

Exhibit B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SHAHRIAR JABBARI and KAYLEE
HEFFELFINGER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

WELLS FARGO & COMPANY and WELLS
FARGO BANK, N.A.,

Defendants.

No. 3:15-cv-02159-VC

**AMENDED [PROPOSED] ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Judge: Hon. Vince Chhabria

I. INTRODUCTION

Plaintiffs Shahriar Jabbari and Kaylee Heffelfinger, and proposed settlement class representatives Jose Rodriguez and Antonette Brooks, individually and on behalf of the Settlement Class (“Plaintiffs”), and Defendants Wells Fargo & Company and Wells Fargo Bank, N.A. (“Defendants”) have reached a proposed settlement, as set forth in the Parties’ Amended Stipulation and Agreement of Class Action Settlement and Release (the “Stipulation” or the “Settlement”). Plaintiffs, on behalf of themselves and the Settlement Class (as hereinafter defined), have applied to the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for: (1) an order approving the settlement of the above-captioned litigation (the “Action”) in accordance with the Stipulation; (2) dismissal of the Action with

1 prejudice as against all of the Released Parties (as defined in the Stipulation), upon the terms and
2 conditions set forth in the Stipulation; and (3) certification of the Action as a class action for settlement
3 purposes only.

4 Plaintiff Jabbari filed a class action complaint against Defendants on May 13, 2015, alleging that
5 Defendants had opened multiple accounts in his name without his knowledge or consent. (ECF 1). On
6 June 24, 2015, Plaintiff Heffelfinger filed a putative class action complaint captioned *Heffelfinger v.*
7 *Wells Fargo & Co., et al.*, Case No. 3:15-cv-02942 (N.D. Cal.), asserting similar claims. On July 30,
8 2015, Plaintiff Heffelfinger voluntarily dismissed *Heffelfinger v. Wells Fargo & Co., et al.*, Case No.
9 3:15-cv-02942, and Plaintiffs consolidated their claims against Wells Fargo and filed a Consolidated
10 Amended Class Action Complaint on behalf of themselves and all others similarly situated. (ECF 37).
11 The Court granted Defendants' motion to compel arbitration on September 23, 2015. (ECF 69). The
12 following month, Plaintiffs appealed that order. (ECF 70).

13 While Plaintiffs' appeal was pending, the parties began settlement discussions. (Settlement at 2-
14 4). On September 8, 2016, the parties notified the Ninth Circuit that they had reached a settlement and
15 stipulated that the appeal be dismissed, so that jurisdiction would re-vest in this Court for the purpose of
16 settlement approval proceedings. (9th Cir. Dkt No. 22-1).

17 This matter has now come before the Court pursuant to Plaintiffs' Motion for Preliminary
18 Approval of Class Action Settlement and for Certification of a Settlement Class (the "Motion"). (ECF
19 101). Defendants have filed a brief in support of the Court's entry of the proposed Preliminary Approval
20 Order (ECF 106), and the Parties submitted supplemental briefing in response to questions posed by the
21 Court on May 17, 2017. (ECF 145, 146).

22 The Court finds that it has jurisdiction over the Action, the Parties, and all Settlement Class
23 Members for purposes of settlement under 28 U.S.C. § 1331 and 28 U.S.C. § 1332(d).

1 The Court held a Preliminary Approval Hearing on May 18, 2017, received amended settlement
2 papers from the Parties on June 13, 2017, and has considered all of the presentations and submissions
3 related to the Motion and is otherwise fully advised of all relevant facts in connection therewith, and has
4 found good cause for entry of the following Order.

5 **IT IS HEREBY ORDERED AS FOLLOWS:**

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7 (1) This Order (the “Preliminary Approval Order”) hereby incorporates by reference the
8 definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the
9 Stipulation;

10 (2) The Court, having fully reviewed Plaintiffs’ Motion, the supporting Memorandum and
11 Declarations filed in support thereof, and supplemental briefing, determines that the Settlement appears
12 to be the product of thorough, serious, informed, and non-collusive negotiations between experienced
13 attorneys familiar with the legal and factual issues of this case; has no obvious deficiencies; does not
14 improperly grant preferential treatment to the Settlement Class Representatives or segments of the Class;
15 and appears to be fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of
16 Civil Procedure, such that preliminary approval of the Settlement should be granted, notice of the
17 Settlement should be directed to the Settlement Class Members, and a Fairness Hearing should be set.

