goal, rather than imposing court-ordered requirements, the parties hope to create real, lasting change in the workplace.

The settlement incorporates Professor Dobbin's research findings in three ways. First, the

[2] Professor Dobbin is Chair of the Organizational Behavior Ph.D. Program at Harvard Business School and lead author of an article recently featured on the cover of the Harvard Business Review, *Why Diversity Programs Fail*. HARVARD BUS. REV. (July-Aug. 2016), https://hbr.org/2016/07/why-diversity-programs-fail.

settlement invites Wells Fargo's senior business leaders voluntarily to collaborate with African Americans, including the Class Representatives, who will provide feedback and input. The business leaders will review demographic data and design initiatives to improve opportunities and outcomes for African American FAs. (Dkt. 104-1 at 27-30.) Second, the settlement eliminates harmful practices, such as recoupment of training costs.[3] (*Id.* at 26-27.) Third, the settlement emphasizes the voluntary use of coaching and a teaming database, as well as the development of a database for bank assignments, and other innovative approaches. (*Id.* at 27-32.) Under the settlement, Professor Dobbin will continue to act as a consultant to Wells Fargo. (*Id.* at 28-29.)

The Class Representatives also bargained hard to preserve the rights of class members to sue Wells Fargo in court if the firm does not live up to its commitments. Employers increasingly force their employees to arbitrate their civil rights claims on an individual basis rather than filing class or collective actions in federal court. Indeed, after Wells Fargo's two motions to transfer this case to Washington, D.C. failed, Wells Fargo moved to compel two Class Representatives to arbitrate their claims individually, but this Court rejected that motion. Later, the Seventh Circuit held that arbitration agreements with class action waivers are illegal because they interfere with the collective action protected by the National Labor Relations Act. *Lewis v. Epic Sys. Corp.*, 823 F.3d 1147, 1161 (7th Cir. 2016), *cert. granted*, 137 S. Ct. 809 (2017). Other circuits have reached the opposite conclusion, and the issue is now pending before the Supreme Court. In the wake of this legal uncertainty, the Class Representatives fought hard to ensure that class members would not have to overcome the obstacle of mandatory arbitration and class action waiver during the term of the Settlement.

[3] This practice is also challenged in a companion case pending before Judge John J. Tharp Jr., *Williams, et al. v. Wells Fargo Advisors, LLC*, No. 14-cv-1981 (N.D. Ill.).

In addition, the $35.5 million Settlement Fund in this case ranks among the largest class action settlements in employment discrimination cases.[4] Given the class of approximately 365, this settlement is also more generous on a per capita basis than other discrimination settlements, including race discrimination settlements against Wall Street firms. *E.g.*, *Turnley v. Bank of America*, No. 07-cv-10949, Dkt. 143, 148 (D. Mass. 2009) ($7.2 million fund for class of 514) (Ex. 2); *Curtis-Bauer v. Morgan Stanley & Co.*, No. C 06-3903, 2008 WL 4667090, at *4 (N.D. Cal. Oct. 22, 2008) (approving $16 million settlement in class of 1,331). Moreover, unlike these and most other discrimination class action settlements, monetary awards to the class will not be computed by formula based on length of service or other objective factors. Instead, this settlement provides a Claims Resolution Process ("CRP") that will allocate monetary awards based on class member's individual experiences, and each class member will be able to discuss the details those experiences with a trained neutral for up to 75 minutes. (Dkt.104-1 at 37.) An independent Special Master will oversee the CRP and review monetary awards for fairness and consistency, *see* Exs. 17-18. (*Id.* at 37-38.)

B. The Settlement Is an Outstanding Result for the Class in Light of the Risks of Proceeding through Trial and Appeal.

Continued litigation of this action would be complex, lengthy, and risky for both sides. Liability is hotly contested, and both sides would face considerable risks, as well as further appeals, should the litigation proceed. Absent a settlement, the class would face more legal hurdles, the appeal of this Court's order on mandatory arbitration, a class certification fight, a potential Rule 23(f) appeal, and more years of litigation before any class member could potentially recover on his or her claim. *See Hiram Walker*, 768 F.2d at 890 (affirming approval

[4]The ten largest employment discrimination class action settlements in 2016 totaled only $79.81 million. Seyfarth Shaw LLP, *13th Annual Workplace Class Action Litigation Report* 9 (2017), http://www.workplaceclassaction.com/2017/01/its-here-seyfarths-2017-workplace-class-action-report.

of settlement in part because of "great uncertainty about the proper resolution of a number of legal issues involved"). In light of the complicated, uncertain, and lengthy litigation facing class members, the prompt and outstanding programmatic and monetary relief in this settlement is in the best interests of the class.

