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VENTURA SUPERIOR COURT

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VENTURA SUPERIOR COURT

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02/08/2024

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Executive Officer and Clerk

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10  
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GEORGE AGAK

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF VENTURA

15 WELLS FARGO BANK, N.A.

16 Plaintiff,

17 vs.

18 GEORGE W. AGAK, an individual

19 Defendant.

20  
21 AND RELATED CROSS-ACTION(S)

) Case No.: 56-2017-00500587-CL-CL-VTA  
) [Assigned for all purposes to Hon. Judge  
) Benjamin Coats, dept. 43]

) ~~Proposed~~ SECOND AMENDED ORDER  
) GRANTING GEORGE AGAK'S MOTION  
) FOR PRELIMINARY APPROVAL OF  
) CLASS ACTION SETTLEMENT

) [Filed concurrently with Supplemental  
) Declaration of Evan Selik; Declaration of  
) Gerge Agak; Declaration of Third-Party  
) Administrator]

) Date: February 8, 2024  
) Time: 8:30 a.m.  
) Dept.: 43

) Action filed: August 24, 2017  
) Trial date: None

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27 1 SECOND ~~PROPOSED~~ AMENDED ORDER  
GRANTING GEORGE AGAK'S MOTION  
FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT  
28 *Wells Fargo Bank, N.A. v. Agak*

Ventura Superior Court Accepted through eDelivery submitted 02-07-2024 at 09:38:00 AM  
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1 WHEREAS, an above-entitled action is pending before this Court, referred to herein as the  
2 “Action”;

3 WHEREAS, the parties having made application, pursuant to California Rules of Civil  
4 Procedure, for an order preliminarily approving the settlement of this Action in accordance with  
5 the Settlement Agreement and Release dated October 24, 2023 (the “Agreement”), which, together  
6 with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of  
7 the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth  
8 therein; and the Court having read and considered the Agreement and the exhibits annexed thereto;

9 WHEREAS, the Parties have agreed to seek preliminary approval of the Agreement and  
10 proposed settlement from this Court, so that the Court may decide whether to approve this  
11 settlement in accordance with California Rules of Civil Procedure; and

12 WHEREAS, all defined terms herein have the same meanings as set forth in the  
13 Agreement.

14 NOW, THEREFORE, IT IS HEREBY ORDERED:

15 1. **Settlement.** Defendant/Cross-Complainant, George W. Agak, on behalf of himself  
16 and all members of the Class, and Plaintiff/Cross-Defendant Wells Fargo Bank, N.A. (“Wells  
17 Fargo”) negotiated a potential settlement to the Action to avoid the expense, uncertainties, and  
18 burden of protracted litigation, and to resolve the Released Claims (as defined in the Agreement)  
19 against Wells Fargo and the Releasees.

20 2. **Review.** At the preliminary approval stage, the Court’s task is to evaluate whether  
21 the settlement is within the “range of reasonableness.” 4 Newberg on Class Actions § 11.26 (4th  
22 ed. 2010); Cal. Rules of Court, rule 3.769(d)–(g)). To approve the settlement, the court must  
23 “determine that the agreement is not the product of fraud or overreaching by, or collusion  
24 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and  
25 adequate to all concerned.” *Carter v. City of Los Angeles*, 224 Cal.App.4th 808, 810-11 (2d DCA

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1 2014). A presumption of fairness exists where (1) the settlement is reached through arm’s-length  
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3 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is  
5 small. *Id*; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399,  
6 408 (2d DCA 2010); see also *Manual for Complex Litigation, Third*, § 30.42 (West 1995) (“A  
7 presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in  
8 arms’-length negotiations between experienced, capable counsel after meaningful discovery.”)  
9 (internal quotation marks omitted). The Court has carefully reviewed the Agreement, as well as  
10 the files, records, and proceedings to date in the Action. The terms and conditions in the  
11 Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise  
12 indicated, capitalized terms in this Order shall have the meanings attributed to them in the  
13 Agreement.

14       3.       **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and  
15 over all parties to the Action, including all Members of the Class, and venue in this Court is  
16 proper.

