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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

BARBARA WALDRUP, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

vs.

COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation, et al.,

Defendants.

Case Number: 2:13-cv-08833-CAS(AGRx)
CLASS ACTION

PLAINTIFFS' REPLY IN SUPPORT OF (1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND (2) MOTION FOR ATTORNEYS' FEES, LITIGATION COSTS, AND CLASS REPRESENTATIVE SERVICE AWARDS

District Judge: Hon. Christina A. Snyder

Date: July 13, 2020
Time: 10:00 a.m.
Location: Dept. 8D

ELIZABETH WILLIAMS, BECKIE REASTER, REBECCA MURPHY, individually, and on behalf of all others similarly situated, Plaintiffs, vs. COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation, et al. Defendants.	Consolidated with Case Number: 2:16-cv-4166 CAS(AGRx)

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By any measure, the Settlement here is an excellent outcome for millions of consumers who paid for appraisals which allegedly failed to comply with the Uniform Standards of Professional Appraisal Practice ("USPAP"). With the objection and opt-out deadline now passed, the Court no longer has to take Class Counsel's word for it. After 2,375,780 mailed settlement notice packets, publication in print media and on-line, 21,902 telephone calls with class members and 48,068 unique visits to the settlement website, only 33 class members have opted out – representing approximately 0.00001% of the Settlement Class – and only five class members submitted "objections," although two failed to comply with the directions for doing in the Court's Preliminary Approval Order making their "objections" facially invalid. However, even if all the purported "objections" are deemed valid, ***none*** question the fundamental fairness of the Settlement. Instead, as detailed below, the objectors either fail to offer any substantive basis to deny final approval, or they complain about financial hardships that have uniquely impacted their lives and seek remedies unavailable in this case, even if it was tried to verdict.

Given the high-profile and well-publicized nature of this litigation, the low opt out and objection rate reflects the Class Members' resounding approval of the Settlement and constitutes powerful evidence of the Settlement's fairness and adequacy. *See, e.g.*, *Nat'l Rural Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.").

In the end, the record here is clear. Resolving this litigation was no easy feat. The Settlement is the result of contentious, active litigation coupled with protracted and highly-complex settlement negotiations overseen by the Court-appointed mediator. The $250 million *non-reversionary* common fund settlement, which by all accounts was based

1 on a novel and difficult legal theory, is an extraordinary result for Class Members, and is
2 objectively fair, reasonable, and adequate.
3 And, for their work in achieving this settlement, Class Counsel seek
4 $49,364,800.06 in attorneys' fees and $2,366,250.80 in expenses. As set forth in
5 Plaintiffs' opening motion, Class Counsel's requested fee is 19.55% of the total
6 $252,500,000 settlement amount, which is below the Ninth Circuit's 25% benchmark for
7 fees awarded as a percentage of a common fund. Moreover, to the extent the Court
8 wishes to employ a "cross check" against Class Counsel's lodestar to ensure that the fees
9 awarded are reasonable, the amount represents a 2.9 multiplier, which is inherently
10 reasonable given the enormous risks and benefits achieved. By any measure, the request
11 seeks fair and reasonable compensation for Class Counsel's time and effort, which
12 resulted in substantial benefits to millions of Class Members, *only after seven years of*
13 *difficult work*, without any guarantee of recovery or reimbursement of expenses.
14 Finally, Plaintiffs Barbara Waldrup, Beckie Reaster and Rebecca Murphy (the
15 "Class Representatives") each request a service award of $15,000 to be paid from the
16 Settlement common fund. This service award amount is reasonable in light of the valuable
17 benefits the Class Representatives conferred to the Settlement Class.
18 For all the reasons set forth below and in Plaintiffs' Motion for Final Approval of
19 Class Action Settlement and Motion for an Award of Attorneys' Fees, Litigation Costs,
20 and Service Awards, Plaintiffs respectfully request that the Court grant final approval of
21 the proposed Settlement and approve Class Counsel's reasonable request for attorneys'
22 fees and costs, along with service awards for the Class Representatives.

