

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Dec 19, 2018**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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

2:17-CV-00093-SMJ

Plaintiff,

**SETTLEMENT ORDER AND  
FINAL JUDGMENT**

v.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, a National Banking  
Association,

Defendant.

On June 19, 2018, Plaintiff Valerie Rhodes filed the settlement agreement (“Agreement”), ECF No. 60 at 41–55, which sets forth the terms and conditions and release of certain claims against Defendant Wells Fargo Bank, National Association and the Released Parties.<sup>1</sup> On June 25, 2018, the Court granted preliminary approval to the proposed class settlement (“Settlement”) between Ms. Rhodes, as Representative Plaintiff, and Defendant. ECF No. 62. Pursuant to that order, notice was given to the Settlement Class.

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<sup>1</sup> Capitalized terms shall have the meaning ascribed to them in the Agreement. ECF No. 60 at 41–55.

1 Now before the Court are Plaintiff's unopposed Motion for Attorneys' Fees  
2 and Service Award, ECF No. 71, and Motion for Final Approval of Class Action  
3 Settlement, ECF No. 101. On December 18, 2018, this Court held a fairness hearing  
4 to consider whether to grant final approval to the Settlement and Class Counsel's  
5 application for an award of attorneys' fees, costs, and service award to Valerie  
6 Rhodes. ECF No. 107. The Court heard argument from counsel. No class members  
7 objected to or otherwise appeared to testify regarding the settlement and/or the fee  
8 application. *Id.*

9 The Court has considered all the papers and proceedings in this matter,  
10 including the pleadings; supporting declarations; oral argument; and the  
11 Agreement. Having reviewed the file in this matter, the Court finds the proposed  
12 Settlement fair, reasonable, and adequate, and that it is the result of extensive arm's  
13 length negotiations with the guidance of two experienced mediators. The Court  
14 therefore certifies the Federal Rule of Civil Procedure 23(b)(3) class and approves  
15 the parties' Settlement.

16 The Court maintains its previous appointment of Representative Plaintiff and  
17 Class Counsel, and now turns to Plaintiff's application for an award of attorneys'  
18 fees, costs, and service award to Valerie Rhodes.

19 **ATTORNEYS' FEES**

1           Because Washington substantive law applies to the Class’s claims, attorneys’  
2 fees are awarded in accordance with Washington state law. *Vizcaino v. Microsoft*  
3 *Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). “Under Washington law, the  
4 percentage-of-recovery approach is used in calculating fees in common fund cases.”  
5 *Id.* (citing *Bowles v. Dep’t of Ret. Sys.*, 121 Wash. 2d 52, 72 (1993)). The Ninth  
6 Circuit provides courts with the discretion to apply the percentage method, which  
7 remains the “primary basis of the fee award” in common fund cases. *Id.* at 1050; *In*  
8 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The  
9 benchmark both in Washington state and in the Ninth Circuit for attorney fee awards  
10 in common fund settlement cases is 25% of the common fund. *Vizcaino*, 290 F.3d  
11 at 1047; *Bowles*, 121 Wash. 2d at 72–73.

12           Here, Class Counsel request 12.5% of the \$26,305,000 common fund—half  
13 of the Washington state and Ninth Circuit benchmarks. No class member has  
14 objected to Class Counsel’s requested fee award. To determine whether Class  
15 Counsel’s fee request is reasonable, this Court considered: (1) the exceptional  
16 results Class Counsel achieved for the class—including the first and largest  
17 settlement of this type, exceeding \$26 million; (2) Class Counsel’s diligent and  
18 efficient approach to this litigation and their ability to leverage past experiences and  
19 successes to obtain timely payment for Class members and avoid protracted  
20 litigation; (3) Class Counsel’s significant experience in complex class action

1 litigation regarding Washington borrowers’ pre-foreclosure rights to exclusively  
2 possess their homes, along with their comprehensive understanding of the pre-  
3 foreclosure property preservation industry; (4) risks inherent in this case, including  
4 risks to class certification, risks of preemption, risks involved in industry leaders’  
5 attempts to enact legislation retroactively immunizing Defendant, rulings in related  
6 cases, and the risks inherent in establishing liability and damages at trial; (5) the  
7 substantial risk Class Counsel took in litigating this case on a contingency basis and  
8 paying all costs; (6) that Class Counsel surrendered other work in order to maintain  
9 this action and satisfy their duties and obligations to the Class; (7) Class Counsel’s  
10 laudable work and efficient-yet-effective litigation of this case; (8) the duration and  
11 complexity of the litigation; and (9) the state-wide benefits Class Counsel provided  
12 for the Class and Washington borrowers as a whole beyond the cash common fund.