17       4.       **Preliminary Approval.** The Court does hereby preliminarily approve the  
18 Agreement and the Settlement set forth therein as fair, reasonable, and adequate, subject to further  
19 consideration at the Final Approval Hearing described below. The Court finds on a preliminary  
20 basis that the Settlement as set forth in the Agreement falls within the range of reasonableness and  
21 was the product of informed, good-faith, arms’-length negotiations between the Parties and their  
22 counsel, and therefore meets the requirements for preliminary approval.

23       5.       **Settlement Class.** The Court conditionally certifies, for settlement purposes only  
24 (and for no other purpose and with no other effect upon the Action, including no effect upon the  
25 Action should the Agreement not receive final approval or should the Effective Date not occur), a  
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1 class defined as the collective group of “all Wells Fargo credit card customers in California who  
2 were charged a Credit Defense fee at any time beginning March 1, 2015 through December 31,  
3 2018”. The Court finds, for settlement purposes only, that class certification under California  
4 Rules of Civil Procedure is appropriate in that, in the settlement context: (a) the members of the  
5 Class are so numerous that joinder of all Class Members in the class action is impracticable; (b)  
6 there are questions of law and fact common to the Class which predominate over any individual  
7 question; (c) the claims of the Class Representative are typical of the claims of the Class; (d) the  
8 Class Representative and his counsel will fairly and adequately represent and protect the interests  
9 of the Class Members; (e) the Class is ascertainable; and (f) a class action is superior to other  
10 available methods for the fair and efficient adjudication of the controversy.

11       6.       **Designation of Class Representative and Class Counsel.** The Court appoints the  
12 Defendant/Cross-Complainant George W. Agak as Class Representative, and Evan Selik and  
13 Christine Zaouk of McCathern, LLP and Adam Feit of Mardirossian Akaragian, LLP as Class  
14 Counsel.

15       7.       **Final Approval Hearing.** This Court shall set a date for a hearing (the “Final  
16 Approval Hearing”) to be held before the Court, at the Superior Court of the State of California,  
17 County of Ventura, 800 South Victoria Avenue, Ventura, California, 93009, Courtroom 43. At the  
18 Final Approval Hearing, the Court will determine, among other things: (i) whether the proposed  
19 Settlement of the Action on the terms and conditions provided for in the Agreement is fair,  
20 reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a  
21 Judgment as provided in Paragraph 1.20 of the Agreement should be entered; (iii) whether Class  
22 Members should be bound by the Release set forth in the Agreement; and (iv) any amount of fees  
23 and expenses that should be awarded to Class Counsel.

24       8.       **Class Notice.** The Court approves the form, substance and requirements of the  
25 notice of the proposed settlement of the class action annexed hereto as Exhibits 1-A (“Mail  
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1 Notice), and 1-B (“Long Form Notice”). The Court further finds that the form, content and  
2 mailing of the Mail Notice, substantially in the manner and form set forth in Paragraphs 8 of this  
3 Order, meet the requirements of the California Rules of Civil Procedure and due process. The  
4 Court further finds that this is the best notice practicable under the circumstances and is  
5 reasonably calculated, under all the circumstances, to apprise potential Class Members of the  
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7 pendency of the Action, to apprise persons who would otherwise fall within the definition of the  
8 Class of their right to exclude themselves from the proposed Class, and to apprise Class Members  
9 of their right to object to the proposed Settlement and their right to appear at the Final Approval  
10 Hearing. The Court further finds that the Notice constitutes due and sufficient notice to all persons  
11 entitled thereto.

12           9.       **Settlement Administrator.** Pursuant to California Rules of Civil Procedure, the  
13 Court appoints Epiq Class Action & Claims Solutions (“Settlement Administrator”) to supervise  
14 and administer the notice procedure as more fully set forth below:

15                   (a)       No later than forty-five (45) days from the entry of this Order (the “Notice  
16 Mailing Date”), the Settlement Administrator shall cause a copy of the Mail Notice, substantially  
17 in the form annexed as Exhibit 1-A hereto, to be mailed by first class mail to each individual on  
18 the Notice List;

19                   (b)       No later than the Notice Mailing Date, the Settlement Administrator shall  
20 establish a website at www.[web address].com, and shall post on the website the Agreement the  
21 Long Form Notice (Exhibit 1-B);

22                   (c)       Following the mailing of the Mail Notice, the Settlement Administrator  
23 shall provide counsel with written confirmation of the mailing; and

24                   (d)       The Settlement Administrator shall otherwise carry out its duties as set forth  
25 in Section 6 of the Agreement.

