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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SHAHRIAR JABBARI, ET AL, Plaintiffs, v. WELLS FARGO & COMPANY, ET AL, Defendants.	No. 3:15-cv-02159-VC **OBJECTIONS TO FINAL APPROVAL**

OBJECTIONS TO MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CLASS CERTIFICATION

Comes now DARLENE MARTINEZ, DORIS LOPEZ, and CAITLIN TURNER, Plaintiffs in the related case styled as *William Cason, et al vs. Wells Fargo & Company, et al*, Cause No. 3:16-cv-07040-VC, currently pending before this Court and related to this present matter by Court Order (see Document 87), by and through their counsel, and file this their Objections to Class Action Settlement and Class Certification.

INTRODUCTION

The proposed settlement is not fair, adequate, and reasonable. Further, the continued lack of meaningful discovery by the parties in the Jabbari matter fails to meet the standard for approval.

LACK OF INFORMATION, LACK OF MEANINGFUL DISCOVERY

Admittedly, a similar objection has been previously made in advance of the hearing regarding the motion for preliminary approval. While the Court did not expressly overrule the objection to the lack of meaningful discovery, it felt that the parties had exchanged enough information to negotiate the present settlement. However, the parties have still failed to provide specific information regarding the extent and number of people affected. Further, the proposed settlement fails to provide and/or disclose information about the different ways class members' credit has been damaged.

In its Order granting preliminary approval, the Court stated:

> "To the extent the proposed intervenors object to the lack of discovery in this case, their concerns are adequately addressed by the parties' recent revisions. The Court is cognizant of the proposed intervenors' concern that further discovery is required to uncover the scope of Wells Fargo's alleged wrongdoing. But if discovery of that kind is itself a benefit of pursuing litigation rather than reaching an early settlement, it's a benefit that must be weighed against the costs of further proceedings and the risk of forfeiting a recovery of real value to the injured class members." See Document 165, page 2, lines 2 to 9, Order Granting Motion for Preliminary Approval, Denying Motions to Intervene.

However, the "recent revisions" referenced by the Court proved inadequate just 20 days later. The Court granted preliminary approval in this matter on July 8, 2017. It was reported by the New York Times on July 27, 2017 and the Washington Post on July 28, 2017 that Wells Fargo acknowledged "that for six years about 570,000 of its customers were charged for auto insurance they didn't need, potentially driving some to default on their loan and have their cars repossessed." See Exhibits 1 and 2 attached hereto.

Therefore, just 19 days after the Court granted preliminary approval, additional information was made public that demonstrates that the "recent revisions" did not, in fact, remedy the need for discovery in this matter. In fact, after the Order was issued, Defendant admitted more wrongdoing to the public that possibly adds another 570,000 claimants to the class of people with damage to their credit. Wells Fargo admits that it learned of the issue in June of 2016 – more than a year before this Court granted preliminary approval herein. Based upon this revelation alone, it is clear that discovery is necessary and justified in this matter. This discovery does not have to be for the benefit of pursuing litigation but for the sole purpose of ensuring a fair and adequate recovery for those class members whose credit has been harmed by the actions of Wells Fargo.

Non-disclosure has been the method of operation for the Defendant and there has not been any formal discovery conducted in this matter. While formal discovery is not necessarily a formal requirement, the Court can look to the parties' behavior to determine whether or not there has been collusion by the parties. A class action "settlement may not be the product of collusion among the negotiating parties." See *Dunleavy v. Nadler* (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 458, 2000 U.S. App. LEXIS 11365, *8, Fed. Sec. L. Rep. (CCH) P90,977, 2000 Cal. Daily Op. Service 3989, 2000 Daily Journal DAR 5357, 46 Fed. R. Serv. 3d (Callaghan) 883 (9th Cir. Nev. 2000).

