

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-23307-CIV-COOKE/GOODMAN

AUSTIN BELANGER,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

ROUNDPOINT MORTGAGE
SERVICING CORPORATION, and
GREAT AMERICAN E&S INSURANCE
COMPANY and WILLIS OF OHIO, INC.
D/B/A Loan Protector Insurances Services,

Defendants.

**DECLARATION OF ADAM MOSKOWITZ AND LANCE HARKE IN SUPPORT OF
SETTLING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF ROUNDPOINT
SETTLEMENT, APPLICATION FOR CASE CONTRIBUTION AWARD, AND
CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES**

We, ADAM MOSKOWITZ and LANCE HARKE declare as follows:

1. We are Co-Lead Settlement Class Counsel, and counsel of record for Settling Plaintiff and the proposed Settlement Class in this action ("Class Counsel"), and we respectfully submit this Declaration in support of Plaintiff's Motion for Final Approval of Settlement, Application for Case Contribution Award and Class Counsel's Application for Attorneys' Fees. Except as otherwise noted, we have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. In September 2018, after months of hard-fought, arm's-length negotiations, Settling Plaintiff and Defendants executed the Settlement Agreement and Release ("Agreement") under which Defendants have agreed to make available more than \$2 million in cash benefits to Settlement Class Members who submit a valid claim form, as well as

significant injunctive relief.¹ We are proud to seek final approval and the reaction from the Class to date has been outstanding.

3. Settling Plaintiff maintains that the claims asserted in this matter are meritorious, Defendants' attempt to dismiss this action would be unsuccessful, a motion for class certification would prove successful, and Settling Plaintiff would prevail if this matter proceeded to trial. This case involved sharply opposed positions on several fundamental and dispositive legal and factual issues. The ultimate success of the litigation required Settling Plaintiff to prevail, in whole or in part, on *all* of these issues. Conversely, Defendants' success on any one of these issues could have spelled defeat for Settling Plaintiff and the Settlement Class. Therefore, continued litigation would have presented significant risks to attaining a successful judgment, as well as the time and expense associated with proceeding to trial, the time and expense associated with appellate review, and the countless uncertainties of litigation, particularly in the context of a large and complex litigation.

4. In light of the risks presented by continued litigation, and taking into account the substantial benefits extended to Settlement Class Members under the terms of the Settlement Agreement, the Settlement not only provides fair and adequate compensation to Settlement Class Members, it also represents a significant achievement benefitting the Settlement Class.

I. The Litigation

5. On August 31, 2017, Settling Plaintiff filed this putative nationwide class action, alleging claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, tortious interference with a business relationship, violations of Florida's Deceptive and Unfair Trade Practices Act, as well as violations of the Federal Truth in Lending and RICO statutes.

6. Defendants voluntarily provided Settling Plaintiff and Class Counsel with a substantial volume of documents concerning the specific RoundPoint LPI program at issue in this Litigation.

¹ All capitalized terms have the same meaning as defined in the Agreement attached as Exhibit A to Plaintiffs' Motion for preliminary approval. (D.E. 102-1.) Any capitalized terms not defined there are defined herein.

7. The Parties filed a stipulation on November 3, 2017, in which Defendants agreed to produce certain documents in advance of formal discovery. This production was designed to streamline the discovery and efficiently advance this Litigation.

8. Settling Plaintiff filed a First Amended Class Action Complaint on January 12, 2018.

9. Thereafter, the Settling Parties began engaging in discovery, drafting and responding to interrogatories and document requests, including the production of documents.

10. On February 12, 2018, Defendants moved to dismiss the First Amended Class Action Complaint for failure to state a claim. Defendant Great American also moved to dismiss the First Amended Class Action Complaint for lack of standing.

11. On March 19, 2018, Settling Plaintiff filed an opposition to Defendants' motion to dismiss and an opposition to Great American's motion to dismiss for lack of standing. Defendants filed their reply in support of their motion to dismiss on April 27, 2018. Great American filed an amended reply in support of its motion to dismiss for lack of standing on April 30, 2018.

12. Defendants RoundPoint and Willis of Ohio also moved to strike Settling Plaintiff's jury demand. Their motion was filed on February 12, 2018.

13. Defendant Great American filed a joinder to that motion on the same day. Settling Plaintiff filed his response to the motion to strike on March 19, 2018, and Defendants RoundPoint and Willis of Ohio filed their reply on April 27, 2018. Great American filed a joinder to the moving Defendants' reply on the same day.

