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

ERIKA WILLIAMS, JAMES TULLY, WALTER RICHARDSON, and MICHAEL FRANK, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	Case No. 14 C 1981
-vs-	)	Chicago, Illinois
WELLS FARGO ADVISORS, INC.,	)	December 1, 2017 10:00 a.m.
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN J. THARP, JR.

APPEARANCES:

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(Proceedings heard in open court:)

THE COURT: All right. Good morning.

MS. BISH: Good morning, Your Honor.

MR. TURNBULL: Good morning, Your Honor.

MR. MOLLICA: Good morning, Your Honor.

THE COURT: You want to go ahead and put your appearances on the record?

MS. BISH: Suzanne Bish on behalf of the plaintiffs in the classes.

MR. WOOD: Bryan Wood on behalf of the plaintiffs in the classes.

MS. FRIEDMAN: Linda Friedman on behalf of the plaintiffs.

MR. ROBOT: George Robot on behalf of the plaintiffs in the classes.

THE COURT: All right.

MR. TURNBULL: Good morning, Your Honor. Ken Turnbull on behalf of Wells Fargo.

MR. SWARTZ: Good morning, Your Honor. Justin Swartz from Outten & Golden in New York on behalf of the objectors.

MR. MOLLICA: Paul Mollica on behalf of the objectors.

THE COURT: All right. Good morning.

MR. MOLLICA: Good morning, Your Honor.

THE COURT: All right. We're here for a final

approval hearing on the settlement reached between the plaintiffs and Wells Fargo. There were I believe four objectors who filed consolidated objections to the settlement, and I have reviewed those materials. Each of the parties to the case, the plaintiffs and the defendants, filed responses to those objections as well.

Mr. Mollica, if you would like to supplement your written submissions. I have gone through that, but if you would like to supplement with any oral comments, I'm happy to give you the opportunity to do that.

MR. MOLLICA: Thank you, Your Honor. I'm going to defer to Mr. Swartz, please.

THE COURT: All right.

MR. SWARTZ: Thank you, Your Honor. If I may get my binder. I didn't bring it up.

THE COURT: Certainly.

MR. SWARTZ: Thank you.

THE COURT: And, folks, please feel free to have a seat if you prefer, or stand as you prefer.

MR. SWARTZ: Thank you, Your Honor.

Your Honor, our objections are set forth in our papers, but there are a couple of things I would like to supplement and just explain to the Court in a little bit more detail.

To start off with, Your Honor, I know that the Court

has expressed its view on this issue already, but I would like to try to convince you otherwise just briefly.

It's our view and our clients' view that this case was never -- it never included the claims that our clients brought in the New York arbitrations until very recently. Now, we're not disputing that this case involved overtime claims. That was clear. But we are disputing that it involved the overtime claims that we are bringing in the New York arbitrations. The initial complaint in this matter raised overtime claims, and it said that the plaintiff and the similarly situated people -- similarly situated workers worked more than 40 hours a week, but then it only -- then it didn't -- it never said that the class wasn't paid for the work over 40 hours a week. It only said that the plaintiffs were only paid for 40 -- over 40 hours a week. That's the initial -- that's the initial complaint.

At the July 28, 2015 conference before this Court, there was a -- somewhat of a dispute about whether the case involved overtime claims or not at all. Wells Fargo made the comment that the case was limited to the training cost issue. Class counsel responded no, that's not true; this case involves overtime claims, but it described those overtime claims as misclassification claims. People were misclassified as exempt.

Those aren't the claims that our clients are bringing

in the New York arbitrations. The claims that our clients are bringing in the New York arbitrations are that they were classified as nonexempt, that they're entitled to overtime but they weren't paid for overtime that they worked from their homes studying for exams. It's a very specific claim. It's not a misclassification claim like class counsel described it at the July 28, 2015 hearing. It's not an exempt status claim as class counsel described it then. It's a nonexempt, off the clock study time claim for times worked at home studying for exams.

It wasn't until June of 2017 in the amended complaint that this case ever, at least to the outside world and as far as any class member could see, included nonexempt claims. In the amended Williams complaint in paragraph 21, class counsel describes the overtime claims for the first time as claims by new FAs who were discouraged from reporting overtime and that Wells Fargo failed to pay new FAs wage and overtime. And then they describe those claims in detail in a way that does not include the claims in the New York case. They say wages and overtime for work they performed in their branch offices over 40 hours a week. So even when they amended the complaint in June of this year to include for the first time, that we could tell, claims for off-the-clock, nonexempt workers, they didn't even include the claims that are part of the two New York arbitrations.

And in paragraph 55 of the complaint, they also described those claims in a way that does not include the claims that we brought, that our clients brought in the New York arbitrations. In paragraph 55, they describe the claims as people who were subject to the new FA agreement who were subject to Wells Fargo's unlawful practice of being forced to work without reporting and being properly paid for hours worked upon threat of being forced to repay training costs. So in that paragraph, they're tying the overtime claims, the unpaid overtime claims to the threat of being forced to repay training costs.

That's not our case either. Our case does not involve training costs at all. The only thing that our case involves is the time that these people spent at home studying for their Series 7 and other exams that we believe is compensable time under the FLSA. Defendants say it's not, but that's what our case is focused on. It's not focused on training time like this complaint says. It's not focused on time in the branch as this complaint says.

And then the last thing on this point that I would like to point Your Honor to is the settlement agreement itself. Paragraph 3.6 of the settlement agreement I think provides further evidence that to the extent that nonexempt workers' claims for off-the-clock work ever contemplated in this case, it was an after-the-fact attempt to -- at least for

Wells Fargo to, you know, be pragmatic about this settlement and erase the two New York arbitrations to the extent that they could as well because in the allocation formula, it's clear that the people in our class won't even receive any money for the time that they worked off the clock. The people in the cases that we bring, the New York arbitrations, people who worked at home studying for their exams and didn't get paid for that, didn't record that time, weren't allowed to record that time, that time is not included in the allocation formula. What the allocation formula says is that claimants receive one point for each applicable work week that he or she was not paid at an overtime rate for any time worked as reflected on defendant's internal records. The claims that we're bringing don't rely on the defendant's internal records. In fact, it's just the opposite. The claims that we're bringing in New York are claims for time that is not recorded on defendant's internal records. So there are going to be people who are releasing their claims in this case who aren't going to get any money for the claims that we are bringing in New York.