C. The Dearth of Opposition to the Settlement Favors Approval.

Far from opposing the settlement, the class has exhibited uncommon support for it. No class member objects to the settlement, and only six class members (less than 2% of the class) opted out of the monetary relief portion of the Settlement. (Ex. 1 ¶ 31.) Indeed, approximately 60 class members have contacted Class Counsel to inquire about the settlement, and their response to it has been overwhelmingly positive. (*Id.*) This lack of opposition weighs in favor of approving the settlement, particularly considering the financial sophistication of this class. *Isby*, 75 F.3d at 1200 (affirming approval of settlement and commenting that "[o]nly thirteen per cent of the class submitted written objections"); *Am. Int'l Group, Inc. v. ACE INA Holdings, Inc.*, Nos. 07 CV 2898, 09 C 2026, 2012 WL 651727, at *6-7 (N.D. Ill. Feb. 28, 2012) ("*AIG*") (reasoning that three objectors and one opt-out in sophisticated class "indicates that the class members consider the settlement to be in their best interest"), *appeal dismissed*, 710 F.3d 754 (7th Cir. 2013); *cf. Curtis-Bauer*, 2008 WL 4667090, at *3-4 (approving settlement despite 9 objectors and 24 opt-outs in class of 1,331 FAs).

D. The Settlement Is Supported By Competent, Experienced Counsel After Hard-Fought Litigation and Extensive Arm's Length Negotiations.

This settlement is the non-collusive product of lengthy and difficult negotiations facilitated by experienced mediators. (Ex. 1 ¶¶ 25-30.) Class Counsel has ample experience litigating, trying, and settling employment discrimination class actions, and they reviewed and analyzed substantial discovery, including years of personnel, payroll, and client account data.

(*Id.* ¶¶ 3-14.) "The information the parties have exchanged is more than sufficient to enable them, and the court, to evaluate the settlement." *AIG*, 2012 WL 651727, at *10. Based on their experience and an in-depth analysis of the merits, record, and risks of this action, Class Counsel enthusiastically recommend this settlement to the Court. (Ex. 1 ¶ 32.)

E. The Notice Provided to the Class Satisfies Due Process.

A settlement must provide adequate notice to class members so they can make an informed choice about whether to opt out, object, and/or file a timely claim for a monetary award. In this case, the Class Notices approved by the Court were clear, accurate, and satisfied due process. The Claims Administrator mailed the Class Notices to each of the confirmed and potential class members identified by Wells Fargo, and it appears that 99% of them received the Notices. (Ex. 3, Shawver Decl. ¶¶ 3-5.) The Claims Administrator also established a website from which visitors may download copies of the Amended Settlement Agreement, the Third Amended Complaint, the Class Notices, and the Amended Preliminary Approval Order. (*Id.* ¶ 6.)

On January 9, 2017, Wells Fargo's counsel sent notices of the proposed Settlement to the Attorney General of the United States, the Attorneys General of the 50 states in which class members reside and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands, as required by the Class Action Fairness Act, 28 U.S.C. § 1715(d). (Ex. 20, Lee Decl.) No federal or state authority has expressed opposition to the settlement. (*Id.*)

F. The Settlement Class Meets All Requirements of Rules 23(a), 23(b)(2), and 23(b)(3).

Plaintiffs request certification of the following settlement class:

> All African Americans who are or were employed as Financial Advisors or licensed Financial Advisor Trainees by Wells Fargo Advisors, LLC ("WFA"), and worked in the United States in the Private Client Group ("PCG") or in the WFA bank brokerage channel ("Wealth Brokerage Services" or "WBS") at any time between September 4, 2009, and December 31, 2016.

A class may be certified under Rule 23(a) when "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." *Kleen Prods. LLC v. Int'l Paper Co.*, 831 F.3d 919, 923 (7th Cir. 2016) (quoting Fed. R. Civ. P. 23(a)). This class meets all the requirements of Federal Rule of Civil Procedure 23(a), as well as Rules 23(b)(2) and 23(b)(3).

