

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

ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS  
SETTLEMENT, CONDITIONALLY  
CERTIFYING SETTLEMENT CLASS,  
AND APPROVING FORM AND  
MANNER OF NOTICE

Plaintiffs' Revised Unopposed Motion for Preliminary Approval of Proposed Class  
Action Settlement has come before this Court. The Court determines and orders as follows:

A. Counsel have advised the Court that the parties have agreed, subject to final  
approval by this Court following notice to the Plaintiff Settlement Class (as described in  
Paragraph 5, below) and a hearing, to settle this action upon the terms and conditions set forth  
in the Settlement Agreement ("Settlement Agreement"), which has been filed with the Court.

B. The Court has reviewed the Settlement Agreement, as well as the files, records,  
and proceedings to date in this matter. The terms of the Settlement Agreement are hereby  
incorporated as though fully set forth in this Order, and capitalized terms shall have the  
meanings attributed to them in the Settlement Agreement.

1 C. Based upon preliminary examination, it appears to the Court that the Settlement  
2 Agreement is fair, reasonable, and adequate, that the Plaintiff Settlement Class should be  
3 certified for settlement purposes, subject to Paragraph 10, below, and that a hearing should be  
4 held after notice to the Plaintiff Settlement Class to determine whether the Settlement  
5 Agreement is fair, reasonable and adequate, and whether a settlement approval order and final  
6 judgment should be entered in this action, based upon that Settlement Agreement.

7 Based upon the foregoing, IT IS HEREBY ORDERED:

8 1. **Preliminary Approval of Proposed Settlement.** The Settlement Agreement,  
9 including all exhibits thereto as modified by this Order at ¶ 5, is preliminarily approved as fair,  
10 reasonable and adequate. The Court finds that (a) the Settlement Agreement resulted from  
11 extensive arm's-length negotiations, including a lengthy mediation session with the  
12 experienced mediator Teresa Wakeen; and (b) the Settlement Agreement is sufficient to  
13 warrant notice thereof to members of the Plaintiff Settlement Class and the Settlement Hearing  
14 described below.

15 2. **Class Certification for Settlement Purposes Only.** Pursuant to Federal Rule of  
16 Civil Procedure 23(b)(3), the Court, for settlement purposes only, hereby conditionally certifies  
17 a class (the "Class") consisting of:

18 All persons and entities who maintained a Portfolio Management  
19 Account ("PMA") with Wells Fargo, thereby contracting for the  
20 PMA's feature of no annual fee on a personal Line of Credit  
21 Account ("LCA"), and who were assessed an annual fee in  
22 connection with a Linked, Reversed, Waived, or Unlinked LCA.

23 For the purposes of this certification, the following definitions  
24 apply:

25 "Linked LCA" means an LCA linked to a PMA and opened  
26 between November 1, 2005 and July 31, 2007, and for which  
27 annual fees were assessed and paid, and not reversed or refunded,  
despite eligibility for a waiver of annual fees. Where a PMA  
customer has more than one LCA, Linked LCA shall refer only to  
the first LCA opened by that customer.

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

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

4 “Unlinked LCA” means an LCA opened between November 1,  
5 2005 and the date of final approval of this Settlement, not linked  
to a PMA, and for which annual fees were assessed and paid, and  
6 not reversed or refunded, despite eligibility for a waiver of annual  
fees. Where a PMA customer has more than one LCA, Unlinked  
7 LCA shall refer only to the first LCA opened by that customer.

8 (a) In connection with the certification, the Court makes the following  
9 preliminary findings:

10 (1) Rule 23(a)(1) is satisfied because the Class appears to be so  
11 numerous that joinder of all members is impracticable;

12 (2) Rule 23(a)(2) is satisfied because there appear to be questions of  
13 law or fact common to the above-described Class;

14 (3) Rule 23(a)(3) is satisfied because the claims of the named  
15 plaintiffs appear to be typical of the claims being resolved through the proposed Settlement;

16 (4) Rule 23(a)(4) is satisfied because Class Representative George  
17 Cole appears to be capable of fairly and adequately protecting the interests of the above-  
18 described Class in connection with the proposed Settlement and because Counsel representing  
19 the Class, Tousley Brain Stephens PLLC and the Gallagher Law Office, P.S., are qualified,  
20 competent and capable of prosecuting this action on behalf of the Class. Adequacy of  
21 representation therefore is satisfied.

