

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

**PLAINTIFFS' REVISED
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT**

Noted for Consideration:
June 20, 2008

I. RELIEF REQUESTED

Plaintiff George Cole, on his behalf and on behalf of all others similarly situated, respectfully requests this Court to: (1) grant preliminary approval of the proposed Settlement and provisionally certify the proposed Settlement Class by entering an order in the proposed form lodged herewith; and (2) set a formal fairness hearing on final Settlement approval at the Court's convenience at least ninety (90) days after entry of the order preliminarily approving the Settlement. Consistent with the terms of the Settlement Agreement, Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), has not opposed the motion.

II. INTRODUCTION

1
2 By order dated June 13, 2008, the Court denied (Doc. No. 13, the "Order") Plaintiff's
3 Motion for Approval of Notice to Class Members (Doc. No. 9), but invited Plaintiff to re-note
4 the motion once the proposed notices and order were properly amended. The Court found the
5 proposed, mailed notice deficient because it did not describe Class members' right to opt out,
6 indicate the time and place of the final fairness hearing, or include contact information for
7 Class counsel. The Court indicated that the parties must accomplish notice by independently
8 mailing amended "website" content notices, which contained this crucial information and more,
9 to all Class members. The Court also questioned the truncated notice and website claim
10 procedure for unlinked accounts, which the parties have addressed by including a claim form
11 with the independently mailed, "website" style notice.

III. STATEMENT OF FACTS

12
13 The substantive facts supporting the Motion for Preliminary Approval have not
14 changed. Plaintiff additionally submits the Declaration of Brian Meenaghan, which clarifies
15 the commitment of Defendant Wells Fargo Bank, N.A., to mail notice to Class members
16 separate and apart from regular statements. Plaintiff also submits two amended class notices
17 and an amended proposed order, as required in the Order.¹

IV. ARGUMENT: PLAINTIFF REQUESTS PRELIMINARY APPROVAL AND PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS, INCLUDING APPROVAL OF THE AMENDED NOTICES

18
19
20 Having cured the deficiencies identified in the Order, Plaintiff respectfully requests the
21 Court to grant preliminary approval, approve the amended notices, and provisionally certify the
22 Settlement Class.

V. CONCLUSION

23
24 Plaintiff respectfully requests that the Court grant preliminary approval to the proposed
25 settlement, provisionally certify the proposed settlement class, appoint as Class Counsel
26

27 ¹ Revised notices are attached as Exhibits 1 and 2 and are redlined for the Court's attention.

1 Tousley Brain Stephens PLLC and the Gallagher Law Office, P.S., approve the amended
2 notices and proposed notice plan, and schedule a formal fairness hearing for final settlement
3 approval as the Court's calendar permits at least ninety (90) days after preliminary approval.
4 Plaintiffs have submitted a proposed order contemporaneously.

5 DATED this 20th day of June, 2008.

6 TOUSLEY BRAIN STEPHENS PLLC

7 By: /s/ Kim D. Stephens

8 Kim D. Stephens, P.S., WSBA #11984

9 kstephens@tousley.com

10 Paul W. Moomaw, WSBA #32728

11 pmoomaw@tousley.com

12 1700 Seventh Avenue, Suite 2200

13 Seattle, WA 98101

14 Tel: 206.682.2992

15 Fax: 206.682.2992

16 GALLAGHER LAW OFFICE, P.S.

17 Daniel C. Gallagher, WSBA # 21940

18 seattlelaw@hotmail.com

19 10611 Battle Point Drive NE

20 Bainbridge Island, WA 98110-1493

21 Tel: 206.855.9310

22 Fax: 206.855.2878

23 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

1
2 I hereby certify that on June 20, 2008, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to the
4 following:

5 Rudy A. Englund, WSBA No. 04123
6 Email: englundr@lanepowell.com
7 Ronald E. Beard, WSBA No. 24014
8 Email: beardr@lanepowell.com
9 Brian Meenaghan, WSBA No. 28264
10 Email: meenaghanb@lanepowell.com
11 Tara Gillespie, WSBA No. 38610
12 Email: gillespiet@lanepowell.com
13 LANE POWELL PC
14 1420 Fifth Avenue, Suite 4100
15 Seattle, Washington 98101-2338
16 Telephone: 206.223.7000
17 Facsimile: 206.223.7107

Attorneys for Defendant

DATED at Seattle, Washington, this 20th day of June, 2008.