Numerosity. The proposed class includes approximately 365 class members, which is more than sufficient to meet the numerosity requirement. (Ex. 3 ¶¶ 3, 8.) *See Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326, 1333 (7th Cir. 1969).

Commonality. This case presents common questions of law and fact, including whether Wells Fargo engaged in a pattern or practice of racial discrimination and whether the firm's teaming, account distribution, territory assignment, and other policies and practices had an unlawful disparate impact on African Americans. *See Chicago Teachers Union, Local No. 1 v. Bd. of Educ. of City of Chicago*, 797 F.3d 426, 436-40 (7th Cir. 2015) (finding commonality in race discrimination class action where challenged decisions combined objective, subjective, and discretionary factors); *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 489 (7th Cir. 2012) ("If the teaming policy causes racial discrimination and is not justified by business necessity, then it violates Title VII as 'disparate impact' employment discrimination—and whether it causes racial discrimination and whether it nonetheless is justified by business necessity are issues common to the entire class and therefore appropriate for class-wide determination.").

Typicality. The claims of the Class Representatives are typical of the class because they all

are African Americans who are or were FAs and FA Trainees and subject to and harmed by Wells Fargo's account distribution, teaming, assignment, and other policies. Therefore, "the representative[s'] and the remaining class members' claims arise from the same legal theory, practice, or conduct." *Henry v. Sears Roebuck & Co.*, No. 98-cv-4110, 1999 WL 33496080, at *3 (N.D. Ill. July 23, 1999) (quoting *Wells v. McDonough*, 1998 WL 160876, at *3 (N.D. Ill. Mar. 31, 1998)).

Adequate Representation. The Class Representatives will fairly and adequately protect the interests of the class, and they already have devoted significant time and effort to meeting with Class Counsel and participating in the litigation and settlement negotiations on behalf of the class. The Class Representatives also retained experienced counsel who have been regularly appointed by courts as class counsel, including in discrimination class action lawsuits against other financial services firms. *E.g., McReynolds v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 05 C 6583, 2012 WL 5278555, at *1 (N.D. Ill. July 13, 2012); *Cremin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 328 F. Supp. 2d 865 (N.D. Ill. 2004).

Rule 23(b)(2). Certification under Rule 23(b)(2) is warranted because the class alleges that Wells Fargo "acted or refuse[d] to act on grounds that apply generally to the class, so that final programmatic relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Chicago Teachers Union*, 797 F.3d at 441 (quoting Fed. R. Civ. P. 23(b)(2)). Plaintiffs allege that firm-wide account distribution and teaming polices caused a disparate impact on African American FAs and FA Trainees. The settlement provides programmatic relief designed to remedy the impact of these policies by, among other things, enhancing efforts to recruit African Americans and creating a Team Database, Financial Advisor Coaches, Leadership Teams, Focus Groups, and a Business Development Fund to benefit African American FAs and

Trainees.[5]

Rule 23(b)(3). For Rule 23(b)(3) certification, "questions of law or fact common to class members [must] predominate over any questions affecting individual members" and a class action must be "superior to other available methods for fairly and efficiently adjudicating the controversy." *Chicago Teachers Union*, 797 F.3d at 443-44 (quoting *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1436 (2013) and Fed. R. Civ. P. 23(b)(3)). Those requirements are met here. *See Kleen*, 831 F. 3d at 926-31 (affirming finding of predominance and superiority where plaintiffs demonstrated a common method of proving aggregate class-wide damages). Because Rule 23(b)(3) certification is proposed in the settlement context, the "court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (citation omitted). Any manageability or predominance concerns relating to individual proceedings and defenses are satisfied by the settlement and its Claims Resolution Process. *See Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 660 (7th Cir. 2004) (lauding the use of special masters to preside over individual damages proceedings as a solution to defendant's manageability concerns).

