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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 BOBBIE PACHECO DYER, on behalf
of herself and all others similarly
15 situated,

16 Plaintiff,

17 v.

18 WELLS FARGO BANK, N.A.,

19 Defendant.
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Case No. 13-CV-02858 JST

**JOINT STIPULATION OF CLASS
SETTLEMENT AND RELEASE**

Complaint Filed: June 20, 2013
FAC Filed: November 27, 2013

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1 **JOINT STIPULATION OF SETTLEMENT AND RELEASE**

2 This Stipulation of Class Settlement and Release (“Stipulation of Settlement”
3 or “Settlement Agreement”) is made and entered into by and between Plaintiffs
4 Bobbie Pacheco Dyer and Patricia Stallworth (collectively, “Plaintiffs” or “Class
5 Representatives”) and Defendant Wells Fargo Bank, N.A. (“Defendant” or “Wells
6 Fargo”), and is subject to the terms and conditions herein and the approval of the
7 Court. Plaintiffs and Defendant are referenced collectively herein as “the Parties.”

8 **BACKGROUND AND RECITALS**

9 1. On or about June 20, 2013, Plaintiff Dyer filed a class action in the
10 United States District Court for the Northern District of California, Case No. 13-
11 CV-02858 JST, entitled *Dyer v. Wells Fargo Bank, N.A* (“the Lawsuit”). On
12 November 27, 2013, Plaintiffs’ filed a first amended complaint. The Lawsuit
13 alleged that Wells Fargo breached the terms of the Incentive Compensation Plans by
14 paying Wells Fargo home mortgage employees a flat commission rate of 43 basis
15 points (“bps”) instead of the standard commission rates for certain specialty
16 refinance loans they originated, including loans under Home Affordable Refinance
17 Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie
18 Mae Refi Plus programs. Plaintiffs alleged a single claim for breach of contract,
19 which shall be referred herein as “the Class Claim.”

20 2. For purposes of this Settlement Agreement, the “Settlement Class” or
21 “Class Members” shall consist of all “All home mortgage employees of Wells Fargo
22 Bank, N.A. who were paid 43 bps, but who otherwise would have been paid
23 standard commission rates, for originating specialty refinance loans under the Home
24 Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and
25 Fannie Mae to Fannie Mae Refi Plus programs, between April 1, 2011 and January
26 1, 2013, excluding all employee and partner referral loans.”

27 3. For purposes of settling the Lawsuit, the Parties conditionally stipulate
28 and agree that the requisites for establishing class certification with respect to the

1 Settlement Class have and are met, and therefore, stipulate to class certification.
2 Specifically, the Parties conditionally stipulate and agree that, for the Settlement
3 Class:

4 a. The number of Class Members is so numerous as to make it
5 impracticable to join all Class Members.

6 b. There is an ascertainable class.

7 c. There are common questions of law and fact.

8 d. Plaintiffs' claims are typical of the claims of the members of the
9 Settlement Class.

10 e. John A. Yanchunis, Morgan & Morgan Complex Litigation
11 Group, shall be deemed "Lead Class Counsel." Lead Class Counsel, together with
12 Clayeo C. Arnold, A Professional Corporation, and Zies Widerman & Malek, shall
13 be deemed "Class Counsel" and will fairly and adequately protect the interests of
14 the Settlement Class.

15 f. Plaintiffs Bobbie Pacheco Dyer and Patricia Stallworth should be
16 appointed as the representatives of the Settlement Class and will fairly and
17 adequately represent the interests of the Settlement Class.

18 g. The prosecution of separate actions by individual members of the
19 Settlement Class would create the risk of inconsistent or varying adjudications,
20 which would establish incompatible standards of conduct.

21 h. Questions of law and fact common to the members of the
22 Settlement Class predominate over questions affecting individual members in the
23 Settlement Class and a class action is superior to other available means for the fair
24 and efficient adjudication of the controversy.

25 4. Wells Fargo denies any liability or wrongdoing of any kind associated
26 with the claims alleged in the Lawsuit and further denies that, for any purpose other
27 than settling the Lawsuit, this action is appropriate for class treatment. Wells Fargo
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1 contends, among other things, that it has properly compensated the Settlement Class
2 and has complied at all times with applicable California and federal law.

3 5. Plaintiffs believe that they have filed a meritorious action and that class
4 certification is appropriate. Plaintiffs contend that Wells Fargo breached its
5 nationwide incentive compensation plans and that this case is appropriate for class
6 certification as the requisites for class certification can be satisfied in this case.

7 6. It is the desire of the Parties to fully, finally, and forever settle,
8 compromise, and discharge all disputes and claims which exist between them arising
9 from the factual allegations that underlie the Lawsuit. In order to achieve a full and
10 complete release of Wells Fargo (and the "Releasees" as defined in Paragraph 7) of
11 such disputes and claims, each Class Representative (which includes any legal heirs
12 and/or successors-in-interest of each Class Member who receives Notice), through
13 execution of the Stipulation of Settlement, acknowledges that this Stipulation of
14 Settlement is intended to include the claims, as more fully described in Paragraph 26
15 of this Stipulation of Settlement.