23 **II. ARGUMENT**

24 **A. The Settlement is Fair, Adequate, and Reasonable.**

25 At the final approval stage, the primary inquiry is "whether a proposed settlement is
26 fundamentally fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
27 1026 (9th Cir. 1998) (citation omitted). In making this determination, the question the
28 Court must answer "is not whether the final product could be prettier, smarter or snazzier,

but whether it is fair, adequate and free from collusion." *Id.* at 1027.

Under Rule 23(e), examination of proposed class settlements occurs at the preliminary approval stage where the Court determines whether it will likely approve the settlement and certify the class for settlement purposes before class notice is sent. Fed. R. Civ. P. 23(e). Here, the Court made these findings when it granted preliminary approval. (Dkt. 475). The Court found that the Settlement was "fair, reasonable, and adequate in light of the relevant factual, legal, practical, and procedural considerations" to warrant sending notice of Settlement to the Settlement Class." *Id.* ¶ 6. This remains true, and now we know that the overwhelming majority of the Settlement Class agrees as well.

B. The Settlement Class's Favorable Reaction to the Settlement Strongly Supports Final Approval.

As noted in Plaintiffs' opening motion, the Settlement Administrator commenced the Court-approved notice program on April 13, 2020, and the June 15, 2020 deadline to object or opt-out has now passed. *See* concurrently filed Supplemental Declaration of Cameron R. Azari ("Azari Suppl. Decl.").

Plaintiffs are pleased to report that following 2,375,780 mailed settlement notice packets, publication in print media and on-line, 21,902 telephone calls with class members and 48,068 unique visits to the settlement website, only 33 class members have opted out – representing approximately 0.00001% of the Settlement Class—and only five Settlement Class Members purport to "object" to the Settlement. Azari Suppl. Decl. at ¶¶ 6-18. Such a small percentage of exclusions and objections under any circumstances strongly favors final approval, especially here given the well-publicized nature of this litigation and the alleged conduct that was at issue. *See Churchill Vill. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming final approval where "only 45" of the approximately 90,000 notified class members objected and 500 opted out); *Asghari v. Volkswagen Grp. of Am.*, No. 13-02529-MMM, 2015 WL 12732462, at *22 (C.D. Cal. May 29, 2015) (approving class settlement where 15 objected out of 224,853 class notice recipients, which "indicates that generally, class members favor the proposed settlement

and find it fair"); *Cruz v. Sky Chefs, Inc.*, No. C-12- 02705 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) ("A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.") (citing *Churchill*, 361 F.3d at 577); *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 529 ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.").

C. Two of the Five "Objections" Are Invalid And, At Most, Should be Treated as Opt Outs.

The Court's Preliminary Approval Order made clear that Class Members who wish to object must timely file written objections with the Court, on or before June 15, 2020, and serve them on Class Counsel and Counsel for the Defendants. (Dkt. 475 at ¶ 12). The Order further provides that any Class Member that fails to comply "shall not be treated as having filed a valid Objection to the Settlement." *Id.* Two objectors, Franklin Allen and James E. Mack, failed to file their objections with the Court in compliance with the Preliminary Approval Order and Settlement. These "objections" are thus facially invalid and should be disregarded by the Court. Additionally, as noted below, their objections appear to focus on financial hardships that have uniquely impacted their lives and seek remedies unavailable in this case. Class Counsel understand these Class Members feel strongly about their circumstances, but their concerns are beyond the scope of this case. Nevertheless, rather than deem their "objections" invalid, Class Counsel and Defendants' Counsel do not oppose this Court's treatment of these otherwise invalid objections as timely opt outs under the Settlement. *See Hanlon*, 150 F.3d at 1024-25 (9th Cir. 1998) (trial court has authority and discretion to deem class members as having opted out of a settlement class). Doing so gives these three Class Members a chance to raise their individualized grievances directly with the Defendants and attempt to obtain the remedies they desire. Nevertheless, if the Court desires to consider the merits of these objections, as discussed below, they should all be overruled.

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D. Even if Valid, All Five "Objections" Should be Overruled.