18 Accordingly, the Motion is GRANTED.

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20 **II. THE SETTLEMENT CLASS**

21 The Court hereby certifies, for settlement purposes only pursuant to Rules 23(a) and (b)(3) of the
22 Federal Rules of Civil Procedure, a Settlement Class defined as follows:

23 All Persons for whom Wells Fargo or Wells Fargo’s current or former subsidiaries, affiliates,
24 principals, officers, directors, or employees opened an Unauthorized Account or submitted an
25 Unauthorized Application, or who obtained Identity Theft Protection Services from Wells Fargo during
26 the period from May 1, 2002 to April 20, 2017, inclusive.
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1 The following entities and individuals are excluded from the Class:

2 A. Defendants' officers, directors and employees;

3 B. Judicial officers and associated court staff assigned to this case, and the
4 immediate family members of such officers and staff; and

5 C. All those otherwise in the Class who or which timely and properly exclude
6 themselves from the Class as provided in the Agreement.
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8 **III. THE SETTLEMENT FUND**

9 The Settlement creates a non-reversionary settlement fund of \$142 million, which Wells Fargo
10 shall cause to be deposited into the Escrow Account within ten (10) business days of entry of this
11 Preliminary Approval Order.

12 The Escrow Account established by this Order is intended to be a Qualified Settlement Fund
13 within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986,
14 as amended. Class Counsel shall, in its sole discretion, appoint an escrow agent who shall hold and
15 distribute funds as provided herein. All costs and expenses of the Escrow Agent, including taxes, if any,
16 shall be paid from the funds under its control, including any interest earned on the funds.
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18 After deductions for any attorneys' fees and costs that Class Counsel may apply for and the
19 Court may award, the Named Plaintiff Service Awards, any Notice and Administration Costs, the cost of
20 the Claims Review Process, and other Court-approved costs, expenses, or amounts, the balance of the
21 non-reversionary \$142 million settlement fund will be distributed to Authorized Claimants as set out in
22 in the proposed Plan of Allocation set forth in Paragraph 9 of the Stipulation.
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24 To implement the Plan of Allocation, a Settlement Administrator, working under the supervision
25 of Class Counsel and subject to the jurisdiction of this Court, shall administer a process of receiving,
26 reviewing, and approving or denying Settlement Class Member claims.
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1 First, Authorized Claimants will be reimbursed from the Net Settlement Amount for out-of-
2 pocket losses stemming from Unauthorized Accounts and Unauthorized Applications. Such out-of-
3 pocket losses shall consist of two components: (1) increased borrowing cost due to credit score impact
4 as a result of a Credit Analysis Account (“Credit Impact Damages”); and (2) fees assessed by Wells
5 Fargo in connection with certain Unauthorized Accounts (“Fee Damages”). Authorized Claimants who
6 activated or used an Unauthorized Credit Analysis Account are not eligible to receive Credit Impact
7 Damages in connection with such account; however, they remain entitled to receive a Non-
8 Compensatory Payment in connection with such account. Consultant-Identified Persons are not eligible
9 to receive Fee Damages in connection with the account, product, or service identified through the
10 Consultant Analysis as potentially being an Unauthorized Account, as any fees assessed by Wells Fargo
11 in connection with such account, product, or service have been or will be reimbursed through a separate
12 process. Consultant-Identified Persons remain eligible to receive Fee Damages only in connection with
13 Unauthorized Accounts which were not identified through the Consultant Analysis. Consultant-
14 Identified Persons are eligible to receive Credit Impact Damages in connection with an Unauthorized
15 Credit Analysis Account, regardless of whether the Unauthorized Credit Analysis Account was
16 identified through the Consultant Analysis.
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19 Given the complexity of calculating Credit Impact Damages, Class Counsel has retained Credit
20 Impact Damages Experts who have developed a process for determining the amount of compensation
21 that will be provided to Settlement Class Members who claim Credit Impact Damages, as reflected in
22 Exhibit A to the Stipulation. The process of calculating Credit Impact Damages entails the use of
23 historical credit reporting information that may be too old or otherwise inappropriate under the Fair
24 Credit Reporting Act for use in determining consumers’ eligibility for credit at this time. Use of such
25 information for purposes of this Settlement, however, is appropriate for the accurate assessment of the
26 historical impact of alleged misconduct on past extensions of credit to the consumer. *See* 15 U.S.C. §
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1 1681b(a)(1) (permitting consumer reporting agency to furnish consumer report in response to a court
2 order). For that reason, the Settlement contemplates that Consumer Reporting Agencies will utilize such
3 historical information as part of the Plan of Allocation.

