IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00185-REB-MJW

JACK WELLER,
GLADYS WOODEN, and
MATT WOODEN individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HSBC MORTGAGES SERVICES, INC.,
ASSURANT, INC.,
AMERICAN SECURITY INSURANCE
COMPANY, and JOHN DOES 1-10,

Defendants.

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PRELIMINARILY CERTIFYING A CLASS FOR SETTLEMENT PURPOSES, APPROVING FORM AND MANNER OF CLASS NOTICE, AND SETTING DATE FOR HEARING ON FINAL APPROVAL AND MEMORANDUM IN SUPPORT THEREOF

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Named Plaintiffs Gladys Wooden and Matt Wooden (the "*Weller* Plaintiffs"), together with James Hoover, Kimberly Hoover and David Mincel (the "*Hoover* Plaintiffs") (collectively, "Plaintiffs"),[1] by their undersigned Counsel, respectfully move this Court for an Order (1) granting preliminary approval to the proposed Class Action Settlement Agreement ("Settlement" or "Settlement Agreement");[2] (2) certifying the Settlement Class[3]; (3) approving the form and manner of the Class Notice to the proposed Settlement Class; and (4) scheduling a Fairness Hearing. Plaintiffs also submit this Memorandum in support of their Motion.

I. Introduction

The proposed Settlement, establishing a common fund of $1,800,000.00, provides substantial monetary benefits to members of the Settlement Class and resolves all claims asserted by Plaintiffs. In addition to the monetary recovery, the Settlement provides significant prospective relief to borrowers with lender placed flood insurance ("LPFI"), prohibiting the practices that gave rise to Plaintiffs' claims. In particular, the HSBC Defendants may not accept any financial benefits from placing LPFI Policies beyond the protection afforded by the LPFI Policies on properties serving as collateral, and further requires, in order to avoid over-insuring properties (at the expense of borrowers), that if HSBC places insurance on a borrower's property the LPFI

[1] Pursuant to Paragraph 1.7 of the Settlement Agreement, attached to the Declaration of Peter A. Muhic ("Muhic Decl.") as Exhibit A, the Settlement is conditioned on the *Weller* Plaintiffs filing a motion for leave to amend the complaint to include additional affiliates of defendants HSBC Mortgage Services, Inc., Assurant, Inc., and American Security Insurance Company. The Amended Complaint will also include the *Hoover* Plaintiffs as additional named plaintiffs.

[2] All capitalized terms not defined herein are defined in the Settlement Agreement.

[3] Per the terms of the Settlement Agreement, such certification is for settlement purposes only.

shall be maintained in the last known coverage amount under the borrower's voluntary flood insurance policy or at the then-unpaid principal balance of the loan.

The proposed Settlement returns approximately 90% of the commissions that were paid to the HSBC Defendants in connection with LPFI placed during the Class Period, provides an excellent recovery for Settlement Class members, and is plainly adequate under the governing standards for evaluating class action settlements in this Circuit. *See Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984) (citing *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610 (D. Colo. 1976)). As further set forth below, certification of the Settlement Class is appropriate pursuant to FED. R. CIV. P. 23; the Settlement is fair, reasonable and adequate, and merits preliminary approval so the proposed Notice of Settlement ("Class Notice") can be distributed to the Class.

II. Factual and Procedural Background

A. Description of Litigation

The *Weller* Action was filed on January 25, 2013, alleging that Defendants improperly benefited from the procurement and issuance of LPFI and asserting claims on behalf of a nationwide class and state subclasses for: (1) breach of contract, including the implied covenant of good faith and fair dealing; (2) violation of section 1962(c) of the Racketeer Influenced and Corrupt Organizations Act, 28 U.S.C. §§ 1961 *et seq.* ("RICO"); (3) violation of section 1962(d) of RICO ("RICO Conspiracy"); (4) breach of fiduciary duty; (5) declaratory and injunctive relief; (6) violation of section 1607 of Truth in Lending Act, 15 U.S.C. § 1601, *et seq.* ("TILA"); and (7) violation of Colorado's Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq*. The parties in the *Weller* Action fully briefed Defendants' Motions to Dismiss (ECF Nos. 31, 33), Defendants' Motions to Compel Arbitration (ECF Nos. 53 and 60), Assurant Defendants'

Motion for Order to Certify Determinative Question of Virginia Law (ECF No. 61), and Assurant Defendants' Motion to Dismiss Nationwide Class Allegations in Connection With Counts II and VI (ECF No. 99).[4]

The parties have engaged in pertinent discovery, including Defendants' production of several thousand pages of documents and three witnesses for deposition. In January 2014, the parties moved to stay the action pending settlement discussions, and have been submitting status reports to the Court periodically to inform the Court of the progression of the discussions. In March 2014, in light of the parties' continued negotiations, the Court entered an Order denying the pending motions before it (including the Motions to Dismiss, Motion to Certify Determinative Question of Virginia Law, and Assurant Defendants' Motion to Dismiss Nationwide Class Allegations in Connection With Counts II and VI) without prejudice. ECF No. 121.

On February 8, 2013, just two weeks after the *Weller* Plaintiffs commenced this action, the *Hoover* Plaintiffs filed a complaint in the Northern District of New York asserting similar claims against HSBC Mortgage Corporation (USA), HSBC Bank USA, N.A., Assurant, Inc. and American Security Insurance Company concerning Defendants' LPFI practices. The parties in the *Hoover* Action briefed Defendants' Motions to Dismiss, which the Court denied in part on March 27, 2014. *See Hoover v. HSBC Mortg. Corp. (USA)*, 9 F. Supp. 3d 223 (N.D.N.Y. 2014). The parties also fully briefed Assurant Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction the Nationwide Class Allegations (ECF No. 62). On January 15, 2014, the parties entered

[4] The Court granted Defendants' Motions to Compel Arbitration with regard to Plaintiff Jackson Weller's claims on September 11, 2013 (ECF No. 87). Subsequently, Jackson Weller settled individually with Defendants and is not a party to this Settlement.

into a Stipulation and Order Staying the Case pending settlement discussions. ECF No. 73. On April 16, 2014, the *Hoover* Plaintiffs filed an Amended Complaint, which Assurant Defendants moved to dismiss on May 7, 2014 (ECF Nos. 102 and 103), and the HSBC Defendants Answered (ECF No. 106). In July 2014, the Court stayed the *Hoover* Action, requesting a status report from the parties every 90 days thereafter to follow. ECF No. 119.