There is a strong judicial policy favoring settlement, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 526 (quoting 4 A. Conte & H. Newberg, *Newberg on Class Actions*, § 11:40 at 155 (4th 3d. 2002)). "[T]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982). Furthermore, in challenging the reasonableness of a class action settlement, "objectors to a class action settlement bear the burden of proving any assertions they raise challenging the reasonableness of a class action settlement." *In re Google Referrer Header Priv. Litig.*, 87 F. Supp. 3d 1122, 1137 (N.D. Cal. 2015) (citing *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990)). None of the objectors here have met their burden.

1. Mr. Allen's Objection Lacks Substance

Class Member Franklin Allen's objection, in its entirety, consists of his cryptic complaint that "22 percent reimbursement is <u>not</u> acceptable for the violation. I am requesting for mediation." As a threshold matter, there is no right to mediation under the Settlement. If Mr. Allen desires to negotiate further with Defendants, he can do so as an opt-out class member pursuing his own course of action. With respect to his complaint about the reimbursement percentage, this Court's Preliminary Approval Order makes clear that an objector must "state the legal or factual grounds for each Objection with specificity," among other requirements. (Dkt. 475 at ¶ 12). Mr. Allen neither offers any legal or factual basis for his objection, nor does he articulate what reimbursement percentage he would find acceptable. Nevertheless, as this Court has previously noted, an objector's desire for a "better deal" is not a valid ground for objecting to a settlement. *See Negrete v. Allianz Life Insurance Company of North America*, 2015 WL 12592726 (C.D. Cal. Mar. 3, 2015)("Several of the objections express a desire for a better deal… But these are not valid grounds for objecting to a proposed class settlement. 'That the Objectors

1 may have made another bargain is beside the point; settling parties need not find the most
2 ideal terms.").
3 As discussed in Plaintiffs' Motion for Final Approval, and in the supporting
4 declaration of Professor Brian Fitzpatrick, given the obstacles Plaintiffs faced at trial, a
5 gross recovery equal to 29.6% of the total appraisal fees assessed to borrowers is
6 unquestionably fair and reasonable.[1] Indeed, in granting class certification, this Court
7 cautioned that Plaintiffs' RICO claim presented "a close question, particularly because the
8 alleged USPAP violation underlying plaintiffs' claims is based on an ethical standard that
9 is seldom, if ever, subject to judicial scrutiny." Dkt. 248 at p. 35. And, Defendants
10 argued that Plaintiffs' full-refund model was flawed because appraisals were, in fact,
11 completed, even if non-USPAP complaint, and borrowers benefited through successful
12 loan closings and refinancings. In this regard, the Court again cautioned that "[i]n seeking
13 a full refund, plaintiffs will have the burden at trial to prove that defendant's USPAP
14 violations rendered the appraisals worthless to borrowers." (*Id.* at p. 37).
15 **2. Three Objections Seek Remedies Unavailable Here.**
16 Three objectors, Susan Gloria Fineout, Kevin and Juanika Harper (the "Harpers")
17 and James E. Mack, all focus on tragic financial hardships that have uniquely impacted
18 their lives. For example, Ms. Fineout details her on-going litigation history with
19 Countrywide over a disputed "foreclosure nightmare" in which she claims she incurred
20 substantial legal fees and medical expenses, and desires to recover for "stress" resulting
21 from "far more than just property appraisal dilemas (sic)." (Dkt. 483, p. 5). In this regard,
22
23 [1] Courts have approved fractional recoveries when the risk of proceeding to trial presents
24 a substantial chance of recovering nothing. *See Linney v. Cellular Alaska P'ship,* 151
25 F.3d 1234, 1242 (9th Cir. 1998) (settlement amounting to a fraction of the potential total
recovery was reasonable given the significant risks of going to trial); *Hendricks v.*
26 *StarKist Co.*, No. 13-CV-00729-HSG, 2015 WL 4498083, at *7 (N.D. Cal. July 23, 2015)
(settlement representing "only a single-digit percentage of the maximum potential
27 exposure" was reasonable given the defenses and potential weaknesses in the plaintiffs'
28 case).

