

THE HONORABLE ROBERT S. LASNIK

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

GEORGE COLE, a Washington resident, on
behalf of himself and all others similarly
situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A., a national
association,

Defendant.

NO. C07-0916 RSL

~~WEBSITE~~ NOTICE OF PENDENCY
OF CLASS ACTION AND PROPOSED
SETTLEMENT FOR LINKED LCA
OWNERS

**READ THIS CAREFULLY -- YOU MAY BE ENTITLED TO A RECOVERY
UNDER THE TERMS OF THIS PROPOSED SETTLEMENT**

1. What is the purpose of this notice?

The purpose of this Notice is to inform you that there has been a proposed Settlement of claims asserted in this action against Wells Fargo Bank, N.A. ("Wells Fargo"), which assessed annual fees on line of credit accounts ("LCA") to customers who had signed up for Wells Fargo's Portfolio Management Account package ("PMAs"), thereby becoming entitled to waiver of the annual fees on one linked LCA. Under the proposed Settlement, Wells Fargo will

1 refund to eligible claimants (as explained below or through information available to you by
2 calling the Wells Fargo Cole Settlement Administrator at 888-275-7520) 100% of the annual
3 fees paid that should have been waived from one PMA-linked LCA, plus simple interest at the
4 rate of four (4) percent per annum. This Notice summarizes the proposed Settlement regarding
5 Wells Fargo customers with LCAs linked to a PMA, and those customers' rights under the
6 proposed Settlement.

7 **2. What is this lawsuit about?**

8 George Cole filed this lawsuit on June 13, 2007. Mr. Cole alleged that Wells Fargo
9 improperly assessed annual fees on LCAs to customers who had signed up for PMAs. In its
10 advertisements, Wells Fargo offered various incentives to its customers to open a PMA,
11 including that those customers who open a PMA will pay no annual fees on one linked LCA.
12 Mr. Cole alleged that despite these uniform promises, Wells Fargo improperly assessed an
13 annual fee on these LCAs. Mr. Cole brought claims against Wells Fargo under the Truth in
14 Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA") and its implementing regulations, 12 C.F.R.
15 § 226.1 *et seq.* ("Regulation Z"), along with claims based on common law breach of contract
16 and unjust enrichment.

17 Wells Fargo has denied all allegations of wrongdoing and liability. Wells Fargo
18 maintains that some annual fees were assessed as a result of computer errors, and that Wells
19 Fargo has taken reasonable steps to correct the problem. The Court has not made any rulings in
20 this case regarding the merits of Mr. Cole's claims.

21 Wells Fargo has agreed to settle to avoid the uncertainty and expense of further
22 litigation. The settlement is not an admission of any wrongdoing. The settlement resulted from
23 extensive arm's-length negotiations, including a lengthy mediation session with the
24 experienced mediator Teresa Wakeen.

1 **3. What does the Settlement cover?**

2 The Settlement resolves all claims asserted in the lawsuit, including all claims relating
3 to annual fees on LCAs which should not have been assessed to Wells Fargo customers as a
4 result of linkage to a PMA from November 1, 2005 through the present.

5 **4. Who is covered by this Settlement?**

6 The Settlement covers a Linked LCA Plaintiff Settlement Class (“Linked Settlement
7 Class”), which has been defined as follows:

8 All persons and entities who maintained a Portfolio Management
9 Account package (“PMA”) with Wells Fargo, and who
10 contracted for the PMA feature of no annual fee on a single
11 personal Line of Credit Account (“LCA”), and who were
12 assessed an annual fee in connection with a Linked, Reversed, or
13 Waived LCA.

14 For the purposes of this certification, the following definitions apply:

15 “Linked LCA” means an LCA linked to a PMA and opened
16 between November 1, 2005 and July 31, 2007, and for which
17 annual fees were assessed and paid, and not reversed or refunded,
18 despite eligibility for a waiver of annual fees. Where a PMA
19 customer has more than one LCA, and did not receive a waiver
20 on any such LCA, Linked LCA shall refer only to the first LCA
21 opened by that customer.

22 “Reversed LCA” means a Linked LCA where Wells Fargo later
23 reversed or refunded the annual fees.

24 “Waived LCA” means a Linked LCA where the annual fees were
25 assessed but not paid—that is, the annual fees were waived prior
26 to payment.

27 **5. What are the Settlement terms?**

 The principal terms of the proposed settlement for Linked, Reversed, and Waived LCA
owners are as follows:

 (a) Refund to Linked, Reversed, and Waived LCA owners. To those
customers who paid annual fees on a Linked LCA that should have been waived pursuant to
terms of a PMA, Wells Fargo has agreed to refund the entire amount of these fees paid as

1 reflected in Wells Fargo's computer system, plus interest. For Linked LCA owners, the interest
2 shall be tabulated as simple interest at four (4) percent per annum commencing from the date
3 that the Linked LCA was opened through the date of payment pursuant to this Settlement.