14. Defendants RoundPoint and Willis of Ohio also moved, on February 12, 2018, to stay discovery pending the Court's ruling on the motions to dismiss. Defendant Great American filed a joinder to that motion on the same day. Settling Plaintiff filed his response to the motion to stay discovery on March 19, 2018. The Court denied the motion to stay discovery on April 2, 2018.

15. Subsequently, on April 4, 2018, Defendants RoundPoint and Willis of Ohio moved to vacate the Court's order. Settling Plaintiff filed a response to the motion to vacate on April 5, 2018 and the moving Defendants filed a reply on April 6, 2018. Shortly thereafter, a hearing on discovery matters was scheduled for June 8, 2018.

16. At the same time, based upon the First Amended Class Action Complaint, recent rulings of the Court, and the discovery exchanged in this Litigation, the Settling Parties began to engage in mediation discussions under the supervision of mediator Rodney Max. In advance of and during the mediation discussions, Defendants provided Settling Plaintiff and Class Counsel with additional information concerning RoundPoint's specific LPI program, including aggregate LPI premium information across the country for this LPI program.

17. On June 22, 2018, the Court scheduled a hearing on Defendants' motions to dismiss for August 8, 2018. The Settling Parties held further discussions in the following weeks where ultimately a settlement in principle was reached.

18. On July 12, 2018, the Settling Parties announced their settlement and filed a joint motion to stay the case while the Settling Parties formalized their Settlement Agreement. (D.E. No. 99.) That motion to stay was granted July 23, 2018. (D.E. No. 100.) The parties subsequently finalized and executed a settlement agreement.

19. On September 6, 2018, Class Counsel filed their Motion for Preliminary Approval of the Settlement and Certification of the Settlement Class. (D.E. 102.)

20. This Court preliminarily approved the settlement on October 12, 2018 (D.E. 109) by approving the September 28, 2018 Report and Recommendations on Joint Motion for Preliminary Approval of Class Action Settlement, Certifying Settlement Class For Settlement Purposes, Directing the Issuance of Class Notice, and Scheduling a Final Approval Hearing (D.E. 107).

21. Judge Cooke thereafter referred this matter to this Court for all purposes, including entry of a final judgment, on October 17, 2018. (D.E. 112.)

22. On November 13, 2018, this Court entered an order setting the final fairness hearing for March 14, 2019. (D.E. 116.)

II. The Settlement Terms and Agreement

A. The Proposed Class

23. The Settlement Agreement provides relief to "all borrowers in the United States who, from November 1, 2012 to the date of entry of the Preliminary Approval Order ("Settlement Class Period"), inclusive of those dates, were charged by "RoundPoint under an LPI Policy for Residential Property, and who, within the Settlement Class Period, either (i) paid to RoundPoint the Net Premium for that LPI Policy or (ii) did not pay to and still owe

RoundPoint the Net Premium for that LPI Policy.” (D.E. 102-1 ¶¶ 3.1, 3.2.) This class will include borrowers whose homes are in foreclosure and short sale, and those granted a deed in lieu of foreclosure or loan modifications.²

B. Monetary and Injunctive Relief

24. The Settlement Agreement affords members of the Settlement Class significant monetary and injunctive relief. (*Id.* ¶ 4.) The monetary relief will compensate Settlement Class Members for a significant part of the allegedly inflated portion of the amounts that they either paid or were charged for force-placed coverage. All Settlement Class Members who submit a valid claim form will recover 6.75% of the net premium *charged* to them during the class period. (*Id.*) The payment is taken from the entire premium, rather than the alleged “excess” or inflated portion of the premium, since a considerable portion of the premiums charged, in fact, was applied to pay for coverage. Defendants will distribute claims payments via check. (*Id.* ¶ 7.4.3.)

25. The prospective relief provided by the Settlement Agreement addresses the FPI practices that are the subject of this lawsuit. The Settlement Agreement enjoins the Defendants from engaging in the alleged unlawful conduct that is the subject of the litigation.

26. For example, for a period of five years following the Final Settlement Date, among other things, the Defendant Great American is prohibited from paying commissions to RoundPoint for its FPI program and entering into quota share reinsurance arrangements with RoundPoint. (*Id.* ¶¶ 4.3.1.)

C. Release of Claims against Defendants

27. Class Counsel, with the agreement of the Defendants, are proud to inform the Court that after preliminary approval of the settlement, the parties have received comments from class members and various attorneys general of different states, and as a result of those contacts, have agreed to narrow the release provided to the Defendants in this matter by the Settlement Class. This is more beneficial to the Settlement Class Members, and brings the language of the release in line with a number of other releases approved by this Court in past

² By contrast, the court in *Williams v. Wells Fargo Bank, N.A.*, No. 11-cv-21233 (S.D. Fla.), specifically excluded certain categories that are included in this settlement from the Florida class it certified in February 2012. *Williams*, No. 11-cv-21233 at ECF 211 (S.D. Fla. Feb. 21, 2012).