1 Ms. Fineout believes she has claims for breach of contract, misrepresentation and other
2 alleged improper conduct related to her mortgage application, none of which is at issue
3 here. For their part, the Harpers endured significant financial struggles resulting from a
4 loss of employment and Ms. Harper's admirable decision to join the United States Public
5 Health Service following Hurricane Katrina. Along the way, the Harpers had great
6 difficulty attempting to refinance and, thereafter, sell a home whose value had dropped
7 precipitously. The Harpers desire to recover "the difference between what we paid for our
8 house" and "what the original appraisal value should have been…" Finally, although Mr.
9 Mack does not detail his financial hardship, he desires compensation for "the aggravation
10 caused by the Defendants."

11 The sincerity of these objectors' concerns is undeniable but, at bottom, they seek
12 remedies unavailable in this class case, even if it was tried to verdict, and therefore should
13 be overruled. *See, e.g.*, *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 461-63 (9th Cir.
14 2000) (affirming district court's final approval of a settlement over objection made by
15 class member that he was entitled to additional damages not available in the litigation).
16 Indeed, the only legal claim applicable to these Class Members is Plaintiffs' nationwide
17 RICO claim which properly seeks reimbursement of out of pocket appraisal fees, not
18 "aggravation" damages or damages based on diminished property value. *See, e*.g.,
19 *Heflebower v. JPMorgan Chase Bank, NA.*, No. 1:12-cv-1671-AWI-SMS, 2014 WL
20 897342 at * 6 (E.D. Cal. 2014). And, these objectors fail to take into account the
21 difficulties in establishing classwide diminution in value damages in light of the unique
22 nature of real estate values across the United States. Although some class settlements
23 have provided compensation for diminished value, courts have rejected the notion that
24 class action settlements must provide compensation for diminished value. *See, e.g.,*
25 *Vaughn v. Am. Honda Motor Co.*, 627 F.Supp.2d 738, 749 (E.D. Tex. 2007) (rejecting
26 objections concerning failure of settlement to compensate for diminution in value to
27 vehicles with allegedly defective odometer, holding that "[i]t does not make the settlement
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unfair or unreasonable that the class has to release speculative claims for diminution in value"). And, importantly, classwide evidence of diminished value cannot be shown by anecdotal claims of the experiences of individual class members. *See Eisen v. Porsche Cars North America, Inc.*, 2014 WL 439006 (C.D. Cal. Jan 30, 2014).

3. Mr. Garland Mistakenly Interprets the Settlement Terms and Provides No Legitimate Basis for Challenging Class Counsel's Fee Request.

Mr. Garland appears to take issue with three aspects of the Settlement – (1) his mistaken belief that he "might get a $25 dollar check," (2) that Class Counsel "say they are well below the 25% standard but the settlement says 25%??" and (3) the $15,000 service award to each of the three Class Representatives.

First, Mr. Garland misinterprets the Settlement's payout provisions. As clearly set forth in the Settlement Agreement and the Notice, Class Members will receive a minimum refund of 22% of the appraisal fees they were assessed, excepting only that if Defendants' records concerning the amount of the appraisal fee assessed are not available or are unreliable – and Class Members' themselves have no records reflecting the assessed amount -- then the refund check will be for $25.00. The $25 check is simply designed to ensure that Class Members receive something even in the unlikely event that there exist no records evidencing the assessment of a particular appraisal fee.

Second, Class Counsel's requested fee is, in fact, well below the Ninth Circuit's 25% benchmark for common fund settlements. Although the Settlement Agreement permits Class Counsel to seek *up to* 25% of the settlement amount, the amount requested here, $49,364,800.06, represents 19.55% of the total settlement amount. The request seeks fair and reasonable compensation for Class Counsel's time and effort, which resulted in substantial benefits to millions of Class Members, *only after seven years of difficult work*, without any guarantee of recovery or reimbursement of expenses, and consistent with the standards of Rule 23(h) and the law of this Circuit. Class Counsel took a significant financial risk in prosecuting this case, expending a substantial amount

of time, money and resources on a contingent basis over the course of more than seven years, without any assurance of victory and with the singular focus of maximizing the recovery of Class Members. Class Counsel's prosecution of this case was vigorously opposed by experienced and skilled attorneys representing Defendants zealously throughout the litigation. As detailed in Class Counsel's Motion for Attorney Fees, each of the *Bluetooth* factors easily supports the reasonableness of the award. Dkt. 479 at pp. 14-18; *see also* Prof. Fitzpatrick Decl. (Dkt. 479-6) at ¶¶ 15-33.

