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16 Attorneys for Plaintiff
KEVIN LOCKWOOD

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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 KEVIN LOCKWOOD, individually and on
behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 WELLS FARGO BANK, NATIONAL
24 ASSOCIATION and DOES 1 through 10,
inclusive,

25 Defendants.
26

Case No. 3:15-cv-5239 JCS

**JOINT STIPULATION TO MODIFY
SETTLEMENT AGREEMENT**

Complaint Filed: August 25, 2015

1 **JOINT STIPULATION**

2 **THIS STIPULATION** is hereby entered into by and between Defendant Wells Fargo
3 Bank, N.A. (“Wells Fargo”) and Plaintiff Kevin Lockwood (“Plaintiff”) (collectively, the
4 “Parties”), by and through their respective counsel of record.

5 **WHEREAS**, the parties have previously provided the Court information about an audit
6 Wells Fargo was performing concerning its calculations of FASTMail and HMC Website charges.

7 **WHEREAS**, the audit ultimately identified approximately \$2,606,229 in omitted expenses
8 (exclusive of interest) impacting 617 members of the settlement class.

9 **WHEREAS**, counsel for the parties met and conferred on the issue of modifying the
10 settlement to increase payment to the 617 members and increasing the attorney’s fee award to
11 account for the additional money added to the total settlement.

12 **WHEREAS**, the parties have reached an agreement on the modifications that they wish to
13 submit to the Court for approval.

14 **NOW THEREFORE**, the Parties hereby stipulate to the following:

15 1. The original terms of the settlement agreement will be modified to require Wells
16 Fargo to contribute an addition \$1,900,000 to the settlement fund (raising the gross settlement
17 amount from \$8.95 million to \$10.85 million).

18 2. Plaintiff will seek to have one third of this supplemental payment (\$633,333)
19 preliminarily allocated to attorney’s fees and Wells Fargo will not object to that request.

20 3. The remaining portion of the \$1,900,000 supplemental payment will be allocated to
21 the 617 settlement class members who Wells Fargo’s audit revealed had experienced additional
22 FASTMail or HMC Website charges and will be divided among this group proportionally based
23 on the amount of additional charges each class member experienced.

24 4. A new class notice in the form of Exhibit “A” to this stipulation will be issued to all
25 settlement class members under the same procedures and timetable as the original class notice in
26 this action that the Court approved when it originally granted preliminary approval, except that
27 class members will have only 30 days from mailing to postmark a request for exclusion from the
28 class settlement.

1 5. The new notice will provide revised values for each class member’s anticipated
2 share of the settlement fund that take into account this supplemental contribution to the settlement
3 and that assume all requests for attorney’s fees, costs, and incentive payments are approved in full.
4 These amounts should be increased from the previous notice only with respect to the
5 aforementioned 617 class members.

6 6. All remaining terms of the settlement agreement will remain as was approved when
7 the Court previously granted preliminary approval.

8 7. The Court will set a final approval date on or after November 1, 2020 and will
9 notify the parties of the selected date.

10 8. To the extent the Court ultimately approves less than the full requested amount of
11 attorney’s fees, costs, or class representative enhancement, the difference will be allocated among
12 all participating class members proportionally to the size of their individual claim value.

13 9. The amended notice will be mailed within ten (10) business days of the day the
14 Court approves this stipulation.

15 **IT IS SO STIPULATED.**

16
17 Dated: August 21, 2020

18 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

19
20 By /s/ Thomas R. Kaufman
21 THOMAS R. KAUFMAN
22 Attorneys for Defendant
23 WELLS FARGO BANK, N.A.
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Dated: August 21, 2020

WYNNE LAW FIRM

By _____ /s/ Edward J. Wynne
EDWARD J. WYNNE
Attorneys for Plaintiff
KEVIN LOCKWOOD

EXHIBIT A

THIRD AMENDED NOTICE OF CLASS ACTION SETTLEMENT

Lockwood v. Wells Fargo Bank, N.A.

United States District Court for the Northern District of California Case No. 3:15-cv-5239.

PLEASE READ THIS NOTICE CAREFULLY.

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.

If you were employed by Wells Fargo Bank, N.A. (“Wells Fargo”) in California as a Home Mortgage Consultant, Home Mortgage Consultant, Jr., Private Mortgage Banker, or Private Mortgage Banker, Jr. (collectively “HMCs”), at any time from August 25, 2011 through December 31, 2016, you may be entitled to receive money from a class action settlement.

THIS NOTICE MODIFIES THE PREVIOUS NOTICES YOU SHOULD HAVE RECEIVED CONCERNING THE SETTLEMENT OF THIS LAWSUIT, WHICH WAS FORMERLY KNOWN AS NGUYEN v. WELLS FARGO BANK, N.A.

