

HON. SALVADOR MENDOZA JR.

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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 VALERIE RHODES, a single woman,
10 and on behalf of others similarly situated,

11 Plaintiff,

12 vs.

13 WELLS FARGO BANK, NATIONAL
14 ASSOCIATION, A National Banking
15 Association

16 Defendant.

NO. 2:17-CV-0093-SMJ

[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND SERVICE
AWARD

CLASS ACTION

17 BEFORE THE COURT is Plaintiff's Motion for Attorneys' Fees, Costs, Expenses,
18 and Service Award. After reviewing the files and records herein, and the Court having
19 been fully advised, and for good cause shown, the Court hereby GRANTS Plaintiff's
20 Motion and FINDS, ORDERS, and DECREES:

1. Because Washington State substantive law applies to all of the Class' claims,
attorneys' fees are awarded in accordance with Washington state law. *Vizcaino v. Microsoft*

1 *Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Washington follows the “practice of looking
2 to federal law for guidance in this area,” so this Court has done the same. *Id.* at 1047.
3 “Under Washington law, the percentage-of-recovery approach is used in calculating fees
4 in common fund cases.” *Id.* (citing *Bowles v. Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72, 847
5 P.2d 440 (1993)). The Ninth Circuit likewise provides courts with discretion to apply the
6 percentage method, which remains the “primary basis of the fee award” in common fund
7 cases. *Id.* at 1050; *In re Bluetooth Headset Prods. Liabl. Litig.*, 654 F.3d 935, 942 (9th Cir.
8 2011). The benchmark both in Washington and in the Ninth Circuit for attorney fee awards
9 in common fund settlement cases is 25% of the common fund. *Vizcaino*, 290 F.3d at 1047;
10 *Bowles*, 121 Wn.2d at 72–73. That bench mark can be adjusted up or down depending on
11 the circumstances of the case. *Vizcaino*, 290 F.3d at 1048, *In re Bluetooth*, 654 F.3d at 942.
12 Although the percentage-of-the-fee approach remains the primary method in common fund
13 cases such as these, the Ninth Circuit instructs that a rough lodestar cross check “may
14 provide a useful perspective on the reasonableness of a given percentage award.” *Vizcaino*,
15 290 F.3d at 1050.

16 2. Class Counsel request 12.5% of the \$26,305,000 common fund—half of the
17 Washington state and Ninth Circuit benchmarks. No class member has objected to Class
18 Counsel’s requested fee award. To determine whether Class Counsel’s fee request is
19 reasonable, this Court considered (1) the exceptional results Class Counsel achieved for
20 the class—including the first and largest settlement of this type, exceeding \$26 million; (2)

1 Class Counsel's diligent and efficient approach to this litigation and their ability to leverage
2 past experiences and successes to obtain timely payment for Class members and avoid
3 protracted litigation; (3) Class Counsel's significant experience in complex class action
4 litigation regarding Washington borrowers' pre-foreclosure rights to exclusively possess
5 their homes, along with their comprehensive understanding of the pre-foreclosure property
6 preservation industry; (4) risks inherent in this case, including risks to class certification,
7 risks of preemption, risks involved in industry leaders' attempts to enact legislation
8 retroactively immunizing the Defendant, rulings in related cases, and the risks inherent in
9 establishing liability and damages at trial; (5) the substantial risk Class Counsel took in
10 litigating this case on a contingency basis and paying all costs; (6) that Class Counsel
11 forewent other work in order to maintain this action and satisfy their duties and obligations
12 to the Class, suffering monetarily as a result; (7) Class Counsel's high-quality work and
13 efficient yet effective litigation of this case, particularly against experienced and well-
14 respected defense counsel; (8) the duration and complexity of the litigation; and (9) the
15 state-wide benefits Class Counsel provided for the Class and Washington borrowers as a
16 whole beyond the cash common fund.

17 3. This Court also performed a lodestar cross-check on Counsel's requested
18 12.5% of the settlement fund. As demonstrated by the declarations of counsel filed
19 concurrently with Class Counsel's Motion for Attorneys' Fees and Service Award
20 (including the 2015 Chart of Approved Rates created by Erica Hartlep, Staff Attorney to

1 U.S. District Court Senior Judge Edward F. Shea), Counsel’s rates are consistent with rates
2 in the community for similar work performed by attorneys (and paralegals) with
3 comparable skill, experience, and reputation. Counsel expended 1,568.49 hours on this
4 case, which this Court finds to be reasonable given the factors examined in Paragraph 2
5 above and the complexity of this case. Class Counsel’s total lodestar is therefore
6 \$541,355.75, with an implied multiplier of 6.07%. Class Counsel’s multiplier is at the
7 “high end” of a typical multiplier, but still “well within the range of multipliers” accepted
8 in this circuit. *Steiner v. Am. Broad. Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) In light of
9 the factors examined above and in Paragraph 2, the implied multiplier at issue here is
10 reasonable.

11 4. Considering all of these factors, Class Counsel’s request for 12.5% of the
12 settlement fund is reasonable. Class Counsel’s request is consistent with or more modest
13 than other percentage-of-the-fund requests granted in this district in cases of similar size
14 and complexity. And a lodestar cross check bolsters the reasonableness of their request.
15 The Court therefore AWARDS Plaintiffs’ attorneys \$3,288,125: 12.5% of the common
16 fund to be paid out of the common fund before distribution to class members, as
17 contemplated by the parties’ settlement agreement and this Court’s Order Granting
18 Unopposed Motion for Preliminary Approval of Class Settlement. ECF No. 62.

19 5. The Court also approves a service award payment to Valerie Rhodes, named
20 Plaintiff in this action, of \$10,000.00. Ms. Rhodes dedicated substantial effort as a Class

1 representative, promptly communicating with Class Counsel, assisting in claims
2 investigation, participating in discovery, and participating in strategic and settlement
3 discussions. This award reasonably compensates Ms. Rhodes for the time and effort she
4 dedicated to this case, as well as the stigma she accepted by serving as the face of this
5 litigation. It does not undermine her representativeness as named Plaintiff. The Court
6 therefore AWARDS Plaintiff Valerie Rhodes \$10,000.00 for her effort and dedication to
7 this case.

8 IT IS SO ORDERED.

9
10 DATED this _____ day of _____, 2018.

11
12 _____
13 HON. SALVADOR MENDOZA, JR.
United States District Judge

14 Presented by:

15 s/CLAY M. GATENS

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties listed below by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

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DATED at Wenatchee, Washington this 1st day of October, 2018.

s/CLAY M. GATENS
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