Plaintiffs and Defendants have not conducted any formal discovery in this matter. When the news of Wells Fargo's conduct broke on a national level, the Plaintiffs abandoned their appeal of the arbitration clause ruling. Subsequently, other cases were filed. While some were allowed to progress, some were stayed. Others were stymied by procedural maneuvers and, in most (if not all) cases, the Wells Fargo Defendants failed to even file an answer. Attorneys for plaintiffs in cases other than the *Jabarri* matter attempted to contact the *Jabarri* plaintiff and defendant attorneys to get information regarding the settlement negotiations. However, none were allowed to participate. While other cases sought to move forward and conduct formal discovery, they have been met with consistent opposition. The actions in this regard by the *Jabarri* and Wells Fargo parties could be construed as evidence of collusion regarding the settlement of this matter – especially in light of plaintiff counsel's own previous statement that the case may have value in excess of $600,000,000.00.

Therefore, the Motion for Approval should be denied so that meaningful discovery can take place and the full extent of the wrongdoing discovered.

Class Definition Over Inclusive

While these auto loan customers are not arguably a part of the proposed class, they are not specifically excluded as other claims have been. See ¶2.53, Amended Stipulation and Agreement of Class Action Settlement and Release (hereinafter "SA"), ECF document 162.

A class action cannot be certified unless the court determines that the class representatives "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Likewise, a proposed settlement which has been entered into without discovery, without knowing the totality of the damages, or even the types of damages to the class members cannot withstand dismissal. It is fundamental to meet the Rule 23(a)(4) adequate representation prerequisite that, at the time the class is certified, a class representative must be a part of the class and possess the same interest and suffer the same injury as the class members. *Bishop v. Comm. on Prof'l Ethics and Conduct of Iowa State Bar Ass'n*, 686 F.2d 1278, 1289 (8th Cir. 1982).

Paragraph 2.53 of the Settlement Agreement broadly defines the "Settlement Class" as "all Persons for whom Wells Fargo or Wells Fargo's current or former subsidiaries, affiliates, principals, officers, directors, or employees opened an Unauthorized Account or submitted an Unauthorized Application, or who obtained Identity Theft Protection Services from Wells Fargo during the period from May 1, 2002 to April 20, 2017, inclusive."

This definition is overbroad and vague to the point that it arguably includes the auto loan customers, and others, who have been damaged by Wells Fargo is some way only tangentially related to the opening of an unauthorized account. The Court should require that the Class be more narrowly defined, create sub-classes, or be more specific in the exclusions.

THE PROPOSED SETTLEMENT IS NOT FAIR, ADEQUATE, AND REASONABLE

One of the main thrusts of the brief in support of final approval is the argument regarding arbitration. However, Wells Fargo has voluntarily withdrawn their Motion to Compel Arbitration in the *Mitchell, et al., v. Wells Fargo Bank, N.A.*, 2:16-cv-00966 (D. Utah) ("*Mitchell*") matter pending in Utah. See Exhibits 3 and 4 attached hereto.

Rather than dealing with the hypothetical "what ifs" that might occur if a Court granted Wells Fargo's Motion to Compel Arbitration, we should deal with the reality that Wells Fargo has withdrawn their Motion to Compel Arbitration and thus dismiss any arguments regarding arbitration in favor of approval.

The idea of forced arbitration is one of the settling parties' main arguments in favor of the settlement. However, that argument necessarily fails when dealing with the reality that Wells Fargo has abandoned and withdrawn the same such Motion in the *Mitchell* case. Therefore, the arguments of "increased costs" to present the claims individually and all other arguments related to arbitration no longer support final approval.

The proposed settlement is not fair, adequate and reasonable and preliminary approval should be denied. To quote the Plaintiff's own Motion for Preliminary Approval:

> Still, Plaintiffs strongly believe that Wells Fargo would face very substantial liability under federal law if this case could be pursued successfully as a class action. If a jury assessed the maximum penalty for willful violations of FCRA, liability could reach into the hundreds of millions or more. The CFPB identified approximately 2 million accounts which may have been unauthorized, over 600,000 of which potentially involve the misuse of credit reports (unauthorized credit cards and lines of credit). CFPB Consent Order at 5, 7. *If a jury awarded a class the statutory maximum of $1,000 per account, that would be a $600 million award*—a figure that could be higher if credit reports were willfully misused in opening accounts other than credit cards and lines of credit. Punitive damages might add substantially, if unpredictably, to that award.