4 Reversed LCA owners shall receive a payment of interest only, because their fees have already
5 been reversed or refunded. For Reversed LCA owners, the interest shall be tabulated as simple
6 interest at the rate of four (4) percent per annum from the date that the annual fees were paid to
7 Wells Fargo through the date that Wells Fargo reversed or refunded such payments. Waived
8 LCA owners shall receive no payment or interest because their annual fees were waived by
9 Wells Fargo prior to payment. **If you have received a Notice of Settlement directing you to**

10 **this website, Wells Fargo's records show that you have a Linked, Reversed, or Waived**
11 **LCA. YOU DO NOT NEED TO COMPLETE OR RETURN A CLAIM FORM TO BE**
12 **ENTITLED TO PAYMENT UNDER THIS SETTLEMENT FOR WELLS FARGO**
13 **CUSTOMERS WHO PAID ANNUAL FEES ON A LINKED LCA THAT SHOULD**
14 **HAVE BEEN WAIVED.**

15 (b) Release. In exchange for the benefits under the Settlement, Linked
16 Settlement Class Members who have not timely opted out will irrevocably release, relinquish
17 and forever discharge all Released Claims against Wells Fargo and its predecessors, successors,
18 past and present officers, directors, employees, agents, servants, accountants, attorneys,
19 advisors, shareholders, insurers, representatives, partners, vendors, issuers, and assigns, or
20 anyone acting on their behalf as to the Released Claims. "Released Claims" means any and all
21 claims, rights (including rights to restitution or reimbursement), demands, actions, causes of
22 action, suits, matters, issues, debts, liens, damages, attorneys' fees, obligations, contracts,
23 liabilities, agreements, costs, expenses or losses of any nature, whether known or unknown,
24 direct or indirect, matured or unmatured, contingent or absolute, existing or potential, suspected
25 or unsuspected, equitable or legal, and whether under federal statutory law, federal common
26 law or federal regulation, or the statutes, constitutions, regulations, ordinances, common law, or
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1 any other law of any and all states or subdivisions, parishes or municipalities, with respect to all
2 claims that have been, or could have been, brought in this action relating in any way to annual
3 fees assessed on LCAs which should not have been assessed to Wells Fargo customers as a
4 result of enrollment in PMAs from November 1, 2005 through the present.

5 This Release is conditioned on final approval of the Settlement by the Court.

6 (c) Attorneys Fees and Costs. From the inception of this action, Class
7 Counsel has not received any payment for their services in prosecuting the case, nor have they
8 been reimbursed for any out-of-pocket expenses. Class Counsel will ask the Court to approve
9 an award of attorneys' fees and expenses, which will be divided among the Class Counsel in
10 this case. Wells Fargo has also agreed to pay the attorneys representing Plaintiff and the Linked
11 Settlement Class a fixed sum for attorneys' fees and costs. The award of fees and costs will not
12 reduce the amount paid to the Class.

13 **6. Do Linked Settlement Class Members need to do anything to remain a**
14 **member of the Linked Settlement Class?**

15 If you fit within the description of the Linked Settlement Class set forth above, you
16 automatically will remain a member of the Class, unless you take steps to exclude yourself,
17 described below. You also may appear by your own attorney, at your own expense.

18 **7. Who represents the Linked Settlement Class?**

19 (a) The Court has designated George Cole, a customer of Wells Fargo who
20 paid an annual fee assessed on an LCA which should not have been assessed to Mr. Cole as a
21 result of enrollment in a PMA, as Class Representative for the Linked Settlement Class for
22 purposes of this Settlement approval process.

23 (b) The Court has appointed Tousley Brain Stephens PLLC and the
24 Gallagher Law Office, P.S., as Class Counsel. These attorneys represent the Linked Settlement
25 Class members' interests.

1 **8. How does the claim process work?**

2 You do not need to submit any claim to be entitled to payment under this Settlement. If
3 you remain a Linked Settlement Class Member and do not opt out under the following section,
4 you will automatically receive a refund for amounts paid to Wells Fargo, as explained in
5 greater detail in paragraphs 5 and 11 of this notice.

6 **9. How can Linked Settlement Class Members Exclude Themselves from the**
7 **settlement?**

8 If you are a Linked Settlement Class Member and do not want to remain a Linked
9 Settlement Class Member and participate in the Settlement, then you must sign and return an
10 exclusion request to: Wells Fargo Class Action Opt Outs, c/o Wells Fargo Class Action
11 Administrator, P.O. Box 3207, Portland, OR 97208-3207; or Kim D. Stephens, P.S., Tousley
12 Brain Stephens PLLC, 1700 Seventh Avenue, Suite 2200, Seattle, Washington 98101-4416
13 ("Class Counsel"). ~~If you are a Linked Settlement Class Member and do not want to remain a~~
14 ~~Linked Settlement Class Member and participate in the Settlement, then you must sign and~~
15 ~~return an exclusion request to: Wells Fargo Class Action Opt Outs, c/o Wells Fargo Bank N.A.~~
16 ~~contact and address TBD.~~ The exclusion request must include the following statement: "I
17 want to opt out of the Wells Fargo Class Action."