The second point, Your Honor, is that -- and it's related to the first -- is that class counsel nor Wells Fargo ever tells the Court or the class what the value of these claims is. And so aside from the fact that that reinforces, at least in our view, in our client's view, the fact that

these claims were never part of the case, it doesn't allow class members or their counsel to weigh the possible results of trial against what they will be getting in the case because nowhere in their papers do they explain to the Court what a likely outcome is at trial, what a great outcome is at trial, you know, what a medium outcome is at trial like the Seventh Circuit suggests, or at least in our view requires proponents of settlements to do.

So in the *Eubanks v. Pella Corporation* case, which is 753 F.3d 718, the Seventh Circuit in 2014 noted that the judge didn't estimate the likely outcome for trial as he should have done in order to evaluate the adequacy of the settlement.

We also cited the *Reynolds* case which class counsel took issue with and cited the *Wong* case. The *Wong* case doesn't -- isn't at odds with the principle that class counsel should tell the Court and the class what the possible outcome is at trial. All the *Wong* case says is that under the special circumstances of that case where there were a lot of other indicia of fairness that there was not an abuse of discretion for the District Court judge not to require an estimation of the value of the case.

Here we respectfully submit that it's just the opposite. With respect to -- only with respect to the claims that our clients brought in the New York arbitrations, there's an indicia of unfairness because these claims were, as far as

we can tell, afterthoughts brought at the last minute that were never valued. And we asked the -- yes, Your Honor?

THE COURT: How would you suggest that they could be valued in terms of a maximum recovery?

MR. SWARTZ: Well, Your Honor, we do this all the time in our class settlements and on this same issue. It could be done a number of ways. One, they would all require the defendant to produce data to the plaintiffs and the plaintiffs to analyze those data. And the way to estimate the value of the claims would be simply to know how many work weeks there are at issue, know the average salary, the average hourly rate for the people who are at issue and estimate the number of overtime hours that each of them worked each week. And it's a simple formula.

THE COURT: If I'm understanding you correctly, that would require essentially data on every individual member of the class?

MR. SWARTZ: Well, Your Honor, it would except that that's not hard. In fact, in every settlement that we put before a court, we get that data. We use that data at mediation, and then we present to the Court what a likely outcome at trial would be and what a great outcome at trial would be because that's the kind of data that the companies can easily produce. And if it was produced --

THE COURT: Aren't you talking about -- you're

talking about these are off-the-clock claims. How does the company have the data?

MR. SWARTZ: The company has the data on the -- on the hourly rate that the workers make, and the company has the data on the number of workers and the number of work weeks. The only variable, which is always the subject of negotiation in these cases, is how many hours they worked. And, you know, we have a number of clients who say that they worked X number of hours and the defendant says, you know, we talked to a whole lot of people who said that there's no way they worked that many hours; they worked fewer hours. That's the subject of the negotiation. And so that what we present to the Court in situations like this is we say if we could prove that the average worker worked five hours at home each week, then the damages would be X.

THE COURT: If you could prove it.

MR. SWARTZ: If we could prove that. That's right.

THE COURT: All right.

MR. SWARTZ: And if we could prove that they -- if we could only prove one hour, the damages would be X; if we could prove ten hours, the damages would be X. And then there are other variables too that class counsel usually apprises the Court of in cases like this, whether liquidated damages would be proved, whether there will be a third year for willfulness. And those are all variables that we usually present to the

Court and say, look, this is a likely outcome at trial. And then the class members and in this case their counsel can evaluate whether this is a good settlement or not. And the Seventh Circuit in the *Eubanks* case seems to say that that's required. That's the value of the case.

And so so far what we have is, in our view, a narrow claim that we brought in our cases that was never contemplated in this case. It was thrown in after that fact, but it wasn't actually thrown in because the way that the complaint describes it isn't our claim. And then that's added to the fact that there's no way for class members and their counsel to figure out how much the class claim would be worth.

And then this notice also doesn't inform class members of how much they're going to get. And so in cases where there's no reversion where a class member's -- where any uncollected money goes back to the class and is redistributed, the proper thing to do is to tell the class members at least the minimum they're going to get so they can make a decision. Like, if every class member claims, I will get at least this much, and for that, I'm fine giving up my claims, if the class members --

THE COURT: They do tell -- the settlement agreement tells class members will receive a minimum of $100.

MR. SWARTZ: A minimum of $100, but that's not the minimum -- I understand that, Your Honor. That's just sort of

to eliminate the possibility of very, very small awards. And so the $100 threshold is so that if somebody, you know, is entitled to $25, they're at least going to get 100 so the whole process is not administratively infeasible because in -- that's what that term is for.

What they don't do, they don't say -- they don't even give the class members a chance to figure it out for themselves, which is not as good but it would be at least something. They don't say that if you worked X number of work weeks, you would get at least X. So class members can't make the determination as to whether to join the case or not, and that's especially important here because they have another option. They could join the New York arbitrations. And so it's not like if they don't join the case they're off on their own like it is in many cases. Here there is another option.

And that leads me to my next point, Your Honor, which is that it's common practice when there are cases that would be affected by a settlement that those cases are identified and their counsel is identified in the notice so that class members can make a decision and get advice from the lawyers who are bringing the other cases. In the case before Judge Feinerman in this district, that's what happened, and the judge urged that result. And we were -- in that case we were the proponents of the settlement. And there was an objector, and we agreed to put the objector's name and contact

information and the name of the case that he belatedly filed in the notice just so class members would have that information. There would be no harm in doing that. But we asked class counsel to do that here, and they refused.

On top of all that, Your Honor, is the tax issue that we raised in our papers. If I could just back up for a second, we take no issue with the class counsel's desire to address the training cost issue. We think it's a good idea. It's a good goal. Our clients have no issue with that. I just want to make sure that it's clear that what we're concerned about are the narrow claims that we're bringing in the New York arbitrations that aren't going to be compensated here that were never part of this case and they're going to be compromised.

So the training cost claims, we're not taking issue with those. Those aren't part of our case. But we are noting that there's a potential for adverse tax consequences because it does relate to the fact that there is another pending case in New York, and here's how. If -- neither class counsel nor the defendants have taken a position, a firm position on whether class members who have their training costs' debt relieved will be liable for taxes for --

THE COURT: Well, I think the defendant has taken a very definitive position that they will not be liable and that they will not issue a 1099.

MR. SWARTZ: Well, with respect, Your Honor, I think that's two different things. They said that they won't issue a 1099. That's what the defendants said. But they've never said that they won't be liable. They have said -- they have said that they made a determination not to issue a 1099.

THE COURT: No. They've also said that they believe that this is not a -- this is subject to the nonlending exception to the debt forgiveness rule and that, therefore, it's not a taxable event.

MR. SWARTZ: Well, with respect, Your Honor, that --

THE COURT: It's unequivocal in their filing.