16 7. It is the intention of the Parties that this Stipulation of Settlement shall
17 constitute a full and complete settlement and release of all claims described in
18 Paragraph 26 of this Stipulation of Settlement. This release shall include in its
19 effect not only Wells Fargo, but also each of its present and former affiliates, parent
20 companies, subsidiaries, shareholders, officers, partners, directors, employees,
21 agents, attorneys, insurers, predecessors, representatives, accountants, past, present,
22 and future, successors and assigns, and each and all of their respective officers,
23 partners, directors, servants, agents, shareholders, employees, representatives,
24 accountants, insurers, and attorneys, past, present, and future, and all persons acting
25 under, by, through, or in concert with any of them in connection with the released
26 claims (collectively, the "Releasees").

TERMS OF SETTLEMENT

8. Overview of Payment Structure. This settlement is made on a non-reversionary basis. This settlement shall consist of a Gross Fund Value which, in turn, is comprised of a Net Fund Value for the class, an award of attorney's fees and costs and expenses, an award of administration expenses, and an award to the two Class Representatives of an enhancement for their service as representatives. Further specifics are provided below.

9. Gross Fund Value. Wells Fargo shall pay \$14,743,101.00 (the "Gross Fund Value") to fund the settlement of this action. Payments by Wells Fargo pursuant to this Settlement Agreement shall settle all released claims. The settlement payments are not being made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation.

10. Attorney's Fees, Costs and Expenses: Subject to review and final approval by the Court, Wells Fargo agrees that Class Counsel may apply for an award of attorney's fees and costs and expenses not to exceed TWENTY FIVE percent (25%) of the Gross Fund Value. Wells Fargo agrees further that it will not object to such application for attorney's fees and expenses. Any award granted shall be taken from the Gross Fund Value. If a lower amount is awarded, the difference will be allocated to the Net Fund Value.

11. Enhancement Award: In further consideration for settling this matter and in exchange for the release of the claims by the Settlement Class as set forth in Paragraph 25, and subject to final approval, Wells Fargo agrees that Class Counsel may apply for enhancements or incentive awards for the two class representatives to compensate them for their time, risk and effort on behalf of the class. The enhancement award is in addition to the claim share to which Plaintiffs are entitled along with other claiming Class Members. Wells Fargo agrees that Plaintiffs may apply for up to FIFTEEN THOUSAND DOLLARS (\$15,000.00) for each class

1 representative. Any enhancement award granted shall be paid by Wells Fargo
2 separate and in addition to the Gross Fund Value.

3 12. Administration Costs: Defendant will use Rust Consulting, Inc. as
4 claims administrator for the class. The administration duties shall include, without
5 limitation, mailing Notices, calculating awards, processing requests for exclusion
6 and objections, performing necessary skip traces on Notices returned as
7 undeliverable; mailing Class Member settlement checks, issuing any required tax
8 reporting forms; and providing weekly status reports to Counsel for the Parties,
9 among other things set forth in this Stipulation. The actual cost of paying the
10 claims administrator will be paid by Wells Fargo and be separate and in addition to
11 the Gross Fund Value.

12 13. Remaining Net Fund Value for Class: After payment of Attorneys'
13 fees and costs and expenses, and any portion of the Gross Fund Value which is
14 unclaimed due to class members excluding themselves from the settlement, are
15 deducted from the Gross Fund Value, the remaining portion, the "Net Fund Value"
16 shall be distributed to class members who do not affirmatively exclude themselves
17 from the settlement.

18 14. "Opt Out" Process for the Net Fund Value: Class Members shall
19 receive notice of the action together with instructions on how they may exclude
20 themselves or "opt out" if they do not want to participate in the settlement. Class
21 Members who do not return a valid request for exclusion, however, shall be deemed
22 to have made a settlement claim. In consideration for settlement and a release of the
23 claims of the Settlement Class against Wells Fargo as set forth in Paragraph 26, each
24 Class Member who does not timely return a request for exclusion ("Qualified
25 Claimant") will receive a share of the Net Fund Value. Settlement payments to
26 Qualified Claimants are referred to as "Net Settlement Amount Payments."

27 15. Formula to Distribute the Net Fund Value. The Net Fund Value will be
28 distributed among Qualified Claimants in the class on a proportional basis. Each

1 individual Qualified Claimant's proportional share will be calculated by dividing the
2 actual impact on each individual's commission rates resulting from Wells Fargo
3 paying 43 basis points on the Wells Fargo to Wells Fargo specialty refinances at
4 issue in the Lawsuit, originated between April 1, 2011 and January 1, 2013, by the
5 total actual impact on commission rates as to all Class Members for originating such
6 loans, as reflected in Wells Fargo's payroll records, which will then be multiplied by
7 the Net Fund Value to determine the Class Member's settlement payment. To the
8 extent Wells Fargo is able to determine that an employee has already been paid the
9 difference between 43 basis points and the tier rate of commissions (e.g., Patricia
10 Stallworth raised an internal dispute and received an increased payment on certain
11 loans), such payments shall reduce the individual Class Member's original value
12 used to calculate his or her share of the settlement.