13 In light of these factors, the Court finds reasonable Class Counsel’s request  
14 for 12.5% of the settlement fund and awards counsel \$3,288,125.

#### 15 **SERVICE AWARD**

16 Service awards are within the Court’s discretion and are “fairly typical in  
17 class actions.” *Barovic v. Ballmer*, Nos. C14-0540 JCC & 2:14-cv-00586-JCC,  
18 2016 WL 199674, at \*5 (W.D. Wash. Jan. 13, 2016) (quoting *Hartless v. Clorox*  
19 *Co.*, 273 F.R.D. 630, 646–47 (S.D. Cal. 2011)); *see also Rodriguez v. ACL Farms,*  
20 *Inc.*, No. CV-10-3010-LRS, 2011 WL 13093165, at \*1 (E.D. Wash. July 18, 2011).

1 Here, Class Counsel requests a service award payment to Representative  
2 Plaintiff in the amount of \$10,000. Valerie Rhodes dedicated substantial effort as  
3 the representative, promptly communicating with Class Counsel, assisting in claims  
4 investigation, participating in discovery, and participating in strategic and  
5 settlement discussions. She may have also faced stigma by serving as the face of  
6 this litigation. To compensate her for the time and effort she dedicated to this case,  
7 the Court awards Valerie Rhodes the reasonable amount of \$10,000. This does not  
8 undermine her representativeness.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 **1.** Plaintiff Valerie Rhodes's Motion for Attorneys' Fees and Service  
11 Award, **ECF No. 71**, and Motion for Final Approval of Class Action  
12 Settlement, **ECF No. 101**, are **GRANTED**.

13 **2.** This Court has jurisdiction over the subject matter of this Action and  
14 personal jurisdiction over the Parties and the Settlement Class.

15 **3.** The definitions and provisions of the Agreement are incorporated in  
16 this Order as though fully set forth herein.

17 **4.** Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Settlement  
18 Class is certified as follows:

19 All Citizens of Washington state

20 (a) who own or owned real property in  
Washington state subject to a loan that was in  
default;

- 1 (b) which property, within the applicable statute  
2 of limitations, was entered upon by Wells  
3 Fargo and/or its agents prior to the  
4 completion of any judicial or non-judicial  
5 foreclosure; and  
6 (c) which entry upon the property by Wells  
7 Fargo and/or its agents was the proximate  
8 cause of damage to the homeowner by: (i)  
9 damaging the homeowner's real or personal  
10 property; and/or (ii) converting the  
11 homeowner's personal property or  
12 belongings; and/or (iii) interfering with the  
13 homeowner's full use and enjoyment of the  
14 home.

15 The Settlement Class is further defined by the Class List, which  
16 includes:

17 Individuals identified on the list produced by Wells Fargo  
18 on April 20, 2018, and identified as "Revised Class List"  
19 with Bates numbers "WF\_Rhodes 026839-26842" and  
20 containing 4,013 unique loan numbers. "Settlement Class  
Members" will include Class members who do not  
exclude themselves from the Settlement.

- 1 **5.** For purposes of settlement only, Plaintiff Valerie Rhodes is hereby  
2 appointed Class Representative.
- 3 **6.** For purposes of settlement only, the attorneys at Jeffers, Danielson,  
4 Sonn & Aylward, P.S., are hereby appointed as Class Counsel.
- 5 **7.** The Court finally certifies the Settlement Class.

1           **8.**    Persons included in the Settlement Class who timely submitted valid  
2           requests for exclusion are excluded from the Settlement Class and are  
3           not bound by this Order and Judgment.

4                   **A.**    Gina Britton timely submitted a valid request for  
5                   exclusion and is not bound by this Settlement Order and  
6                   Final Judgment.

7                   **B.**    Angela Indira Mahabir submitted an untimely but valid  
8                   request for exclusion and is not bound by this Settlement  
9                   Order and Final Judgment.

10          **9.**    The Court grants final approval of this Settlement, and finds that it is  
11          fair, reasonable, and adequate, considering all factors set forth in  
12          Federal Rule of Civil Procedure 23.