MR. SWARTZ: The -- it's -- the point -- the point that we're more concerned about is that the class members don't have a choice and don't have any information about that and don't have a meaningful way to make a decision. Because if the defendants are taking that position and, you know, class counsel is taking the position that it's the defendants' job to decide and that they're not giving tax advice, if that's the position, class members still don't know about this issue. And so class members still don't know that there's a chance that this will be taxable income and that they should get tax advice on that before they take the settlement because here -- and this is the important part. Here in this case, they can't get paid for their overtime claims unless they're part of the settlement. And if they're part of the settlement

and there is tax liability, the approximately thousand dollars that class counsel estimates that the average class member will get will likely be much less than their tax liability for a -- you know, significant tens of thousand dollar training debt.

And so what we're concerned about is the class members were not notified of that issue. They had no chance to weigh the pros and cons. And critically, from our clients' perspective, they had no chance to say, I'm going to go join the New York arbitrations because I don't want to take that risk about taxes. And maybe I don't even think that Wells Fargo is ever going to go after me for the taxes -- I mean for the training costs. And so they have no chance to say I just want the clean -- the clean case with the clean result where I can just try to get my overtime, and I don't have to worry about the tax issue. That's not in the notice, and it should have been.

Your Honor, with -- if the Court doesn't have any other questions, we'll just rest on our papers.

THE COURT: All right. Before I hear from the parties, I want to grab a couple of documents so I've got them in front of me that I don't have here. I'll be right back.

(Brief pause.)

THE COURT: All right. Why don't we hear -- well, I don't care what order you want to go, plaintiffs or

defendants, in terms of responding or further comments that you may have.

MS. BISH: Thank you, Your Honor.

I think that one important point Mr. Swartz made helps clarify why many of the objections, many of which the Court has ruled upon but are not persuasive, is that the claims are different. Our cases are different in that we looked at the clients, the FA trainees who came to us and their situation as a whole. And they came to us with both of these issues, that they worked at a place that would -- they had to sign an agreement that said if they leave for any reason within five years, they would owe up to $55,500 to the firm and that in part because of that, you know, that chain around their neck that they also worked overtime off the clock.

And our overtime claims from the beginning of this case have always included overtime. When we spoke to class members, when we interviewed class members, when we did our own damages calculation which was -- we did in much the same way that Mr. Swartz proposed, after an extensive interview of class members, analysis of the data with help from experts, we looked at the hours that they worked and the potential range, but the -- and that was in part why people were working so hard and working overtime and reluctant to report that overtime, was that these policies affected both of them and

that -- so the settlement has to be construed as a whole with both the value that is provided in the monetary relief to all class members for their overtime claims, which is almost identical to a similar suit that was brought by objectors' counsel but in addition to that, this additional relief which is very meaningful to the class members from, you know, tens of thousands of dollars potentially. So I think that it's important to look at those as a whole.

With respect to the over -- whether the claims were pled, the Court ruled that the claims were pled. We reported to the Court throughout that the claims were pled as the declaration that we submitted. And the e-mails show we told objectors' counsel very early on before they ever filed their arbitrations that we -- the claims were pled, that we were prosecuting them, that we had the data on them, that we were in mediations for those same claims. We protected those claims. In another case in New York, in the New York -- and the parties there both presented to the New York court. They acknowledged the *Williams* case. They said that the *Williams* case included -- and this is included in the papers as well, the excerpt from that document. But it said specifically that -- you know, it says the settling parties acknowledge *Williams v. Wells Fargo* because in that case they acknowledged us as the first filed and had to notify us and said that it included claims for overtime wages during the period of the FA

training in which Wells Fargo classified trainees as nonexempt from the FLSA. So I think that issue has -- is clear and is not accurate.

With regard to what the class members were informed in the notice, they were provided with a formula. They were provided with a number of work weeks. And as you said, Your Honor, they were provided with a minimum amount. They all had the opportunity, if they thought that wasn't sufficient, if they wanted more information, to object or to opt out. Only four class members objected, all of whom are represented by objectors' counsel. Only four opted out, less than 1 percent of just the state law classes.

So -- and we've received probably 80 phone calls, have spoken with maybe a hundred members of the class. The support for the class and the relief has been very positive, particularly with regard to the training costs, the value of the claims in terms of -- I believe I addressed this earlier, but we did perform extensive calculations and analysis of the overtime that we believe was worked. It was not recorded and not paid, a number of analysis with the assistance of an expert considering the risks and considering, you know, different things in the data that was provided to us, the exact data that Mr. Swartz discussed, every class member in the case over the entire class period, their salary, their average work weeks, all of that information, but it was

provided in a confidential way subject to Rule 408. It's not unusual for that not to be presented to the Court, and it doesn't raise any question about the settlement, particularly the procedural protections that objectors' counsel has admitted were met here, that there was an extensive exchange of information, that the Court has presided over this very carefully and that there was neutral, nationally-recognized mediators involved, and frankly that we've all, you know, done this a fair amount and take our jobs and our roles as fiduciaries very seriously as did the class representatives in this case.

So I'm happy to answer any questions that Your Honor has.

THE COURT: Let me just ask you to go to Section 3.6 of the settlement agreement and the allocation process there and ask you to clarify that in terms of, you know, when it -- I think we're talking about 3.6(b). It says, "The net settlement fund should be allocated to claimants as follows: Each claimant will receive one point for each applicable work week he or she was not paid at an overtime rate for any time worked as reflected on defendant's internal records." I just want to clarify what "as reflected on defendant's internal records" is really modifying there. Are we talking about records that show they didn't receive overtime compensation, or are we talking about records of hours worked of overtime?

What exactly are we looking for -- what exactly are the defendant's internal records corroborating or showing or being relied upon?

MS. BISH: Sure. Mr. Wood is going to clarify the exact field, but it was something that we spent a considerable time talking with -- amongst ourselves and also with the class representatives was how do we best allocate this fund to try to direct it towards the people who worked more of the unpaid overtime. And so there was a considerable -- I mean, typically these -- many of these cases treat it's just simply work weeks. So someone could report and be paid for overtime in every single week and still receive the same as someone who didn't have any reporting. You know, the claim was that basically Wells Fargo, part of the claim, discouraged people and wouldn't allow that kind of reporting. So if someone reported overtime every week, you know, that speaks to the strength of their claim, and it would make sense to allocate it in a different way. But Mr. Wood can explain precisely the calculation.

MR. WOOD: Sure.