13 16. Settlement Date: The settlement embodied in this Stipulation of
14 Settlement shall go into effect upon entry of a final Judgment by the Court
15 approving this Stipulation of Settlement.

16 17. Funding and Payout of Settlement Funds

17 a. Payment Procedure to Claims Administrator: No later than
18 fifteen (15) business days after the "effective date" of final approval of the
19 settlement, Wells Fargo will issue to the Claims Administrator payment to pay all
20 claims of Class Members. The effective date shall be the date of final approval if no
21 objections are filed to the settlement. If objections are filed and overruled, and no
22 appeal is taken of the final approval order, then the effective date of final approval
23 shall be thirty-five (35) days after the Court enters final approval. If an appeal is
24 taken from the Court's overruling of objections to the settlement, then the effective
25 date of final approval shall be ten (10) business days after the appeal is withdrawn
26 or after an appellate decision affirming the final approval decision becomes final.
27 No money will be distributed unless and until the effective date of final approval
28 occurs.

b. The Claims Administrator will mail Net Settlement Amount Payment checks to Qualified Claimants no later than ten (10) days after receiving payment from Wells Fargo. Qualified Claimants shall have 180 days after mailing by the Claims Administrator to cash their Net Settlement Amount Payment checks. Ten days prior to the check expiration date, the Claims Administrator will mail postcard reminders to those Qualified Claimants who have not yet cashed their Net Settlement Amount Payment checks. If Qualified Claimants do not cash their Net Settlement Amount Payment checks within the 180-day period, those checks will become void and the Claims Administrator will stop payment on the uncashed checks. In such event, those Qualified Claimants will be deemed to have waived irrevocably any right in or claim to a settlement payment.

c. Should there remain any residual from the Gross Fund Value after all payments are made under this Settlement Agreement, for example, if any settlement checks remain uncashed more than 180 calendar days after mailing, the Claims Administrator will pay the funds represented by such un-redeemed checks to the California Industrial Relations Unclaimed Wages Fund with an identification of the Participating Class Member.

d. Tax Treatment of Settlement Payments: The Parties have determined that Eighty percent (80%) of the Net Settlement Amount Payments will be treated as back wages, subject to IRS Form W-2 reporting and, therefore, normal payroll taxes and withholdings will be deducted pursuant to state and federal law, and Wells Fargo will make all required contributions. Contingent upon a Qualified Claimant cashing his/her settlement payment, the payment representing back wages shall be reported to the IRS and the Qualified Claimant under the Qualified Claimant name and social security number on an IRS Form W-2. Twenty percent (20%) of the Net Settlement Amount Payments will be treated as interest sought in the Lawsuit. Contingent upon a Qualified Claimant cashing his/her settlement payment, the payment representing interest shall be reported to the IRS and the

1 Qualified Claimant under the Qualified Claimant's name and social security number
2 on an IRS Form 1099. Wells Fargo will pay the employer's share of payroll taxes,
3 which will be paid separate and in addition to the Gross Fund Value.

4 e. Aside from the employer portion of government-mandated
5 withholdings, Qualified Claimants are responsible for the appropriate payment of
6 any federal, state and/or local income or employment taxes on the Net Settlement
7 Amount Payments they receive. Class Counsel and Wells Fargo's Counsel do not
8 intend this Stipulation of Settlement to constitute legal or tax advice regarding any
9 federal, state or local tax issue. To the extent that this Stipulation of Settlement, or
10 any of its attachments, is interpreted to contain or constitute advice regarding any
11 federal, state or local tax issue, such advice is not intended or written to be used, and
12 cannot be used, by any person for the purpose of avoiding any tax liability or
13 penalties. The tax issues for each Qualified Claimant are unique to him/her, and
14 each Qualified Claimant is advised to obtain tax advice from his or her own tax
15 advisor with respect to any payments resulting from this Settlement.

16 f. Tax Treatment of Class Representatives' Enhancement Awards:
17 Plaintiffs Dyer and Stallworth will receive an IRS Form 1099 for their individual
18 enhancement awards, if such a tax form is required by law, and will be responsible
19 for correctly characterizing this additional payment for tax purposes and for paying
20 any taxes owing on said amount. In the event of an audit of Wells Fargo by any
21 state or federal government agency, or if any tax authority should dispute the
22 characterization of this compensation, Wells Fargo reserves all rights to
23 indemnification permitted by law.

24 g. Resolution of Disputes Relating to Amounts Owed to a
25 Claimant: If a Qualified Claimant timely disputes Wells Fargo's records as to the
26 proper size of his or her claim, the Parties' counsel will make a good faith effort to
27 resolve the dispute informally. If counsel for the Parties cannot agree, the dispute
28 shall be submitted to the Court, who shall examine the records in an attempt to

1 resolve the dispute. In any event, counsel will make every effort to resolve any
2 such disputes without Court intervention prior to final approval of this Settlement.

3 h. No later than fifteen (15) business days after the entry of the final
4 approval of the settlement, Wells Fargo will issue to Lead Class Counsel payment of
5 Court-approved attorney's fees, costs and expenses, and the enhancement awards to
6 be paid to the class representatives.

