

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DYLAN HOFFMAN, Individually, and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

WELLS FARGO & COMPANY, a Delaware
Corporation,

Defendant.

Case No. 1:11-cv-06011

**NOTICE OF PENDENCY OF CLASS ACTION;
PROPOSED SETTLEMENT; AND DATE FOR
FINAL FAIRNESS HEARING**

To: ALL PERSONS WHO WORKED FOR WELLS FARGO AND/OR WACHOVIA AS A HOME MORTGAGE CONSULTANT (“HMC”), MORTGAGE CONSULTANT (“MC”), AND/OR PRIVATE MORTGAGE BANKER (“PMB”) (COLLECTIVELY “LOAN OFFICERS”) IN THE STATE OF ILLINOIS BETWEEN AUGUST 29, 2008 AND MARCH 26, 2011, EXCLUDING LOAN OFFICERS WHO OPTED-IN TO THE MDL ACTION (AS DEFINED BELOW)

PLEASE READ THIS NOTICE CAREFULLY

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a class member, it contains important information about your right to make a claim for payment.

IMPORTANT DEADLINES

- **Last day to file a Claim Form to participate in the Settlement: November 10, 2015**
- **Last day to file a request for exclusion from the Settlement: November 10, 2015**
- **Last day to file an objection to the Settlement: November 10, 2015**
- **Final Fairness Hearing: December 4, 2015**

WHAT IS A CLASS ACTION?

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as “class representatives,” file a lawsuit asserting claims on behalf of the entire class.

In this case, the class consists of all individuals who were employed as Home Mortgage Consultants (“HMCs”), Mortgage Consultants (“MC”) and/or Private Mortgage Bankers (“PMBs”)(collectively “Loan Officers”) in the state of Illinois between August 29, 2008 and March 26, 2011 (“Class Members”) excluding Loan Officers who opted-in to the MDL Action.

WHAT IS THE PURPOSE OF THIS NOTICE?

The Court has ordered that this Notice be sent to you because you may be a Class Member. The purpose of this Notice is to inform you:

- Of your potential right to money under the Settlement;
- That the Court has certified a class action for the purposes of this Settlement and that if you do not request to be excluded from the Settlement, you will be bound by the terms of the Settlement and Release;
- Of your right to file objections to the Settlement.

WHAT IS THIS CASE ABOUT?

On or about August 29, 2011, Plaintiff Dylan Hoffman (“Named Plaintiff” or “Class Representative”) filed this class action Lawsuit in the United States District Court for the Northern District of Illinois (Case No. 1:11-cv-06011) on behalf of himself and other current and former Loan Officers who worked for Defendant at any time within the three years prior to the filing of this Lawsuit. The Lawsuit alleged that Defendant violated the Fair Labor Standards Act (“FLSA”), the Illinois Minimum Wage Law (“IMWA”), and the Illinois Wage Payment and Collection Act by improperly designating Loan Officers as “exempt” from overtime pay. The Lawsuit seeks overtime pay and other relief on behalf of these Loan Officers. Defendant denies these allegations and denies that it violated the law in any way.

On or about November 15, 2011, Judge Gottschall of the United States District Court for the Northern District of Illinois transferred this action to the United States District Court for the Southern District of Texas to be coordinated with a pending multi-district litigation entitled *In Re: Wells Fargo Wage and Hour Employment Practices Litigation (No. III)* (“MDL

Action”). On August 10, 2012, the Court in the MDL Action certified a Fair Labor Standards Act (“FLSA”) collective action based on alleged violations of the FLSA. On or about June 12, 2013, a Notice of Collective Action was mailed to current and former Loan Officers employed by Defendant nationwide between February 11, 2008 and March 31, 2011. Loan Officers who filed Consent Forms to opt-in to the MDL Action became FLSA Collective Action Members. On April 4, 2014, the Court in the MDL Action entered final approval of settlement on behalf of FLSA Collective Action Members. On May 21, 2014, this Lawsuit was remanded back this Court for further proceedings. Loan Officers who opted-in to the MDL Action and received a settlement payment in that action are not part of this Settlement.