B. Investigation of Claims and Plaintiffs' Complaints

Plaintiffs' Counsel have extensively investigated the HSBC Defendants' LPFI practices, reviewing and analyzing thousands of pages of documents and aggregated LPFI data produced in this litigation along with voluminous public disclosures. In addition to written discovery, Lead Counsel took the depositions of Assurant Defendants' 30(b)(6) witnesses, Ronald Wilson and Hiram Machado, and also deposed Ronny B. Lancaster, a Senior Vice-President of Assurant, Inc. *See* Muhic Decl., at ¶ 3.

Plaintiffs' Counsel's investigation revealed that, unlike lender placed hazard insurance ("LPHI"), the Assurant Defendants did not enter into reinsurance arrangements with the HSBC Defendants, or their affiliates, for LPFI.[5] The Assurant Defendants did, however, pay a 10% commission to the HSBC Defendants for LPFI policies placed on borrowers' properties. Defendants contend that the commissions

[5] The HSBC Defendants and Assurant Defendants entered into a separate settlement concerning LPHI policies in connection with an action pending in the Southern District of Florida captioned *Diaz v. HSBC Bank USA, N.A.*, Case No. 2:13-cv-21104 (S.D. Fla.). Under the settlement in *Diaz*, borrowers who paid for all or a portion of the LPHI charges, and who submit a timely, valid and verified claim form, will receive a check in the amount of 13% of the LPHI charges. *Diaz*, ECF No. 101-1. Borrowers who were charged, but did not pay the LPHI charges, and who submit a timely, valid and verified claim form will receive 6% of the LPHI charges via check or escrow credit. *Id.* Final Approval of the *Diaz* settlement was entered on October 29, 2014. *Diaz*, ECF No. 182.

were legitimate; whereas, Plaintiffs argue that the commissions were unearned. The non-reversionary settlement fund of $1.8 million is approximately 90% of the commissions (and equates to 9% of the net written LPFI premiums) paid to the HSBC Defendants by the Assurant Defendants during the Class Period.

C. Settlement Negotiations and Reasons for the Settlement

Plaintiffs have entered into this proposed Settlement with an understanding of the strengths and weaknesses of their claims. This understanding is based on, *inter alia*: (1) the investigation relating to the events and transactions underlying Plaintiffs' claims; (2) discovery, consisting of the review and analysis of thousands of pages of documents produced by Defendants and depositions taken in this action related to LPFI; (3) the review and analysis of other publicly available information concerning Defendants, including news articles and regulatory investigations; (4) relevant case law; and (5) protracted settlement negotiations.

On January 15, 2014, this Court entered a stay in light of the Parties' planned mediation before Hon. Layn R. Phillips in February 2014. (ECF No. 112). The February 2014 mediation did not result in a settlement; however, the Parties continued their settlement discussions. Counsel for the *Weller* Plaintiffs, *Hoover* Plaintiffs and the HSBC Defendants met for a second formal mediation session on December 11, 2014, this time before mediator Jonathan Marks of MarksADR, LLC. As a result of the December 2014 mediation, Plaintiffs and Defendants reached a settlement in principle, subject to negotiation and execution of the attached Settlement Agreement and subject to preliminary and final approval by the Court, as required by Federal Rule of Civil Procedure 23.

Plaintiffs have carefully evaluated significant issues of law and fact which could affect any recovery by the Class; and when considering the range of possible recovery and risks associated therewith, believe this is a fair, reasonable and appropriate settlement.

III. Settlement Terms

A. Settlement Class

The Settlement Class is defined as:

> All borrowers in the United States who, during the period January 1, 2007 through the Preliminary Approval Date, were charged by the HSBC Defendants and/or their respective subsidiaries and affiliates and/or persons acting for or on their behalf, as insured or additional insureds for a lender-placed food insurance policy.

See Muhic Decl. at Exhibit A, ¶ 2.33. Based on the class member data provided by Defendants, there are approximately 11,000 Settlement Class members.

B. Monetary Relief

The Settlement provides for a non-reversionary Settlement Fund of $1,800,000.00. *See* Muhic Decl. at Exhibit A, ¶ 4.1. The Settlement Fund will be used to provide monetary relief to the Settlement Class members in accordance with the terms of the Settlement Agreement, after deducting any amounts approved by the Court for (a) any service awards or other additional payments to the *Weller* Plaintiffs and *Hoover* Plaintiffs; (b) Class Counsel attorneys' fees and expenses; and (c) the Settlement Administrator's fees and expenses. *Id.* The net proceeds after these deductions will be distributed *pro rata* based on each Settlement Class Member's respective payment. *Id.* at ¶ 7. The payments under the Settlement to those who are entitled to an allocation from the Net Settlement Fund will be paid by check. *Id.*

If, following the initial distribution, the amount of money remaining in the Net Settlement Fund (net of redistribution costs and expenses) exceeds five percent (5%) of the original Net Settlement Fund, there shall be a second distribution on a pro rata basis. *Id.* ¶ 7.8. All unclaimed monies after the second distribution, or if there is less than 5% of the settlement fund remaining after the initial distribution, shall be paid on a *cy pres* basis to Habitat for Humanity, a non-profit organization that assists consumers with flood-related issues, or another suitable alternative *cy pres* recipient that is approved by the Court. *Id.* at ¶ 7.9. No unclaimed funds will revert to Defendants. *Id.*

C. Prospective Relief

In addition to the foregoing monetary relief, Defendants have agreed to significant prospective relief.