See page 15, lines 6 to 18 of Plaintiff's Motion for Preliminary Approval (document no. 101), (emphasis added). Even the *Jabbari* Plaintiff's Counsel has recognized that the value of the individual claims far exceeds the proposed settlement amount.

Now that the arbitration argument has been removed, the notion of a settlement for less than half of the potential award is not reasonable, fair, and adequate – especially given Wells Fargo's public statements accepting responsibility for allegations made herein.

Credit Impact Damages are Unfairly Minimalized and Uncertain

The Motion for Final Approval states that "[f]or Class members to recover Credit Impact Damages, they must have taken out credit either within a year after an Unauthorized Account's opening or an Unauthorized Application's submission, or within seven years after a Consumer Reporting Agency has received a DDR." Citing SA ¶ 9.7.1.2.

In its order granting preliminary approval, the Court requested a report regarding the implementation of the model for credit impact damages. The deadline to file such report was extended to January 29, 2018 but the "report" was presented to the Court in the motion for final approval as the Declaration of Edward M. Stockton on January 19, 2018.

The settlement only requires Wells Fargo to "***ask*** Consumer Reporting Agencies to suppress credit inquiries or Delinquency or Derogatory Reports related to certain Unauthorized Accounts and Unauthorized Applications." This is really no remedy at all for the claimants in this matter. There is absolutely no obligation for Wells Fargo to actively assist consumers in repairing their credit. Once they "ask," they've complied with the agreement which doesn't grant any relief to consumers at all. It leaves them in the exact same position they were in before this suit, and many others like it, were brought.

At a minimum, the Court should order Wells Fargo to make commercially reasonable efforts to suppress negative inquiries and, further, to provide compensation to class members for their costs incurred in repairing credit.

The model also does nothing to address class members who were denied a loan, lost a car, suffered a foreclosure, or were denied in other ways or applications because of Wells Fargo's actions. As stated earlier, some of these loan customers are not arguably a part of the proposed class, but they are not specifically excluded as other claims have been. See ¶2.53, Amended Stipulation and Agreement of Class Action Settlement and Release (hereinafter "SA"), ECF document 162.

Additionally, Mr. Stockton's report was filed less than one month ago. Therefore, objection is hereby made again to the lack of discovery and lack of opportunity given to other parties and their attorneys to respond and present the Court with reports from opposing experts who place a higher value on the Credit Impact Damages.

CONCLUSION

Objection is made to the Motion for Final Approval in that no meaningful discovery has occurred, evidence of possible collusion, and the lack of reasonable adequacy of the settlement. For the foregoing reasons, the Court should deny the Motion for Preliminary Approval.

Dated: January 19, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Objections to the Motion for Preliminary Approval to be served via the Electronic Case Filing (ECF) system in the United States District Court for the Northern District of California, on all parties registered for CM/ECF in the litigation.

Dated: January 19, 2018

Scott W. West

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Business

Wells Fargo charged 570,000 customers for auto insurance they didn't need

By Renae Merle July 28, 2017

Wells Fargo acknowledged Friday that for six years about 570,000 of its customers were charged for auto insurance they didn't need, potentially driving some to default on their loan and have their cars repossessed.

The San Francisco bank said it would start refunding about $80 million, or about $140 each, to customers next month.

The revelation quickly sparked a backlash from lawmakers still angry after Wells Fargo admitted last year that thousands of its employees had created millions of fake credit card and bank accounts for customers without their knowledge to earn bonuses and meet sales goals.

“No wonder so many hard-working Americans believe the system is rigged against them in Wall Street's favor,” Sen. Sherrod Brown (Ohio), the ranking Democrat on the Banking Committee, said in a statement. “Wells Fargo has a lot of explaining to do, and we cannot let up until every single customer is made whole.”