LPI settlements. The full Release language is attached to the Motion for Final Approval as **Exhibit C**.

D. Class Notice

28. Settlement Class Members were sent notice of the settlement, instructions, and a claim form by first-class mail, at their last-known mailing address in the forms attached to the Settlement Agreement as Exhibits B, C, and D. (D.E. 102-1 ¶ 6.) The Court's preliminary approval order required the notice to be mailed no fewer than 90 days before the date set for the final approval hearing. (*Id.*) It also provides that the Administrator perform a search of the National Change of Address database for each mailing address attached to a notice that is returned as undeliverable (*id.*), and establish a website on which Settlement Class Members may download and print or e-sign and upload a claim form and review the Settlement and its exhibits. (*Id.*) Notice of the Settlement is also to be published in *USA Today* and advertised on the internet. (*Id.*) Further, the notice will provide a toll-free number for Settlement Class Members to call for settlement information. (*Id.*) Members may opt out or object by following the prescribed process. (*Id.* ¶¶ 11, 12.)

29. The Settlement Administrator, JND Legal Administration ("JND") administered the Mailed Notice program in accordance with the terms of the Settlement and the Court's Preliminary Approval Order. After running the names and last known addresses of the identifiable Settlement Class Members through the National Change of Address Database, JND mailed to all such Settlement Class Members the Notice on December 12, 2018. (*See* Declaration of Jennifer M. Keough Regarding Notice Administration, attached to Motion for Final Approval as **Exhibit D**, at ¶¶ 6, 7.) A total of 18,057 notices of the Settlement were mailed to members of the Settlement Class. (*Id.*)

30. The Notice was published in *USA Today* on January 7, 2019. (*Id.* at ¶ 9.) Further, a targeted internet advertising campaign is currently underway to further notify the Class. (*Id.* at ¶ 8)

31. JND also established a Settlement Website, located at www.BelangerSettlementInfo.com, as a means for Settlement Class Members to make claims, and to obtain notice of, and information about, the Settlement. (*Id.* ¶ 10). Settlement Class Members can upload claim forms and submit their claims electronically through the Settlement Website. (D.E. 102-1 ¶ 6.2.) The Settlement Website also includes hyperlinks to

the Settlement Agreement, the Notice, the Preliminary Approval Order, and other documents which Class Counsel and counsel for Defendants agreed to post, and answers to frequently asked questions about the settlement, its terms, and the procedures for filing a claim, opting out, and objecting. These documents will remain on the Settlement Website until the Final Accounting. (*Id.* ¶ 6.2.1.)

32. Further, the Settlement Administrator has established and maintains a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and to answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries. (*Id.* ¶ 6.5.)

33. Settlement Class Members may leave messages to be returned. The Settlement Administrator and Class Counsel have responded and continue to respond to questions about the Settlement. (*Id.*)

E. *Claims Process*

34. To obtain relief from Defendants, Settlement Class Members will be required to submit the claim form on or before a deadline that will be no later than sixty days after the Final Approval Hearing. (*Id.* ¶ 2.10.) The claims will be reviewed and approved by the Settlement Administrator, who will then make a determination of the amount owed to each class member using Defendants' electronic records, and then within thirty days after submitting the final list of all valid claims described in Section 7.4.2 of the Agreement, or the Effective Date, whichever is later, the Settlement Administrator shall distribute the monetary relief. (*Id.* ¶ 7.4.3) The Settlement Administrator will advise Class Counsel on a weekly basis of any claims deemed invalid before those claims are denied so that Class Counsel may follow up with the borrower to cure any deficiency in his or her submission. The Settlement Administrator will also send notices to claimants identifying the deficiency. (*Id.* ¶ 7.3.1.) The Parties have agreed to attempt to resolve any disputes related to the denial of class member claims in good faith.

F. *Class Counsel Fees and Expenses and Settling Plaintiff's Case Contribution Award*

35. The Parties stipulate in the Settlement Agreement that the law firms of The Moskowitz Law Firm PLLC, and Harke Law LLP will serve as Class Counsel. (D.E. 102-1 ¶ 2.14.) Class Counsel's application for attorneys' fees and expenses for all of the various law firms involved is \$406,865.00. (*Id.* ¶ 14.1.) Defendants will also pay Settling Plaintiff Belanger

a Case Contribution Award not to exceed \$5,000.00. (*Id.* ¶ 14.7.) The Court will consider whether to approve these awards separate and apart from its analysis of the fairness, reasonableness, and adequacy of the settlement. (*Id.* ¶ 14.8.)