Mr. Garland also erroneously suggests that Class Counsel's lodestar was only $2.3 million "but they still want an additional $60 million…" In fact, as of April 30, 2020, Class Counsel collectively devoted 29,654 hours to this case, representing $17,022,344.85 in lodestar, and incurred $2,366,250.80 in out of pocket expenses. Applied to the requested fee, the lodestar cross-check yields a multiplier of 2.9 which is squarely within the range of multipliers approved in the Ninth Circuit. *See Vizcaino*, 290 F.3d at 1051 (upholding multiplier of 3.65 and noting that range between 1 and 4 is typically appropriate, with slightly over half the cases surveyed awarding positive multipliers in the 1.5 to 3.0 range); *In re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017 U.S. Dist. LEXIS 201108, at *22 (N.D. Cal. Dec. 6, 2017) ("multipliers of 4.0 and above are frequently applied in granting fee awards from common funds"); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 U.S. Dist. LEXIS 67298, at *25 n.3 (N.D. Cal. May 21, 2015) (multiplier of 4.53); *Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113 (C.D. Cal. 2008) (approving 25% fee award with cross-check of 5.2 multiplier and collecting cases); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298–99 (N.D. Cal. 1995) (multiplier of 3.6 was "well within the acceptable range for fee awards in complicated class action litigation"; "[m]ultipliers in the 3–4 range are common").

Third, although Mr. Garland says he is "not sure why the four (sic) plaintiffs are to get $60,000," Class Counsel's Motion for Attorney's Fees, Litigation Costs and Service

1 Awards, and the supporting Declarations of the three Class Representatives, details the
2 significant amount of time and effort they spent in the litigation. Each provided facts and
3 documents necessary for the filing of a complaint, each responded to more than twenty
4 sets of written discovery, and each sat for an all-day deposition, including depositions of
5 their spouses. The Class Representatives each earned the proposed $15,000 incentive
6 payments through their efforts on behalf of the Class, over the course of many years.
7 Moreover, the amount requested is well within the range of incentive payments approved
8 in comparable cases. *See Staton*, 327 F.3d at 976 (approving an incentive payment of
9 $25,000 to one named plaintiff who "spent hundreds of hours with his attorneys and
10 provided them with `an abundance of information'"); *Villegas v. J.P. Morgan Chase &*
11 *Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *7 (N.D. Cal. Nov. 21, 2012)
12 ($10,000 *without trial*); *Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *16 (N.D.Cal.
13 Jan. 26, 2007) ($25,000 *without trial*); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp.
14 294, 299 (N.D. Cal. 1995) ($50,000); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.
15 1998); *see also* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class*
16 *Action Plaintiffs: An Empirical Study*, 53 UCLA L. REV. 1303, 1308 (2006) (review of
17 374 opinions, average award was $15,992).
18 In sum, none of the five objections undermine the Settlement's fairness as they
19 raise unique issues that either do not relate to, or are not compensable in this litigation. In
20 light of these facts, this Court should overrule these objections in their entirety.

21 **III. CONCLUSION**

22 For each of the foregoing reasons, Plaintiffs respectfully request that the Court
23 (1) overrule all objections to the Settlement; (2) grant Final Approval of the Settlement;
24 (3) award Class Counsel $49,364,800.06 in attorneys' fees and $2,366,250.80 in
25 expenses; and (4) grant service awards of $15,000 to each of the three Class
26 Representatives Barbara Waldrup, Beckie Reaster and Rebecca Murphy.
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Dated: June 29, 2020

BARON & BUDD, P.C.