Sen. Elizabeth Warren (D-Mass.), a fierce Wall Street critic, renewed her call for the Federal Reserve to force Wells Fargo's board of directors to resign. “There are surely deep risk management problems at a bank when it opens millions of fake customer accounts and charges nearly a million customers for a financial product they don't need — all over roughly the same five-year period,” Warren said in a statement. “The Wells Fargo Board is ultimately responsible for that failure, and the Federal Reserve should remove Board members who served during that time period.”

Wells Fargo said the most recent scandal is centered on its auto lending business. Customers' loan contracts require them to maintain auto insurance and allow the bank to buy it for them if there is no evidence that the customers have a policy, the bank said.

But after receiving some complaints from customers, the bank launched a review of the program in July 2016. The review found that “certain external vendor processes and internal controls were inadequate,” the bank said in a statement. As a result, customers were being charged for auto insurance premiums even though they already had another policy. In some cases, the bank said, the “premiums may have contributed to a default that led to their vehicle's repossession.”

Exh. 1

Wells Fargo said it has discontinued the program.

“We take full responsibility for our failure to appropriately manage the [auto insurance] program and are extremely sorry for any harm this caused our customers, who expect and deserve better from us,” Franklin Codel, head of Wells Fargo consumer lending, said in a statement. “Upon our discovery, we acted swiftly to discontinue the program and immediately develop a plan to make impacted customers whole.”

The problem was first reported by the New York Times.

The bank’s stock price fell about 2.6 percent Friday.

Read more about Wells Fargo:

Wells Fargo fires 4 executives as investigation continues into sham accounts

Wells Fargo CEO steps down in wake of sham accounts scandal

Philadelphia sues Wells Fargo for allegedly discriminating against minority borrowers

85 Comments

Renae Merle covers white-collar crime and Wall Street for The Washington Post. Follow @renaemerle

Exh. 1

The New York Times

BUSINESS DAY

Wells Fargo Forced Unwanted Auto Insurance on Borrowers

By GRETCHEN MORGENSON JULY 27, 2017

More than 800,000 people who took out car loans from Wells Fargo were charged for auto insurance they did not need, and some of them are still paying for it, according to an internal report prepared for the bank's executives.

The expense of the unneeded insurance, which covered collision damage, pushed roughly 274,000 Wells Fargo customers into delinquency and resulted in almost 25,000 wrongful vehicle repossessions, according to the 60-page report, which was obtained by The New York Times. Among the Wells Fargo customers hurt by the practice were military service members on active duty.

Wells Fargo, one of the largest banks in the United States, is struggling to repair its image after a scandal in which its employees created millions of credit card and bank accounts that customers had never requested. That crisis, which came to a head last year, toppled Wells Fargo's chief executive and led to millions of dollars in fines.

The bank also stands accused of having made improper adjustments to the terms of the home loans of customers who were in bankruptcy, which Wells Fargo denies.

Asked about the findings on auto insurance, Wells Fargo officials confirmed that the improper insurance practices took place and said the bank was determined to

Exh. 2

"We have a huge responsibility and fell short of our ideals for managing and providing oversight of the third-party vendor and our own operations," Franklin R. Codel, the head of consumer lending at Wells Fargo, said in an interview. "We self-identified this issue, and we made the right business decisions to end the placement of the product."

The report, which was prepared by the consulting firm Oliver Wyman, looked at insurance policies sold to Wells customers from January 2012 through July 2016. The insurance, which the bank required, was more expensive than auto insurance that customers often already had obtained on their own.

National General Insurance underwrote the policies for Wells Fargo, which began to require the insurance on auto loans as early as 2006. The practice continued until the end of September.

Christine Worley, a spokeswoman for National General, declined to comment.

For borrowers, delinquencies arose quickly because of the way the bank charged for the insurance. Say, for example, that a customer agreed to a monthly payment of $275 in principal and interest on her car loan, and arranged for the amount to be deducted from her bank account automatically. If she were not advised about the insurance and it increased her monthly payment to, say, $325, her account could become overdrawn as soon as Wells Fargo added the coverage.

The report tried to determine how many Wells Fargo customers were hurt and how much they should be compensated. It estimated that the bank owed $73 million to wronged customers.