II. The Class Representatives Deserve Service Awards for their Time and Effort on Behalf of the Class.

These Class Representatives achieved a settlement that will bring systemic change to Wells Fargo and the securities industry, and they deserve to be compensated for the sacrifices they made and the personal risks they took to lead the class. Unlike most class actions, this one was driven from the beginning not by lawyers, but by African American FAs committed to

[5] Plaintiffs' pursuit of monetary relief does not inhibit certification under 23(b)(2). *See Chicago Teachers Union*, 797 F.3d at 443-45 (reversing denial of class certification for both injunctive relief under Rule 23(b)(2) and monetary relief under Rule 23(b)(3) in case alleging that reduction in force had a disparate impact on African American teachers); *McReynolds*, 672 F.3d at 492 (ordering Rule 23(b)(2) certification despite claims for monetary relief).

changing Wells Fargo's policies and practices. (Ex. 1 ¶ 16.)

> Rewarding such efforts creates the proper incentives for individuals to come forward and undertake the arduous efforts needed to challenge alleged discrimination on a class-wide level, thus fulfilling the policies and purposes underlying Title VII.

Ingram v. Coca-Cola Co., 200 F.R.D. 685, 694 (N.D. Ga. 2001).

Service awards for these Class Representatives are appropriate "in light of the benefit [the representatives] bestowed on [the] class, the risks [they] faced in bringing the case and the time [they] spent pursuing it." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). This is especially true in employment discrimination cases. "By lending his name to the litigation, [a class representative] has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005).[6] For these reasons, service awards in employment discrimination cases tend to be higher than in other types of class action. *E.g.*, *McReynolds*, No. 05-cv-6583, Dkt. 616 at 5 (N.D. Ill. Dec. 6, 2013) (approving $250,000 service awards to each of 17 class representatives) (Ex. 10); *Velez v. Novartis Pharm. Corp.*, No. 04 Civ. 9194, 2010 WL 4877852, at *26 (S.D.N.Y. Nov. 30, 2010) (awarding service awards between $175,000 and $425,000 to 26 named plaintiffs who released their emotional distress claims); *Ingram*, 200 F.R.D. at 694 (awarding service awards of $300,000 each); *Cremin v. Merrill Lynch, Pierce, Fenner & Smith*, No. 96 C 3773 (N.D. Ill. Sept. 2, 1998) (approving service awards of $70,000 to $85,000 to 8 class representatives) (Ex. 11); *Martens v. Smith Barney Inc.*, No. 96 Civ. 3779 (S.D.N.Y. July 28, 1998) (awarding service awards up to $150,000 to 23 named plaintiffs) (Ex. 12 at 75).

All of the relevant factors support the service awards requested in this case. The Class

[6] *Accord Ingram*, 200 F.R.D. at 694 (noting class representatives "took risks, bore hardships, and made sacrifices that absent class members did not" during two years of race discrimination suit); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 201 (S.D.N.Y. 1997) (current or former employee puts "present position or employment credentials or recommendation . . . at risk by reason of having prosecuted the suit").

Representatives devoted significant time and energy and assumed personal, professional, and financial risk in order to achieve outstanding programmatic and monetary relief for the class. (Exs. 4-9, Class Representative Declarations.) They played a crucial role in every aspect of the litigation and settlement, actively participating in meetings and phone calls with Class Counsel, experts, and class members and in settlement negotiations with Wells Fargo executives. (*Id.*; Ex. 1 ¶ 18.) Showing tremendous courage, several Class Representatives – including current Wells Fargo employees – travelled to attend mediations, sat across the table from high-level Wells Fargo executives, described their personal experiences of workplace discrimination, and advocated for fundamental changes in the firm's policies with respect to African Americans. (*Id.*) *See Briggs v. PNC Fin. Servs. Grp., Inc.*, No. 1:15-CV-10447, 2016 WL 7018566, at *3 (N.D. Ill. Nov. 29, 2016) (approving incentive award where Named Plaintiffs actively participated in discovery and provided declarations that were "utilized extensively during the mediation"); *In re Sw. Airlines Voucher Litig.*, No. 11 C 8176, 2013 WL 4510197, at *11 (N.D. Ill. Aug. 26, 2013) (approving incentive awards in part because one of the class representatives attended a single mediation session), *aff'd as modified*, 799 F.3d 701 (7th Cir. 2015).

Moreover, in this digital age, these Class Representatives' names will forever be linked with this discrimination lawsuit. Americans, and especially financially savvy investors, routinely conduct online searches of people they encounter professionally, and such a Google or PACER search will inevitably hit upon the Class Representatives' role in this case. They face a risk not only that prospective employers might be reluctant to hire Class Representatives who sued a prior employer, but also that existing and potential clients might shy away from doing business with financial advisors involved in public litigation against their brokerage firm. A service award would partially compensate them for these risks.