18 By: /s/ Kim D. Stephens, P.S.
19 Kim D. Stephens, P.S., WSBA #11984
20 kstephens@tousley.com
21 Attorneys for Plaintiff
22 TOUSLEY BRAIN STEPHENS PLLC
23 1700 Seventh Avenue, Suite 2200
24 Seattle, WA 98101
25 Tel: 206.682.5600
26 Fax: 206.682.2992

— EXHIBIT 1 —

THE HONORABLE ROBERT S. LASNIK

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WELLS FARGO BANK, N.A., a national
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NO. C07-0916 RSL

WEBSITE-NOTICE OF PENDENCY
OF CLASS ACTION AND PROPOSED
SETTLEMENT FOR UNLINKED LCA
OWNERS

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

***IF SO, YOU WILL BE REQUIRED TO RETURN A CLAIM FORM AS
DESCRIBED BELOW***

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 ("PMA"), thereby becoming entitled to waiver of the annual fees on one linked LCA. Under the proposed Settlement, Wells Fargo will refund to eligible claimants (as explained below) 100% of the annual fees paid that should have

1 been waived from one LCA that has been linked to a PMA, plus simple interest at the rate of
2 four (4) percent per annum. This Notice summarizes the proposed Settlement regarding PMA
3 customers with an unlinked LCA who were charged and paid an annual fee, and such
4 customers' rights under the proposed Settlement. Wells Fargo records show that certain PMA
5 customers have not taken advantage of the opportunity to link a personal line of credit to the
6 PMA account and this information provides such Wells Fargo PMA customers another
7 opportunity to do so. Wells Fargo waives annual fees on one personal line of credit that a
8 customer links to a PMA account. Linking your accounts will allow them to appear
9 on one combined monthly statement. If you link a personal line of credit to your PMA
10 account, and previously did not receive a fee waiver on one linked LCA, Wells Fargo will also
11 refund any annual fees you have already paid for one such previously unlinked line of credit
12 plus 4% simple interest.

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

14 George Cole filed this lawsuit on June 13, 2007. Mr. Cole alleged that Wells Fargo
15 improperly assessed annual fees on LCAs to customers who had signed up for PMAs. In its
16 advertisements, Wells Fargo offered various incentives to its customers to open a PMA,
17 including that those customers who open a PMA will pay no annual fees on one linked LCA.
18 Mr. Cole alleged that despite these uniform promises, Wells Fargo improperly assessed an
19 annual fee on these LCAs. Mr. Cole brought claims against Wells Fargo under the Truth in
20 Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA") and its implementing regulations, 12 C.F.R.
21 § 226.1 *et seq.* ("Regulation Z"), along with claims based on common law breach of contract
22 and unjust enrichment.

23 Wells Fargo has denied all allegations of wrongdoing and liability. Wells Fargo
24 maintains that some annual fees were assessed as a result of computer errors, and that Wells
25 Fargo has taken reasonable steps to correct the problem. The Court has not made any rulings in
26 this case regarding the merits of Mr. Cole's claims.
27

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

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

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

9 **4. Who is covered by this part of the Settlement?**

10 The part of the Settlement regarding Wells Fargo customers who own a PMA and an
11 unlinked LCA covers a Settlement Class of Unlinked LCA owners (the "Unlinked Settlement
12 Class"), which has been defined as follows:

13 All persons and entities who maintained a Portfolio Management
14 Account package ("PMA") with Wells Fargo, and who
15 contracted for the PMA's feature of no annual fee on a single
16 personal Line of Credit Account ("LCA"), and who were charged
and paid such annual fee.

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

18 "Unlinked LCA" means an LCA opened between November 1,
19 2005 and the date of final approval of this Settlement, not linked
20 to a PMA, and for which annual fees were assessed and paid, and
21 not reversed or refunded. Where a PMA customer has more than
one LCA, Unlinked LCA shall refer only to the first LCA opened
by that customer, unless a different LCA received an annual fee
waiver.