State insurance regulations required Wells Fargo to notify customers of the insurance before it was imposed. But the bank did not always do so, the report said. And almost 100,000 of the policies violated the disclosure requirements of five states — Arkansas, Michigan, Mississippi, Tennessee and Washington.

Wells Fargo took issue with some of the figures in its own report. In a statement, Jennifer A. Temple, a bank spokeswoman, said the bank determined only 570,000 of its customers may qualify for a refund and that just 60,000 customers in the five states had not received complete disclosures before the insurance placement. Finally, she said, the bank estimated the insurance may have contributed to 20,000 wrongful repossessions, not 25,000.

"We take full responsibility for these errors and are deeply sorry for any harm we caused customers," Ms. Temple added.

Requiring borrowers to be insured is common in the mortgage arena, where banks expect customers to carry enough homeowners' insurance to protect the property backing their loans. The term for the practice is "lender-placed insurance." Pressing such insurance on auto borrowers, however, is not as common: Representatives of Bank of America, Citibank and JPMorgan Chase said they did not offer the policies, though some smaller banks do.

In the Wells Fargo arrangement, National General receives all of the commissions on the insurance it sold to the bank's borrowers. But for a time the bank shared in those revenues. Wells stopped sharing in the commissions in February 2013, according to the report.

Asked about the bank's insurance practices, Bryan Hubbard, a spokesman for the Office of the Comptroller of the Currency, Wells Fargo's regulator, said, "I cannot comment on specific ongoing supervisory matters or potential pending actions pertaining to a particular bank."

Wells Fargo borrowers sustained financial damages beyond the costs of the insurance, the report said. The harm also included repossession costs, late fees, charges for insufficient funds and damage to consumers' credit reports.

In recent years, consumers have complained to federal regulators about lender-placed insurance on auto loans, the Consumer Financial Protection Bureau's database shows. Many complaints identified Wells Fargo. In one example, an unidentified Wells Fargo customer reported providing proof to the bank on three occasions that the car was already insured and the new insurance was unnecessary, only to continue receiving calls from bank employees demanding payment of insurance charges.

Wells Fargo automatically imposed the insurance through its Dealer Services unit. Its website says it has more than four million customers and provides a variety of banking services to 14,000 auto dealers around the nation. It says the company's lender-placed auto insurance "may be considerably more expensive than insurance you can obtain on your own."

Such policies typically cost more than $1,000 a year, not counting interest. (Customers could pay them in full or finance them over time.) If a car was repossessed, the bank might charge a reinstatement fee of as much as $500, so a borrower could face $1,500 in charges.

Here is how the process worked: When customers financed cars with Wells Fargo, the buyers' information would go to National General, which was supposed to check a database to see if the owner had insurance coverage. If not, the insurer would automatically impose coverage on the customers' accounts, adding an extra layer of premiums and interest to their loans.

When customers who checked their bills saw the charges and notified Wells Fargo that they already had car insurance, the bank was supposed to cancel the insurance and credit the borrower with the amount that had been charged.

The Oliver Wyman report indicated that many customers appear not to have notified Wells Fargo of the redundant insurance. This may have been because their payments were deducted automatically from their bank accounts and they did not spot the charges.

According to documents on a Wells Fargo website titled "understanding your auto loan," the bank had strict rules about the order in which it would apply a customer's car payment to costs associated with the loan: First to be deducted from a payment would be the interest owed on the car loan. Then the bank would deduct interest charged on the lender-placed insurance. The third deduction would be principal on the loan, followed by the amount of premium owed on the insurance.

This payment structure had the effect of increasing the overall interest borrowers paid on their loans, the Oliver Wyman report noted, because fewer dollars went to reducing the principal outstanding.

Wells Fargo was also aggressive in repossessing vehicles: Some customers endured multiple repossessions, the report said.

Last fall, Wells Fargo Dealer Services had a run-in with regulators, and it agreed to pay $4 million in a settlement with the Justice Department over illegally repossessing cars of military service members. Since that settlement, three top executives have left the Dealer Services division.