36. These amounts will be roughly 20% of the Settlement monetary benefits alone, not taking into account the valuable injunctive relief.

III. Considerations Supporting Settlement

A. *There Was No Fraud or Collusion.*

37. Class Counsel negotiated the Settlement vigorously and at arm's-length. Settling Plaintiff was represented by experienced counsel at these arm's-length negotiations. Settlement negotiations were informed by the experience of counsel for both sides in the litigation, certification, trial, and settlement of nationwide class action cases. In particular, Class Counsel had the benefit of years of experience litigating LPI claims and a familiarity with the facts of this case and the mechanics of the Defendants' FPI program, as well as with other cases involving similar claims.

38. Class Counsel conducted a thorough investigation and analysis of Settling Plaintiff's claims based upon their considerable experience in LPI actions. Class Counsel's investigation and review of the information provided by Defendants enabled Class Counsel to gain an understanding of the evidence related to central questions in the case, and prepared them for well-informed settlement negotiations.

39. The settlement negotiations were further aided by Class Counsel's successful pursuit of similar claims against other mortgage servicers and LPI insurers, through class certification and settlement.³

³ See e.g. *See Circeo-Loudon v. Green Tree Servicing*, No. 14-cv-21384 (S.D. Fla.); *Jackson v. U.S. Bank*, No. 14-cv-21252 (S.D. Fla.); *Almanzar v. Select Portfolio Servicing, Inc.*, No. 14-cv-22586 (S.D. Fla.); *Wilson v. EverBank, N.A.*, No. 14-cv-22264 (S.D. Fla.); *Braynen v. Nationstar Mortgage, LLC*, No. 14-cv-20726 (S.D. Fla.); *Lee v. Ocwen Loan Servicing LLC*, No. 14-cv-60649 (S.D. Fla.); *Williams v. Wells Fargo Bank, N.A.*, No. 11-cv-21233 (S.D. Fla.); *Saccoccio v. JPMorgan Chase Bank, N.A.*, No. 13-cv-21107 (S.D. Fla.); *Fladell v. Wells Fargo Bank, N.A.*, No. 13-cv-60721 (S.D. Fla.); *Diaz v. HSBC Bank (USA), N.A.*, No. 13-cv-21104 (S.D. Fla.); *Hall v. Bank of America, N.A.*, No. 12-cv-22700 (S.D. Fla.); *Hamilton v. SunTrust Mortgage, Inc.*, No. 13-cv-60749 (S.D. Fla.); *Montoya v. PNC Bank, N.A.*, No. 14-cv-20474 (S.D. Fla.); *Ziwczyń v. Regions Bank*, No. 15-cv-24558 (S.D. Fla.); and *Beber v. BB&T*, 15-cv-23294 (S.D. Fla.).

40. Thus, Class Counsel were well-positioned to evaluate the strengths and weaknesses of Settling Plaintiff's claims, as well as the appropriate basis upon which to settle them, as a result of the discovery taken in this matter and their participation in years of similar litigation in this Court and before District Judges Moreno, Altonaga, Scola, Bloom, Williams, Cohn, and this Court among others, and review of hundreds of thousands of pages of documents and more than thirty depositions in similar force-placed insurance actions within the Southern District of Florida.

41. Moreover, the mediation was overseen by Rodney Max, a nationally-prominent mediator. Mr. Max has significant experience mediating complex commercial suits to resolution, and was involved in every step of the process. The settlement negotiations and mediation sessions were, at all times, adversarial, and conducted at arm's length. The mediation process and subsequent negotiations spanned many weeks.

B. *The Settlement Will Avert Years of Highly Complex and Expensive Litigation.*

42. This case involves over 18,057 Settlement Class Members who were charged millions in insurance premiums. The claims and potential defenses are complex; litigating them to resolution would have been difficult and time consuming. Although Settling Plaintiff's claims have been pending for over a year, recovery by any means other than settlement would require additional years of litigation in this Court and appellate courts. By contrast, the Settlement provides immediate and substantial benefits to the Settlement Class.

C. *The Factual Record Is Sufficiently Developed to Enable Settling Plaintiff and Class Counsel to Make a Reasoned Judgment Concerning the Settlement.*

43. As discussed above, Class Counsel were well-versed in the operations of the FPI industry through considerable discovery in similar cases prior to the Settlement. This afforded Class Counsel important insight into the strengths and weaknesses of their claims against Defendants. Before settling, Class Counsel had already developed ample information and performed extensive analyses from which to assess the probability of success on the merits, the possible range of recovery, and the likely expense and duration of the litigation.