22 (5) For purposes of determining whether the Settlement is fair,  
23 adequate and reasonable, the Court finds the requirements of Rule 23(b)(3) have been satisfied  
24 because common questions of law and fact appear to predominate over questions affecting only  
25 individual Class Members and because settlement with the above-described Plaintiff Settlement  
26 Class appears to be superior to other available methods for the fair and efficient resolution of  
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1 the claims of the Class. Accordingly, the Class appears to be sufficiently cohesive to warrant  
2 adjudication through settlement by representation.

3 (b) In making the foregoing findings, the Court has exercised its discretion  
4 in conditionally certifying a settlement class.

5 (c) Named plaintiff George Cole is designated as a Class Representative.

6 3. **Class Counsel.** The Court appoints Tousley Brain Stephens PLLC and the  
7 Gallagher Law Office, P.S., as counsel for the Class. For purposes of these settlement approval  
8 proceedings, the Court finds that these counsel are competent and capable of exercising their  
9 responsibilities as Class Counsel.

10 4. **Settlement Hearing.** A final approval hearing (the "Settlement Hearing") shall  
11 be held before this Court on October 7, 2008, at 8:30 a.m., as set forth in the Notice (described  
12 in Paragraph 5 below), to determine whether the Settlement Agreement is fair, reasonable and  
13 adequate and should be approved. Papers in support of final approval of the Settlement  
14 Agreement and plaintiffs' counsel's application for an award of attorneys' fees, costs and  
15 expenses (the "Fee Application") shall be filed with the Court according to the schedule set  
16 forth in Paragraph 9, below. The Settlement Hearing may be postponed, adjourned, or  
17 continued by order of the Court without further notice to the Class. After the Settlement  
18 Hearing, the Court may enter a Settlement Order and Final Judgment in accordance with the  
19 Settlement Agreement (the "Final Judgment") that will adjudicate the rights of the Class  
20 Members with respect to the claims being settled.

21 5. **Notice.** Wells Fargo shall comply with the notice requirements of Paragraph 3.3  
22 of the Settlement Agreement.

23 (a) In compliance with that Paragraph, within twenty (20) days of entry of  
24 this Order, Wells Fargo shall cause a Notice of Pendency of Class Action and Proposed  
25 Settlement ("Notice to Linked LCA Owners") to be mailed by United States mail to all Linked  
26 LCA owners, Reversed LCA owners, and Waived LCA owners who appear in Wells Fargo's  
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1 computerized records. The Notice to Linked LCA Owners shall be substantially in the form  
2 attached as Exhibit 1 to Plaintiffs' Revised Unopposed Motion for Preliminary Approval of  
3 Settlement Agreement, and will include email addresses through which Class Members can  
4 contact Class Counsel.

5 (b) In addition, in compliance with Paragraph 3.3 of the Settlement  
6 Agreement, within twenty (20) days of entry of this Order, Wells Fargo shall cause a Notice of  
7 Pendency of Class Action and Proposed Settlement and Claim Form ("Notice to Unlinked LCA  
8 Owners") to be mailed by United States mail to all Unlinked LCA owners who appear in Wells  
9 Fargo's computerized records. The Notice to Unlinked LCA Owners shall be substantially in  
10 the form attached as Exhibit 2 to Plaintiffs' Revised Unopposed Motion for Preliminary  
11 Approval of Settlement Agreement, and will include email addresses through which Class  
12 Members can contact Class Counsel.

13 (c) For Plaintiff Class Members who remain Wells Fargo customers, Wells  
14 Fargo must not include the notices described in the previous sections with a customer's  
15 statement or other communications, but instead must mail them independently.

16 6. ***Findings Concerning Notice.*** The Court finds that the notice and the manner of  
17 its dissemination described in the previous Paragraph and in Paragraph 3.3 of the Settlement  
18 Agreement is the best practicable notice under the circumstances and is reasonably calculated,  
19 under all the circumstances, to apprise Class Members of the pendency of this action and their  
20 right to object to or exclude themselves from the Class. The Court further finds that the notice  
21 is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to  
22 receive notice, and that it meets the requirements of due process.

23 7. ***Exclusion from Class.*** Each Class Member who wishes to exclude himself or  
24 herself from the Class and follows the procedures set forth in this Paragraph shall be excluded.  
25 Any potential member of the Class may mail a written request for exclusion, in the form  
26 specified in the Notice, to Class Counsel at the address set forth in the Notice. All such written  
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1 requests must be postmarked not later than September 25, 2008. All persons who properly  
2 make requests for exclusion from the Class shall not be Class Members and shall have no rights  
3 with respect to, nor be bound by, the Settlement Agreement, should it be approved. The names  
4 of all such excluded individuals shall be attached as an exhibit to any Final Judgment.