1. WHAT IS THE PURPOSE OF THIS NOTICE?

The purpose of this Notice is to let you know that the court has preliminarily approved a *modification* to the settlement agreement in the class action lawsuit pending in the United States District Court for the Northern District of California Case No. 3:15-cv-5239 entitled *Lockwood v. Wells Fargo Bank, N.A.*, and that you may be entitled to a payment as part of the settlement.

A hearing addressing the fairness, adequacy, and reasonableness of the settlement will be held on _____ at _____.m. to determine whether the settlement should receive the Court’s final approval.

2. WHAT ARE THE CLASS CLAIMS?

The lawsuit alleges, in relevant part, that Wells Fargo failed to fully reimburse HMCs’ necessary marketing expenses as required by California Labor Code section 2802 (“Section 2802”) and delivered HMCs’ commission payments later than the deadlines required by California Labor Code Section 204. The lawsuit also alleges related claims for civil penalties for violation of the California Labor Code Private Attorneys General Act (“PAGA”). The complaint seeks to recover unreimbursed expenses, interest, civil and statutory penalties, and attorneys’ fees.

3. WHAT IS WELLS FARGO’S POSITION ON THE CLAIMS?

Wells Fargo continues to deny all the allegations in the case. Wells Fargo contends that it fully complied with the requirements of Labor Code §§ 204 and 2802 and that it should not be held liable to the class for any of the claims asserted in the *Lockwood* class action lawsuit, but it has negotiated a settlement to avoid the cost and uncertainty of continued litigation.

4. WHY DOES PLAINTIFF KEVIN LOCKWOOD SEEK SETTLEMENT APPROVAL?

Plaintiff seeks approval of the settlement because Plaintiff has reached a proposed settlement with Wells Fargo that Plaintiff believes to be fair, reasonable, adequate, and in the best interests of the members of the class and all parties.

5. WHY DID I GET THIS NOTICE?

You received this Notice because you were identified as having been employed by Wells Fargo in California as an HMC at some point between August 25, 2011 and December 31, 2016. Approximately 4,791 individuals qualify as class members.

6. WHY WAS THE SETTLEMENT MODIFIED AND IN WHAT MANNER?

After issuing previous notice of the settlement in this action, Wells Fargo became aware that its original calculation of the sum total that was charged to class members for FASTMail and HMC Websites omitted a substantial amount of such charges. Wells Fargo has undertaken an audit that uncovered approximately \$2.6 million in such charges that the parties had been unaware of when they negotiated the original settlement. Accordingly, the parties renegotiated an adjustment to the settlement that involves Wells Fargo paying an additional \$1.9 million into the settlement fund. The additional money paid will increase the settlement amounts allocated to the 617 class members who experienced the charges that were uncovered in the recent audit. **Only those 617 individuals will receive an increased share of the settlement** although all class members are receiving this updated notice.

7. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

Class Counsel

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8. WHAT ARE THE MODIFIED TERMS OF THE PROPOSED SETTLEMENT?

The following is a summary of the proposed settlement. The complete terms of the proposed settlement are stated in the Stipulation of Settlement, which is on file with the Court and is available on line at www._____.

Under the Stipulation of Class Settlement between Plaintiff and Wells Fargo (“Stipulation of Settlement” or “Settlement Agreement”), Wells Fargo has agreed to pay \$10,850,000 as a “Gross Fund Value” to settle the claims asserted in this lawsuit, plus Wells Fargo has agreed separately to pay for the costs of having a third party, CPT Group, administer the settlement.

Prior to any distribution of funds to class members, subject to Court approval, the following amounts will be deducted from the Gross Fund Value: (1) attorneys’ fees (not to exceed \$3,616,666) to compensate Class Counsel for the unpaid work they have performed on the class action; (2) reimbursement of Class Counsel’s out-of-pocket litigation expenses, up to \$35,000; (3) a payment of \$75,000 to the State of California as part of

the settlement of the PAGA claim; and (4) an award of additional funds (not to exceed \$5,000) to class representative Kevin Lockwood, in consideration of his services to the class in this case. Following the Court-approved deductions, the remaining sum of approximately \$7,118,334 (the “Net Fund Value”) will be distributed to all members of the Class.

Class members received a previous projected allocation of the settlement fund that shall not be reduced for any class member. However, **for the 617 people who were identified in the recent audit as having experienced additional FASTMail and HMC Website charges**, approximately \$1,266,667 will be allocated to increase their settlement share from the previous amount with the increase proportional to the amount of FASTMail and HMC Website charges attributable to each person as uncovered in the recent audit.

The motion for final approval of the settlement, which will include Class Counsel’s application for an award of attorney’s fees and costs will be filed with the court by _____, 2020 and may be viewed in the court file at the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, or on line at [www._____](http://www._____.).

