

Derek Loeser, *admitted pro hac vice*
Gretchen Freeman Cappio, *admitted pro hac vice*
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
(206) 623-1900; Fax: (206) 623-3384
dloeser@kellerrohrback.com
gcappio@kellerrohrback.com

David H. Fry (Bar No. 189276)
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, California 94105-2907
(415) 512-4000; Fax: (415) 512-4077
david.fry@mto.com

Jeffrey Lewis (Bar No. 66587)
KELLER ROHRBACK L.L.P.
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
(510) 463-3900; Fax: (510) 463-3901
jlewis@kellerrohrback.com

Erin J. Cox (Bar No. 267954)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071-1560
(213) 683-9100; Fax: (213) 687-3702
erin.cox@mto.com

Attorneys for Plaintiffs

Attorneys for Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A.

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. 15-cv-02159-VC

**STIPULATION AND ADMINISTRATIVE
MOTION RE SETTLEMENT RESERVE
AND SCHEDULE; ~~PROPOSED~~ ORDER**

Judge: Hon. Vince Chhabria

NOTICE OF JOINT ADMINISTRATIVE MOTION

PLEASE TAKE NOTICE that, pursuant to Civil Local Rules 7-11, Plaintiffs Shahriar Jabbari, Kaylee Heffelfinger, Jose Rodriguez, and Antonette Brooks (collectively, "Plaintiffs"), on the one hand, and Defendants Wells Fargo Bank, N.A., and Wells Fargo & Co. (collectively, "Wells Fargo" and

1 together with Plaintiffs, the “Parties”), on the other, jointly move this Court for an order modifying the
 2 existing schedule in this Action as set forth below.¹

3 I. BACKGROUND

4 In August 2017, Class Counsel raised with counsel for Wells Fargo a question about the
 5 possibility that the number of Unauthorized Accounts identified in the claims submitted by Settlement
 6 Class Members could potentially exceed the Plaintiffs’ estimate of 3.5 million that Plaintiffs provided to
 7 the Court in connection with preliminary approval briefing.
 8

9 While neither Plaintiffs nor Wells Fargo believes that the claims process will result in the
 10 identification of more than 3.5 million individual potentially Unauthorized Accounts, Plaintiffs believed
 11 that it was important to address the possibility. With the assistance of the mediator, the Hon. Layn R.
 12 Phillips, and following extensive negotiations, the Parties have agreed to address Plaintiffs’ concerns
 13 through two steps.
 14

15 First, the Parties request that the Final Approval Hearing be continued to March 20, 2018, from
 16 the current hearing date, January 4, 2018. This would allow the Final Approval Hearing to occur after
 17 the February 3, 2018 Deadline to Submit Claim Form so that parties will not need to speculate, and,
 18 instead, will know how many Unauthorized Accounts are identified by Settlement Class Members in the
 19 claims process.²
 20

21 Second, the Parties have agreed that the \$25 million “Gross-Up” provided by the Settlement for
 22 non-compensatory damage, Settlement ¶ 9.9, will be adjusted proportionately in the event the number of
 23 Unauthorized Accounts identified by Settlement Class Members in the claims process, and not disputed
 24

25 ¹ Capitalized terms have the same meanings as defined in the Amended Stipulation and Agreement of
 Class Action Settlement and Release, filed on June 14, 2017 (Dkt. 162), and the Order Granting
 Motion for Preliminary Approval, dated July 8, 2017 (Dkt. 165).

26 ² It is possible that, as of that date, there will be claims as to which the Settlement Administrator is still
 27 making a final determination. Nevertheless, the Settlement Administrator should be able to provide
 information concerning the total number of accounts claimed and the portion of those that are
 28 potentially subject to dispute.

1 by the Settlement Administrator, exceeds 3.5 million. The rationale for this change is based on the
2 structure of the Settlement.

3 The Settlement provides for three types of payment: (1) Fee Damages and (2) Credit Impact
4 Damages, both of which are “Compensatory”; and (3) and a per account “residual” payment, which is
5 termed “Non-Compensatory Allocation” under the Settlement. *See id.* ¶¶ 9.7, 9.8. The Settlement
6 provides for a reserve totaling \$25 million for residual, per account payments to Settlement Class
7 Members. *Id.* ¶ 9.9. Wells Fargo has agreed that if the Settlement Fund is insufficient to cover Fee
8 Damages and Credit Impact Damage payments based on the formula in the Settlement, it will put in
9 more money. *Id.*

10
11 Because Wells Fargo has already agreed to increase the Settlement Fund if necessary to ensure
12 full payment of the compensatory elements—Fee Damages and Credit Impact Damages, the only aspect
13 that could be impacted by the number of accounts identified in the claims process is the \$25 million
14 reserve for the non-compensatory residual payment. The Parties have agreed that in the event the
15 number of Unauthorized Accounts identified by Settlement Class Members in the claims process and not
16 disputed by the Settlement Administrator exceeds Plaintiffs’ 3.5 million estimate, Wells Fargo will
17 proportionately increase the \$25 million reserve so that the ratio of reserve to Unauthorized Accounts is
18 no less than what was implied by Plaintiffs’ estimate at the time of Preliminary Approval.
19
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21 **II. STIPULATION**