7 **NOTICE TO THE PLAINTIFF CLASS**

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9 18. The Parties agree that within ten (10) business days after preliminary
10 approval of this settlement, Wells Fargo will provide to the Claims Administrator all
11 of the following information about each Class Member in Excel format ("Class Data
12 List"): (1) name, (2) employee identification number, (3) last known home address
13 and telephone number, and (4) Social Security Number. The Claims Administrator
14 will perform address updates and verifications as necessary prior to the first mailing.

15 19. Within ten (10) business days after receipt of the "Class Data List," the
16 Claims Administrator will send Class Members, by first-class mail to their last
17 known address, the Court-approved Notice of Pendency of Class Action ("Notice"),
18 in the form attached hereto as Exhibit "A." The Notice will also include Wells
19 Fargo's calculation of the actual impact on each individual's commission rates
20 resulting from Wells Fargo paying 43 basis points on the Wells Fargo to Wells
21 Fargo specialty refinances at issue in the Lawsuit and a calculation of the Class
22 Member's estimated payment (assuming that the request for attorney's fees and
23 costs and expenses is awarded in full).

24 **CLAIM PROCESS**

25 20. Class Members will have forty-five (45) days from the date of the
26 Notices to postmark their objections or written requests for exclusion to the
27 administrator. Requests for exclusion must state, in effect, that the Class Member
28 does not wish to participate in the settlement of this action. In addition, any request

1 must include the Class Member's first and last name, signature, address, phone
2 number, and last four digits of social security number for verification purposes. A
3 Class Member who excludes himself or herself from the settlement shall lose
4 standing to object.

5 21. The Claims Administrator will perform skip-traces on returned mail
6 and re-mail the Notice to an updated address (if any) as soon as possible upon return
7 of the undeliverable Notice. It is the intent of the Parties that reasonable means be
8 used to locate Class Members since all Class Members who do not request exclusion
9 are entitled to receive their proportionate share of the Net Fund Value.

10 22. Within fifteen (15) days after receipt by the Claims Administrator of
11 each timely-submitted request for exclusion, the Claims Administrator will send a
12 deficiency notice to the Class Members for any irregularities in any request for
13 exclusion (such as failure to sign or include last four digits of Social Security
14 Number). The deficiency notice will provide the Class Members no more than
15 fifteen (15) days from the mailing of the deficiency notice to postmark a written
16 response to cure all deficiencies. The failure of a Class Member to cure all
17 deficiencies in a timely manner shall invalidate a request for exclusion and will not
18 be subject to cure.

19 23. With the Class Data List, Wells Fargo will provide the Claims
20 Administrator an Excel spreadsheet that the Administrator will use to calculate each
21 Class Member's proportional share of the Net Fund Value. The Excel spreadsheet,
22 without employee identification information except for the two class representatives,
23 shall also be provided to Class Counsel. The Claims Administrator will certify
24 jointly which request for exclusion forms, if any, were timely postmarked. The
25 Claims Administrator shall be responsible for calculating the payments (including
26 recalculation of each claimant's share based on reallocation of amounts from
27 exclusions as set forth in paragraph 24 below), issuing the payments and any
28 required tax reporting forms, and for communicating this information to Wells

1 Fargo and Class Counsel. Upon completion of its calculation of payments, the
 2 Claims Administrator shall provide Plaintiffs and Wells Fargo with a report listing
 3 the amount of all payments to be made to each Qualified Claimant. Proof of
 4 payment will be filed with the Court and provided to the Parties' counsel.

5 24. To the extent any Class Members request exclusion from the
 6 settlement, their unclaimed portion shall be retained by Wells Fargo, as Wells Fargo
 7 will not be receiving any release from that Class Member.

8 **RIGHT TO RESCISSION IN THE EVENT OF EXCESS OPT-OUTS**

9 25. Notwithstanding any other provision of this Stipulation of Settlement,
 10 Wells Fargo shall retain the right, in the exercise of its sole discretion, to nullify the
 11 settlement within thirty (30) days of expiration of the opt-out deadline, if ten percent
 12 (10%) or more Class Members opt out of the settlement. All signatories and their
 13 counsel must not encourage opt-outs. The Parties specifically agree not to solicit
 14 opt-outs, directly or indirectly, through any means. Objective statements to Class
 15 Members who call Class Counsel with inquiries regarding the settlement, or the
 16 exercise of Class Counsel's ethical obligations, shall not be deemed a violation of
 17 the prohibitions contained herein. In the event of such a rescission, no party may
 18 use the fact that the Parties agreed to settle this case as evidence of Wells Fargo's
 19 liability in this Lawsuit or the lack thereof.