The HSBC Defendants have agreed that they will not accept any financial interest in the placement of LPFI Policies other than the protection afforded by the LPFI Policies on properties serving as collateral. *Id.* at ¶ 4.2. To that effect, the HSBC Defendants will not: (a) accept commissions on LPFI; (b) enter into quota-share reinsurance arrangements on new or renewal LPFI Policies; (c) accept payments from any LPFI insurer or vendor for administrative or other services associated with an LPFI Policy or other LPFI-related services; (d) accept below-cost or free outsourced services provided by an LPFI insurer or vendor; and (e) place LPFI through an LPFI insurer or vendor affiliated with the HSBC Defendants. *Id.* Additionally, the Settlement provides that if HSBC elects to place insurance on a borrower's property, unless otherwise required by law or contract, LPFI shall be established at the last known coverage

amount under the borrower's voluntary flood insurance policy or at the then-unpaid principal balance of the loan. *Id.*

The Assurant Defendants similarly agree that they will not enter into: (a) LPFI commission agreements with the HSBC Defendants; (b) LPFI quota-share reinsurance arrangements with the HSBC Defendants; (c) agreements to pay administrative or other services associated with LPFI Policies or other LPFI-related services. *Id.* at ¶ 4.3 The Settlement Agreement also provides that to the extent the Assurant Defendants provide outsourced services to the HSBC Defendants in connection with LPFI, the Assurant Defendants shall not provide these services for free or below cost. *Id.*

D. Release of Claims

In exchange for the relief provided by the Settlement, Settlement Class members who do not timely exclude themselves from the Settlement by opting out will release all force-placed flood insurance related claims that were asserted or could have been asserted against Defendants regarding LPFI as set forth in the Agreement. *Id.* at ¶ 9. The release includes Defendants' employees, agents, affiliates, predecessors, parents, and subsidiaries. *Id.* The proposed Class Notice to be provided to Settlement Class members includes notice of the release of claims by Settlement Class members. Exhibit 2 to Settlement Agreement.

E. Preliminary Injunction

Additionally, to effectuate an orderly and efficient settlement process, Plaintiffs further request that, as part of the Preliminary Approval Order, the *Weller* Action continue to be stayed, except as may be necessary to implement the Settlement, and that the Preliminary Approval Order preliminarily enjoin Plaintiffs, all Settlement Class

members and any person or entity allegedly acting on behalf of any Settlement Class member, either directly, representatively or in any other capacity, from: (i) commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims; or (ii) organizing any Settlement Class members into a separate class for purposes of pursuing as a purported class action any action or proceeding in any court or tribunal, including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

IV. Proposed Schedule

The proposed Preliminary Approval Order includes a blank date for the date of the Fairness Hearing that must be completed by the Court to properly effectuate the Settlement. In this regard, the Parties have consented to the following schedule:

Event	**Time for Compliance**
Deadline for Mailing of Class Notice to members of the Settlement Class (the "Notice Date")	Within 60 days after Preliminary Approval Order
Deadline for establishing Website	Notice Date
Deadline for Publishing Class Notice	Within 7 days of Notice Date
Filing of Motion in Support of Settlement and Motion for Counsel Fees, Reimbursement of Expenses and an Award of Attorneys' Fees	30 days before Objection Deadline Hearing
Deadline for Filing of Objections/Opt-Outs	30 days before Fairness Hearing
Fairness Hearing Date	As Determined by the Court

The events set forth above are tied to the Fairness Hearing, which the Plaintiffs respectfully request be scheduled for no fewer than one hundred-fifty (150) days after the entry of the Proposed Preliminary Approval Order or later, at the Court's convenience.

V. Argument

A. Plaintiffs' Motion for an Order Preliminarily Approving the Settlement Should Be Granted

Plaintiffs present this Settlement to the Court for its review under FED. R. CIV. P. 23, which provides in pertinent part:

> **(e) Settlement, Voluntary Dismissal, or Compromise.**
>
> (1)(A) The court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.
>
> (B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.
>
> (C) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

Settlements of disputed claims, especially of complex class action litigation, are clearly favored by the Courts. *See Sears v. Atchison, Topeka, & Santa Fe Railway Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984). "Preliminary approval of a proposed settlement is the first of two steps required before a class action may be settled." *In re Motor Fuel Temperature Sales Practices Litig.*, 258 F.R.D. 671, 675 (D. Kan. 2009) (citation omitted).

> At the preliminary approval stage, the Court makes a preliminary evaluation of the fairness of the proposed

> settlement and determines whether it has any reason to not notify the class members of the proposed settlement or to not hold a fairness hearing. The Court will ordinarily grant preliminary approval where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious-deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval. The standards for preliminary approval of a class settlement are not as stringent as those applied for final approval.

Id. at 675-76 (citations and quotation marks omitted).

In determining whether preliminary approval of the Settlement is warranted, the sole issue before the Court is whether the Settlement is within the range of what could be found to be fair, adequate, and reasonable, so that notice should be given to the proposed Settlement Class, and a hearing scheduled to consider final approval of the settlement. "If the Court grants preliminary approval, it directs notice to class members and sets a hearing at which it will make a final determination on the fairness of the class settlement." *Id.* at 675. (citation omitted).

The Tenth Circuit in *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322 (10th Cir. 1984), cited *supra*, identified the following four factors that a district court should consider in determining whether a settlement is fair, reasonable, and adequate:

> (1) whether the proposed settlement was fairly and honestly negotiated;
>
> (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
>
> (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
>
> (4) the judgment of the parties that the settlement is fair and reasonable.

Id. at 324.[6] Also, in addition to the judgment of the parties, the opinion of experienced counsel supporting the settlement is entitled to considerable weight in the Court's evaluation of the settlement. *See Marcus v. State of Kansas.*, 209 F. Supp. 2d 1179, 1182-83 (D. Kan. 2002) (citations omitted).

All the indicia of procedural fairness are present here: the Settlement is the result of extensive arm's-length negotiations over an extended period of time, involving a formal mediation session before a respected mediator; serious legal and factual questions creating significant uncertainty; competent counsel well-versed in complex litigation supporting the settlement; and a substantial and immediate payment to members of the Class instead of the possibility of a smaller recovery or no recovery at all. In addition, the complexity, expense, uncertainty, and likely duration of the litigation also militate in favor of consummating the settlement process. Therefore, Counsel submit that all of the above cited circumstances support preliminary approval of the proposed Settlement.