WHAT ARE THE TERMS OF THE SETTLEMENT?

The parties have agreed to settle this matter for a maximum of Six Hundred Fifty Thousand Dollars and No Cents (\$650,000.00) (including Class Counsel’s fees and costs, Settlement Administrator costs, and a Service Award for the Named Plaintiff who commenced this Lawsuit).

MONETARY PAYMENT

If the Settlement is given final approval by the Court, Defendant will pay up to a maximum of Six Hundred Fifty Thousand Dollars and No Cents (\$650,000.00) (“Maximum Gross Settlement Amount”). Subject to the Court’s approval, the following deductions will be against the Maximum Gross Settlement Amount (“MGSA”):

- a. Service Award: If the Court approves such payment, Five Thousand Dollars and No Cents (\$5,000.00) will be paid out to Named Plaintiff Dylan Hoffman. This payment is being sought to compensate Named Plaintiff for his time, effort and burden in prosecuting this case on behalf of Class Members.
- b. Attorneys’ Fees: Class Counsel will apply to the Court for attorneys’ fees in the amount of not less than \$162,500.00, nor more than \$195,000.00, which is thirty percent (30%) of the MGSA. This amount will be requested given the significant number of hours that Class Counsel spent in pursuing this case on behalf of the Class Members, the risks that Class Counsel took that no fees would be recovered, and the result achieved for the Class Members.

The requested fees represent a multiple of about two times the Class attorneys’ lodestar. “Lodestar” is determined by multiplying the attorneys regular hourly rates times the number of hours worked on the case. The hourly rates are the rates that Class Counsel charge their hourly clients for noncontingent work. For more information, please refer to the memo Class Counsel filed in support of preliminary approval of the Settlement and the fee petition filed by Class Counsel on August 14, 2015, all of which are available from the Court’s records and also may be accessed on the settlement website www.WellsFargoIllinoisMLOsettlement.com

- c. Attorneys’ Costs: Class Counsel will apply to the Court for costs not to exceed seven hundred dollars (\$700.00) to compensate Class Counsel for costs incurred in pursuing this case on behalf of the Class Members.
- d. Settlement Administrator’s Costs: Rust Consulting, Inc. has been hired to handle the administration of class Notice, claims, create the website and distribute Individual Payments to Class Members. Class Counsel will make an application to the Court for the Settlement Administrator’s costs which currently are estimated to total sixteen thousand six hundred eighty-one dollars (\$16,681.00)

The Maximum Net Settlement Amount (“MNSA”) will be MGSA minus the deductions above (a-d), as approved by the Court. Individual Payments will be distributed from the MNSA to Class Members who do not request to be excluded from the Settlement (“Qualified Class Members”) on a claims-made basis, as set forth below.

SETTLEMENT FORMULA

All Qualified Class Members will receive a minimum payment of One Hundred Dollars and No Cents (\$100.00) regardless of whether or not the Qualified Class Member files a Claim Form.

Further Individual Payments will be made to Qualified Class Members on a claims-made basis. **To receive a further Individual Payment, a Qualified Class Member must submit a valid and timely Claim Form.** All Claim Forms must be signed under penalty of perjury and completed in their entirety to be considered valid.

After the minimum payment of \$100.00, the Individual Payment allocated to each Qualified Class Member will be determined by using a settlement allocation formula taking into account time worked during the Class Period and earnings during the Class Period. Based on information to be provided by Defendant, the Settlement Administrator will calculate each Qualified Class Member’s Points by multiplying the Qualified Class Member’s total months worked as a Loan Officer during the Class Period times the Qualified Class Member’s average monthly earnings as a Loan Officer during the Class Period. The Settlement Administrator then will calculate each Qualified Class Member’s Net Points Per Share by dividing the Net Settlement Amount by the combined Points for all Qualified Class Members. Each Qualified Class Member’s Individual Payment will be the Qualified Class Member’s Points multiplied by the Net Share Per Point.