20 **RELEASE BY THE CLASS OF CLASS CLAIM**

21 26. Upon final approval by the Court, the Settlement Class and each Class
 22 Member who has not submitted a timely and valid request for exclusion will release
 23 Wells Fargo and the Releasees from the Class Claim and any other claims arising
 24 from the same underlying factual allegations in the operative complaint relating to
 25 the payment of 43 bps rather than standard commission schedule rates for
 26 originating specialty refinance loans under the Home Affordable Refinance Act
 27 (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi
 28 Plus Programs. The Class Claim includes the breach of contract claim set forth in

the operative complaint concerning the payment of 43 bps on specialty refinance loans that Plaintiffs contend should have been paid at a higher rate and any other claims under any statute, regulation or common law, and whether for damages, restitution, interest, attorney's fees or penalties, that arise out of the same underlying factual allegations. This release will include any claims within the above scope arising before the date of preliminary approval of the settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

27. The Parties shall promptly submit this Stipulation of Settlement to the Court in support of a request for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Stipulation of Settlement, the Parties shall apply to the Court for the entry of a preliminary order, which would accomplish the following:

a. Scheduling a final fairness hearing on the question of whether the proposed settlement, the Class Representatives' enhancement awards, and the requested attorneys' fees and expense reimbursement should be finally approved as fair, reasonable, and adequate as to the Class Members;

b. Certifying a Settlement Class for all claims;

c. Certifying this action pursuant to Fed. R. Civ. Proc. 23 as a class action for purposes of settlement;

d. Approving as to form and content the proposed Notice;

e. Directing the mailing of the Notice, by first-class mail, to the Class Members;

f. Appointing Bobbie Dyer and Patricia Stallworth as Class Representatives;

g. Appointing John Yanchunis, Morgan & Morgan Complex Litigation Group, as Lead Class Counsel;

h. Preliminarily approving the settlement subject only to the objections of Class Members and final review by the Court; and,

1 i. Preliminarily approving the use of Rust Consulting, Inc. as
2 Claims Administrator.

3 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

4 28. Following final approval of the settlement provided for in this
5 Stipulation of Settlement, Class Counsel will submit a proposed final order and
6 Judgment, which would accomplish the following:

7 a. Approving the settlement, adjudging the terms thereof to be fair,
8 reasonable, and adequate, and directing consummation of its terms and provisions;

9 b. Approving Class Counsel's application for an award of
10 attorney's fees and costs and expenses;

11 c. Approving the Class Representatives' enhancement awards; and

12 d. Barring all members of the Settlement Class from prosecuting
13 against Releasees any individual or class claims released by the Settlement.

14 **PARTIES' AUTHORITY**

15 29. The signatories hereto hereby represent that they are fully authorized to
16 enter into this Stipulation of Settlement and bind the Parties hereto to the terms and
17 conditions hereof.

18 **MUTUAL FULL COOPERATION**

19 30. The Parties agree fully to cooperate with each other to accomplish the
20 terms of this Stipulation of Settlement, including but not limited to, execution of
21 such documents and to take such other action as may reasonably be necessary to
22 implement the terms of this Stipulation of Settlement. The Parties to this Stipulation
23 of Settlement shall use their best efforts, including all efforts contemplated by this
24 Stipulation of Settlement and any other efforts that may become necessary by order
25 of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms
26 set forth herein. As soon as practicable after execution of this Stipulation of
27 Settlement, Class Counsel shall, with the assistance and cooperation of Wells Fargo
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1 and its counsel, take all necessary steps to secure the Court's final approval of this
2 Stipulation of Settlement.

3 **NO PRIOR ASSIGNMENTS**

4 31. The Parties hereto represent, covenant, and warrant that they have not
5 directly or indirectly, assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity any portion of any liability, claim,
7 demand, action, cause of action, or rights herein released and discharged except as
8 set forth herein.

9 **NO ADMISSION**

10 32. Nothing contained herein, nor the consummation of this Stipulation of
11 Settlement, is to be construed or deemed an admission of liability, culpability,
12 negligence, or wrongdoing on the part of Wells Fargo. Wells Fargo specifically
13 denies any liability. Each of the Parties hereto has entered into this Stipulation of
14 Settlement with the intention to avoid further disputes and litigation with the
15 attendant inconvenience and expenses.

16 **PUBLICITY**

17 33. Neither Plaintiffs nor Class Counsel will publicize the Settlement in
18 any way prior to preliminary approval.

19 **CONSTRUCTION**

20 34. The Parties hereto agree that the terms and conditions of this
21 Stipulation of Settlement are the result of lengthy, intensive arms-length
22 negotiations between the Parties, and that this Stipulation of Settlement shall not be
23 construed in favor of or against any party by reason of the extent to which any party
24 or his, her, or its counsel participated in the drafting of this Stipulation of
25 Settlement.

26 **CAPTIONS AND INTERPRETATIONS**

27 35. Paragraph titles or captions contained herein are inserted as a matter of
28 convenience and for reference, and in no way define, limit, extend, or describe the

1 scope of this Stipulation of Settlement or any provision hereof. Each term of this
2 Stipulation of Settlement is contractual and not merely a recital.

3 MODIFICATION

4 36. This Stipulation of Settlement may not be changed, altered, or
5 modified, except in writing and signed by the Parties hereto, and approved by the
6 Court. This Stipulation of Settlement may not be discharged except by performance
7 in accordance with its terms or by a writing signed by the Parties hereto.