1. The Proposed Forms of Notice to Class Members Are Adequate

In determining whether to grant preliminary approval, the Court must make the threshold determination of whether adequate notice will be issued to prospective class members. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In order to satisfy due process considerations, notice to Class members 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." *Id*.

[6] *See also Gottlieb v. Wiles*, 11 F.3d 1004, 1014 (10th Cir. 1993) (overruled in part on other grounds); *Rutter & Wilbanks v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002) (*reaffirming* the four-factor test of *Gottlieb*).

Notice should also provide a "very general description[] of the proposed settlement." *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982); *also In re Motor Fuel Temp. Sales Practice Litig.*, No. 07-MD-1840, 2014 WL 5431133, at *5 (D. Kan. Oct. 27, 2014) ("Under Rule 23(e), notice of a settlement must "fairly apprise" class members of the terms of the proposed settlement and their opinions with respect thereto.") (internal citation omitted).

Here, the proposed Publication Notice and Mailed Notice,[7] which will notify Class Members of the proposed settlement, have been agreed to by the Parties. The Class Notices satisfy all due process considerations and meet the requirements of FED. R. CIV. P. 23(e)(1)(B). The Publication Notice will be published by the Settlement Administrator in a national weekday (i.e. Monday-Thursday) edition of USA Today. Ex. A, ¶ 2.27. In addition, the Mailed Notice will be sent by first-class mail to the last known address of the Class Members within 60 days after the entry of the Preliminary Approval Order. Addresses of Class Members are maintained by Defendants, who use this information for, *inter alia*, tracking flood insurance coverage on borrowers' properties, as well as issuing LPFI policies. The proposed forms of notice describe in plain English (i) the terms and operation of the Settlement; (ii) the nature and extent of the release; (iii) the maximum counsel fees and class representative compensation that may be sought; (iv) the procedure and timing for objecting to the settlement; and (v) the date and place of the fairness hearing. Thus, the form of notice and proposed procedures for notice satisfy the requirements of due process and the Court should approve the Notice Plan as adequate. *See* NEWBERG ON CLASS ACTIONS, § 8.34 (4th Ed. 2002). In addition, by

[7] The proposed Publication Notice and Mailed Notice are attached to the Settlement Agreement as Exhibits 1 and 2, respectively.

that same date, the Notices and Settlement Agreement will be published on the dedicated website: www.wellerfloodlpisettlement.com.

2. The Proposed Settlement is Fair, Reasonable and Adequate

In addition to the procedural Notice issues, on a substantive level, the Court must decide whether the proposed settlement itself is "fair, reasonable and adequate." *Gottlieb,* 11 F.3d at 1014 (citing *Jones v. Nuclear Pharmacy, Inc.*, *supra*, 741 F.2d at 324); *see also U.S. v. Colo.*, 937 F.2d 505, 509 (10th Cir. 1991) (the Court is required to "ensure that the agreement is not illegal, a product of collusion, or against public interest."). As noted above, the proposed settlement should be considered presumptively fair if it was the product of informed, arm's length bargaining and negotiated by counsel with experience in the area of law in question. It was, and further, absent evidence to the contrary, the Court should presume that Settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion. *Newberg on Class Actions* § 11.28, at 11-59 (3d ed. 1992) (counsel are "not expected to prove the negative proposition of a non-collusive agreement.").

a) The Proposed Settlement Is the Result of Informed, Arm's-Length Negotiations

The Settlement Agreement is the product of extensive arm's-length negotiations by experienced counsel utilizing an experienced mediator, undertaken in good faith after substantial factual investigation, discovery, and legal analysis. *See Marcus v. State of Kansas*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002) (finding settlement resulting from "arm's-length negotiations" was fair).

Plaintiffs conducted an extensive investigation and evaluation of their claims. Plaintiffs performed substantial legal research in responding to Defendants' Motions to Dismiss, in filing supplemental authority, and in opposing Defendants' Motions to Compel Arbitration and Assurant Defendants' Motion for Order to Certify Determinative Question of Virginia Law. Plaintiffs' factual investigation included depositions and the detailed review of publicly available documents along with voluminous documents and data produced by Defendants. The Parties also engaged in an extensive exchange of information and analysis regarding their respective settlement positions, including information relating to LPFI borrowers and premium amounts during the relevant period.

In addition, the Parties prepared and exchanged detailed mediation memoranda, as well as data requests, and participated in mediation before a neutral mediator. Consequently, Plaintiffs' Counsel were well-informed of all significant legal and factual issues and had a substantial basis to assess the strengths and weaknesses of their claims in order to engage in meaningful settlement negotiations.

b) Plaintiffs' Counsel Is Experienced in Similar Litigation

Courts also recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration. *Gottlieb*, 11 F.3d at 1014 (citing *Malchman v. Davis*, 706 F.2d 426, 433 (2d Cir. 1983)); *see also Lucas v. Kmart Corp.*, 234 F.R.D. 688, 695 (D. Kan. 2006) ("Counsels' judgment as to the fairness of the agreement is entitled to considerable weight.") (internal citation omitted).[8] Here, as demonstrated by their firm resumes filed contemporaneously herewith,

[8] *See also Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) ("The fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight").

Plaintiffs' Counsel, the law firms of Kessler Topaz Meltzer & Check, LLP and Berger & Montague, P.C., are highly qualified, experienced attorneys with broad-based, multi-jurisdictional experience in complex class action litigation, with significant experience and expertise regarding force-placed insurance litigation. The experience of Plaintiffs' Counsel demonstrates that the Class was well-represented at the bargaining table, and further weighs in favor of approval of the Settlement on this case. *See Zapata v. IBP, Inc.*, 167 F.R.D. 147, 161 (D. Kan. 1996) ("In the absence of proof to the contrary, courts presume that class counsel is competent and sufficiently experienced to vigorously prosecute the action on behalf of the class."). Plaintiffs' counsel, after a detailed consideration of the facts, risks and terms of the proposed settlement, recommends this settlement.

c) The Settlement Is Within the Range for Approval and Properly Takes into Account the Potential Risks and Rewards of the Litigation