In the event that the total Qualified Class Members' Payments, including the \$100.00 minimum payment, are less than \$325,000.00, then each Qualified Class Member who filed a claim shall receive an additional payment representing his or her *pro rata* portion of the difference between the total amount claimed by the Qualified Class Members' Payments and \$325,000.00.

CALCULATIONS BASED ON DEFENDANT'S RECORDS

For each Qualified Class Member submitting a timely and valid Claim Form, the amount payable to the Qualified Class Member will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct with respect to the dates worked as a Loan Officer during the Class Period and the Qualified Class Member's earnings as a Loan Officer during the Class Period.

If a Qualified Class Member disputes the accuracy of Defendant's records as to the dates he or she worked for Defendant as a Loan Officer during the Class Period and/or his or her earnings as a Loan Officer during the Class Period, the Qualified Class Member should submit documentation in writing (i.e., pay stubs, offer letter, resignation letter, performance evaluations, W2's etc...) supporting his or her position to the Settlement Administrator at the same time he or she mails his or her Claim Form to the Settlement Administrator.

TAX TREATMENT

For tax purposes, half of the payment will be considered back wages subject to lawful deductions and W-2 reporting and half will be considered liquidated damages and interest subject to 1099 reporting. Each Qualified Class Member who filed a Claim Form and was sent a check will be issued an IRS Form W-2 for that portion of the Qualified Class Member's settlement payment which is being treated as wages. For this amount, normal payroll taxes and withholdings will be deducted pursuant to state and federal law. Each Qualified Class Member who files a Claim Form and is sent a check will be issued an IRS Form 1099 for the remaining portion of the Qualified Class Member's settlement payment which is being treated as liquidated damages and interest. Other than the employer's portion of payroll taxes and withholdings, Qualified Class Members are responsible for the appropriate payment of any federal, state and/or local income or employment taxes on the payments they receive.

DISMISSAL OF CASE AND RELEASE OF CLAIMS

In exchange for the payment set forth above, this action will be dismissed with prejudice, and the Qualified Class Members (excepting only those who file a request for exclusion) will fully release and discharge Defendant and all Released Entities from each of the claims alleged in the *Hoffman* Complaint and any claims derived from or based upon or related to or arising out of the same factual predicate of the *Hoffman* Complaint, whether known or unknown, that exist in their favor through the date of this Agreement ("Released Claims"). The Released Claims include all claims, asserted or unasserted, by the Named Plaintiff and Qualified Class Members arising before or during the Class Period, whether in the nature of claims for damages, liquidated damages, punitive damages, minimum wages and/or overtime pay, interest, attorneys' fees, costs or injunctive relief or other penalties or remedies that were or could have been asserted out of, relating to, or in connection with any type of actual or alleged violation of any wage and hour laws asserted in the *Hoffman* Complaint, or that arise from the same factual predicate, whether known or unknown, and whether under the Illinois Minimum Wage Law, the Illinois Wage Payment and Collection Act, the Fair Labor Standards Act or other state wage and hour laws.

WHAT ARE YOUR OPTIONS AS A CLASS MEMBER?

You have several options. Be sure to read this section carefully.

1. Submit a claim and participate in the Settlement:

To get money from the Settlement, you must complete the enclosed Claim Form, sign it under penalty of perjury, date it, and mail it to the Settlement Administrator at:

**HOFFMAN V. WELLS FARGO BANK & COMPANY
Settlement Administrator
c/o Rust Consulting, Inc. - 4632
P.O. Box 2396
Faribault, MN 55021-9096**

The Claim Form must be postmarked no later than November 10, 2015. If your Claim Form is postmarked after November 10, 2015, you will not receive any payment, but you will be bound by the Release and all other terms of the Settlement.

If you lose, misplace, or need another Claim Form, you should contact the Settlement Administrator at 1-877-256-3560.