4 Second, after Authorized Claimants are compensated for their out-of-pocket losses, the balance
5 of the Net Settlement Fund will be allocated on a *pro rata* basis defined by reference to the number of
6 claimed Unauthorized Accounts, Unauthorized Applications, and instances of authorized enrollment in
7 Identity Theft Protection Services identified on Authorized Claimants' Claims or, for Automatically-
8 Enrolled Claimants who do not separately submit a Claim, on the basis of one (1) Unauthorized
9 Account, as set forth in the Plan of Allocation in Paragraph 9 of the Stipulation. Automatically-
10 Enrolled Claimants who submit a Claim will be entitled to receive a Non-Compensatory Damages
11 Payment defined by reference to the number of claimed Unauthorized Accounts, Unauthorized
12 Applications, and authorized enrollment in Identity Theft Protection Services listed on their Claim (that
13 is, the account or application that was the subject of the customer complaint identified through the
14 Customer Complaint Review Process will be assumed to be included in the Automatically-Enrolled
15 Claimant's Claim).

16 This Plan of Allocation ensures that the per account compensation for accounts opened between
17 2009 and 2017 will not be diminished in any way by any compensation paid related to accounts opened
18 between 2002 and the end of 2008. In no case will any of the \$142 million Settlement Fund revert to
19 Wells Fargo if the Settlement is granted final approval.

20 Wells Fargo does not admit wrongdoing in the Settlement. In exchange for the benefits conferred
21 on Settlement Class Members by the Settlement, Settlement Class Members who do not opt out agree to
22 release all claims that could have been asserted, or that arise out of the same transactions or occurrences
23 as the claims against Wells Fargo entities that were or could have been asserted in this action,
24 commensurate with the res judicata effect at the conclusion of the litigation, as described in the
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1 Settlement. None of Wells Fargo's obligations under its September 2016 settlements with government
2 agencies will be diminished by this Settlement.

3 **IV. PRELIMINARY FINDINGS**

4 The Court preliminarily finds that this Settlement complies with the Northern District of
5 California's Procedural Guidance for Class Action Settlements and this Court's standard for preliminary
6 approval of class action settlements. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1035 (N.D. Cal.
7 2016) (stating standard). Furthermore, the Court finds, on a preliminary basis, that the Settlement
8 appears to be within the range of reasonableness of a settlement which could ultimately be given final
9 approval by this Court, and that the Settlement is fair and reasonable to Settlement Class Members when
10 balanced against the probable outcome of further litigation, liability and damages issues, and potential
11 appeals of rulings, in particular given the Parties' dispute over the mandatory arbitration and class action
12 waiver provisions contained in Defendants' Customer Account Agreements.

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15 The Court preliminarily finds, for purposes of settlement only, that the proposed Settlement
16 Class as defined above meets the numerosity requirement of Rule 23(a)(1) such that joinder would be
17 impractical; that there are questions of law and fact common to the Settlement Class as required by Rule
18 23(a)(2); that these common questions predominate over individual questions as required by Rule
19 23(b)(3); that the claims of the proposed Settlement Class Representatives are typical of the claims of
20 the Class under Rule 23(a)(3).

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22 In addition, the Court preliminarily finds that the Class Counsel and Plaintiffs will fairly and
23 adequately represent the interests of the Class under Rule 23(a)(4), have done so, and are adequate under
24 Rule 23(g)(1) and (4), and, therefore, hereby appoints them as Class Counsel and class representatives,
25 under Rules 23(c)(1)(B) and 23(g) to implement and complete the Settlement Approval Process.