D. *Settling Plaintiff Would Have Faced Significant Obstacles to Obtaining Relief.*

44. Settling Plaintiff and Class Counsel are confident in the strengths of their case, but are also pragmatic in their awareness of the various defenses available to Defendants and the risks inherent to litigation. Indeed, Class Counsel have briefed numerous motions to

dismiss, motions for judgment on the pleadings, and for class certification in other LPI class actions, and have encountered significant dispositive defenses to each and every claim brought by Settling Plaintiff here.

45. While Settling Plaintiff and Class Counsel believe they have a compelling case against Defendants, Class Counsel is mindful of the fact that Defendants would have advanced significant defenses that they would be required to overcome in the motions to dismiss, class certification, summary judgment, trial, and eventually on appeal. Class Counsel and Settling Plaintiff thus appreciate that, absent a settlement, it would have taken years of additional litigation – and overcoming vigorous legal and factual defenses – to bring the action to finality. Even then, the outcome would be uncertain. Given the myriad risks attending these claims, the Settlement cannot be seen as anything other than a fair compromise.

46. Another risk Settling Plaintiff has considered is the need for and reliance upon expert witnesses if the matter were to proceed to trial. To establish liability and damages in a case of this sort, expert testimony is essential. Because Settling Plaintiff's claims are premised on issues concerning the amount of lender-placed insurance charges passed onto Settlement Class Members and the concealment of low-cost servicer tasks, the litigation through trial would entail extensive (and expensive) evaluation and development of these complex issues. The acceptance of expert testimony by the Court or a jury is always far from certain, regardless how distinguished the source. Settlement of this action avoids the risk that Defendants' competing experts would prevail, resulting in a dispositive finding or ruling against Settling Plaintiff and the Class.

47. Indeed, courts have rendered opinions which illustrate the risks associated with these types of actions. In *Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098 (11th Cir. 2014), the Eleventh Circuit dismissed lender-placed flood insurance claims brought under Alabama law. In *Cohen v. American Sec. Ins. Co.*, 735 F.3d 601 (7th Cir. 2013), the district court dismissed the complaint in its entirety—and also rejected two attempted amendments. *Id.* The Seventh Circuit affirmed dismissal on different grounds as it found that maintaining property insurance was plaintiff's "contractual obligation and she failed to fulfill it; because the consequences of that failure were clearly disclosed to her, none of her claims for relief can succeed." *See id.* at 604.

48. Additionally, the Eleventh Circuit just affirmed this Court's order dismissing two actions based upon the filed-rate doctrine. *See Pankaj Patel, et al. v. Specialized Loan Servicing, LLC, et al.*, Case No. 16-12100 (11th Cir. Sept. 24, 2018), *petition for rehearing en banc denied* (11th Cir. Jan. 17, 2019).

49. Moreover, nationwide class certification of similar claims has been denied. *See, e.g., Gustafson v. BAC Home Loans Servicing, LP*, 2013 WL 5911252, at *17-18 (C.D. Cal. Nov. 4, 2013) (denying nationwide class in force-placed lending case because commonality and predominance could not be met where resolution of case "would require the application of different states' laws to nearly 3,000 mortgage templates with differing applicable provisions;" there were "numerous material variations" in the thousands of mortgage templates used; the court would be required to "evaluate the filed rates of various jurisdictions;" there were variations of the insurance rates by state and over time; and jury would have to make "individualized fact determinations" as to the borrowers' level of knowledge and whether they paid for the FPI); *see also Kunzelmann v. Wells Fargo Bank*, No. 11-cv-81373 at ECF 141 (S.D. Fla.). Although Class Counsel believe that these opinions can be distinguished from this case factually and legally, there is always a risk that the Court would have held otherwise.

50. Protracted litigation carries inherent risks and inevitable delay. Settling Plaintiff and Class Counsel determined that the benefits of the Settlement reached with Defendants clearly outweigh the risks of continued litigation.

51. The Settlement provides substantial value to the Settlement Class. Such value is well within the range of reasonableness.

52. According to Defendants' records and Settling Plaintiff's calculations, the total value of the cash portion of the settlement made available is approximately \$2 million. Under the Settlement, Settlement Class Members who submit valid claims will receive 6.75% of the Net Premium charged to the Settlement Class Member. (D.E. 102-1 ¶¶ 4.7.).