The issue was complicated, as Mr. Swartz noted, by the fact that there aren't good records of time people actually spent working. Some people, however, did report all hours that they worked and received overtime pay for many, if not all, of the works -- of the work weeks that they were in

nonexempt positions during the training period. We felt, as class counsel, that it would be inappropriate for those people who had accurately reported all hours to participate in the fund distribution beyond the minimum payment. And so individuals who reported hours sufficient to receive overtime pay in a particular work week do not get a point for that work week. Anyone who has not reported enough hours to receive overtime pay in a particular work week, work week being a full work week because of the issue of holidays, anyone who did not report enough hours to receive overtime pay in an applicable work week does receive a point under the formula.

So the notion that Mr. Swartz's clients would not receive a point under the formula is incorrect. If there was enough work reported to receive overtime pay, you don't get a point for that week. If there was not enough work reported to receive overtime pay, you do get a point under the assumption that that may be a work week in which you worked off-the-clock hours that weren't recorded.

THE COURT: Okay. All right. Thank you.

Mr. Turnbull.

MR. TURNBULL: Yes, Your Honor, and I'll be brief. I think our papers address each of the points raised by the objectors, including some of the points that were raised during the preliminary approval process. They had previously asked that they be included in the notice. Your Honor ruled

on that.

I did want to just point out or correct the record on a couple of points the objectors' counsel made, and it relates to the scope of the claims. There was never any dispute that the claims being pursued by the plaintiffs were nonexempt claims. In fact, the only pleading that reflected a distinction between exempt and nonexempt is the pleading that counsel filed in the arbitrations. In those arbitrations, objectors' counsel inappropriately and incorrectly said that there are two classes here. There's a nonexempt class that worked off the clock and didn't get paid. And then they also allege there's an exempt class where people are misclassified. And this -- you can -- Your Honor has the AAA pleadings, but if you look at the Tucker pleading, for example, in paragraph 4, they make this misclassification allegation. And it was counsel for Wells Fargo that informed them that no, the trainees are nonexempt throughout the entire training period.

So the claims being pursued by the class here were always claims for time worked over 40 hours during the time when they were nonexempt and entitled to overtime and that included from day one through the training period, whether it was work in a branch, whether it was study time, any time that they claim was compensable time over 40 was part of the claims and part of our settlement discussions.

THE COURT: Okay.

MR. SWARTZ: Your Honor, may I briefly respond?

THE COURT: Very briefly.

MR. SWARTZ: Thank you.

A couple of quick points, Your Honor.

Class counsel acknowledged that the claims are different, that the claims -- the study time claims, the home study time claims we brought in our case --

THE COURT: No, that's not what she said, Mr. Swartz.

MR. SWARTZ: All right.

THE COURT: She said the claims are different by virtue of the fact that in this case they recognized a symbiotic relationship between the training class issue and the overtime issue. She did not say that they differed with respect to their analysis of the overtime question itself or that there was some other aspect of the overtime, unless I misunderstood you, Ms. Bish.

MS. BISH: You did not, Your Honor.

MR. SWARTZ: Your Honor, the class counsel did say that the -- that the reason -- at least a reason that people didn't report their time was because they were worried about getting charged for their study time costs. That doesn't even include all of the people in our class because not everybody in our class, in the class that we're trying to bring, had unpaid study time costs. Some people got through their study time and they didn't have any debt. And so it's a different

class. It's a different claim for a different reason. And it should be carved out of this case.

Your Honor, with respect to the expert analysis and the potential damages in the case, I don't see any reason that the class counsel couldn't share the results of that. We're not asking that class counsel would share the underlying analysis, anything that would be properly considered as work product. But the Court should know and class members should know what the maximum or a reasonable potential outcome of the case could be to weigh it against the settlement. There's no other way that the Court or class members can weigh the settlement against -- could evaluate the settlement as to whether it's enough without that information.

And, Your Honor, the other last point I want to make is just to remind the Court, and I assume that it's already evident, but the releases in this case, if somebody signs an FLSA release or if somebody fails to opt out of the -- of one of the Rule 23 classes include all overtime claims that they could possibly bring. And I just wanted to raise that because that's the harm that we're claiming. If the releases in these cases carved out the study time at home which we respectfully submit was never part of this case, our clients wouldn't be objecting.

Thank you, Your Honor.

THE COURT: All right. Let me walk through these

issues.

There are several overarching objections that there are, you know, different points relating to each of. One of them is that there are reasons to subject the settlement agreement to -- not using terms of art but strict scrutiny, if you will, because there are reasons to question the procedural integrity of the process. There are objections that fall under the heading basically that the settlement is not fair, adequate and reasonable. And there are objections under the heading that the notice of the proposed settlement was inadequate. So I'm going to address each of those categories of objections.

With respect to the procedural objections, really the overarching argument is that Wells Fargo repeatedly took actions against its own interests and that a "plausible explanation" for that action is that Wells Fargo made an opportunistic choice in this case to pursue settlement of the overtime claims at the expense of the two New York arbitrations. Well, I start with the premise that I can -- I think I can safely assume that Wells Fargo sought in negotiating a settlement here to have as broad a settlement as possible to eliminate as many claims as possible that might be asserted against Wells Fargo. That's Mr. Turnbull's job as counsel for the defendant, and that, of course, is the posture of any defendant in a settlement negotiation.

What this claim really suggests is that this is -- that their class counsel in this case colluded with the defense counsel to shut off the New York arbitrations at the expense of class members with overtime claims. That's what that argument boils down to.

So I start expressly with the premise that these are two highly reputable firms -- Mr. Wood, I'll include you in that -- three highly reputable firms. But since this really -- this argument really focuses on plaintiffs' counsel, notwithstanding the way it's framed as, you know, the defendant being opportunistic, of course the defendant is going to be as opportunistic as circumstances permit.

But focusing specifically on class counsel, class counsel -- and I'm -- and Ms. Friedman's firm in particular, are regularly in this court, writ large the Northern District of Illinois, and as well have regularly appeared in this Court, 1419. I have personally seen their dogged and effective advocacy on behalf of their clients time and time again.

Second, the most plausible explanation for results that provide substantial compensation and results for the plaintiffs' class, the most plausible explanation for that is not collusion between the parties. The most plausible explanation is the plaintiffs drove a hard bargain and got a lot of concessions from the defendant. And I'm not sure what

this argument says about objections that the settlement is not fair and reasonable when the procedural objection is based on an argument that the plaintiffs got too good a deal for the class.

Third, the idea that this was a collusive settlement I find implausible for several reasons. These are settlement negotiations that took place over the course of several years. That fact alone suggests that it is quite unlikely that the parties were colluding. That is consistent with a very hard fought, complex, arm's length negotiation. That inference is corroborated and underscored by the fact that three different mediators participated at various points along the way in the mediation, and that finally resulted in the settlement that is at issue here in this proceeding.