13                   **A.**    Plaintiff Valerie Rhodes and Class Counsel have  
14                   adequately represented the Settlement Class throughout  
15                   this litigation, settlement, and notice period. Class  
16                   Counsel is experienced and well informed and approves  
17                   of the settlement. No Settlement Class member or  
18                   governmental participant has objected or otherwise  
19                   attempted to intervene.  
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*B.* The Settlement was negotiated at arm's length and without collusion after extensive discovery and two rounds of full-day mediation.

*C.* The Settlement provides adequate relief for the Settlement Class taking into account: the costs, risks, and delay of trial and appeal, which would be complex, lengthy, and expensive; the effective method of distributing relief to the Settlement Class, including the method used to process Eligible Settlement Class Members' claims; the terms of the attorneys' fee and cost award and timing of the fee and cost payment; and the Settlement Agreement.

*D.* The Settlement also treats all Settlement Class Members equitably relative to each other, calculating each Eligible Class Member's Settlement Award as a function of the harm that Eligible Class Member actually suffered.

**10.** The Parties, their counsel, and the Claims Administrator shall fulfill their obligations and duties under the Agreement.



1           **11.** The Court **DISMISSES WITH PREJUDICE** this action, the  
2           Released Claims, and the Released Parties, and adjudges that the  
3           Released Claims are released against the Released Parties.

4           **12.** The Court adjudges that Plaintiff Valerie Rhodes and the Settlement  
5           Class Members are deemed to have fully, finally, completely, and  
6           forever released, relinquished, and discharged the Released Claims  
7           against the Released Parties.

8           **13.** Plaintiff Valerie Rhodes and the Settlement Class Members are  
9           permanently enjoined and barred from asserting, initiating,  
10          prosecuting, or continuing any of the Released Claims against the  
11          Released Parties.

12          **14.** The Claims Administrator completed the delivery of Mailed Notice  
13          according to the terms of the Notice Plan, the Agreement, and the  
14          Preliminary Approval Order. The Notice Plan and Mailed Notice  
15          provided by the Claims Administrator to the Settlement Class, which  
16          set forth the principal terms of the Agreement and other matters, was  
17          the best practicable notice under the circumstances. The Notice Plan  
18          and Mailed Notice prescribed by the Agreement was reasonable and  
19          provided due and adequate notice of these proceedings and of the  
20          matters set forth therein, including the terms of the Agreement, to all

1 parties entitled to such Notice Plan and Mailed Notice. The Notice Plan  
2 and Mailed Notice provided to the Settlement Class satisfied the  
3 requirements of Federal Rule of Civil Procedure 23 and the  
4 requirements of constitutional due process. The Notice Plan and  
5 Mailed Notice were reasonably calculated under the circumstances to  
6 apprise the Settlement Class of the pendency of this Action, all  
7 material elements of the Settlement, and their opportunity to exclude  
8 themselves from, object to, or comment on the Settlement and appear  
9 at the Final Approval Hearing. The Court has afforded a full  
10 opportunity to all members of the Settlement Class to be heard.  
11 Accordingly, the Court determines that all members of the Settlement  
12 Class, except those who timely excluded themselves from the  
13 Settlement Class, are bound by this Judgment and Final Order.

- 14 **15.** Within ten (10) days after the filing of the proposed Agreement in this  
15 Court, a notice of the proposed Settlement was served upon the U.S.  
16 Attorney General, Office of the Comptroller of the Currency,  
17 attorneys' general of all fifty states, as well as the District of Columbia,  
18 American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and  
19 the Virgin Islands. ECF No. 103. The Court finds that this notice  
20 satisfied the requirements of 28 U.S.C. § 1715(b) and that more than

1 ninety (90) days have elapsed since the required notice was provided,  
2 as required by 28 U.S.C. § 1715(d).

3 **16.** The Court approves payment of attorneys' fees and costs to Class  
4 Counsel in the amount of \$3,288,125 in fees and costs. This amount  
5 shall be paid from the Settlement Fund pursuant to the terms of the  
6 Agreement. The Court finds these amounts to be appropriate and  
7 reasonable in light of the work performed by Class Counsel and the  
8 benefits obtained for the Settlement Class Members.

9 **17.** The Court approves payment of a service award to Representative  
10 Plaintiff Valerie Rhodes in the amount of \$ 10,000. This amount shall  
11 be paid from the Settlement Fund pursuant to the terms of the  
12 Agreement.