Third, unlike other class members, the Class Representatives have agreed to give Wells Fargo a general release of all claims (such as breach of contract, wrongful termination, and age and gender discrimination), not just the class claims covered by the settlement and class release. Granting the requested service awards would partially compensate the Class Representatives for sacrificing their individual claims for the sake of the class. *See Velez*, 2010 WL 4877852, at *26 (granting enhanced service awards because named plaintiffs released their emotional distress claims); *Curtis-Bauer v. Morgan Stanley & Co.*, No. 3:06-cv-3903, Dkt. 158 at 5-8, Dkt. 250 at 19 (N.D. Cal. Feb. 7 & Oct. 22, 2008) (approving $25,000 service award plus $125,000 award for class representative's general release) (Ex. 13); *Tucker v. Walgreen Co.*, No. 05-cv-440, Dkt. 129 at 32-33, Dkt. 135 (S.D. Ill. Mar. 17 & 24, 2008) (approving awards totaling approximately 2.5% of common fund to class members and representatives who executed broader release) (Ex. 14). Accordingly, Class Counsel respectfully request that the Court approve service awards of $175,000 to each Class Representative, an aggregate total less than 3% of the Settlement Fund.

III. The Fees and Costs Requested by Class Counsel Are Fair and Reasonable.

Courts in this Circuit examine four factors in determining an appropriate percentage fee award in common fund cases: (1) the market value of the legal services; (2) the results obtained on behalf of the class; (3) the risk that the attorneys will receive no payment; and (4) the quantity and quality of the legal services provided to the class. *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 957-58 (7th Cir. 2013); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid I*"). Each of these factors supports the 25% fee award Class Counsel request here.

First, the requested fee is less than the market rate for Class Counsel's services. An award of attorneys' fees from a class action settlement in this Circuit "should approximate the market rate that prevails between willing buyers and willing sellers of legal services." *Silverman*, 739

F.3d at 957; *accord In re Synthroid Mktg. Litig.*, 325 F.3d 974, 975 (7th Cir. 2003) ("*Synthroid II*"); *Synthroid I*, 264 F.3d at 718. "[E]stablishing a fee structure at the outset of a suit" is the ideal method of determining the market price for legal services. *Silverman*, 739 F.3d at 958; *Synthroid I*, 264 F.3d at 719. Accordingly, actual fee agreements signed by class members "*define* the market" rate. *Synthroid I*, 264 F.3d at 720 (emphasis in original).

The Class Representatives here are sophisticated financial advisors, and each of them signed a fee agreement agreeing to pay Class Counsel a 33⅓% contingency fee. (Ex. 1 ¶ 17.) Under *Synthroid I* and *II*, the agreement of these sophisticated parties to pay a 33⅓% fee constitutes strong, if not definitive, evidence of the market rate for Class Counsel's legal services. *Synthroid I*, 264 F.3d at 719-20; *Synthroid II*, 325 F.3d at 976; *see also City of Greenville v. Syngenta Crop Protection, Inc.*, 904 F. Supp. 2d 902, 908-10 (S.D. Ill. 2012) (awarding 33.3% of $105 million fund to attorneys where sophisticated named plaintiffs agreed to one-third contingency). The Court need not "approximate the market rate" for Class Counsel's services because, when the Class Representatives engaged counsel, they willingly agreed that the rate would be 33⅓%. *See Silverman*, 739 F.3d at 959 (approving 27½% fee award in $200 million settlement, where sophisticated institutional class members did not object).

Although neither the class nor Wells Fargo requested a fee reduction, Class Counsel agreed to request fees of 25% rather than 33⅓%. This fee is lower than the market rate, the agreed contingency fee, and awards approved for other class action settlements in this Circuit. *E.g.*, *Taubenfeld v. Aon Corp.*, 415 F.3d 598, 600 (7th Cir. 2005) (affirming 30% fee where securities class action was pending only 20 months before it settled); *Silverman*, 739 F.3d at 959 (affirming 27½% fee because it was within range of reasonableness and sophisticated institutional investors did not object); *Gaskill v. Gordon*, 160 F.3d 361, 362–63 (7th Cir. 1998)