And third, in terms of this point about just being implausible that there would be collusion here is -- you know, the premise of why the plaintiffs would sell out the class, the only reason would be to get a settlement in place so that they could get fees. But here class counsel are not even asking for what their -- the settlement agreement would entitle them to ask for, 33 and a third percent, or what would be standard settlement. They are seeking significantly less than that and a fee that is significantly below even their lodestar. That fact, as well, suggests the implausibility that this is a collusive settlement here.

Relatedly, the claim that "the parties sweep into this settlement claims brought in two arbitrations in 2015 without involving plaintiffs' counsel in those cases" I find to be inaccurate to the extent it suggests that counsel for the -- in the New York arbitrations were taken by surprise when an amended complaint and a settlement agreement were presented in this case. The documentation submitted by the parties, particularly by the plaintiffs, clearly indicates that -- well, actually, not just by the plaintiffs but also by the defendant clearly indicate that the plaintiffs were advised back in 2015 that -- and essentially contemporaneously with the filing of the first New York arbitration. The second wasn't filed for another -- almost another year after that. But clearly the New York arbitration counsel, the objectors' counsel here, were on notice that the parties in this case were proceeding and pursuing and working on settling overtime claims.

That brings me to the point concerning the overtime claim and whether or not it was alleged in this class on behalf of the class in the original complaint. I have already addressed and rejected that contention in the context of the motion to intervene, and I see no reason to change my view of that ruling. The overtime claim is expressly alleged in numerous paragraphs of the original complaint, including paragraphs 11, 34, 36, 43 and 44. The -- I find the argument

that the allegations there were made only on behalf of Ms. Williams personally and not on behalf of the class to be frivolous. The entire complaint is presented as a complaint for collective action and class action. The entire complaint is brought on behalf of not only Ms. Williams but others similarly situated. Paragraph 11 speaks of financial analysis -- or analysts in general not being paid for overtime.

Paragraphs 36, 43, 44 are in Count Four which is brought expressly on behalf of Williams and all others similarly situated. That argument is predicated on a single sentence that perhaps is not as artfully stated or doesn't include the boilerplate that appears 100 other times throughout the complaint in virtually -- on virtually every page that the claims are being asserted on behalf of Ms. Williams and others similarly situated. And frankly the resort to that argument suggests nothing more than the paucity of other arguments to focus on.

Beyond what's in the original complaint, the docket expressly reflects both a consideration of the overtime claims and the fact that active settlement negotiations were occurring over the course of several years. And beyond that, whether or not the claim was set forth expressly or in great detail, as I have already mentioned, plaintiffs' counsel it's undisputed advised the objectors' counsel in no uncertain

terms as far back as the spring of 2015 that overtime claims were being pursued in this case.

Other evidence that the plaintiffs were, in fact, pursuing overtime claims in this case is the fact that they took the action to carve out those claims of the settlement in the settlement of the *Hartley* case in the Eastern District of New York. That settlement agreement included "claims for overtime" -- or carved out "claims for overtime wages during the period of the FA training in which Wells Fargo classified trainees as nonexempt from the FLSA." That is not only evidence that that is what was being pursued in this case by class counsel, but it's also significant evidence of the diligence and the lengths to which class counsel in this case sought to protect the interests of all class members, which, again, further undermines this theory that there was some collusion between the plaintiffs and defense counsel.

The objections make reference to Judge Caproni's ruling that the first filed rule did not apply. That was in the context of considering the arbitration motions that were put before her. It's not clear what materials Judge Caproni actually considered. Footnote 6 of her order does not refer to any of the paragraphs of the original complaint in this case that actually set forth overtime claims. But she clearly did not have the benefit of further information about the claims that was provided to this Court and was provided to

counsel for the -- for the plaintiffs in the -- or claimants in the arbitration case. And in any event, first filed isn't the relevant issue in this case. The question isn't whether the overtime claims were first filed in this case or -- the question is whether they were being pursued. They clearly were being pursued. And they clearly were in the mix when this case was filed.

Relatedly, the issue isn't whether the original complaint in this case adequately pled a FLSA overtime claim. The issue is whether plaintiffs' class counsel was pursuing such a claim. So there's nothing to be inferred from the fact that Wells Fargo did not move to dismiss the conclusory allegations of overtime in the Williams complaint. Why on earth would Wells Fargo litigate a motion to dismiss based on pleading deficiencies, No. 1, that could easily be cured, and No. 2, when they were actively negotiating a settlement? That would have been a complete waste of effort.

It's hardly surprising that after several years of negotiations to settle this case that more meat was put on the bone of the amended complaint. And when you think about it, that actually reflects that the overtime claims didn't spring up with the filing of the amended complaint. That's actually evidence that they had been in play and were subject to part of the ongoing negotiations to settle the case. It shows that a motion to dismiss the original complaint also would have

been a pointless exercise.

The arguments about that also ignore the fact that there was a tolling agreement in effect in which the plaintiffs expressly agreed not to amend the complaint while the settlement negotiations and the tolling agreement were in effect.

Wells -- you know, part of this big argument about collusion here is the fact that Wells Fargo -- as set forth as an agreement by Wells Fargo to settle two extra years' worth of claims, the premise being that the statute of limitations on the New York claims would have run, so Wells Fargo didn't have to agree to include New York claims back to 2009; those claims should have been caught off at 2011, and, therefore, we can infer that the class definition expanded without additional consideration? No. There was a tolling agreement, so that entire premise is wrong. The statute of limitations on the New York claims did not run. That tolling agreement was executed in November of 2014 which would allow the claims to extend back under the five-year New York statute.

As I've already mentioned, the plaintiffs specifically agreed not -- or the plaintiffs specifically agreed not to amend the complaint during the pendency of that tolling agreement. The parties also agreed to stay the appeal of the denial of the motion to compel the Williams -- Ms. Williams to arbitrate as part of that tolling agreement.

So there is -- I see no basis whatsoever for the argument that Wells Fargo -- that, you know, this is evidence of some degree of collusion between the parties.

Similarly, Wells Fargo didn't move to compel arbitration in that case. As I've just mentioned, that is because -- well, No. 1, Wells Fargo moved to compel Williams to arbitrate in the *Slaughter* case, and Judge Leinenweber denied that motion. That ruling by Judge Leinenweber was appealed, but that appeal was stayed pending the settlement discussions, and, again, as part of the tolling agreement. And, you know, if the argument is being premised that I would have moved forward on a motion to compel Ms. Williams to arbitrate after Judge Leinenweber denied an identical motion and the case was on appeal, and the appeal had been stayed pending settlement discussions, you are sadly mistaken.