53. The potential Class recovery of approximately \$2 million represents between 50% to 100% of the Settlement Class Members' anticipated total recovery, depending on the final damages calculations of Settling Plaintiff's experts had the claims proceeded to trial.

54. Importantly, the percentage of the premium returned to Settlement Class Members in this settlement is close to what was approved as a reasonable rate reduction by more than forty-five state regulators as a new lender-placed product of another force-placed

insurer, Assurant, Inc. These regulators have approved as reasonable a new lender-placed hazard insurance product that would reduce the rates used to calculate the premiums charged to lenders (and then passed on to borrowers) by up to 12.5% if the lender agrees to forego the commissions and reinsurance profits that are the subject of this lawsuit. State regulators' approval of this product with regard to both straight commission and reinsurance lender-placed hazard programs supports a finding of reasonableness here.

55. In addition, Class Counsel have spent years with their experts understanding the nature of the alleged overcharges, including commissions, ceded reinsurance premiums, and below-cost servicer functions to ascertain an appropriate and fair percentage of the premium to be returned for each bank and insurance product. The return here is eminently fair.

56. Finally, the injunctive relief precludes the practices complained of, including the acceptance of commissions, among other injunctive changes, for a period of up to five years, and will provide real value to the Class and the consuming public.

E. *The Settlement Amount Is Reasonable Given the Range of Possible Recovery.*

57. The Settlement provides substantial value to the Settlement Class. Such value is well within the range of reasonableness. Under the Settlement, Settling Plaintiff and the Settlement Class have recovered approximately \$2 million in potential monetary relief, which represents between 50% to 100% of the Settlement Class Members' anticipated total recovery, depending on the final damages calculations of Settling Plaintiff's experts.

58. While it is certainly possible that the maximum recoverable damages at trial for all claims could exceed the amount of the Settlement, this assumes complete acceptance of Settling Plaintiff's liability and damage evidence on a class-wide basis. Given the obstacles and uncertainties of continued litigation, Class Counsel believe the proposed settlement represents an outstanding recovery for the Class who otherwise may have not recovered anything.

59. The Settlement also helps Settlement Class Members by providing for significant and real injunctive relief which prohibits specific practices that Settling Plaintiff alleges have provided Defendants millions in revenues during the class period and provides that future lender-placed insurance policies will be issued in a manner that is fairer and serves to reduce the number of policies issued in the first place.

G. *The Opinions of Class Counsel, Settling Plaintiff, and Absent Class Members Strongly Favor Approval of the Settlement.*

60. Class Counsel believe that this Settlement is extraordinary and clearly deserving of final approval. Moreover, opposition to the Settlement has been *de minimis*. As of January 28, 2019, Class Counsel has received no objections and three exclusion requests. (Keough Decl. ¶¶ 15, 17.)

IV. Case Contribution Award

61. Pursuant to the Settlement, Class Counsel seek, and Defendants do not oppose, a Case Contribution Award of \$5,000.00 for the Settling Plaintiff. (D.E. 102-1 ¶ 14.7.) If the Court approves the awards, they will be paid over and above the settlement amounts available for Settlement Class Members, and in addition to the relief the Settling Plaintiff will be entitled to under the terms of the Settlement. *Id.*

62. Service awards compensate the class representative for the services he provided and the risks they incurred during the course of the class action litigation. Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives.

63. The factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation.

64. The above factors, as applied to the Action, demonstrate the reasonableness of a service award of \$5,000.00 to the Settling Plaintiff. Among other things, the Settling Plaintiff took numerous actions and provided substantial assistance to Class Counsel by locating and forwarding documents and information, including the LPI notices and policies sent to him by Defendants, the monthly account statements, and his mortgage agreements, and by engaging in conferences with Class Counsel.

65. The Settling Plaintiff not only devoted time and effort to this litigation, but the end result of his efforts (and those of counsel) was a substantial benefit to the Class. The Settling Plaintiff should be compensated for his service.

V. Class Counsel's Attorneys' Fees

66. Pursuant to the Settlement, Class Counsel are entitled to request that the Court award attorneys' fees up to \$406,865.00 which is roughly 20% of the cash settlement benefits. (D.E. 102-1 ¶ 14.1.) If the value of the injunctive relief is included, the percentage is even lower.⁴ Defendants have agreed not to oppose Class Counsel's request for attorneys' fees and expenses. *Id.* The Parties negotiated and reached this agreement regarding attorneys' fees and expenses only after reaching agreement on all other material terms of this Settlement.

67. As indicated in the Court-approved Notice disseminated to the Settlement Class, and consistent with standard class action practice and procedure, Class Counsel request a fee amounting to \$406,865.00, inclusive of all litigation costs and expenses.