As previously noted, the Settlement confers substantial benefits on the Class. Plaintiffs' Counsel believe the $1.8 million cash payment is an outstanding result, particularly given the uncertainties of litigation. In addition to the monetary relief, the Settlement also provides for significant prospective relief, including (1) prohibiting the HSBC Defendants from accepting any financial interest in the placement of LPFI Policies other than the protection afforded by the LPFI Policies on properties servicing as collateral; (2) providing that if HSBC elects to place insurance on a borrower's property, LPFI shall be maintained in the last known coverage amount under the borrower's voluntary flood insurance policy or at the then-unpaid principal balance of the loan; (3) prohibiting Assurant Defendants from providing or entering into LPFI commissions or LPFI quota-share reinsurance arrangements with the HSBC

Defendants and prohibits Assurant Defendants from paying the HSBC Defendants for any administrative or other services associated with LPFI policies or other LPFI-related services; and (4) prohibiting Assurant Defendants from providing free or below-cost outsources services to the HSBC Defendants in connection with LPFI, provided that the outsourced services do not include expenses associated with tracking functions that the Assurant Defendants incur for their own benefit.

Prior to entering into the Settlement Agreement, Plaintiffs' Counsel considered the uncertain outcome and the risk of litigation, especially in a complex action such as this one, as well as the difficulties and delays inherent in any such litigation. While Plaintiffs were confident of their ability to obtain certification of nationwide classes, there remained a risk that class certification would be denied, in whole or in part.[9] By settling the case at this juncture, and obtaining Defendants' consent to nationwide settlement class certification, Plaintiffs' Counsel wisely have sought to assure class-wide relief to the broadest possible set of settlement class members.

In addition to the risks associated with class certification, there were risks relating to the underlying legal claims. While Plaintiffs are confident in their theories of recovery, Plaintiffs are equally aware that some appellate courts and district courts have affirmed

[9] While Plaintiffs believe that class certification would have been granted in this case, there exist lender-placed insurance cases in which class certification was denied. *See, e.g., Rapp v. Green Tree Servicing, LLC*, 302 F.R.D. 505 (D. Minn. 2014); *Gooden v. Suntrust Mortg.*, No. 11-cv-2595, 2013 WL 6499250 (E.D. Cal. Dec. 11, 2013); *Gustafson v. BAC Home Loans Servicing, LP*, 294 F.R.D. 529 (C.D. Cal. 2013); *Gordon v. Chase Home Fin., LLC*, No. 11-cv-2001, 2013 WL 436445 (M.D. Fla. Feb. 5, 2013); *and Kunzelmann v. Wells Fargo Bank, N.A*., No. 11-cv-81373, 2013 WL 139913 (S.D. Fla. Jan. 10, 2013).

the dismissal of certain force-placed insurance claims.[10] With that said, LPFI claims against Defendants have survived motions to dismiss. *See Hoover v. HSBC Mortg. Corp. (USA)*, 9 F. Supp. 3d 223 (N.D.N.Y. 2014). Weighing the prospect of securing a guaranteed benefit for the Class against the uncertainty of continued litigation, Plaintiffs' Counsel respectfully submit that the Settlement is a reasonable compromise under the facts and circumstances of this case and falls well within the range for approval.

B. The Proposed Settlement Class Meets the Prerequisites for Class Certification under Rule 23(a)

One of this Court's functions in reviewing a proposed settlement of a class action is to determine whether the action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure. *See Amchem Prods. v. Windsor*, 521 U.S. 591 (1997). Moreover, variations in state laws are "irrelevant to certification of a [nationwide] settlement class" because the settlement eliminates the burden of establishing the elements of liability under disparate laws. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 303 (3d Cir. 2011) (*en banc*). This is borne out by an examination of other force-placed insurance cases in which class settlements have been reached. Although the case law on contested class certification motions for litigation purposes has been mixed*, see supra*, courts have uniformly certified classes for settlement purposes in other force-placed litigation cases. *See, e.g.*, *Hamilton v. SunTrust Mortg.*

[10] While Plaintiffs contend these cases were wrongly decided, they do acknowledge their presence. *See Cannon v. Wells Fargo Bank, N.A*., No. 13-cv-1324, 2014 WL 672687, at *9-16 (D. Mar. Feb. 20, 2014); *Swain v. Wells Fargo Bank, N.A.*, No. 13-cv-1727, 2014 WL 4675363, at *5-8 (N.D. Ohio Sept. 18, 2014); *Kolbe v. Bank of America, N.A.,* 738 F.3d 432 (1st Cir. 2013) (*en banc*) ("*Kolbe III*"); *Feaz v. Wells Fargo Bank, N.A.,* No. 13-cv-10230, 2014 WL 503149 (11th Cir. Feb. 10, 2014); *Cohen v. Am. Sec. Ins. Co.,* 735 F.3d 601, 608 (7th Cir. 2013); *Decambaliza v. QBE Holdings, Inc.*, No. 13-cv-286, 2013 WL 5777294, at *5-9 (W.D. Wis. Oct. 25, 2013); *Singleton v. Wells Fargo Bank*, N.A., No. 12-cv-216, 2013 WL 5423917, at *2 (N.D. Miss. Sept. 26, 2013).

Inc., No. 13-cv-60749, 2014 WL 5419507 (S.D. Fla. Oct. 24, 2014) (final approval order); *Hall v. Bank of America, N.A.*, No. 12-cv-22700, 2014 WL 7184039 (S.D. Fla. Dec. 17, 2014) (final approval order); *Fladell v. Wells Fargo Bank, N.A.*, No. 13-cv-60721, 2014 WL 5488167 (S.D. Fla. Oct. 29, 2014) (final approval order); *Diaz v. HSBC USA, N.A.*, No. 13-cv-21104, 2014 WL 5488161 (S.D. Fla. Oct. 29, 2014) (final approval order); *Casey v. CitiMortgage, Inc.*, No. 5:12-cv-820, Dkt. No. 234 (N.D.N.Y. Oct. 01, 2014) (final approval order); *Saccoccio v. JPMorgan Chase Bank, N.A.*, No. 13-cv-21107, 2014 WL 808653 (S.D. Fla. Feb. 28, 2014) (final approval order); *Clements v. JPMorgan Chase Bank, N.A.,* No. 3:12-cv-02179, Dkt. No. 61 (N.D. Cal. Jan. 17, 2014) (preliminary approval order); *Pulley v. JPMorgan Chase Bank, N.A.,* No. 12-cv-60936, Dkt. No. 84 (S.D. Fla. Nov. 25, 2013) (final approval order); *Ulbrich v. GMAC Mortgage,* No. 0:11-cv-62424, Dkt. No. 105 (S.D. Fla. May 10, 2013) (final approval order). The same result should apply here.