13 **18.** The Court approves payment of notice and claims administration costs  
14 in an amount not to exceed \$28,300. This amount shall be paid to Epiq  
15 Class Action & Claims Solutions, Inc. from the Settlement Fund  
16 pursuant to the terms of the Agreement.

17 **19.** The Court approves payment to Greenfield Advisors for damages and  
18 settlement award calculation costs in an amount of \$106,085.50. This  
19 amount has been previously paid to Greenfield Advisors by the  
20

1 Defendant and shall be deducted from the Settlement Fund pursuant to  
2 the terms of the Agreement.

3 **20.** Within thirty-five (35) days of entry of the Court’s Settlement Order  
4 and Final Judgment (the “Effective Date”), Defendant shall remit the  
5 remaining balance of the Settlement Fund, which totals  
6 \$26,198,914.50<sup>2</sup>, to the Claims Administrator pursuant to the terms of  
7 the Agreement.

8 **21.** Settlement Award checks shall be mailed by the Claims Administrator  
9 to Settlement Class Members within thirty (30) days of the Effective  
10 Date pursuant to the terms of the Agreement.

11 **22.** Settlement Award checks that are not cashed within ninety (90) days  
12 of the date on the check shall be voided. If administratively feasible to  
13 do so at the discretion of the Claims Administrator, unclaimed  
14 Settlement Funds shall be used to make a second distribution, on a pro  
15 rata basis, to all Settlement Class Members who cashed a Settlement  
16 Award check. Second round distribution checks that are not cashed  
17 within ninety (90) days after the date on the check shall be voided.

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19 \_\_\_\_\_  
20 <sup>2</sup> This amount is calculated by taking the total common fund settlement amount of  
\$26,305,000 and deducting the amount of \$106,085.50 previously paid to  
Greenfield Advisors for pre-final approval Settlement Class calculations by  
Defendant.

1           **23.** Available Settlement Funds remaining after the second round of check  
2           distributions, if any, shall be payable 25% to Northwest Justice  
3           Project; 25% to Chelan-Douglas County Volunteer Services; 25% to  
4           Rebuilding Together Seattle; and 25% to Housing Hope – Everett.

5           **24.** Within thirty (30) days of the Effective Date, the Claims Administrator  
6           shall distribute to itself payment for approved notice and claims  
7           administration costs in an amount not to exceed \$28,300.

8           **25.** Within thirty (30) days of the Effective Date, the Claims Administrator  
9           shall issue to Class Counsel payment for the approved service award  
10          amount in favor of Representative Plaintiff Valerie Rhodes pursuant  
11          to the terms of the Agreement.

12          **26.** Within thirty (30) days of the Effective Date, the Claims Administrator  
13          shall issue to Class Counsel payment for approved attorneys' fees and  
14          costs pursuant to the terms of the Agreement.

15          **27.** Neither this Order nor the Agreement is an admission or concession by  
16          Defendant of the validity of any claims or of any liability or  
17          wrongdoing or of any violation of law. This Order and the Agreement  
18          do not constitute a concession and shall not be used as an admission or  
19          indication of any wrongdoing, fault or omission by Defendant or any  
20          other person in connection with any transaction, event or occurrence,

1 and neither this Order nor the Agreement nor any related documents  
2 in this proceeding, nor any reports or accounts thereof, shall be offered  
3 or received in evidence in any civil, criminal, or administrative action  
4 or proceeding, other than such proceedings as may be necessary to  
5 consummate or enforce this Order, the Agreement, and all releases  
6 given thereunder, or to establish the affirmative defenses of *res*  
7 *judicata* or collateral estoppel barring the pursuit of claims released in  
8 the Agreement. This Order also does not constitute any opinion or  
9 position of this Court as to the merits of the claims and defenses related  
10 to this Action.

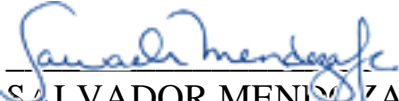
11 **28.** The Court retains jurisdiction to consider all further matters arising out  
12 of or connected with the Settlement, including the implementation and  
13 enforcement of the Agreement.

14 **29.** The Clerk's Office is **DIRECTED** to **ENTER JUDGMENT** of  
15 dismissal with prejudice, **STRIKE** all dates and deadlines, and  
16 **CLOSE** this file.

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**IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and provide copies to all counsel.

**DATED** this 19<sup>th</sup> day of December 2018.

  
\_\_\_\_\_  
SALVADOR MENDOCZA, JR.  
United States District Judge