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

23 The principal terms of the proposed settlement for the Unlinked Settlement Class, that is
24 Wells Fargo customers with a PMA and an unlinked LCA who were charged and paid an
25 annual fee are as follows:
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1 (a) Refund to Unlinked LCA owners. To those customers who did not
2 receive a fee waiver on one LCA, if the customer links the LCA to a PMA account within the
3 time set forth to take advantage of this Settlement, Wells Fargo has agreed to refund the entire
4 amount of these fees paid on one such previously Unlinked LCA as reflected in Wells Fargo's
5 computer system, plus simple interest at four (4) percent per annum from the date of payment
6 of the unlinked LCA annual fee through the date of payment pursuant to this Settlement. For
7 settlement class members with Unlinked LCAs, Wells Fargo has agreed to refund these
8 amounts to all eligible claimants who return a properly completed claim form affirming that the
9 settlement class member consents to linking the Unlinked LCA to an eligible PMA. These
10 Unlinked LCA owners need to submit a timely and valid claim form to be entitled to payment
11 under this Settlement. If you have received a Notice of Settlement directing you to this
12 website, Wells Fargo's records show that you have an Unlinked LCA. A CLAIM FORM
13 APPEARS WITH THE NOTICE OF SETTLEMENT MAILED TO YOU. TO BE
14 ENTITLED TO PAYMENT, YOU MUST FILL OUT, SIGN, AND RETURN THAT
15 CLAIM FORM ON OR BEFORE _____ consenting to linking one previously
16 unlinked LCA to your PMA.

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

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

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

15 **6. Do Unlinked Settlement Class Members need to do anything to remain a**
16 **member of the Unlinked Settlement Class?**

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

21 **7. Who represents the Unlinked Settlement Class?**

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

1 (b) The Court has appointed Tousley Brain Stephens PLLC and the
2 Gallagher Law Office, P.S., as Class Counsel. These attorneys represent the Unlinked
3 Settlement Class Members' interests.

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

5 An Unlinked Settlement Class Member is eligible to be paid a refund under the
6 Settlement only if the Unlinked Settlement Class Member returns a properly completed Claim
7 Form forwarded to all Unlinked Settlement Class Members: with this Notice. Unlinked
8 Settlement Class Members must return the Claim Form to the address shown on the Claim
9 Form within ninety (90) days of the date of the Notice. If an Unlinked Settlement Class
10 Member does not timely send in a Claim Form, the Unlinked Settlement Class Member will not
11 receive a refund payment under the settlement with respect to annual fees paid on an Unlinked
12 LCA.

13 To facilitate claim processing, the claim form requests (but does not require) the
14 Unlinked Settlement Class Member to state the amount of fee(s) assessed. This will facilitate
15 processing your claim, but it is not required.

16 **9. How can I exclude myself from the settlement?**

17 If you are an Unlinked Settlement Class Member and do not want to remain an
18 Unlinked Settlement Class Member and participate in the Settlement, then you must sign and
19 return an exclusion request to: Wells Fargo Class Action Opt Outs, c/o Wells Fargo Class
20 Action Administrator, P.O. Box 3207, Portland, OR 97208-3207; or Kim D. Stephens, P.S.,
21 Tousley Brain Stephens PLLC, 1700 Seventh Avenue, Suite 2200, Seattle, Washington 98101-
22 4416 ("Class Counsel"). If you are an Unlinked Settlement Class Member, but do not want to
23 remain an Unlinked Settlement Class Member and participate in the Settlement, then you must
24 sign and return an exclusion request to: Wells Fargo Class Action Opt Outs, c/o Cole v. Wells
25 Fargo Class Action Administrator, P.O. Box 3207, Portland, OR 97208-3207. The exclusion
26
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1 request must include the following statement: "I want to opt out of the Wells Fargo Class
2 Action."