I guess the last point I'll make with respect to this is the objectors' motion acknowledges that this particular settlement -- "This particular settlement was the subject of extended negotiations before a reputable mediator." That acknowledgement is fundamentally inconsistent with the premise that these negotiations were somehow collusive or somehow reflect some procedural irregularities that undermine the integrity of the arm's length nature of these negotiations.

With respect to the objections under -- that fall under the heading that the settlement was not fair, adequate

and reasonable, I'll note the following: The first argument baffles me. The argument is made that the settlement is not fair, adequate and reasonable because it includes injunctive relief that's not permitted under FLSA. Again, the fact that this is the lead argument for the unfairness of the settlement agreement doesn't say much for the other arguments that are advanced. This suggests to me that there is an effort here to throw anything and everything against the wall and see what might stick.

The simple response to this is this benefits the plaintiffs, so why on earth would somebody be arguing or objecting on that basis? There are state law claims that specifically allow equitable relief. The limitation in FLSA is for the protection of defendants, so, again, why would anyone in the plaintiff class be objecting if there is declaratory or injunctive relief being provided? There's nothing in FLSA in any event that says a defendant cannot agree to or adopt -- to adopt or abandon a particular policy as part of a settlement, and FLSA in any event permits declaratory relief if not injunctive relief. That argument is an utter makeweight.

The argument that settling training costs claims would be a taxable event, again, is an example of the objectors trying to throw anything that might stick up against the wall. I'll start with the premise that there's no -- you

know, you said the parties have not definitively taken a position as to the taxable nature of the debt forgiveness as it's characterized, nor have the objectors as the first point. But beyond that, as I've already noted, Wells Fargo does take a definitive position that discharge of a nonlending amount is not a taxable event, and, therefore, they have no obligation and no intention of issuing 1099s, and it is exceedingly unlikely, therefore, that anyone would ever be subject to taxation on this.

Beyond that -- so I put this in the category of unwarranted speculation. There's no guarantees in life about many things. But there is no basis and no reasonable basis that's been identified here to include warnings about highly farfetched scenarios in the class notice. That's not going to help class members. That's going to confuse class members given the absolute minimal likelihood that any issue like this would ever arise.

I guess the last point I'll make on this is this is also like saying "I don't want to make more money because I might get taxed on it." And I'm not using this as a term of art. The debt forgiveness, or whatever you want to call it, the elimination of the potential liability for training costs is a substantial, real and concrete benefit of this settlement agreement to the members of the class, and it is real. It is concrete. And if the settlement is approved, the class

members will get that benefit. Weighed against that absolute -- and a benefit that is worth for many of them in excess of $50,000. Against that very real concrete benefit, the speculative nature of the idea that somebody might get taxed based on that benefit, the real nature of that benefit substantially outweighs the need or the idea that the class needs to be confused or told to go investigate the possibility that this might be a taxable event.

And the third point under this heading that was raised was the lack of information about value of the settlement of the overtime claims in particular. There's no requirement identified in the objection, no authority identified in the objection, and the Court is not aware of any authority that requires notice or settlement agreement to parse out the value of different claims that are subject to the settlement. And in this case, it's not practical to do so in any event as to the overtime claims because of the -- what both sides have acknowledged are difficulties in recordkeeping and understanding exactly how much overtime any individual may be due.

It is, however, with respect to this, fair to say that the bulk of the settlement fund that is being created by this settlement is going to the overtime claims and therefore does define the value of those claims. That's because the size of the check that any class member receives, the overtime

benefit is the cancellation of the potential liability for the overtime training costs -- or not overtime training costs -- training costs and the availability of the training cost fund to reimburse class members who may have actually had to pay out of -- or reimburse out-of-pocket training costs. So the -- most of the settlement fund is therefore predicated on the value of the overtime claims.

The size of the check is a function of the number of weeks worked without overtime compensation. Thus, the value of the overtime claims is 3.5 million less the 300,000 for the training cost fund, less the 50,000 for service awards, less 875,000 for attorneys' fees. That takes you to 2.275 million divided by 2,263 class members, subtracting the 16 undeliverable class notices, comes out to the $1,005 per class member recovery that is reflected in the parties' briefs as the likely average benefit on a pro rata case. Obviously each class member is not going to get 1,005 because this is not a pro rata distribution, but it is an allocation weighted to try to give more compensation to those who have not already received overtime compensation from Wells Fargo. So there is adequate information about the value of the settlement of the overtime claims notwithstanding the objection.

To the extent this objection is predicated on saying that the parties have failed to quantify the maximum recoverable damages, as the Seventh Circuit has acknowledged,

unquestionably that is a relevant factor. But in cases where there is not -- and for the reasons I went through at length, there is not here any reason to question the integrity of the settlement process, it's not a requirement that there be set forth what the, you know, maximum value of the damage claims in a particular case may be. It's particularly difficult to determine a max value here because of what everybody has recognized is the great variability in potential individual damage claims and the lack of information about those damage claims due to inadequate availability of records. You know, how can a max potential recovery be estimated at this stage? Without information specific to literally every member of the class, it would be difficult to say what you would be able to achieve if this case were to go to trial and the plaintiffs were to prevail on liability and then some form of damage trial or model had to be done because you would have to have -- there is no uniformity to say that, you know, one particular plaintiff is representative of the overtime of others or that sort of thing. You really would have to consider -- to know what the max recovery is, you would have to have information about every member of the class.

I will also note with respect to information about the overall value of the settlement is it is not insignificant here that the value of the -- Wells Fargo's agreement to abandon efforts to collect on training costs is substantial

and is documented by the work of Mr. Vekker, an expert that was retained by the plaintiffs to assess the valuation of the abandonment of efforts to collect training costs for members of the class. That estimate was, again, based on some assumptions, but these estimates are always based on assumptions. They have not been questioned by the objectors. The value simply at that part of the settlement as estimated by Mr. Vekker was estimated between 38 and $76 million. Again, you can't prorate that. That would depend on how long analysts had worked and that sort of thing, but it would be up to $55,000 or more for certain individuals, and in that regard, that's not an unrealistic figure. The presentation by I believe it was the plaintiffs' brief, it could have been in the defendant's brief, is that Wells Fargo won a FINRA arbitration and was able to actually collect, receive an order collecting training costs from a Wells Fargo analyst, and that award was $37,500. So this is not an imaginary recovery on behalf of the class here with respect to these -- you know, the disappearance of the training costs thing. That is a very real and tangible benefit to the class members.