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1 (e) The Court preliminarily approves Settlement Administrators expenses not to  
2 exceed four hundred sixty thousand dollars and no cents (\$460,000.00) to complete its duties for  
3 this Settlement.

4 10. **Exclusion from the Class.** Any Class Member may, upon request, be excluded  
5 from the Class. Any such Class Member must submit a written Request to Opt-Out no later than  
6 thirty (30) days prior to the Final Approval Hearing. The written Request to Opt-Out must be sent  
7 to the Settlement Administrator: *Wells Fargo Bank, N.A. v. Agak*, Settlement Administrator, Epiq  
8 Class Action & Claims Solutions. To be valid, the Request to Opt-Out must include the Class  
9 Member's name, address, original signature, and a statement that indicates a desire to be excluded  
10 from the Settlement Class. All Class Members who submit valid and timely Requests to Opt-Out  
11 in the manner set forth in this Paragraph shall have no rights under the Agreement, shall not  
12 receive a Settlement payment, and shall not be bound by the Agreement or any Final Judgment.  
13 Mass or class opt outs shall not be allowed. A Class Member who desires to opt out must take  
14 timely affirmative written action pursuant to this Order and the Agreement, even if the person  
15 desiring to opt out of the Class (a) files or has filed a separate action against any of the Released  
16 Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of  
17 the Released Parties.

18 11. **Copies of Requests to Opt-Out.** The Settlement Administrator shall provide Class  
19 Counsel and Defense Counsel with a list of all timely Requests to Opt-Out within seven (7)  
20 business days after the Opt-Out Deadline.

21 12. **Entry of Appearance.** Any member of the Class who does not exclude himself or  
22 herself from the Settlement Class may enter an appearance in the Action, at his or her own  
23 expense, individually or through counsel of his or her own choice. If he or she does not enter an  
24 appearance, he or she will be represented by Class Counsel.

25 13. **Binding Effect on Class.** All Members who do not exclude themselves from the  
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1 Settlement Class by properly and timely submitting a Request to Opt-Out shall be bound by all  
2 determinations and judgments in the Action concerning the Settlement, whether favorable or  
3 unfavorable to the Class.

4       14.     **Objections.** Any Class Member who does not timely and validly exclude himself  
5 or herself from the Settlement Class may appear and show cause, if he or she has any reason why  
6 the proposed Settlement of the Action should not be approved as fair, reasonable and adequate,  
7 why a Final Judgment should not be entered thereon, or why attorneys' fees and expenses should  
8 not be awarded to Class Counsel; provided, however, that no Class Member shall be heard or  
9 entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if  
10 approved, the Final Judgment to be entered thereon approving the same, or any attorneys' fees and  
11 expenses to be awarded to Class Counsel or award made to the Class Representative, unless a  
12 written objection is filed with the Clerk of the Superior Court of the State of California, County of  
13 Ventura, 800 South Victoria Avenue, Ventura, California 93009, no later than thirty (30) days  
14 prior to the Final Approval Hearing. A copy of the objection must also be mailed to Class Counsel  
15 and Defense Counsel, postmarked no later than thirty (30) days prior to the Final Approval  
16 Hearing. To be valid, the objection must set forth, in clear and concise terms: (a) the case name  
17 and number (*Wells Fargo Bank, N.A. v. Agak*, Adv. Pro. No. 56-2017-00500587-CL-CL-VTA);  
18 (b) the name, address, and telephone number of the objector objecting and, if represented by  
19 counsel, of his or her counsel; (c) the basis for objection; and (d) a statement of whether the  
20 objector intends to appear at the Final Approval Hearing, either with or without counsel. Any  
21 Class Member who does not make his or her objection in the manner provided shall be deemed to  
22 have waived such objection, shall not be permitted to object to any terms or approval of the  
23 Settlement at the Final Approval Hearing, and shall forever be foreclosed from making any  
24 objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated  
25 in the Agreement, and to the award of attorneys' fees and expenses to Class Counsel and the

1 payment of an award to the Class Representative for her representation of the Class, unless  
2 otherwise ordered by the Court.