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10 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
11 **WESTERN DIVISION**

12 BARBARA WALDRUP, individually, and on behalf of other members of the 13 public similarly situated, 14 Plaintiff, v. 15 COUNTRYWIDE FINANCIAL CORPORATION, a Delaware 16 corporation, *et al.*, 17 Defendants.	Case No. 2:13-cv-08833-CAS-AGR *lead case* CLASS ACTION **SUPPLEMENTAL DECLARATION OF CAMERON R. AZARI, ESQ. ON IMPLEMENTATION AND ADEQUACY OF SETTLEMENT NOTICES AND NOTICE PLAN** Action Filed: November 27, 2013 District Court Judge: Christina A. Snyder Magistrate Judge: Alicia G. Rosenberg
21 ELIZABETH WILLIAMS, *et al.*, 22 Plaintiff, v. 23 COUNTRYWIDE FINANCIAL CORPORATION, a Delaware 24 corporation, *et al.*, 25 Defendants.	(Consolidated with Case No. 2:16-cv 04166-CAS-AGR) Hearing Date: July 13, 2020 Time: 10:00 a.m.

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I, CAMERON R. AZARI, ESQ., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I am over the age of twenty-one and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice and I have served as a legal notice expert in dozens of federal and state cases involving class action notice plans.

3. I am the Director of Legal Notice for Hilsoft Notifications ("Hilsoft"), a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. ("Epiq").

4. This declaration will provide updated case administration stats for the implementation of the Settlement Notice Plan ("Notice Plan" or "Plan") for the parties' Settlement in *Waldrup v. Countrywide Financial Corporation*, Case No. 2:13-cv-08833 and *Williams v. Countrywide Financial Corporation*, Case No. 2:16-cv-04166, United States District Court, Central District of California, Western Division. Previously, I provided the Court my "*Declaration of Cameron R. Azari, Esq. on Settlement Notices and Notice Plan*," dated January 27, 2020, in which I detailed the proposed Settlement Notice Plan and Notices. Subsequently, I provided the Court my "*Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Settlement Notices and Notice Plan*," ("Implementation Declaration") dated May 11, 2020, in which I detailed the implementation of the Notice Plan and provided case administration stats to date. For the Class Certification Notice efforts, I also provided to the Court my "*Declaration of Cameron R. Azari, Esq. on Notices and Notice Plan*," dated October 26, 2018, in which I detailed Hilsoft's class action notice experience and attached Hilsoft's *curriculum vitae*. In addition, I provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs. The facts in this declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues from Hilsoft and Epiq.

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OVERVIEW

5. As detailed in my Implementation Declaration, after the Court's "*Order Preliminarily Approving Settlement, and with Respect to the Class Notice, Court Approval, and Hearing Administration*" ("Preliminary Approval Order") was entered, we began to implement the Settlement Notice Program. Federal Rule of Civil Procedure 23 directs that the best notice practicable under the circumstances must include "individual notice to all members who can be identified through reasonable effort."[1] The Settlement Notice Program as implemented satisfied this requirement with individual notice to all Class Members and supplemental media to reach the small percentage of Class Members whose individual notice was undeliverable at the Class Certification Notice phase.

Individual Notice via Postcard

6. As I stated in my Implementation Declaration, from April 13, 2020, through April 27, 2020, Epiq sent a Postcard Notice concerning the Settlement to 2,375,780 Class Members (excluding those Class Members who previously requested exclusion from the Classes). Each Notice was sent via United States Postal Service ("USPS") first class mail.

7. Prior to mailing, all mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the USPS.[2] In addition, the addresses were certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip codes, and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

8. The return address on the Notices is a post office box maintained by Epiq. Postcard Notices returned as undeliverable were re-mailed to any new address available through USPS

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[1] Fed. R. Civ. P. 23(c)(2)(B).
[2] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and known address.

information, for example, to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, or to better addresses that were found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices were promptly re-mailed. As of June 22, 2020, the USPS has sent 12,149 Postal Forwards. As of June 22, 2020, Epiq has received 245,849 undeliverable Postcard Notices and re-mailed 168,162 Postcard Notices for those addresses where a forwarding address was provided, or address research identified a new address.