Rule 23(a) sets forth four prerequisites to class certification. These four requirements are referred to in the short-hand as: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. In addition, the Class must meet one of the three requirements of Rule 23(b). *See* FED. R. CIV. P. 23. Here, the proposed Class satisfies each of Rule 23(a)'s prerequisites. Further, the Settlement Class' claims satisfy at least one of the alternate requirements: Rule 23(b)(3). Plaintiffs respectfully request that the Court certify the following proposed class for settlement purposes:

> All borrowers in the United States who, during the period January 1, 2007 through the Preliminary Approval Date, were charged by the HSBC Defendants and/or their respective subsidiaries and affiliates and/or persons acting for or on their behalf, as insured or additional insureds for a lender-placed food insurance policy.

As explained below, the Settlement Class satisfies each of the requirements for settlement purposes.

1. Rule 23(a)(1) – "Numerosity"

Numerosity is easily satisfied here. First, the Settlement Class is sufficiently numerous because the number and diverse location of putative class members is such that it is impractical to join all of the Class Members in one lawsuit. *See Decoteau v. Raemisch*, No. 13-cv-3399, 2014 WL 3373670, at *2 (D. Colo. July 10, 2014) (holding class of at least 500 was sufficiently numerous and acknowledging that courts have found smaller class sizes also satisfied the requirement); *see also Horn v. Associated Wholesale Grocers, Inc.*, 555 F.2d 270, 275 (10th Cir. 1977) (refusing to establish a threshold number as a prerequisite to a finding of numerosity and certifying a class of 46).[11] Moreover, "[i]n evaluating numerosity, the court may also consider whether the proposed class members are geographically dispersed." *In re Farmers Ins. Cor., Inc. FCRA Litig.*, No. CIV-030158, 2006 WL 1042450, at *3 (W.D. Okla. Apr. 13, 2006) (citing *Zeidman v. J. Ray McDermott & Co.*, 651 F. 2d 1030, 1038 (5th Cir. 1981)). Here, the class data produced by Defendants indicates that there are approximately 11,000 potential class members, which is more than sufficient to find that joinder of all parties is impracticable under Rule 23(a)(1).[12] Accordingly, the proposed Class satisfies Rule 23(a)(1).

[11] *See also In re Intelcom Group Sec. Litig.*, 169 F.R.D. 142, 147-48 (D. Colo. 1996) (unspecified "thousands" satisfies numerosity requirement).

[12] During the Class Period, the Assurant Defendants placed approximately 21,000 LPFI policies on approximately 11,000 loans, with a total net written premium of approximately $20,000,000. *See* Muhic Decl., at ¶ 4.

2. Rule 23(a)(2) – "Commonality"

To satisfy the commonality requirement of Rule 23(a)(2), the plaintiffs' "claims must depend upon a common contention." *See Wal-Mart v. Dukes*, 131 S. Ct. 2541, 2551 (2011). "That common contention, moreover, must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. "Complete identify of legal claims among class members is not required." *Maez v. Springs Automotive Group, LLC,* 268 F.R.D. 391, 395 (D. Colo. 2010) (Blackburn, J.). "A finding of commonality requires only a single question of law or fact common to the entire class." *D.G. ex rel. Stricklin v. Devaughn*, 594 F. 3d 1188, 1195 (10th Cir. 2010). "Claims arising out of standard documents present a classic case for treatment as a class action." *Maez*, 268 F.R.D. at 396 (finding common factual and legal questions where class members had signed form contracts) (quoting *Arenson v. Whitehall Convalescent and Nursing Home, Inc.*, 164 F.R.D. 659, 664 (N.D. Ill. 1996)). As explained below, common questions of law and fact among all members of the proposed Class clearly predominate in this action.

Here, Defendants engaged in several practices that were uniform across the Class. In particular, the HSBC Defendants' affiliates received a 10% commission in connection with the HSBC Defendants' forced-placement of flood insurance. In addition, the HSBC Defendants' practices were uniform in requiring replacement cost flood insurance coverage. The Class members' claims address these common practices and raise common issues as to whether arranging for and receiving those commissions or requiring replacement cost coverage breached Class members' contracts and improperly inflated their LPFI charges. As stated in *Robinson*, "[t]here

exist common issues of law or fact, such as whether [defendants] purchased unauthorized coverage, inflated the amount of forced placed insurance, and whether [they] did so to gain improperly inflated commissions." 1997 WL 634502, at *3.[13] Thus, Plaintiffs satisfy the commonality requirement of Rule 23(a)(2).

3. Rule 23(a)(3) – "Typicality"[14]

Third, the typicality requirement of Rule 23(a)(3) is satisfied because the proposed Class representatives' claims arise from the same event or course of conduct that gives rise to the claims of other Class Members and are based on the same legal theory. "Common questions of law or fact presented by the class will be deemed sufficient" for a determination of typicality. *Milonas v. Williams*, 691 F.2d 931, 938 (10th Cir. 1982), *cert. denied*, 460 U.S. 1069; *Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir. 1988). To be typical members of the class, proposed class representatives need not be identical to all other class members. *Milonas*, 691 F.2d at 938. If a

[13] *See e.g.*, *Hofstetter*, 2011 WL 1225900, at *8 ("Plaintiffs allege a variety of legal and factual questions common to the class, such as … the amount of flood insurance coverage [defendants] required borrowers to carry."); *id.* at *15 (certifying subclass of borrowers to pursue claim that defendant acted unlawfully "by charging inflated premiums and by generating commission income through self-dealing"); *Hall*, 2000 WL 1725238, at *1 & *3 (holding that there were "common questions of fact and law" where "[t]he essence of plaintiff's allegations is that defendant [] engaged in the forced placement of hazard insurance through agencies owned by affiliates . . . and debited the affected mortgagors' escrow accounts in the amount of excessive and unauthorized premiums charged by the affiliates which received commissions for these placements."); *Brand*, No. 99-cv-60167, 2000 WL 554193, at *1 (5th Cir. Apr. 11, 2000) (finding commonality requirement was satisfied where plaintiff identified several common issues, including whether the defendant bank "charged borrowers more than the cost of the insurance under a system of kickbacks from the insurer"). *Casey v. Citibank, N.A.*, No. 5:12-cv-820 Dk. No. 161, at 3 (N.D. N.Y. Ap. 2, 2014) ("There are common questions of law and fact common to the classes with respect to both the challenged 'commission' practice and Citi's flood insurance coverage requirements.").