With respect to the objections as to notice, the principal objection there is the failure to -- is that the notice should have included notice to the claimants of their individual share of the settlement. Again, there's no requirement to do that, and it's not practical to do in this

case where there is going to be a proportional allocation rather than a flat reimbursement. That can't -- an individual's particular share can't be calculated in advance because it depends on the number of claims submitted and the determination of the data, but it assures those who worked the most weeks without receiving overtime pay receive more of the fund. And that allocation mechanism is set forth in the notice.

I think it's also worth noting that they will -- the members of the class will also have checks before they have to decide whether to opt into the FLSA collective. That's not perfect because they will have at that point foregone the opportunity to opt out. I understand that, and that has ramifications for the availability of their class claims. But it is nevertheless not inconsequential to note that the members of -- the potential members of the collective haven't been determined yet and won't be determined until they cash that check. So anyone who is dissatisfied with the amount of that check is told in no uncertain terms, don't cash it, and you will preserve your right to assert your FLSA overtime claim individually or in whatever manner may be available.

With respect to the argument that it doesn't notify them of their rights or doesn't notify them about the pending New York arbitrations, I addressed and rejected that argument in detail when it was raised in the context of the

intervention motion. I'm not going to repeat everything I said about that at that time. I will, however, say the newly proposed language that was included in the objections does not, in my view, promote clarity. It promotes confusion, and it promotes confusion because it says nothing about these other arbitration cases, where they are, what the likelihood is that they will proceed in arbitration, what the status of those cases are. It gives -- provides no basis to get information about -- or provides no information about, you know, the relative likelihood of recovery in that case versus this case. The only information it provides to give the proposed members of the class any real significant information about those arbitrations is the phone number of the objectors' counsel. And I don't believe that that is necessary in this case or warranted by any questions about the integrity of the process by which the settlement in this case was reached.

So the bottom line regarding the objections is that the process that gave rise to the settlement does not give rise to an inference that there was any procedural irregularity or collusion between the parties that creates any reason to view this settlement as anything more than a hard-driven bargain between parties who were negotiating at arm's length.

And with respect to the objections implicating the fairness of the settlement, I overrule those objections. This

is a real and *bona fide* recovery for the class as it is defined in the settlement agreement. And, of course, any collective or class member has had the opportunity to opt out. Very few have chosen to do so. And that fact, as I will discuss in a moment, is strongly suggestive that the collective and class members support this settlement agreement. So for all of those reasons, I am overruling the objections by the objectors.

So I will then briefly, because this is also set out in what I will enter as the order granting final approval of the settlement agreement, but I won't bury the headline. I will approve this settlement as fair and reasonable settlement of these claims in this case.

The primary factors that should be considered in assessing the reasonableness of a settlement are set forth in *Wong v. Accretive Health*, 773 F.3d 859. It's a case from the Seventh Circuit in 2014. I start with the strength of the case for the plaintiffs on the merits balanced against the extent of the settlement offer. I've already discussed the challenges of proving a maximum value for the overtime claims due to the lack of available records and the variability of the experiences of various class members. So that -- to come up with a maximum value of the settlement agreement in this case would be a very difficult task and doing so would require the expenditure of substantial additional resources which

ultimately I firmly believe would only have the effect of reducing the recovery for the class members because it might prompt substantial additional expenditure of effort by class counsel that would ultimately appropriately be compensated. And additional compensation to class counsel would reduce, in fact, the value of the settlement fund to the class members.

With respect to the risks of further litigation posed here, they are substantial. There are arbitration issues that remain open both -- you know, and the New York arbitrations are further evidence that this is a difficult and complex issue. The New York court went one way with respect to compelling arbitration. Judge Leinenweber went another way. Both rulings are on appeal at this point in time, though the ruling in this case, as I've indicated, was stayed, given the settlement negotiations.

Beyond the arbitration issues, there are very real class certification issues in this case. As the plaintiffs noted, Wells Fargo has recently successfully challenged nationwide collective certification in other cases, not factually identical with this case but involving their financial advisors and claims that they were misclassified; I assume misclassified as exempt as opposed to nonexempt was the argument in those cases. So there's no certainty that the plaintiffs would be able to prevail on class certification. And given Wells Fargo's success in the past, even if they did,

there is a substantial possibility that that class certification or collective certification might be appealed, though there are also procedural issues there as to whether you can get an interlocutory appeal on a collective issue as opposed to a class issue. That just demonstrates further the complexity and uncertainty that would attend those questions.

If we got by all of that, there would almost certainly be dispositive motions filed in this case that could go against the plaintiffs.

If they survive dispositive motions, there would, of course, then be a trial that would undoubtedly focus first on liability.

Then there would have to be some mechanism determined as to how to assess damage claims. And, again, that would be a very difficult process given the vari- -- the potential variability in individual damage claims. And, of course, after all that, there would be the possibility of further appeal of the substantive outcome of the case. All of those steps pose significant risks to the plaintiff class in this litigation.

While we don't know the maximum value of the potential claims to be asserted in this case, we do know that they are -- it is substantial because the value includes the surrender of the training claims, and for that, we can put a value of between 38 and $76,000,000.

The estimated recovery here of -- on a pro rata basis, roughly a thousand dollars per collective class member, moreover, is comparable to recoveries that have been made in other similar, not identical, proceedings involving overtime claims. The *Koszyk* case that is referenced in the briefs resulted in a $2.8 million overtime settlement for 2,000 trainees. The *Blum v. Merrill Lynch* settlement, after subtracting class attorneys' fees, was about a $10 million settlement fund for 9500 trainees; comes out, again, roughly to about a thousand dollars per trainee. Those comparable settlements provide further evidence of the reasonableness of the settlement in this case.

But that's not the only -- those were just cases settling overtime claims. Here there is 38 to $76 million worth of settlement value in the training cost claims. On top of that, there is a $300,000 training cost fund that's available to reimburse class members who had their -- who actually had to pay out of pocket reimbursement of training costs for funds.

And there is no reverter of any unclaimed amounts. Those will go to increase the training fund. To the extent there are any, they will not go back to the defendant.

And not only has the defendant agreed to not pursue training cost funds against any members of the class, they have agreed not to do so perspectively for another four years;

and that is further evidence that this is a very substantial recovery on behalf of the class. And in terms of the value of that recovery, I have absolutely no question that it is a fair and reasonable and attractive recovery for the members of the class.

Balanced against all that, we also consider as a second factor the complexity, length and expense of further litigation. I've already sort of touched on some of those points already. Obviously the complexity of this matter is significant and substantial. There has been a great deal of informal discovery done, but formal discovery in this case hasn't even started. While the plaintiffs have done interviews with various class members, there have been no depositions done, for example, so the discovery process in this case would likely be very substantial, time consuming and expensive. Both sides will doubtless -- will have expert motions both with respect to liability and damages, particularly with respect to damages. Litigating those motions and paying those experts will obviously increase the cost and length and complexity of this litigation.