1 C. Each Settlement Class Member's right to object or opt out of the settlement, and
2 the timing and procedures for doing so;

3 D. Preliminary court approval of the proposed Settlement; and

4 E. The date of the Fairness Hearing as well as the rights of Settlement Class
5 Members to file documentation in support of or in opposition to and appear in connection with
6 said hearing.
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8 The Court further finds that the mailing to the last known address for Automatically-Enrolled
9 Claimants and Consultant-Identified Persons with appropriate skip tracing and mail forwarding for
10 Notices returned undeliverable, emailing current and former customers for whom Wells Fargo opened
11 consumer and small business checking accounts, consumer and small business savings accounts, and
12 unsecured credit cards and unsecured lines of credit or who enrolled in Identity Theft Protection
13 Services during the Class Period, and including notice in monthly (or, as appropriate, quarterly)
14 statements for Wells Fargo consumer and small business checking, savings, unsecured credit card and
15 unsecured line of credit accounts constitutes reasonable notice to Settlement Class Members of their
16 rights with respect to the class action and proposed Settlement.
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18 For the purpose of identifying and providing notice to potential Settlement Class Members, the
19 Court hereby orders Wells Fargo to provide or cause to be provided to the Settlement Administrator
20 within sixty (60) business days of the date of entry of the Preliminary Approval Order the names,
21 Personal Identification, last known addresses, and, if known, email addresses, of the Automatically-
22 Enrolled Claimants and Consultant-Identified Persons to the extent such information is available at that
23 time, and for each Consultant-Identified Person, information on the type of account and account number
24 which was identified through the Consultant Analysis for purposes of including such information in the
25 Claim Form sent and made available on the Settlement Website to each such Consultant-Identified
26 Person. If additional Automatically Enrolled Claimants or Consultant-Identified Persons are
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1 subsequently identified, Wells Fargo shall promptly provide or cause to be provided the names, Personal
2 Identification, last known addresses and, if known, email addresses of those Persons to the Settlement
3 Administrator, and for each Consultant-Identified Person, information on the type of account and
4 account number which was identified through the Consultant Analysis.
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6 Wells Fargo shall also disclose to the Settlement Administrator the following information (to the
7 extent such information is available) regarding Settlement Class Members claiming to have an
8 Unauthorized Credit Analysis Account: an indication of whether that Unauthorized Credit Analysis
9 Account was activated or used by the Settlement Class Member, the date of the hard credit inquiry
10 associated with that Unauthorized Credit Analysis Account, the relevant Consumer Reporting Agency
11 for the hard credit inquiry, and information concerning any Delinquency or Derogatory Report
12 associated with that Unauthorized Credit Analysis Account. Wells Fargo shall also disclose to the
13 Settlement Administrator the following information (to the extent such information is available)
14 regarding Settlement Class Members claiming to have an Authorized Credit Analysis Account:
15 information concerning any Delinquency or Derogatory Report associated with that Authorized Credit
16 Analysis Account. Wells Fargo shall also disclose to the Settlement Administrator transaction records
17 or information for the purpose of calculating Fee Damages, as described in Paragraph 9.7.2 of the
18 Stipulation.
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21 The Settlement Administrator shall not provide this information to any Person other than Class
22 Counsel and the Credit Impact Damages Experts. Class Counsel and the Credit Impact Damages Experts
23 shall keep such information confidential and will use the information only in connection with the
24 administration of the Settlement. In addition, the Settlement Administrator, Class Counsel, and the
25 Credit Impact Damages Experts shall adopt data security measures reasonably calculated to protect that
26 information from unauthorized disclosure.
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1 The Settlement Administrator shall mail the Mailed Notices to the Automatically-Enrolled
2 Claimants and Consultant-Identified Persons substantially in the form attached hereto as Exhibits 1.1
3 and 1.2, respectively, by no later than 40 days after the Settlement Administrator begins receiving the
4 names, Personal Identification, and last known addresses of the Automatically-Enrolled Claimants and
5 Consultant-Identified Persons from Wells Fargo. (If an Automatically-Enrolled Claimant is also a
6 Consultant-Identified Person, that Person shall receive the Mailed Notice which will include information
7 on the type of account and account number which was identified through the Consultant Analysis for
8 that Person.)
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10 The Court otherwise hereby directs that such notice be disseminated in the manner set forth in
11 the Settlement to Settlement Class Members under Rule 23(e)(1).
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13 **VI. SETTLEMENT ADMINISTRATION**

14 The Court finds that the costs associated with the notice plan described above and the estimated
15 costs of administering the Settlement are fair and reasonable.