[14] The Supreme Court has recognized that the commonality and typicality analyses "tend to merge." *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 157 n. 13 (1982).

representative plaintiff's claims arise from a similar course of conduct and share the same legal theory as those of the proposed class, typicality is satisfied. *See Emig v. American Tobacco Co., Inc.*, 184 F.R.D. 379, 387 (D. Kan. 1998) ("Typicality exists because plaintiffs' claims arise from the same course of conduct that gives rise to the claims of the proposed class members.") (citation omitted); *Milonas*, 691 F.2d at 938 (citation omitted); *see also Cook v. Rockwell Intern. Corp.*, 151 F. R.D. 378, 385-6 (D. Colo. 1993) (finding typicality where all class claims arose out of the same course of conduct by the defendants and that a named plaintiff's degree of harm may differ from those of the class as long as the harm itself was the same).

Here, Plaintiffs' claims are typical of the proposed Settlement Class because they arise from a "similar course of conduct and share the same legal theory as those of the proposed class." *Emig*, 184 F.R.D. at 387. In particular, the named Plaintiffs were subject to the same flood insurance coverage requirements as other Class Members, and commissions were paid in connection with the flood insurance that was force-placed on the named Plaintiffs. Accordingly, Plaintiffs' claims are typical of those of the Class. *See, e.g.*, *Williams*, 280 F.R.D. at 673 ("[Plaintiffs] are typical of the class in that they were both charged and either paid or still owe Wells Fargo for the alleged excessive and inflated premiums for the force-placed property insurance."); *Hamilton,* 2014 WL 5419507, at *2 (finding Named Plaintiffs' claims were typical of the class); *Fladell,* 2014 WL 5488167, at *2 (finding the requirements under FED. R. CIV. P. 23(a), including typicality, have been met).

4. Rule 23(a)(4) – "Adequacy of Representation"

Finally, under Rule 23(a)(4) the representative parties must fairly and adequately protect the interests of the class. FED. R. CIV. P. 23(a)(4). There are two inquiries

which must be answered with regards to adequacy: (i) does named plaintiff and his counsel have any conflicts of interest with the proposed class members and (ii) will they prosecute the action vigorously on behalf of the proposed class? *See Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F. 3d 1180, 1187-88 (10th Cir. 2002) (citation omitted); *see also Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625 (1997). Plaintiffs clearly satisfy the adequacy requirement of Rule 23(a)(4) here because, (i) there are no conflicts of interest between the Named Plaintiffs and the Class as a whole, and (ii) the attorneys prosecuting this case are exceptionally qualified to litigate this matter.

First, "[t]here is nothing to indicate that [Plaintiffs'] interest are in conflict with any members of the class." *Brand*, 2000 WL 554193, at *2. To the contrary, Plaintiffs' claims are the same as those of the other Settlement Class members.

Second, Plaintiffs retained attorneys who are highly qualified, experienced and able to conduct this litigation. Plaintiffs' Counsel, the law firms of Kessler Topaz Meltzer & Check, LLP and Berger & Montague, P.C., are qualified, experienced attorneys with broad-based, multi-jurisdictional experience in complex class action litigation, especially in the context of force-placed insurance litigation, and are clearly capable of assessing the strengths and weaknesses of their respective positions. Indeed, each of these firms has successfully litigated analogous cases throughout the country. Given the lack of conflict and the retention of highly experienced and competent counsel, Plaintiffs are adequate Class representatives.

C. The Class May Be Properly Certified Under Rule 23(b)(3)

In addition to satisfying all of the criteria of Rule 23(a), a party seeking class certification must also satisfy one of the requirements of Rule 23(b). It has oft been

noted that the additional requirements of Rule 23(b) overlap considerably with those of Rule 23(a), and with each other. NEWBERG ON CLASS ACTIONS § 4.01 at 185 (1977).

Having established that Plaintiffs meet all of the requirements of Rule 23(a), Plaintiffs also meet the requirements of Rule 23(b)(3). Under this Rule, a class action may be maintained if: (1) questions of law or fact common to the class members predominate over any questions affecting only individual members; and (2) a class action is superior to other methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). Both of these criteria are satisfied here.

1. Common Issues Predominate

The Supreme Court recently clarified the standard that applies under Rule 23(b)(3). As explained by the Court in *Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184 (2013), "Rule 23(b)(3) … does *not* require a plaintiff seeking class certification to prove that each element of [the] claim is susceptible to classwide proof." *Amgen*, 133 S. Ct. at 1196 (emphasis in original) (internal brackets and quotation marks omitted). Rather, the rule simply requires what it says, *i.e.*, that common questions "*predominate* over any questions affecting only individual [class] members." *Id.* (emphasis in original) (citing FED. R. CIV. P. 23(b)(3). Predominance may be satisfied where there is a "common nucleus of operative facts," or "common questions of law and facts." *See Cook v. Rockwell Intern. Corp.*, 151 F.R.D. 378, 388-89 (D. Colo. 1993); *Anderson v. Merit Energy Co.*, No. 07-cv-916, 2008 WL 2484187, at *4 (D. Colo. Jun. 19, 2008). *See also In re Urethane Antitrust Litig.*, 768 F. 3d 1245, 1256 (10th Cir. 2014) (upholding a grant of class certification where there "were two common questions that could yield common answers at trial…The district court

reasonably concluded that these question drove the litigation and generated common answers that determined liability in a 'single stroke.'").