18 By electing to be excluded from the Linked Settlement Class, (1) you will not share in
19 any recovery if the Settlement is approved; (2) you will not be bound by any further orders or
20 judgments entered for or against the Linked Settlement Class; (3) you will not be entitled to
21 comment on or object to any proposed settlement; and (4) you may present any claims you
22 have against Wells Fargo related to the claims identified above by filing your own lawsuit at
23 your own expense.

24 The exclusion request must be postmarked no later than _____, 2008. The
25 Settlement, if approved, will bind all Linked Settlement Class members who do not request
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1 exclusion by this date. Statutes of limitation may apply to your claim if you opt-out of the
2 Settlement.

3 **10. What is the settlement approval procedure?**

4 The Court will hold a Hearing on _____, 2008 at ___ p.m., in the
5 Courtroom of the Honorable Robert S. Lasnik, District Court Judge, United States District
6 Court for the Western District of Washington, 700 Stewart Street, Seattle, Washington 98101,
7 to consider whether the Settlement should be approved, as well as to consider Class Counsel's
8 request for fees and costs.

9 If you exclude yourself from the Linked Settlement Class, you are not entitled to
10 comment on or object to the Settlement or the fee request, or be heard at the Hearing.

11 If you decide to remain in the Linked Settlement Class and you wish to comment on or
12 object to the Settlement, you may submit your comments in writing to ~~Wells Fargo Class~~
13 Counsel, Attention: Kim D. Stephens, P.S., Tousley Brain Stephens PLLC, 1700 ~~7~~Seventh
14 Avenue, Suite 2200, Seattle, Washington 98101-4416 (~~Class Counsel~~), postmarked not later
15 than _____, 2008. Class Counsel will forward copies to both the Court and to
16 counsel for Wells Fargo.

17 If you submit an objection, you must include your name and address, the name and
18 number of the case, and a statement of the reasons why you believe that the Court should find
19 that the proposed settlement is not in the best interests of the Class. If you file an objection and
20 wish it to be considered, you must also appear at the fairness hearing. **YOU ARE NOT**
21 **REQUIRED TO ATTEND THIS HEARING UNLESS YOU PLAN TO OBJECT TO**
22 **THE SETTLEMENT AND WANT YOUR OBJECTION TO BE CONSIDERED.** Please
23 note that it is not sufficient to simply state that you object. You must state reasons why you
24 believe the Settlement should not be approved.

25 If you wish to address the Court at the Hearing, you must indicate your intent to do so
26 in writing to Class Counsel, postmarked no later than _____, 2008, who will
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1 inform the Court and Wells Fargo's lawyers of your intentions. If you do not comply with
2 these procedures, you will not be entitled to be heard at the Hearing or otherwise to contest the
3 approval of the Settlement or Fee Amount, or appeal from any orders or judgments of the
4 Court. If the Court approves the Settlement, the approval will bind all members of the Linked
5 Settlement Class, except those who exclude themselves, and the judgment will release and
6 dismiss all Linked Settlement Class Members' settled claims.

7 If the Settlement is not approved, the case will proceed as if no settlement had been
8 attempted. In that event, Wells Fargo retains the right to contest whether this case may be
9 maintained as a class action and to contest the merits of the claims being asserted in these
10 matters. There can be no assurance that if the Settlement is not approved, the potential Class
11 will recover more than is provided in the Settlement, or indeed, anything.

12 **11. What will happen if this Settlement is approved?**

13 If the Court approves the Settlement, Wells Fargo shall commence payments as follows:
14 Electronic transfers to claimants with Linked LCAs who have a currently open LCA or
15 PMA will be made within 20 days after approval becomes final.

16 Checks will be mailed on a rolling basis within 20 days after approval becomes final to
17 claimants with Linked LCAs who do not have a currently open LCA or PMA.

18 If someone appeals approval of the Settlement, payment will be delayed until appeals
19 are resolved.

20 **12. Where do I get additional information?**

21 If you want further information, or would like copies of the Complaint, the Settlement
22 Agreement, or the papers filed in support of the proposed Settlement, you may telephone the
23 Wells Fargo Cole Settlement Administrator at 888-275-7520, write to Class Counsel at the
24 address provided above, view them over the Internet at www.tousley.com, email Class Counsel
25 at WFBannualfeeslawsuit@tousley.com, or call Class Counsel at (206) 682-5600. **PLEASE**

26 **DO NOT CONTACT THE COURT FOR INFORMATION.**

1 The foregoing is only a summary of the Action and the proposed Settlement. You may
2 seek the advice of your own attorney, at your expense, if you so desire. For more detailed
3 information, you may review the papers on file in the lawsuit, which may be inspected during
4 regular business hours at the Clerk's Office, United States District Court for the Western
5 District of Washington, 700 Stewart Street, Seattle, Washington 98101.

6 Dated: _____, 2008.

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10 _____
Hon. Robert S. Lasnik
United States District Judge