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

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

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

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

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

21 If you are an Unlinked Settlement Class member and decide to remain in the Unlinked
22 Settlement Class and you wish to comment on or object to the Settlement, you may submit your
23 comments in writing to Class Counsel, Attention: Kim D. Stephens, P.S., Tousley Brain
24 Stephens PLLC, 1700 Seventh Avenue, Suite 2200, Seattle, Washington 98101-4416 (~~Class
25 Counsel~~), postmarked not later than _____, 2008. Class Counsel will forward copies
26 to both the Court and to counsel for Wells Fargo.
27

1 If you submit an objection, you must include your name and address, the name and
2 number of the case, and a statement of the reasons why you believe that the Court should find
3 that the proposed settlement is not in the best interests of the Class. If you file an objection and
4 wish it to be considered, you must also appear at the fairness hearing. **UNLINKED**
5 **SETTLEMENT CLASS MEMBERS ARE NOT REQUIRED TO ATTEND THIS**
6 **HEARING UNLESS THE UNLINKED SETTLEMENT CLASS MEMBER PLANS TO**
7 **OBJECT TO THE SETTLEMENT AND WANTS THE OBJECTION TO BE**
8 **CONSIDERED.** Please note that it is not sufficient to simply state that you object. You must
9 state reasons why you believe the Settlement should not be approved.

10 If you are An Unlinked Settlement Class Member and wish to address the Court at the
11 Hearing, you must indicate your intent to do so in writing to Class Counsel, postmarked no
12 later than _____, 2008, who will inform the Court and Wells Fargo's lawyers of
13 your intentions. If you do not comply with these procedures, you will not be entitled to be
14 heard at the Hearing or otherwise to contest the approval of the Settlement or Fee Amount, or
15 appeal from any orders or judgments of the Court. If the Court approves the Settlement, the
16 approval will bind all members of the Unlinked Settlement Class, except those who exclude
17 themselves, and the judgment will release and dismiss all Unlinked Settlement Class Members'
18 settled claims.

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

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

25 If the Court approves the Settlement, Wells Fargo shall commence payments as follows:
26
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1 Electronic transfers to claimants with Unlinked LCAs who have a currently open LCA
2 or PMA and who submit timely and proper claims will be made after approval becomes final
3 and within 20 days of receipt of a proper claim form.

4 Checks will be mailed on a rolling basis after approval becomes final and within 20
5 days of receipt of a timely and proper claim form to claimants with Unlinked LCAs who do not
6 have a currently open LCA or PMA.

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

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

10 If you want further information, or would like copies of the Complaint, the Settlement
11 Agreement, or the papers filed in support of the proposed Settlement, you may telephone the
12 Wells Fargo Cole Settlement Administrator at 888-275-7520, write to Class Counsel at the
13 address provided above, view them over the Internet at www.tousley.com, email Class Counsel
14 at WFBannualfeeslawsuit@tousley.com, or call Class Counsel at (206) 682-5600. **PLEASE**
15 **DO NOT CONTACT THE COURT FOR INFORMATION.**

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

21 Dated: _____, 2008.

22
23
24
25 _____
Hon. Robert S. Lasnik
United States District Judge

CLAIM FORM

If you have questions about completing this Claim Form, you may contact the Wells Fargo Cole Settlement Administrator at 888-275-7520, or Class Counsel at 206-682-5600 (phone), WFBannualfeeslawsuit@Tousley.com (email), or www.tousley.com (website)

1. You Name(s) as it/they appeared on your Line of Credit Account(s):

2. Current Address: _____

3. Check which Line of Credit Account(s) you wish to Link to your PMA account:
 - Personal Credit Management line of credit account
 - Home equity line of credit account
 - Private Client Services line of credit account
4. Line of Credit Account(s) Number(s) (if known): _____

5. Checking Account Number (if known): _____

AS A CONDITION OF PAYMENT, YOU MUST AFFIRM THE FOLLOWING:

You are only entitled to a refund if your answer is "Yes") to the question below. If you have any questions or concerns about providing an answer, please contact the above-listed law firm representing the Class.

Do you consent to Wells Fargo linking your Line of Credit Account(s) checked in paragraph 3 above to your Portfolio Management Account, or the Portfolio Management Account owned by a member of your household, in Wells Fargo's computer system?

YES / / NO / /

By my signature below, I hereby certify, under penalty of perjury under the federal and state laws of the United States, that the foregoing information is true and correct.

Signed this _____ day of _____, 2008, in _____, _____.

(Month) (City) (State)

Claimant (signature)

Return form to:
Wells Fargo Class Action Administrator
PO Box 3207
Portland, OR 97208-3207

— EXHIBIT 2 —

THE HONORABLE ROBERT S. LASNIK

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~~WEBSITE~~ NOTICE OF PENDENCY
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