8 INTEGRATION CLAUSE

9 37. This Stipulation of Settlement contains the entire agreement between
10 the Parties relating to the settlement and transaction contemplated hereby, and all
11 prior or contemporaneous agreements, understandings, representations, and
12 statements, whether oral or written and whether by a party or such party's legal
13 counsel, are merged herein. No rights hereunder may be waived except in writing.

14 BINDING ON ASSIGNS

15 38. This Stipulation of Settlement shall be binding upon and inure to the
16 benefit of the Parties hereto and their respective heirs, trustees, executors,
17 administrators, successors and assigns.

18 CLASS COUNSEL SIGNATORIES

19 39. It is agreed that because of the large number of Class Members, it is
20 impossible or impractical to have each Class Member execute this Stipulation of
21 Settlement. The Notice, attached hereto as Exhibit "A," will advise all Class
22 Members of the binding nature of the release and such shall have the same force and
23 effect as if this Stipulation of Settlement were executed by each Class Member.

24 COUNTERPARTS

25 40. This Stipulation of Settlement may be executed in counterparts, and
26 when each party has signed and delivered at least one such counterpart, each
27 counterpart shall be deemed an original, and, when taken together with other signed
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1 counterparts, shall constitute one Stipulation of Settlement, which shall be binding
2 upon and effective as to all Parties.

3 Dated: February ___, 2014

4 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

5
6
7 By

THOMAS R. KAUFMAN
Attorneys for Defendant
WELLS FARGO BANK, N.A.

1 Dated: February __, 2014 By

2 Representative for Defendant
3 WELLS FARGO BANK, N.A.

4 Dated: February 21st, 2014 By

5 
6 BOBBIE PACHECO DYER
7 Plaintiff and Class Representative

8 Dated: February __, 2014 By

9
10 PATRICIA STALLWORTH
11 Plaintiff and Class Representative

12 Dated: February __, 2014

13 CLAYEO C. ARNOLD, A PROFESSIONAL LAW
14 CORPORATION

15
16 By

17 CLAYEO C. ARNOLD
18 Attorneys for Plaintiffs
19 BOBBIE PACHECO DYER and PATRICIA
20 STALLWORTH

21 Dated: February __, 2014

22 MORGAN & MORGAN COMPLEX LITIGATION
23 GROUP

24 By

25 JOHN A. YANCHUNIS
26 Attorneys for Plaintiffs
27 BOBBIE PACHECO DYER and PATRICIA
28 STALLWORTH

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Dated: February __, 2014 By

Representative for Defendant
WELLS FARGO BANK, N.A.

Dated: February __, 2014 By

BOBBIE PACHECO DYER
Plaintiff and Class Representative

Dated: February 21, 2014 By

Patricia Stallworth
PATRICIA STALLWORTH
Plaintiff and Class Representative

Dated: February __, 2014

CLAYEO C. ARNOLD, A PROFESSIONAL LAW
CORPORATION

By

CLAYEO C. ARNOLD
Attorneys for Plaintiffs
BOBBIE PACHECO DYER and PATRICIA
STALLWORTH

Dated: February __, 2014

MORGAN & MORGAN COMPLEX LITIGATION
GROUP

By

JOHN A. YANCHUNIS
Attorneys for Plaintiffs
BOBBIE PACHECO DYER and PATRICIA
STALLWORTH

1
2 Dated: February __, 2014 By

Representative for Defendant
WELLS FARGO BANK, N.A.

3
4 Dated: February __, 2014 By

5
6 BOBBIE PACHECO DYER
7 Plaintiff and Class Representative

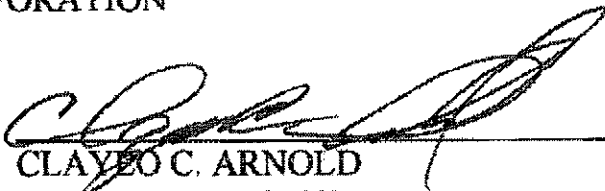
8 Dated: February __, 2014 By

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10 PATRICIA STALLWORTH
11 Plaintiff and Class Representative

12 Dated: February 22, 2014

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14 CLAYEO C. ARNOLD, A PROFESSIONAL LAW
15 CORPORATION

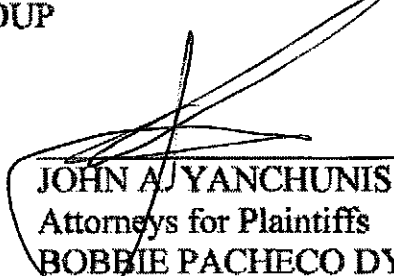
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CLAYEO C. ARNOLD
Attorneys for Plaintiffs
BOBBIE PACHECO DYER and PATRICIA
19 STALLWORTH

20 Dated: February __, 2014

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22 MORGAN & MORGAN COMPLEX LITIGATION
23 GROUP

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27 STALLWORTH

1
2 Dated: February 24th, 2014

3 ZIES WIDERMANN & MALEK

4
5 By 

6 MARK MALEK

7 Attorneys for Plaintiffs

8 BOBBIE PACHECO DYER and PATRICIA
9 STALLWORTH
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Dyer, et al. v. Wells Fargo Bank, N.A.