Wells Fargo has agreed to pay each class member an amount as calculated in accordance with the terms of the Settlement Agreement after final approval of the class action settlement. This settlement payment will be distributed by the Claims Administrator approximately fifteen (15) business days after the “effective date” of the final approval as defined in the settlement agreement. Your settlement check will be valid for 180 days, after which it will become void. If you do not cash or deposit the check before it becomes void, the funds will be sent to the California State Controller as Unclaimed Property in your name. Instructions for retrieving your settlement funds from the Unclaimed Property can be found at www.ucpi.sco.ca.gov/UCP or by contacting the California State Controller’s office.

9. YOUR ESTIMATED PAYMENT UNDER THIS SETTLEMENT IS \$ _____. This amount is based on your having incurred \$ _____ in unreimbursed expenses for FASTMail and HMC Website fees and having received ___ commission checks during the relevant period for calculation of that claim (see above). If you dispute these figures, you may contact the Claims Administrator, as discussed below.

10. WHAT ARE MY RIGHTS IN 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 are set forth below.

A. Option One. Do Nothing and Participate in the Settlement.

To get money from the settlement, you do not need take any action. As a class member, if the Court approves the settlement, you are bound by the settlement. You will then receive payment and will provide a release to Wells Fargo and other “Releasees” (which includes Wells Fargo’s affiliates, subsidiaries, parent companies, predecessor entities, successor entities, related companies, partners, officers, directors, managers, servants, agents, employees, former employees, representatives, and attorneys, past or present, and all persons acting under, by, though, or in concert with any of them). The scope of the release is as follows:

The Release Claims shall include any claims arising from the factual allegations or legal claims asserted in the First Amended Complaint. This would include claims arising under Labor Code Sections 204 or 2802, and any other claims based on other state statute or wage order or federal statute arising from the same factual allegations asserted in the First Amended Complaint in this action. This would include all claims asserting that Wells Fargo failed to timely pay Class Members commissions or incentive payments or that Wells Fargo failed to

reimburse necessary marketing expenses. The release shall apply to any Class Member's claims within the scope of the release arising up until December 31, 2019. The release will also include any PAGA claims within the scope of the letter that Plaintiff submitted to the LWDA on August 26, 2015.

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

B. Option Two. You May Dispute the Information Used to Calculate Your Settlement Payment.

The amount of your estimated settlement payment is based on the sums you expended on FASTMail and HMC Website monthly subscription fees as well as the number of separate commission payments you received during the periods set forth in Section 9 above. If you do not believe that the values for these items assigned to you in Section 9 of this notice is correct, you may dispute those numbers. Any such dispute must be mailed to the Settlement Administrator and **post-marked on or before [DATE]**. Disputes must state what you believe to be the correct values for these items and must be accompanied by any documentation you have to support your dispute. In addition, your dispute **must** include the case name (*Lockwood v. Wells Fargo Bank, N.A.*) your first and last name, signature, address, phone number, and last four digits of social security number for verification purposes. Sending a dispute will not risk your right to a settlement payment.

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

You may object to the settlement before final approval of the settlement by the Court. In order to object to the settlement or any portion of it, you should send any such written objection to the Settlement Administrator on or before **[DATE]**. Objections **must** state all of the reasons for your objection. In addition, any objection **must** include the case name (*Lockwood v. Wells Fargo Bank, N.A.*) your first and last name, address, phone number, and last four digits of social security number for verification purposes and must be signed by you or your attorney. While the Court may, in its discretion, permit objections to be filed up until the date of the Final Approval Hearing, you will only be assured that your objection will be considered if you submit it to the Claims Administrator by the **[DATE]** deadline.

11. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Final Approval Hearing on the fairness and adequacy of the proposed settlement, the plan of distribution, the enhancement award to the Plaintiff, and Class Counsel's request for attorneys' fees and costs, and other issues will be held on _____, 2020 at __ p.m., in Courtroom F of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102. You may attend the Final Approval Hearing and be heard even if you do not submit an objection to the settlement. The Final Approval Hearing may be continued to another date without further notice. If you plan to attend the Final Approval Hearing, it is recommended that you contact the Settlement Administrator to confirm the date and time.

12. NON-RETALIATION

Wells Fargo will not retaliate or take any adverse action against you or any Class Member for participating in the settlement.

13. ADDITIONAL INFORMATION

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file at the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue,

San Francisco, CA 94102. You may also review the settlement agreement and other documents related to this settlement on line at www._____. You may also contact the Settlement Administrator as follows:

Lockwood v. Wells Fargo Bank, N.A.
c/o CPT Group
[ADDRESS]
[TELEPHONE NUMBER]

If you have questions, you may call the Settlement Administrator, CPT Group, toll free at [TELEPHONE NUMBER]. Ask about the *Lockwood v. Wells Fargo* class settlement.

You may also contact Class Counsel at the addresses and telephone numbers listed above. **PLEASE DO NOT CALL THE COURT OR COUNSEL FOR WELLS FARGO.**

If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.