A. *The Claims against Defendants Required Substantial Time and Labor.*

68. Investigating, prosecuting, and settling the claims here demanded considerable time and labor. The complexity of this case required organization by Class Counsel, including assignment of work and regular meetings and conference calls to ensure coordinated, productive work efforts to maximize efficiency and minimize duplication of effort. Class Counsel spent many hours investigating the claims of many of the potential plaintiffs against Defendants in this action.

69. Class Counsel interviewed RoundPoint borrowers and potential plaintiffs to gather information about Defendants' conduct and its impact upon consumers; Class Counsel

⁴ See *Poertner v. Gillette Co.*, 618 Fed. App'x 624 (11th Cir. 2015) (class counsel fees properly awarded based on percentage of total "settlement pie," including injunctive relief and *cy pres* award); *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) ("[C]ourts should consider the value of the injunctive relief obtained as a relevant circumstance in determining what percentage of the common fund class counsel should receive as attorneys' fees.") (internal quotation and citation omitted); *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360 (S.D. Fla. 2007); *Sheppard v. Consol. Edison Co. of N.Y., Inc.*, 2002 WL 2003206, at *7 (E.D.N.Y. Aug. 1, 2002) (in valuing total settlement for percentage-based attorneys' fee award, court included \$6.745 million in monetary relief and "an estimated \$5 million in non-monetary, injunctive relief"); *Steiner v. Williams*, 2001 WL 604035, at *4 (S.D.N.Y. May 31, 2001) ("Although the settlement in this action did not involve the payment of money by the defendants, counsel may nonetheless recover a fee if the settlement conferred a substantial non-monetary benefit.").

also obtained, reviewed, sorted, and analyzed RoundPoint mortgages, vendor agreements, and other discovery before and during mediation.

70. Class Counsel expended significant resources researching and developing the legal claims at issue.

71. Class Counsel prepared for and participated in many meetings and conference calls in an attempt to settle the action. After the Parties executed the MOU, Class Counsel engaged in protracted discussions and drafting over the terms of the Settlement Agreement, Notice, and claim forms. In addition, Class Counsel had continued communications with Defendants, pending final approval of the Settlement.

72. Further, the Settlement requires a continuing role for Class Counsel after final approval, in reviewing the payments made to Settlement Class Members, as well as any denied claims and reasons for denial. Class Counsel have negotiated a procedure to resolve any disagreements with Defendants regarding denied claims and will not involve the Court unless those procedures fail to result in a mutually agreeable solution. Class Counsel have responded to many Class Member calls and written inquiries concerning the Settlement and will continue to do so. Finally, Class Counsel will be responsible for responding to any appeals that may be filed and for handling all other post-approval proceedings. These substantial efforts justify awarding Class Counsel the requested fee.

73. All told, Class Counsel's steadfast and coordinated work paid great dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement currently before the Court. Taken together, the time and resources Class Counsel devoted to prosecuting and settling this action of nationwide importance justify the fee we are now seeking.

B. *The Issues Involved Were Novel and Difficult and Required the Exceptional Skill of a Highly Talented Group of Attorneys.*

74. The Court has witnessed the high quality of Class Counsel's legal work, which has conferred a significant benefit on the Settlement Class in the face of daunting litigation obstacles. As the Court is aware, it is extremely challenging to establish liability based upon the facts at issue in this litigation. Even from the face of Settling Plaintiff's mortgage statements, and the records maintained by Defendants, the proof is not self-evident. Instead,

it requires the acquisition and analysis of specific data – and the efforts of highly skilled lawyers.

75. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. All of the lawyers representing Settling Plaintiff possess these attributes, and their participation as Class Counsel added significant value to the representation of this Settlement Class consisting of thousands of individuals. The record before the Court establishes that the Action involved a wide array of complex challenges, which Class Counsel met at every juncture based on their extensive experience in complex litigation and class action litigation.

76. In assessing the quality of representation by Class Counsel, the Court also should consider the quality of their opposing counsel. Defendants are represented by extremely able and diligent attorneys. These were worthy, highly competent adversaries.

C. *The Claims against Defendants Entailed Considerable Risk.*

77. There have been vigorous defenses to similar claims in other FPI actions denying any and all liability and similar defenses have been raised in this Action. The time and expense demands required to prepare to work on this for Class Counsel were daunting, to say the least, and obviated their ability to work on numerous other matters. Class Counsel's success under these circumstances thus represents a genuine milestone.

78. Prosecuting the Action was risky from the outset. While several risks existed, Class Counsel limit the discussion to the most serious risks.