United States District Court for the Northern District of California, Case No. 13-CV-02858 JST

A court authorized this notice. This is not a solicitation.

This is not a lawsuit against you and you are not being sued.

However, your legal rights are affected whether you act or don't act.

IMPORTANT: YOU ARE MOST LIKELY ENTITLED TO MONEY IF THE COURT APPROVES A CLASS SETTLEMENT AND YOU FOLLOW THE PROCEDURES EXPLAINED BELOW

NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,

YOUR RIGHTS, AND OPTIONS FOR YOU TO CONSIDER

If you were employed by Wells Fargo Bank, N.A. ("Wells Fargo") as a home mortgage employee and were paid 43 basis points (bps), but otherwise would have been paid standard commission rates, for originating specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs, between April 1, 2011 and January 1, 2013, excluding all employee and partner referral loans, THEN YOU MAY RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT.

PLEASE READ THIS NOTICE CAREFULLY.

WHAT THIS NOTICE CONTAINS

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I. What is the purpose of this Notice?

The purpose of this Notice is to let you know that there is a class action lawsuit pending in the United States District Court for the Northern District of California, that you may be a member of the Class, AND THAT YOU MAY BE ENTITLED TO A PAYMENT AS PART OF THE SETTLEMENT OF THE LAWSUIT. The lawsuit was filed against Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant") and alleged that Wells Fargo breached the terms of the Incentive Compensation Plans by paying Wells Fargo home mortgage employees a flat commission rate of 43 basis points ("bps") instead of the standard commission rates for certain Wells Fargo to Wells Fargo specialty refinance loans they originated, including loans under Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs.

On January 23, 2014, the Parties attended a mediation and reached an agreement to settle the matter. On [date of preliminary approval], in Courtroom 9 of the San Francisco Courthouse, the Court held a hearing in which it approved the Parties' motion for a court order that:

- 1.) conditionally certifies the class action for settlement purposes only;
- 2.) grants preliminary Court approval of the proposed settlement;
- 3.) grants Court approval of this Notice, which includes setting a schedule and procedure for filing requests for exclusion; and,
- 4.) schedules a Final Fairness Determination Hearing for final Court approval of the settlement for [date of final approval], ____ a.m. in Courtroom 9 – 19th Floor of the San Francisco Courthouse, located at 450 Golden Gate Avenue, San Francisco, California 94102. The hearing may be continued (moved to another date) without further notice to the Settlement Class. It is not necessary for you to appear at the Final Fairness Determination Hearing unless you have timely filed an objection with the Court.

II. Why do Plaintiffs seek settlement approval?

Plaintiffs seeks approval of the settlement because they have reached a proposed settlement with Wells Fargo that they believe to be fair, reasonable, adequate, and in the best interests of the members of the Class and all parties.

III. What is Wells Fargo's position on settlement?

Wells Fargo views this settlement as a compromise. It is not admitting to the allegations in the case. Wells Fargo denies that any of its practices at issue in this lawsuit were or are unlawful, and Wells Fargo reserves the right to object to all claims if the settlement fails for any reason.

IV. Why did I get this Notice?

You received this Notice because Well Fargo's records identify you as a member of the Class. The "Settlement Class" or "Class Members" shall consist of all home mortgage employees of Wells Fargo Bank, N.A. who were paid 43 bps, but who otherwise would have been paid standard commission rates, for originating Wells Fargo to Wells Fargo specialty refinance loans under the Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs, between April 1, 2011 and January 1, 2013, excluding all employee and partner referral loans.

V. Who are the attorneys representing the Parties?

Lead Class Counsel

John A. Yanchunis

**MORGAN & MORGAN COMPLEX
LITIGATION GROUP**

201 North Franklin Street, 7th Floor

Tampa, FL 33602

Phone: 813-223-5505/Fax: 813-223-5402

Counsel for Defendant

Thomas R. Kaufman

**SHEPPARD MULLIN RICHTER &
HAMPTON, LLP**

1901 Avenue of the Stars, Suite 1600

Los Angeles, CA 90067-6017

Phone: 310-228-3700/Fax: 310-228-3701

VI. What is the proposed settlement?

Under the Stipulation of Class Settlement and Release between Plaintiffs and Wells Fargo ("Stipulation of Settlement" or "Settlement Agreement"), Wells Fargo has agreed to pay \$_____ to settle the claims asserted in this lawsuit. This amount includes the payments to members of the Settlement Class who do not opt-out and Class Counsel's attorney's fees, costs and expenses of up to \$_____. Following the Court-approved deductions for attorneys' fees, costs, and expenses, the remaining sum, \$_____ the "Net Settlement Amount", will be distributed to all members of the Class who do not request to be excluded, automatically, without the need to return a claim form. In addition, Wells Fargo will have to pay enhancement payments to the Named Plaintiffs of up to \$15,000 and all costs incurred by the Claims Administrator. Class Members will be required to keep the Claims Administrator updated of any changes in address until receipt of their settlement payment.