2. Request exclusion from the Settlement:

If you do not want to participate in the Settlement, or if you want the right to pursue your own lawsuit, you must request to be excluded from the Settlement. If you do not request to be excluded, you will be bound by the terms of the Settlement. To request exclusion you must send a signed letter which includes your name (and, if applicable, former name), address, and a statement that you are requesting to be excluded from the Settlement in *Hoffman v. Wells Fargo*. **Any such written request for exclusion must be postmarked no later than November 10, 2015. If you submit a request for exclusion that is postmarked after November 10, 2015, your request for exclusion will be rejected, and you will be bound by the Release and all other terms of the Settlement.** If you request exclusion from the Settlement, you cannot object to the Settlement.

Should you request exclusion from the Settlement, you are permitted to retract the request for exclusion by submitting a signed letter to Class Counsel, which includes your name (and, if applicable, former name), address, and a statement that you wish to withdraw your request for exclusion from the Settlement in *Hoffman v. Wells Fargo*, so as to be received no later than November 27, 2015.

3. Object to the Settlement:

You may object to the Settlement by filing your objection with the clerk of this Court and, personally or through an attorney, by mailing a copy of your objections to each of the following:

Terrence Buehler
TOUHY, TOUHY & BUEHLER, LLP
55 West Wacker Drive, 14th Floor
Chicago, IL 60601

and

Lindbergh Porter, Jr.
LITTLER MENDELSON, PC
650 California Street, 20th Floor
San Francisco, CA 94108-2693

No Class Member's objections shall be heard nor shall any Class Member's papers or briefs be received or considered by the Court at the Final Fairness Hearing unless all objections, papers, or briefs are postmarked no later than November 10, 2015 and mailed to each addressee above. All such objections must be signed and should contain your name, address, and the name of the case, *Hoffman v. Wells Fargo*. If you submit an objection, you may appear personally or through an attorney, at your own expense, at the Final Fairness Hearing to present your objection directly to the Court. Your objection should clearly explain why you object to the Settlement and must state whether you (or someone on your behalf) intend to appear at the Final Fairness Hearing. If you object to the Settlement, you will remain a member of the Class and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way and to the same extent as a Class Member who does not object. Any member of the Class who does not make and serve his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement. Any member of the Class who is satisfied with the proposed Settlement need not appear at the Final Fairness Hearing.

4. Do Nothing:

You can decide to do nothing in response to this Notice. If you choose to do nothing, you will receive an Individual Payment in the amount of One Hundred Dollars (\$100.00). You will be bound by the Release and all other terms of the Settlement.

FINAL FAIRNESS HEARING

The Court will hold a Fairness Hearing on December 4, 2015, at the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Courtroom 2325, Chicago, Illinois 60604. At this hearing, the Court will consider whether or not the terms of the Settlement are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court also will be asked to approve Class Counsel's requests for attorneys' fees and costs, the Settlement Administrator's costs, and the Service Award to the Named Plaintiff.

The hearing may be continued without further notice. It is not necessary for you to appear at this hearing unless you wish to argue an objection.

EXAMINATION OF PLEADINGS AND PAPERS/ADDITIONAL INFORMATION

This Notice does not contain all of the terms of the proposed Settlement or all of the details of the underlying Lawsuit. For more detailed information, you are advised to refer to the Lawsuit documents on file with the Court. This file may be inspected during the hours of each Court business day at the Office of the Clerk of the Court, United States Courthouse,

219 South Dearborn Street, Chicago, Illinois 60604.

You are further advised to examine the settlement website that the parties have set up for this case: www.WellsFargoMLOSettlement.com which links to all important Court documents.

Additionally, if you have questions about this Notice, or want additional information, you can contact Class Counsel: Terrence Buehler, Touhy, Touhy & Buehler, LLP, 55 W. Wacker Drive, Suite 1400, Chicago, Illinois 60601, Tel 312-372-2209; email: tbuehler@touhyllp.com.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIMS PROCESS.