And as I mentioned, we will inevitably have the standard trifecta of summary judgment motions; depending on the outcome of those, trial; depending on the outcome of trial -- or probably the only thing that would depend on the outcome of the trial would be which side was appealing in all

likelihood. That process promises to extend for years. We are approaching the end of 2017. This case was filed in 2014, and it's taken the better part of several years to get the case settled. It would take easily the better part of several more years to get the case to a posture for -- that the merits of the case could be addressed by the Court or a jury.

Third factor, the amount of opposition to the settlement, there is very little opposition to the settlement. There are four objectors and four opt-outs. Out of a potential class of 2279 minus the 16, so 2263, that comes out to .35 of 1 percent. Three and a half tenths of one percent of the class has opted out or objected.

I'll note as well that half the named plaintiffs -- claimants in the arbitration, there is a total of six claimants in the two New York arbitrations. Half of them have abandoned the arbitration. So there has been very little opposition to the settlement agreement.

And the related factor, the fourth factor, is the reaction of members of the class to the settlement. As reflected in the plaintiffs' submission and Ms. Bish's affidavit, some 75 plus class members have contacted class counsel with positive comments. That's a marked contrast to the four objections that have been filed. More than a hundred training cost claim forms have been filed. So there is clearly widespread support for this settlement agreement among

members of the class.

The next factor considers the opinion of competent counsel. I've already addressed my view of the competence and integrity of plaintiffs' counsel. They are highly experienced and highly regarded in this sort of litigation. And their view that this is a fair and reasonable settlement for the class is -- carries significant weight.

Beyond that, the fact that three different mediators have been involved in the negotiations further underscores both the integrity of the process and the fact that this is the product of lengthy, complex, arm's length negotiations, but it is also evidence that this is a fair and reasonable resolution of the case and one that likely reflects either an equal degree of satisfaction on both sides or an equal degree of dissatisfaction on both sides which, as the saying goes, is the sign of a good settlement.

And, finally, the stage of proceedings and the amount of discovery completed, that's really covered in what I've already said. We are, notwithstanding the fact that this case is in its fourth year, at an early stage of this process were this case to have to be actually litigated rather than settled. And the amount of discovery completed, while the work has been substantial, would doubtless be much more substantial if formal discovery necessary to assert or defend against summary judgment claims and to prepare for trial had

to be pursued.

So all of those factors, in the Court's view, support a finding that this is a fair and reasonable settlement that well serves the interests of the members of this class. And, again, I'm using the term "class" to include both the collective and the members of the state law classes.

That brings me to the motion for service awards and attorneys' fees and costs. The service awards, there's been no objection to the service awards. What's proposed is four awards to each of the plaintiffs in the amount of $12,500 each. I agree that those awards are justified by the significant assistance that the plaintiffs have provided as documented in the motion and the supporting affidavits, particularly Ms. Bish's affidavit.

The award is also -- and it's a very good point that the award is also warranted by the fact that in -- this is not a costless exercise for plaintiffs asserting claims against employers. That has the potential to come back and bite them during the rest of their working career if an employer took umbrage or was reluctant to hire someone who -- on the basis that they had sued their former employer. And that's a very real risk, and that should be acknowledged.

Additionally, the results achieved here to which these plaintiffs contributed substantially, as I -- for the reasons I've already indicated are very substantial, real

results. They include systemic change. They include substantial relief from the prospect of having to reimburse training costs, and they include real and significant cash recoveries for members of the class.

In addition, the named plaintiffs have granted broader releases than other class members. That is another factor that warrants recognition with a service award.

And, finally, I will note that the amounts of these awards are relatively modest and certainly in line with the amounts awarded to plaintiffs in other similar cases. So for that reason, I'll grant the motion with respect to the service awards.

Finally, with respect to the motion for attorneys' fees, I find -- that motion will be granted. The attorneys' fees sought in this case are reasonable for reasons that I have already mentioned and for others that I will go through here.

As noted, the settlement agreement authorizes a request for fees up to 33 and a third percent which reflects the standard typical contingency fee sought in these kinds of cases. But despite that, class counsel here is only seeking a recovery of 25 percent of the settlement fund. That is less than their lodestar. And I will say with respect to the lodestar, I find that the rates that -- on which the lodestar calculation are based are reasonable for this marketplace as

the supporting materials submitted suggest and based on the Court's own familiarity with rates charged in this market and also based on the Court's familiarity and high regard for the quality of the work of plaintiffs' counsel.

This -- it's also noteworthy with respect to this request that these are sophisticated plaintiffs. These are financial analysts who have received very valuable training from Wells Fargo and doubtless other places in the course of their education and career. And the fact that sophisticated plaintiffs have agreed to and agree that compensation at this level is appropriate is also something that bears consideration.

Further, the results, as I've already noted, warrant an award of attorneys' fees in this case for the reasons I've already indicated.

Similarly, the risks that counsel took on in trying this case on a -- or asserting this case on a contingency basis have been substantial. And, again, this is a 2014 case. At the end of 2017, we're just getting to the point of settlement. There has been a huge investment made by plaintiffs' counsel in this case and a huge investment that is -- has been made with a substantial risk that it would not achieve a return.

Moreover, on top all of that, the plaintiffs' counsel work is not yet done, and they will receive no further

compensation for the work that -- for the further work that they have to do in administering the settlement and ensuring that the interests of the class are protected throughout the course of the administrative process of the distribution of the settlement fund.

And last but certainly not least, there's been no objection to the award of fees to class counsel.

I think I have covered everything that I am required to cover or that I believe is necessary or appropriate to cover. Is there anything else that either of the parties believes that I should address on the record with respect to approval of the settlement?

MS. BISH: No, Your Honor.

THE COURT: Mr. Turnbull?

MR. TURNBULL: No, Your Honor. Thank you.

THE COURT: All right. Then the motion for final approval of the settlement agreement in this case is granted. And I will issue a final approval order and judgment in the case later today, and this case will be terminated. The Court will, however, of course, maintain jurisdiction to enforce the terms of the settlement agreement which are expressly included and will be expressly included as terms of the final judgment that the Court enters.

With that, I think we are adjourned.

MS. BISH: Thank you, Your Honor.

MR. TURNBULL: Thank you, Your Honor.

MR. WOOD: Thank you, Your Honor.

(Which were all the proceedings heard.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Kelly M. Fitzgerald *January 8, 2018*

Kelly M. Fitzgerald
Official Court Reporter

Date