9. In addition, a Detailed Notice was mailed via USPS first class mail to all persons who request one via the toll-free telephone number. As of June 22, 2020, 2,605 Detailed Notices have been mailed as a result of such requests.

10. As of June 22, 2020, Epiq has mailed Postcard Notices to 2,375,780 unique records, with Postcard Notice to 77,908 unique Class Members currently known to be undeliverable. The Notice Program reached virtually all Class Members (96% of the Class).

Supplemental Media Notice

11. ***National Newspaper.*** As I stated in my Implementation Declaration, a Publication Notice appeared once in the national edition of *USA Today* newspaper, as a 1/8 page ad unit on April 13, 2020.

12. ***Internet Banner Notices.*** Banner Notices measuring 728 x 90, 300 x 600, 970 x 250 and 250 x 300 pixels ran online across the popular display ad networks *Google* and *Yahoo!*. The *Google Display Network* Banner Notices targeted Homeowners who visited websites focused on mortgages, to target individuals who were researching mortgage related content, but already own a home. *Yahoo! Ad Network* Banner Notices targeted website content focused on finance and real estate. Banner Notices were placed online as detailed in the following table.

Online Banners	Delivered Impressions	Distribution	Targeting
Google Display Network	5,187,261	National	Homeowners + "Mortgage" Content Targeting

Yahoo! Ad Network	4,274,192	National	Finance & Real Estate Content Targeting

13. Combined, approximately 9.4 million adult impressions were generated by the Banner Notices, which ran from April 13, 2020 through May 12, 2020. Clicking on the Banner Notices linked the reader to the case website.

Internet Sponsored Search Listings

14. To facilitate locating the case website, sponsored search listings were acquired on the three most highly visited internet search engines: *Google*, *Yahoo!* and *Bing*. The sponsored search listings were acquired through the June 15, 2020, exclusion request and objection deadlines. Through June 15, 2020, the sponsored listings have been displayed 4,643 times, resulting in 617 clicks that displayed the case website.

Case Website, Toll-free Telephone Number and Postal Mailing Address

15. The website (www.WaldrupWilliamsAppraisalLawsuit.com) continues to be available. Class Members are able to obtain detailed information about the case and review key documents, as well as answers to frequently asked questions (FAQs). As of June 22, 2020, there have been 48,068 unique visitors to the website and 83,347 website pages presented since the website was updated for the Settlement on April 13, 2020.

16. The toll-free telephone number (1-877-835-0768) continues to be available to allow Class Members to call for additional information, listen to answers to FAQs and request that a Notice be mailed to them. This automated phone system is available 24 hours per day, 7 days per week. Callers are also be able to talk to a service representative in English or Spanish. As of June 22, 2020, the toll-free telephone number has handled 21,902 calls representing 151,999 minutes of use and service agents have handled 8,995 incoming calls representing 81,398 minutes of use and made 713 outbound calls representing 1,880 minutes of use, all since the toll-free telephone number was updated for the Settlement on April 13, 2020.

17. The existing post office box remains available for correspondence about the Settlement, allowing Class Members to contact the notice administrator by mail with any specific requests or questions.

Requests for Exclusion and Objections

18. The deadline to request exclusion from the Settlement or to object to the Settlement was June 15, 2020. I understand that, consistent with the Settlement Agreement, the final list identifying the Successful Opt-Outs will be filed with the Court by the parties under seal after the Court Approval Hearing. As of June 22, 2020, I am aware of two communications from Class Members purporting to be "objections" to the Settlement, which do relate to notice or settlement administration. Copies of the communications are included as **Attachment 1**.

CONCLUSION

19. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach the greatest practicable number of potential class members and, in a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to class members in any way. All of these requirements were met in this case.