A version of this article appears in print on July 28, 2017, on Page A1 of the New York edition with the headline: Wells Fargo Required Borrowers To Buy Needless Auto Insurance.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

Lawrence J. Mitchell, Kay Mitchell, Matthew C. Bishop, Tracy Kilgore, Jennifer K. Zeleny, Joseph W. Steele V, Scott Westin, Bruce Bird, Nathan Ornellas, Anu Sood, Brent Miller, Nicholas Beach, Alex Inskeep, Loretta Grady, Richard Fountain, Matthew Gragg, Akoya Lawani, Sharon Williams, Ken Gregory, David Self, Edward Dowdy, April Thomas, Don Black, Reza Kamali, Carina Rhea, Shanell Golden, Kim Weston, Adam Brandt, Jacci Brandt, Jennifer King, Ralph McCoy, Aaron Hands, Ayana Smith, Lisa Stern, Mbegane Diouf, Doug Waters, Paul Fos, Patricia Burkhalter, Blake Knight, Cameron Casey, Jeffery Taylor, Robert Moyer, Marcia Cameron, Gloria Pledger, Charles Jones, Aaron Brodie, Dominique Evans, Richard Farr, Kevin Saliva, Harold Beard, Travis Ashby, Andrew Gorayeb, Scott Mugrage, Edwin Zorilla, Curtis Dowdle, Edward Klann, Steven Stetzel, Glenn Gilleshammer, Wenoka Thompson, Maryann Aldous, Jennifer Porter, Robin Quigg, Tamar Hodges, Barbara Shadoan, Austin Law, Jennifer Ellsworth,	**NOTICE OF WITHDRAWAL OF MOTION** Case No. 2:16-cv-00966 Judge Clark Waddoups

Exh. 3

Michelle Sterling, Denise Poe, Jamal Dean, Brandon Westman, Concepcion Powell, Adrian Thompson, Eric Talaska, Zachary Christensen, Erica Jones, Stephen Hope, *et al.* and unknown Plaintiffs 1-1,000,000, Plaintiffs, v. Wells Fargo Bank, National Association, a National Banking Association, and Wells Fargo & Company, a Delaware Corporation, and Does 1-5,300, Defendants.	

Please take notice that Defendants Wells Fargo Bank, N.A. and Wells Fargo & Company hereby withdraw their Renewed Motion to Compel Arbitration Pursuant to FAA §§ 3-4 (Dkt. No. 88).

DATED: December 26, 2017

MUNGER, TOLLES & OLSON LLP

/s/ *Erin J. Cox*
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

LAWRENCE J. MITCHELL, *et al.*, Plaintiffs, v. WELLS FARGO BANK, *et al.*, Defendants.	**ORDER VACATING SUMMARY TRIAL DATES, DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE AND SETTING SCHEDULE** Case 2:16-cv-00966-CW-DBP Judge Clark Waddoups Magistrate Judge Dustin B. Pead

In light of Defendants' Wells Fargo Bank, N.A. and Wells Fargo & Company (collectively, "Wells Fargo") withdrawal of their Motion to Compel Arbitration (ECF No. 88), and Wells Fargo's representation at the telephonic status conference today that it does not intend to pursue arbitration in this matter, the court finds Wells Fargo has waived its right to seek arbitration in this case. Therefore, the court VACATES all summary trial dates and all discovery orders related to the summary trial.

The court also LIFTS the stay on litigation on the merits of Plaintiffs' claims previously imposed upon the parties' stipulation. (*See* ECF No. 37.)

Plaintiffs must disclose to Wells Fargo whether they intend to opt-out of the *Jabbari* settlement **by January 10, 2018**. Wells Fargo has indicated that it intends to file a motion to dismiss the Third Amended Complaint, which it must do **by January 30, 2018**. Briefing on the motion will proceed in accordance with Local Rule 7-1. The court will set a hearing on the motion once it is briefed.

Finally, for the reasons stated on the record, the court DENIES Plaintiffs' Motion for Summary Judgment, (ECF No. 132), without prejudice to refiling.

Exh. 4

DATED this 3rd day of January, 2018.

BY THE COURT:

CLARK WADDOUPS
United States District Judge