79. First, the possibility that this Court would dismiss this action in its entirety based upon arguments that would be raised by Defendants in their motions to dismiss.

80. Second, the Court could have granted summary judgment or denied class certification on a variety of issues raised by Defendants including failure to state a claim, as Defendants would argue that the mortgages allowed them to place insurance on the properties in the manner that they did and the practice was clearly disclosed to borrowers.

81. Each of these risks, standing alone, could have impeded Settling Plaintiff's successful prosecution of these claims at trial (and in any appeal).

82. Together, they overwhelmingly demonstrate that Settling Plaintiff's claims against Defendants were far from a "slam dunk" and that, in light of all the circumstances, the Settlement achieves an excellent class-wide result.

D. *Class Counsel Assumed Substantial Risk to Pursue the Action on a Pure Contingency Basis, and Were Precluded From Other Employment as a Result.*

83. Class Counsel prosecuted the Action entirely on a contingent fee basis. In undertaking to prosecute this complex action on that basis, Class Counsel assumed a significant risk of nonpayment or underpayment. That risk warrants the requested fee.

84. Public policy concerns – especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would defy vindication – further justify the requested fee award.

85. Because of the nature of a contingent practice where cases are predominantly “big cases” lasting for years, not only do contingent firms have to pay regular overhead, but they also have to advance the substantial expenses of litigation of this kind. The financial burden on counsel bringing contingent fee cases is far greater than on a firm that is paid on an ongoing basis.

86. The above does not take into consideration the possibility of no recovery. It is not unusual to spend tens of thousands of hours on losing efforts. Prosecutions without recovery are exceedingly expensive. While the Court must focus on the reasonableness of the fees to be paid in this case, the fees and expenses that go unpaid when the cases are dismissed should not be ignored.

87. The progress of the Action to date readily demonstrates the inherent risk that Class Counsel faced in taking these cases on a contingency fee basis. Despite Class Counsel’s ongoing effort in litigating before this Court, Class Counsel remain completely uncompensated for the time and expenses they have invested. Uncompensated expenditures of this magnitude can severely damage or even destroy law firms. There can be no reasonable dispute that the Action entailed substantial risk of nonpayment and resulting financial harm for our practices.

88. Furthermore, the time Class Counsel spent on the Action was time that they could not spend on other matters. This factor thus strongly militates in favor of Class Counsel’s requested fee.

E. *Class Counsel Have Achieved an Excellent Result.*

89. The result Class Counsel achieved is outstanding. Instead of facing additional years of costly and uncertain litigation, Settlement Class Members will receive an immediate benefit from the potential monetary settlement benefits of approximately \$2 million, which represents between 50% to 100% of the Settlement Class Members' anticipated total recovery, depending on the final damages calculations of Settling Plaintiff's experts. The number is much higher when one considers the injunctive relief obtained. The Settlement represents an exceptional achievement by any measure.

F. *The Requested Fee Comports with Customary Fees Awarded in Similar Cases.*

90. The fee requested here matches the fee typically awarded in similar cases. As legions of decisions have recognized, a fee award of 30% or more of a common benefit is well within the range of a customary fee. The fee requested is only 20% (without any consideration of the injunctive relief). Moreover, the requested fee falls squarely below the range of awards made in numerous cases brought in this Circuit and District.

G. *Other Factors Also Favor Approving Class Counsel's Fee Request.*

91. Other factors likewise support granting Class Counsel's fee request. As noted, the burdens of this litigation have precluded Class Counsel's pursuit of other cases. The relatively small size of the firms representing Settling Plaintiff, and the major commitment involved in accepting this representation, precluded Class Counsel's firms from working on other matters and accepting other representations. In addition, Class Counsel's fee request is firmly rooted in the economics of prosecuting a class action. *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). Without adequate compensation and financial reward, cases such as this simply could not be pursued.

VI. Conclusion

92. Class Counsel are well aware of the strengths and weaknesses of their case, the principles of law applicable to the disputed issues, and the relative risks of continuing to prosecute the litigation and believe the Settlement obtained is an excellent result. For the reasons set forth above and in the accompanying memoranda, Class Counsel respectfully submit that the Settlement is fair, reasonable, and adequate and should be approved. In addition, the amount of attorney's fees expenses and Case Contribution Award agreed upon by the Parties is fair and reasonable and should be approved by the Court.

We declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Miami-Dade County, Florida on January 28, 2019.

By: /s/ Adam M. Moskowitz
Adam M. Moskowitz

By: /s/ Lance A. Harke
Lance A. Harke