5 8. ***Objections and Appearances.***

6 (a) ***Written Objections.*** Any Class Member who has not timely submitted a  
7 written request for exclusion from the Class, and thus is a Class Member, may object to the  
8 fairness, reasonableness or adequacy of the Agreement, or the Fee Application. Any class  
9 member who wishes to object to the Settlement, must submit his or her objection in writing to  
10 Class Counsel, Attention: Kim D. Stephens, P.S., Tousley Brain Stephens PLLC, 1700 7th  
11 Avenue, Suite 2200, Seattle, Washington 98101-4416 ("Class Counsel"), postmarked no later  
12 than September 25, 2008. Class Counsel will file copies with the Court and promptly serve  
13 counsel for Wells Fargo.

14 (b) Objecting Class Members must include their name and address, the name  
15 and number of the case, and a statement of the reasons why they believe that the Court should  
16 find that the proposed settlement is not in the best interests of the Class. Any Class Member  
17 who files an objection and wishes it to be considered, must also appear at the fairness hearing.

18 (c) If any objecting Class Member wishes to address the Court at the  
19 Hearing, such objecting Class Member must indicate his or her intent to do so in writing to  
20 Class Counsel, postmarked no later than September 25, 2008, who will inform the Court and  
21 Wells Fargo's lawyers accordingly.

22 (d) Class Members intending to appear at the Settlement Hearing must  
23 deliver to Class Counsel, postmarked no later than September 25, 2008, a notice of intention to  
24 appear, setting forth (1) the name and address of the Class Member, and (2) the objection,  
25 including any papers in support thereof. Upon receipt of any such notice, Class Counsel shall  
26 immediately upon receipt serve the notice on counsel for Wells Fargo and file the notice with  
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1 the Court. Any Class Member who does not timely deliver written objection and the notice of  
2 intention to appear in accordance with the requirements of this Order, shall not be permitted to  
3 object or appear at the Settlement Hearing, except for good cause shown, and shall be bound by  
4 all proceedings, orders and judgments of the Court. Any objection that is not timely made shall  
5 be forever barred.

6 (e) ***Responses to Objections and Further Papers in Support of Fee***

7 ***Request.*** Any responses to objections to the Settlement Agreement or the fee request, and any  
8 further papers in support of the fee request, shall be filed with the Court on or before October 2,  
9 2008.

10 9. ***Dates of Performance.*** In summary, the dates of performance are as follows:

11 (a) Wells Fargo shall begin mailing the Notice to potential Class Members  
12 on or before July 16, 2008, and all mailing shall be completed by August 25, 2008, all as  
13 provided in Paragraph 3.3 of the Settlement Agreement;

14 (b) Class Members who desire to be excluded shall mail requests for  
15 exclusion postmarked by September 25, 2008;

16 (c) All objections to the Settlement Agreement or Fee Application shall be  
17 filed and served by September 25, 2008;

18 (d) Class Members who desire to submit Claim Forms shall mail completed  
19 Claim forms postmarked by September 25, 2008;

20 (e) Papers in response to objections, if any, and in further support of the fee  
21 request shall be filed by October 2, 2008; and

22 (f) The Settlement Hearing shall be held on October 7, 2008, at 8:30 a.m.

23 10. ***Effect of Failure to Approve the Settlement Agreement.*** In the event the  
24 Settlement Agreement is not approved by the Court, or for any reason the parties fail to obtain a  
25 Final Judgment as contemplated in the Settlement Agreement, or the Settlement Agreement is  
26 terminated pursuant to its terms for any reason, then the following shall apply:  
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1 (a) The parties may file a stipulation and proposed order to vacate this order  
2 or any related orders, or if they cannot agree, either side may file a motion.

3 (b) Nothing contained in this Order is, or may be construed as, any  
4 admission or concession by or against the Defendant or Plaintiffs on any point of fact or law,  
5 including, but not limited to, factual or legal matters relating to any effort to certify this case as  
6 a class action; and

7 (c) Nothing in this Order or pertaining to the Settlement Agreement shall be  
8 used as evidence in any further proceeding in this case, including, but not limited to, motions or  
9 proceedings pertaining to treatment of this case as a class action.

10 11. ***Changes Sought by Counsel.*** If the parties seek changes to the administration  
11 of the Settlement, such as making minor changes to the content of the Notice, they may file a  
12 stipulation and proposed order to do so, or if they cannot agree, either side may file a motion.

13 DONE this 26th day of June, 2008.

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16 Robert S. Lasnik  
17 United States District Judge  
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