20. Our notice effort followed the guidance for how to satisfy due process obligations that a notice expert gleans from the United States Supreme Court's seminal decisions, which are: a) to endeavor to actually inform the class, and b) to demonstrate that notice is reasonably calculated to do so:

A. "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it," *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).

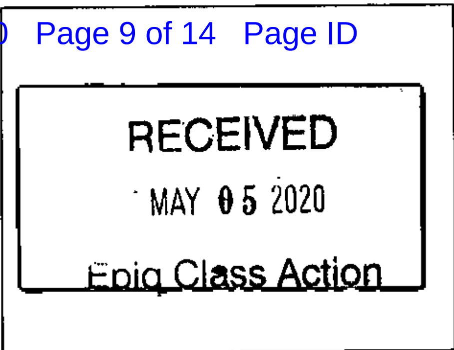
B. "[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) citing *Mullane* at 314.

21. In my opinion, the individual notice effort, with a well-drafted postcard notice and supplemental media satisfied the standard of best notice practicable under the circumstances of this case, conformed to all aspects of Federal Rule of Civil Procedure 23, and comported with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed. The Notice Plan reached over 96% of the Settlement Class.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 29, 2020.

Cameron R. Azari, Esq.

Attachment 1

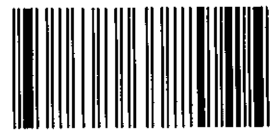


Waldrup v countrywide CA4003

Objection # 600000001

Special Request
Tracking # 1624596

Document Range



Begin:	End:	Quantity:
1	—	1

Prepped by:	QC:	Stats:	Scanned by:
ID #: 412 CG 5.7.20	✓	AH MAY 07 2020	AH MAY 07 2020

Route to: Vault

*Route to:

4/29/20

Dear Steve W. Berman,

Hi my name is Franklin D. Allen. I am a class member of the Countrywide appraisal class action settlement. After reviewing the 22 percent reimbursement is not acceptable for the violation. I am requesting for mediation.

My Info: Franklin D. Allen
Address [redacted]

Phone cell- [redacted]
Home- [redacted]
Email? [redacted]

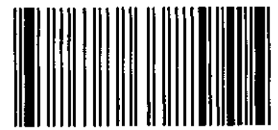
[signature] Franklin Allen

RECEIVED
APR 21 2020
Epiq Class Action

Waldrup v countrywide CA4003

Objection # 600000002

Special Request
Tracking # 1637377


0400305

Document Range

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2	–	1

Prepped by:	QC:	Stats:	Scanned by:
ID #: 412 CG 6.04.20	✓	AH JUN 04 2020	AH JUN 04 2020

Route to: Vault

***Route to:**____________________

From: Ernest Benavidez <ebenavidez@baronbudd.com>
Sent: Wednesday, April 29, 2020 8:11 AM
To: Marquez, Lindsey <lmarquez@epiqglobal.com>
Subject: FW: Waldrup v. Countrywide Settlement

CAUTION: This email originated from outside of Epiq. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Lindsay, please see message below from class member James Mack. Thank you.

Ernest Benavidez

From: James Mack
Sent: Tuesday, April 21, 2020 6:42 AM
To: Dan Alberstone <dalberstone@baronbudd.com>
Cc: Roland Tellis <rtellis@baronbudd.com>; Mark Pifko <MPifko@baronbudd.com>
Subject: Waldrup v. Countrywide Settlement

JAMES E. MACK

a. The address for all properties for which you obtained an appraisal qualifying you as a member of the Class; [redacted]
b. Statement that you object to the Settlement, in whole or in part (and if in part, which part); OBJECT (IN PART) OF ONLY 22%.
c. Statement of the legal and factual basis for your objection;
d. THE APPRAISAL FEE & A MEASLY $110 BENEFIT CHECK. THE SETTLEMENT SHOULD BE MUCH GREATER FOR THE AGGRAVATION CAUSE BY THE DEFENDANTS
e. Copies of any documents that you wish to submit in support of your position.
f. NO DOCUMENT TO SUBMIT.

Analyst Name:

JNOO

Document Received Date:

04/21/2020

Waldrup v Countrywide

CA 4003

Related Tracking Numbers:

1717086

Received from email address (if applicable):

XXXXXXXX

Subject Line of email (if applicable):

XXXXXXX

Instructions for DC:

Please scan the doc as 1 Objection.

Thanks.