22 The Parties further request that deadlines for approval events that have not yet occurred should
23 be adjusted as well so that the interval between Final Approval and each deadline stays the same as
24 originally ordered by the Court. The one exception is the deadline for Mailed Notice, for which the
25 parties request an extension until 35 days following the issuance of an order granting this administrative
26
27
28

1 motion to allow sufficient time to print the revised Mailed Notice³. The following table indicates the
 2 current deadline, and the new deadline requested by the Parties:

| Event | Current Deadline | Proposed New Deadline | Interval per Preliminary Approval Order |
|---|---------------------|--|--|
| Settlement Administrator will issue Mailed Notice to Automatically-Enrolled Claimants and Consultant-Identified Persons | Monday, 10/30/17 | 35 days after order granting this administrative motion | 100 Days after Preliminary Approval Order *deadline extended from October 16 to October 30 during 10/5/2017 telephonic conference |
| Class Representatives to file Motion for Final Approval and/or Attorneys' Fees | Friday, 11/03/17 | Friday, 01/19/18 | 120 Days after Preliminary Approval Order ⁴ *date changed per court order dated 07/28/17 |
| Class Counsel to submit interim report to the Court regarding implementation of the Credit Impact Damages process | Wednesday, 11/15/17 | Monday, 01/29/18 50 Days before Fairness Hearing | 130 Days after Preliminary Approval Order |
| Objection and Opt-Out Deadline | Tuesday, 12/05/17 | Monday, 02/19/18 29 Days before Fairness Hearing | 150 Days after Preliminary Approval Order |

23
 24 ³ The Court granted a two-week extension of the Mailed Notice deadline during the Status Conference
 25 on October 5, 2017; however, because the information in the Mailed Notice cannot be updated until
 26 after the Court's decision on this motion, respectfully, we are seeking additional time to prepare and
 27 issue the Mailed Notice.

28 ⁴ The interval between the Final Approval Hearing and all other deadlines remains the same in the
 proposed revised schedule, except as necessary for the new deadline not to occur on a weekend. For
 example, the deadline for Plaintiffs to file motion for final approval and attorneys' fees is 60 days
 before the Final Approval Hearing in both the original and proposed revised schedule.

| Event | Current Deadline | Proposed New Deadline | Interval per Preliminary Approval Order |
|---|---------------------------|--|---|
| Class Representatives to file Reply on Final Approval and/or Attorneys' Fees | Wednesday, 12/20/17 | Friday, 03/09/18 11 Days before Final Approval Hearing | 170 Days after Preliminary Approval Order *date changed per court order dated 07/28/17 |
| Final Approval Hearing | Thursday, 01/04/18 (10am) | Tuesday, 03/20/18 New Date for Final Approval Hearing | 180 Days after Preliminary Approval Order |
| Deadline to Submit Claim Form | Saturday, 02/03/18 | | 210 Days after Preliminary Approval Order |
| Class members that wish to appear at Final Approval Hearing, file with the clerk a written notification | Thursday, 12/21/17 | Tuesday, 03/6/18 14 Days before Final Approval Hearing | Not later than two weeks before the Final Approval Hearing |

Respectfully Submitted,

DATED this 7th day of October, 2017.

KELLER ROHRBACK L.L.P.

MUNGER, TOLLES & OLSON LLP

By /s/ Derek W. Loeser (w/ email permission)
 Derek Loeser, *admitted pro hac vice*
 Gretchen Freeman Cappio, *admitted pro hac vice*
 Daniel P. Mensher, *admitted pro hac vice*
 KELLER ROHRBACK L.L.P.
 1201 Third Avenue, Suite 3200
 Seattle, WA 98101-3052
 (206) 623-1900; Fax: (206) 623-3384
 dloeser@kellerrohrback.com
 gcappio@kellerrohrback.com
 dmensher@kellerrohrback.com

By /s/ David H. Fry
 David H. Fry (Bar No. 189276)
 MUNGER, TOLLES & OLSON LLP
 560 Mission Street, 27th Floor
 San Francisco, California 94105-2907
 (415) 512-4000; Fax: (415) 512-4077
 david.fry@mto.com

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Jeffrey Lewis (Bar No. 66587)
KELLER ROHRBACK L.L.P.
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
(510) 463-3900; Fax: (510) 463-3901
jlewis@kellerrohrback.com

Matthew J. Preusch (Bar No. 298144)
1129 State Street, Suite 8
Santa Barbara, CA 93101
(805) 456-1496; Fax: (805) 456-1497
mpreusch@kellerrohrback.com

Attorneys for Plaintiffs

Erin J. Cox (State Bar No. 267954)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071-1560
(213) 683-9100; Fax: (213) 687-3702
erin.cox@mto.com

*Attorneys for Defendants Wells Fargo &
Co. and Wells Fargo Bank, N.A.*

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

2
3 DATED: October 20th, 2017.



Hon Vince Chhabria
United States District Court
Northern District California

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