3       15.     **Appearance of Objectors at Final Approval Hearing.** Any Class Member who  
4 files and serves a written objection in accordance with Paragraph 14 of this Order may appear, in  
5 person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the  
6 proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the  
7 objector: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval  
8 Hearing by the Objection Deadline (“Notice of Intention to Appear”); and (b) serves the Notice of  
9 Intention to Appear on Class Counsel and Defense Counsel by the Objection Deadline. The Notice  
10 of Intention to Appear must include copies of any papers, exhibits, or other evidence that the  
11 objector will present to the District Court in connection with the Final Approval Hearing. Any  
12 Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the  
13 deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled  
14 to appear at the Final Approval Hearing and raise any objections.

15       16.     **Service of Motion for Final Approval.** The motion in support of final approval of  
16 the Settlement shall be filed and served no later than fourteen (14) days prior to the Final Approval  
17 Hearing. Wells Fargo’s response to Plaintiff’s Motion for Final Approval of the Settlement shall  
18 be filed and served no later than seven (7) days prior to the Final Approval Hearing.

19       17.     **Enhancement Award.** The Court preliminarily approves the enhancement award  
20 to go to the class representative, George Agak, of twenty thousand dollars and zero cents  
21 (\$20,000.00) as fair and reasonable in light of the work and effort exhibited as part of this Action.

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23       18.     **Attorneys’ Fees and Expenses.** The Court preliminarily approves the Class  
24 Counsel’s Attorneys’ fees to be two million dollars and no cents (\$2,000,000.00) or 40% of the  
25 Settlement Fund and Attorneys Expenses to be no more than fifty thousand dollars and no cents  
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1 (\$50,000.00) of litigation expenses actual incurred.

2 19. **Releases.** If the Settlement is finally approved, the Releasers shall release the  
3 Releasees from all Released Claims.

4 20. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed,  
5 the Agreement, nor any related negotiations, statements, or proceedings shall be construed as,  
6 offered as, admitted as, received as, used as, or deemed to be an admission or concession of  
7 liability or wrongdoing whatsoever or breach of any duty on the part of Wells Fargo. This Order is  
8 not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the  
9 Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any  
10 of its provisions or any negotiations, statements, or proceedings relating to it in any way be used,  
11 offered, admitted, or referred to in the Action, in any other action, or in any judicial,  
12 administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the  
13 Parties and only the Parties in a proceeding to enforce the Agreement.

14 21. **Adjournment of Final Approval Hearing.** This Court reserves the right to  
15 adjourn the date of the Final Approval Hearing without further notice to the Members of the Class  
16 and retains jurisdiction to consider all further applications arising out of or connected with the  
17 proposed Settlement. The Court may approve the Settlement, with such modifications as may be  
18 agreed to by the Parties, if appropriate, without further notice to the Class.

19 22. **Stay of Proceedings.** All proceedings in this Action are stayed until further Order  
20 of this Court, except as may be necessary to implement the Settlement or comply with the terms of  
21 the Agreement.

22 23. **Preliminary Injunction.** Pending final determination of whether the Settlement  
23 should be approved, and upon expiration of the Opt-Out Deadline, all Class Members who do not  
24 timely and validly exclude themselves from the Settlement Class, and each of them, and anyone  
25 who purports to act on their behalf, are preliminarily enjoined from directly or indirectly  
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1 maintaining, commencing, prosecuting, or pursuing directly, representatively, or in any other  
2 capacity, any Released Claim subsumed and covered by the Release in the Agreement, including  
3 in any court or arbitration forum.

4 24. **Termination of Settlement.** If: (a) the Agreement is terminated as provided in  
5 Section 13 of the Agreement; or (b) any specified material term or condition of the Settlement as  
6 set forth in the Agreement is not satisfied as provided in Section 13 of the Agreement, then this  
7 Order may not be introduced as evidence or referred to in any actions or proceedings by any  
8 person or entity and shall be treated as vacated, *nunc pro tunc* and each party shall be restored to  
9 his, her, or its respective position in this Action as it existed prior to the execution of the  
10 Agreement.