(approving 38% fee in securities class settlement); *Mansfield v. Air Line Pilots Ass'n Int'l*, No. 06 C 6869, Dkt. 373 ¶¶ 17-18 (N.D. Ill. Dec. 14, 2009) (awarding 35% of $44 million settlement fund for class of senior pilots alleging union discriminated in favor of junior pilots) (Ex. 15); *Smith v. Nike Retail Servs., Inc.*, No. 03 cv 9110, Dkt. 184, 187 (N.D. Ill. Oct. 1 & 2, 2007) (awarding 32.37% of $7.6 million settlement fund in race discrimination class action) (Ex. 16). "Courts throughout the Seventh Circuit routinely consider the fee awards in other class actions and conclude that a one-third contingency fee is standard." *City of Greenville*, 904 F. Supp. 2d at 909 (citing cases); *accord Taubenfeld*, 415 F.3d at 600; *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1033 (N.D. Ill. 2000) (noting "the established 30% benchmark for an award of fees in class actions"), *aff'd*, 267 F.3d 743 (7th Cir. 2001).

Second, as discussed above, this settlement will provide exceptional monetary and programmatic relief to the class designed to increase the compensation and representation of African Americans at Wells Fargo.

Third, Stowell & Friedman, Ltd. undertook significant risk in accepting and litigating this case for years, with no assurance it would ever be paid for these efforts. Employment discrimination cases generally fare poorly in the courts,[7] and race discrimination cases are the least likely to succeed.[8] Accepting such a case on a contingency basis carries a high risk that the plaintiffs will recover nothing and their attorneys will never be reimbursed for their out-of-pocket costs, much less receive a fee for time invested in the case. "The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic

[7] Kevin M. Clermont & Stewart J. Schwab, *Employment Discrimination Plaintiffs in Federal Court: From Bad to Worse?*, 3 HARV. L. & POL'Y REV. 103, 104 (2009) (based on data from 1979 to 2006, employment discrimination plaintiffs are less likely than other plaintiffs to prevail at trial or on appeal).
[8] Minna J. Kotkin, *Outing Outcomes: An Empirical Study of Confidential Employment Discrimination Settlements*, 64 WASH. & LEE L. REV. 111, 148 (2007) (empirical study of 1,170 confidential employment discrimination settlements, showing that settlements in race discrimination cases were significantly lower than in discrimination cases, except for reverse discrimination cases brought by white plaintiffs).

counsel." *Silverman*, 739 F.3d at 958.

Fourth, the quantity and quality of Class Counsel's legal services justify the requested fee. Class Counsel committed enormous time, effort, and money to ensuring that this settlement would yield meaningful programmatic and monetary relief to benefit the settlement class. No class member has objected to the fees sought for the prosecution and settlement of this action.

Many courts perform a lodestar cross-check to confirm the reasonableness of the requested percentage fee. This is not possible here, however, because much of Class Counsel's work will be done after final approval of the settlement. Without additional compensation, Class Counsel will: establish the Claims Resolution Process for class members and explain it to them; assist class members in completing their claim forms; help them prepare for their interviews with the neutrals; provide office space for the interviews; attend each neutral interview; and actively monitor Wells Fargo's compliance with the programmatic portion of the settlement for the next four years. (Dkt. 104-1 at 22-29, 32-33.) Class Counsel conservatively estimate they will spend more than 2,500 hours of lawyer and professional time on these activities, in addition to more than 4,000 hours already invested in this case. (Ex. 1 ¶¶ 33-34.)

Finally, Class Counsel request the Court reimburse them for the reasonable costs they incurred in prosecuting this litigation. *See* Ex. 21, Robot Decl.**;** *Synthroid II*, 325 F.3d at 980.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the orders at Exhibits 18 and 19, and thereby give final approval to the settlement, certify the settlement class, approve Service Awards for the Class Representatives, and award attorneys' fees and costs.

Respectfully submitted,
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By: */s/ Linda D. Friedman*
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CERTIFICATE OF SERVICE

I, Linda D. Friedman, an attorney, hereby certify that on April 28, 2017, I filed the foregoing *Plaintiffs' Memorandum in Support of Motion For Final Approval Of Class Action Settlement, Service Awards, And Attorneys' Fees And Costs* via the Court's CM/ECF system, which caused a copy of the same to be served upon all counsel of record via ECF.

By: */s/Linda D. Friedman*