Class Counsel's application for an award of attorney's fees and costs will be filed by _____ [insert number of days before final approval hearing] and may be examined (i) online at <http://www.pacer.gov/> by creating a PACER account and entering Case No. 13-CV-02858 JST, or (ii) in person at Courtroom 9 – 19th Floor of the San Francisco Courthouse, located at 450 Golden Gate Avenue, San Francisco, California 94102, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. The following is a summary of the settlement provisions. The specific and complete terms of the proposed settlement are stated in the Stipulation of Settlement, a copy of which is filed with the Court and posted on Class Counsel's website at <http://www.forthethepeople.com/class-action-lawyers/notices>.

Settlement Payment. Wells Fargo has agreed to pay each Class Member who does not validly request exclusion from the Settlement ("Qualified Class Member") through the Claims Administrator in accordance with the terms of the Settlement Agreement, after final approval of the class action settlement. These settlement payments will be distributed approximately fifteen (15) business days after the effective date of the final approval, provided there is no appeal of the Court's final approval of the class action settlement.

The Net Settlement Amount will be distributed among Qualified Class Members in the class on a proportional basis based upon the actual impact on their commission rates resulting from Wells Fargo paying 43 basis points on the Wells Fargo to Wells Fargo specialty refinances at issue in the Lawsuit, originated between April 1, 2011 and January 1, 2013, as reflected in Wells Fargo's payroll records. It is presently estimated that you will receive \$_____.

VII. What are my rights with regard to this matter?

If you fit the description of a Class Member as set forth in this Notice, you have three options. Each option has its own consequences, which you should understand before making your decision. Your rights regarding each option, and the procedure you must follow to select each option, follow.

A. Option One. Do Nothing and Participate as a Class Member.

To get money from the settlement, you do not need take any action. If you are a Class Member and you do not exclude yourself from the Class, you will be bound by the settlement. The judgment will bind all members of the Settlement Class who do not request exclusion. By participating in the settlement, you will receive payment and will release Wells Fargo and other "Releasees" for all claims asserted or which could have been asserted in the operative Complaint on file in the case relating to the payment of 43 bps for certain specialty refinance loans they originated, including loans under Home Affordable Refinance Program (HARP), Freddie Mac to Freddie Mac Relief, and Fannie Mae to Fannie Mae Refi Plus programs. This release will include any such claims arising up to _____ (the date of preliminary approval of the settlement). You can get more details by examining the underlying settlement documents in the court's file at <http://www.pacer.gov/> by creating a PACER account and entering Case No. 13-CV-02858 JST or on Class Counsel's website at <http://www.forthethepeople.com/class-action-lawyers/notices>.

Class Counsel, appointed and approved by the Court for settlement purposes only, will represent you at no additional cost to you. You may also consult with your own attorney at your own expense.

If the Court gives final approval to the settlement, the Claims Administrator will send you a check at a later date to the address it has on file for you. It is important that you keep the Claims Administrator informed of any changes in address until receipt of your settlement payment.

B. Option Two. You Can Exclude Yourself ("opt out") from the Settlement.

If you do not wish to participate in or be bound by the settlement, you must mail to the Claims Administrator, Rust Consulting, Inc., at the address provided below, a request for exclusion from the Class Action Settlement, **post-marked on or before [DATE]**. Requests for exclusion must state, in effect, that you do not wish to participate in the settlement of this action. In addition, any request **must** include your first and last name, signature, address, phone number, and last four digits of social security number for verification purposes.

If you request exclusion, you will not receive any money from the settlement, nor will you be considered to have released your claims alleged in the class action. If you request exclusion from the class action settlement, you may not pursue any recovery under this class action settlement. You may, however, pursue other remedies separate and apart from the class action settlement that may be available to you.

C. Option Three. You May Object to the Settlement.

If you are a Class Member, and you do not exclude yourself from the Settlement Class (opt out), you may object to the settlement before final approval of the settlement by the Court. If you choose to object to the settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself), or through an attorney that you hire and pay for yourself.

In order to object to the settlement, or any portion of it, you must file and serve any such written objection on or before **[DATE]**. Objections must be timely filed in the United States District Court for the Northern District of California, and timely served on the Class Counsel and the attorneys for Wells Fargo listed in Section V above, to be considered by the Court.

VIII. Whom can I contact if I have further questions?

The Claims Administrator for this class action settlement is as follows:

Dyer, et al. v. Wells Fargo Bank, N.A
RUST CONSULTING, INC.

[ADDRESS]
[TELEPHONE NUMBER]

If you have questions, you may call the Claims Administrator toll free at [TELEPHONE NUMBER]. Ask about the *Dyer v. Wells Fargo Bank, N.A.* class settlement. You may also contact Class Counsel listed in Section V above. **PLEASE DO NOT CALL THE COURT OR COUNSEL FOR DEFENDANT.**

IMPORTANT:

- You must keep the Claims Administrator notified of any change of address to ensure receipt of your settlement payment.
- Settlement Payment checks will be null and void 180 days after issuance. Monies represented by checks that remain uncashed 180 days after the date of issuance will be forwarded to the California Industrial Relations Unclaimed Wages Fund in the name of the Qualified Class Member for further handling. If your check is lost or misplaced, you should contact the Claims Administrator immediately to request a replacement.