11 25. **No Merits Determination.** By entering this Order, the Court does not make any  
12 determination as to the merits of this case.

13 26. **Authority.** The Court hereby authorizes the Parties to take such further steps as  
14 necessary and appropriate to establish the means necessary to implement the terms of the  
15 Agreement.

16 27. **Jurisdiction.** This Court retains jurisdiction over the Action to consider all further  
17 matters arising out of or connected with the Agreement and the Settlement

18 28. The Court orders the following **Implementation Schedule** for further proceedings:  
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Last day for Wells Fargo to provide Settlement Class Member Notice List to Settlement Administrator	14 calendar days after the Court’s Order granting Preliminary Approval of Settlement. If Preliminary Approval Order is on February 8, 2024: <b>February 22, 2024</b>
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1 2 3 4 5	Last day for Wells Fargo to deposit \$500,000 of the Settlement Fund into an escrow account with the Settlement Administrator	30 calendar days after the Court’s Order granting Preliminary Approval of Settlement. If Preliminary Approval Order is on February 8, 2024: <b>March 11, 2024</b>
6 7 8 9	Last day for Settlement Administrator to mail Class Notice to Class Members by First Class U.S. Mail. (“Notice Mailing Date”)	45 calendar days after Court’s Order granting Preliminary Approval of Settlement. If Preliminary Approval Order is on February 8, 2024: <b>March 25, 2024</b>
10 11 12 13	Response Deadline (to postmark objections or opt-outs from class action settlement)	No earlier than 45 calendar days after Notice is mailed. Received no later than 30 calendar days before the Final Approval hearing. If the Final Approval hearing is on July 15, 2024: <del>March 11, 2024</del>
14 15	Last day to file Motion for Final Approval of Class Action Settlement	<del>March 11, 2024</del>
16 17 18	Last day for the Parties or Class Members to file Notice of Intention to Appear at the Final Approval hearing pursuant to CRC, Rule 3.672(g)(2)(A).	Two court days before the Final Approval hearing: <b>July 24, 2024</b>
19 20	Final Approval Hearing	<b>July 26, 2024 at 8:30 a.m. in Courtroom 43</b>
21 22 23 24	Last day for Wells Fargo to deposit \$4,500,000 of the Settlement Fund into an escrow account with the Settlement Administrator	30 calendar days after the Court’s Order granting Final Approval of Settlement. If Final Approval Order is on July 26, 2024: <b>August 26, 2024</b>
25 26	The date for which the Settlement	Seven calendar days after Wells Fargo

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<p>Administrator will provide an accounting of funds</p>	<p>deposits the \$4,500,000 into the escrow account.          If Wells Fargo deposits it on the last day possible of August 26, 2024: <b>September 2, 2024</b></p>
<p>Last day for Settlement Administrator to distribute settlement administrator costs, class counsel attorneys’ fees and expenses, and enhancement award</p>	<p>10 calendar days after Wells Fargo deposits the \$4,500,000 into the escrow account.          If Wells Fargo deposits it on the last day possible of August 26, 2024: <b>September 5, 2024</b></p>
<p>Last day for Settlement Administrator to distribute funds to class members</p>	<p>60 calendar days after the Court’s Order granting Final Approval of Settlement.          If Final Approval Order is on July 26, 2024: <b>August 26, 2024</b></p>
<p>The date for Settlement Administrator to file a written certification of the mailing of individual settlement payment/<i>cy pres</i> payment</p>	<p>310 calendar days after the date Settlement Administrator distributes funds to class members.          If Settlement Administrator distributes funds by September 24, 2024: <b>July 31, 2025</b></p>
<p>The date for hearing on Final Accounting following Final Approval and Distribution</p>	<p><b>August 7, 2025 at 8:30 a.m. in Courtroom 43</b></p>

IT IS SO ORDERED

Dated: 02/08/2024



Hon. Judge Benjamin F. Coats