This case presents several fundamental questions common to the Settlement Class, including, without limitation:

- Whether the HSBC Defendants breached their form contracts with borrowers, by arranging for commissions for themselves and affiliates on lender-placed flood insurance;

- Whether the HSBC Defendants breached their form contracts with borrowers by demanding unnecessary and/or excessive amounts of flood insurance coverage;

- Whether the HSBC Defendants breached the implied covenant of good faith and fair dealing by (1) arranging for commissions for themselves and affiliates; or (2) requiring unnecessary and/or excessive amounts of flood insurance coverage;

- Whether Assurant Defendants were unjustly enriched by the practices described in the Complaints; and

- Whether the HSBC Defendants wrongfully converted customers' escrow funds by engaging in the practices described in the Complaints.

These common questions predominate because, in each case, the use of standardized form contracts and form letters present common questions of law and fact. Where the challenged practice is standardized among all class members, predominance is satisfied. *See Rhodes v. Olson Associates, P.C.,* No. 14-cv-919, 2015 WL 1136176, at *13 (D. Colo. Mar. 13, 2015) (certifying class and finding predominance where the complained of "Scripted Voicemail was Defendant's standardized policy"); *Maez*, 268 F.R.D. at 397 (finding predominance met where there was a common issues of liability in an alleged misrepresentation on a form financing contract). In fact, courts have routinely certified classes where the use of form contracts obviated individualized issues. *See Id.; In re Universal Service Fund Telephone Billing Prac. Litig*., 219 F.R.D.

661, 679 (D. Kan. 2004); *Hershey v. ExxonMobil Oil Corp.,* No. 07-cv-1300, 2011 WL 1234883, at *12 (D. Kan. Mar. 31, 2011). *See also Owner-Operator Independent Drivers Ass'n, Inc. v. C.R. England, Inc.*, No. 02-cv-950, 2005 WL 2098919, at *7 (D. Utah Aug. 29, 2005) (finding predominance were "each claim is based on Defendant's lease agreements and the Defendant's allegedly 'uniform course of conduct involving escrows, .. forced purchases, and insurance products.'").

As such, in similar contexts several courts have determined that common issues predominated in other LPI cases. *See, e.g.*, *Fladell v. Wells Fargo Bank, N.A.*¸ No. 13-cv-60721, 2014 WL 5488167, at *2 (S.D. Fla. Oct. 29, 2014); *Brand,* 2000 WL 554193, at *1-2; *Williams,* 280 F.R.D. at 674-75; *Hofstetter,* 2011 WL 1225900, at *14-15; *Robinson*, 1997 WL 634502, at *4 ("We conclude that common class issues of law and fact predominate over any individual issues in this case. While individual issues are present, especially in the context of damages, they do not predominate. Rather, the central issues revolve around whether the form contracts authorized placement of the type of insurance purchased and whether Countrywide knowingly purchased inflated or expensive policies to generate commissions.").

2. Settlement on a Classwide Basis is Superior to Individual Suits

The superiority requirement is also satisfied here. Resolving borrowers' claims together in this class action settlement is vastly superior to leaving each of them to fend for themselves in litigation against one of the nation's largest banks. Indeed, it is unlikely that class members even could bring their claims on an individual basis because the dollar value of each of their claims, standing alone, is relatively small. *See*, *e.g., Hofstetter*, 2011 WL 1225900, at *16 ("[T]he class action mechanism is a superior method for resolving these claims[] because the cost of litigation likely would not be

justified without aggregating them together."); *Williams*, 280 F.R.D. at 675 ("Since the damage amounts allegedly owed to each individual [borrower] are relatively low—especially as compared to the costs of prosecuting the types of claims in this case involving complex, multi-level business transactions between sophisticated Defendants—the economic reality is that many of the class members would never be able to prosecute their claims through individual lawsuits."); *Maez*, 268 F.R.D. at 397 ("The costs associated with pursuing those relatively *de minimus* claims [of a few hundred dollars] individually almost certainly would be prohibitive for the majority of class members."). As the Supreme Court has recognized "[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Amgen*, 133 S. Ct. at 1202 (quoting *Amchem Products*, *Inc. v. Windsor*, 521 U.S. 591, 617 (1997)).

D. Rule 23(g) is Satisfied

In addition to the other requirements outlined above, Rule 23(g) requires the Court to examine the capabilities and resources of counsel for the Class to determine whether they will provide adequate representation to the Class. Plaintiffs' Counsel easily meet the dictates of Rule 23(g). Plaintiffs' Counsel have done substantial work to identify and investigate potential claims in the *Weller* and *Hoover* Actions, and properly support the allegations in their Complaints. Plaintiffs' Counsel have also investigated the allegations made in the Complaints by interviewing witnesses, reviewing publicly-available information, reviewing thousands of pages of discovery obtained from Defendants, and consulting with experts. As described above, Plaintiffs' Counsel have substantial experience, individually and collectively, in handling class actions, other

complex litigation, and claims of the type asserted in this action. Hence, Plaintiffs' Counsel's extensive efforts in prosecuting this case, combined with their in-depth knowledge of the subject area, satisfy Rule 23(g).

Therefore, in sum, for purposes of effectuating this Settlement, this action should be certified as a class action under Rule 23 of the Federal Rules of Civil Procedure.

VI. Conclusion

Based on the foregoing, Plaintiffs respectfully move this Court to preliminarily approve the Settlement, certify the Settlement Class, approve the form and manner of Class Notice, and set a date for the Fairness Hearing approximately one hundred fifty (150) days after the entry of the Proposed Preliminary Approval Order, or later, at the Court's convenience.

Dated: April 10, 2015

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that pursuant to D.C. Colo. LCivR 7.1, I have conferred with all parties involved and this Motion is unopposed.

/s/ *Peter A. Muhic*
Peter A. Muhic

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2015, a true and correct copy of the foregoing was served on all parties by the Court's electronic notification system.

/s/ *Peter A. Muhic*
Peter A. Muhic