16 The Court approves Rust Consulting to act as the class action administrator (“Settlement
17 Administrator”).

18 To assist the Court in its evaluation of Credit Impact Damages, Class Counsel shall file a report
19 approximately 130 days after Preliminary Approval, or on such other date as the Court shall set,
20 addressing the implementation of the Credit Impact Damages process.
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22 **VII. SCHEDULE AND PROCEDURES**

23 The Court orders the following schedule and procedures for disseminating Notice, filing claims,
24 requesting exclusion from the class, filing objections to the Settlement, and filing the motion for final
25 approval:
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Date	Event
10 days after Settlement Agreement was filed	Defendants provided Class Action Fairness Act Notice to the Office of the Comptroller of the Currency
May 18, 2017	Preliminary Approval Hearing
10 days after Amended Settlement Agreement is filed	Defendants will provide Class Action Fairness Act Notice to the Office of the Comptroller of the Currency
60 days after Preliminary Approval Order	Defendants will provide Settlement Administrator information regarding Automatically-Enrolled Claimants and Consultant-Identified Persons
60-100 Days after Preliminary Approval Order	Settlement Administrator will issue notice on a rolling basis as information is received from Defendants
120 Days after Preliminary Approval Order	Class Representatives to file Motion for Final Approval and/or Attorneys' Fees
130 Days after Preliminary Approval Order	Class Counsel to submit interim report to the Court regarding implementation of the Credit Impact Damages process
150 Days after Preliminary Approval Order	Objection and Opt-Out Deadline
170 Days after Preliminary Approval Order	Class Representatives to file Reply on Final Approval and/or Attorneys' Fees
180 Days after Preliminary Approval Order	Fairness Hearing
210 Days after Preliminary Approval Order	Deadline to Submit Claim Form

VIII. FAIRNESS HEARING

The Fairness Hearing shall take place on _____, 2017, at __:00 a.m. at the United States District Court for the Northern District of California, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, before the Honorable Vince Chhabria, to determine whether the proposed Settlement is fair, reasonable, and adequate and should receive the Court's final approval.

1 If, for any reason, the Court does not execute and file an Order of Final Approval, or if the
2 Effective Date does not occur for any reason whatsoever, the proposed Settlement and the proposed
3 Settlement subject of this Order and all evidence and proceedings had in connection therewith, shall be
4 without prejudice to the status quo ante rights of the parties to the litigation as more specifically set forth
5 in the Settlement.
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7 Class Counsel and Defendants' Counsel are hereby authorized to use all reasonable procedures
8 in connection with approval and administration of the Settlement that are not materially inconsistent
9 with the Preliminary Approval Order or the Settlement, including making, without further approval of
10 the Court, minor changes to the Settlement, to the form or content of the Notice, or to any other exhibits
11 that the Parties jointly agree are reasonable or necessary.
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13 **X. SUMMARY**

14 In summary, the Court:

15 A. certifies, for settlement purposes only, the Settlement Class pursuant to Rules
16 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

17 B. preliminarily approves the Settlement as being a fair, reasonable, and adequate
18 settlement as to Settlement Class Members within the meaning of Rule 23 of the Federal Rules
19 of Civil Procedure;

20 C. appoints the proposed settlement class representatives and Named Plaintiffs as
21 Class Representatives, appoints their counsel as Class Counsel to execute this Settlement on
22 behalf of Named Plaintiffs and the Settlement Class, and authorizes Class Counsel to take
23 approved steps to proceed with this Settlement on behalf of the Settlement Class;

24 D. orders Defendants to provide or cause to be provided to the Settlement
25 Administrator and Class Counsel certain customer-identifying information, and imposes
26 appropriate confidentiality requirements and restrictions on use of this information;
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1 E. directs notice to be disseminated as set forth in the Settlement, and find that the
2 notice plan and materials satisfy Rule 23 and due process; and

3 F. subjects the Settlement Fund to the continuing jurisdiction of the Court.
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6 The Court shall maintain continuing and exclusive jurisdiction and independent case
7 management authority under Federal Rule of Civil Procedure 23 regarding the general operation of the
8 Claims Program and those appointed to implement and oversee it.

9 **IT IS SO ORDERED.**

10 Dated: _____

11 _____
12 Hon. Vince Chhabria
13 United States District Court Judge
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