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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

AGUILAR AUTO REPAIR, INC. and  
CENTRAL COAST TOBACCO CO., LLC,  
individually and on behalf all others similarly  
situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A., PRIORITY  
TECHNOLOGY HOLDINGS, INC.,  
PRIORITY PAYMENT SYSTEMS, LLC and  
THE CREDIT WHOLESALE COMPANY,  
INC.,

Defendants.

Case No. 3:23-cv-06265-LJC

*Honorable Magistrate Judge Lisa J. Cisneros*

**~~[PROPOSED]~~ ORDER GRANTING  
PLAINTIFFS’ MOTION FOR  
CERTIFICATION OF SETTLEMENT  
CLASS AND PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

Plaintiffs Aguilar Auto Repair, LLC and Central Coast Tobacco Company, LLC (collectively, “Plaintiffs”) and Wells Fargo Bank, N.A. (“Wells Fargo”), Priority Technology Holdings, Inc. and Priority Payment Systems, LLC (together, “Priority”), and The Credit Wholesale Company, Inc. (“Wholesale”) (collectively, “Defendants”), having appeared before the Court for a hearing on certification of settlement class and preliminary approval of the class action settlement in the above-captioned matter, the Court having reviewed the Motion for Certification of Settlement Class and Preliminary Approval of Class Action Settlement (the “Motion”), as well as the parties’ presentation at the hearing and otherwise being fully informed in the premises:

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The Motion for Certification of Settlement Class and Preliminary Approval of Class Action Settlement (Doc. 79) is **GRANTED**. The Court hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing and certain modifications to the Notice and Long Form Notice, certifies the Settlement Class, appoints Settlement Class Counsel and Settlement Class Representatives, and approves the Notice plan.

2. The Motion attaches and incorporates a Settlement Agreement (the “Settlement Agreement”) that, together with the exhibits thereto, sets forth the terms and conditions for a

1 proposed settlement of the claims on a class-wide basis. Capitalized terms and phrases that are not  
2 defined in this Order shall have the same meanings ascribed to them in the Settlement Agreement.

3 3. The Court finds that Plaintiffs and the Defendants (collectively, the “Settling  
4 Parties”) and their counsel are familiar with the claims being settled and the defenses asserted and  
5 have had the opportunity to conduct, and have conducted, extensive investigation and discovery  
6 relating to the claims alleged in the lawsuit.

7 4. The Court finds that the Settling Parties have investigated the facts and have  
8 analyzed the relevant legal issues with regard to the claims and defenses asserted in the lawsuit.  
9 The Court further finds that the Settling Parties have each looked at the uncertainties of trial and  
10 the benefits to be obtained under the proposed settlement, and have considered the costs, risks, and  
11 delays associated with the continued prosecution of this complex litigation, and the likely appeals  
12 of any rulings in favor of either party.

13 5. The Court finds that the proposed settlement appears to be the product of serious,  
14 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant  
15 preferential treatment to class representatives or segments of the class, and falls within the range of  
16 possible approval. In deciding whether to grant preliminary approval of this class action settlement,  
17 the Court has considered, among other things (1) the strength of the Plaintiffs’ case; (2) the risk,  
18 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action  
19 status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery  
20 completed and the stage of the proceedings; and (6) the experience and views of counsel.<sup>1</sup>

21 6. The Court also concludes that the (1) the Settlement Class Representatives and  
22 Settlement Class Counsel have adequately represented the class; (2) the settlement was negotiated  
23 at arm’s length; (3) the relief provided for the class is adequate, taking into account: (i) the costs,  
24 risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing

25 <sup>1</sup> Once Notice has been provided to the class and the appropriate governmental entities pursuant to  
26 the Class Action Fairness Act, U.S.C. § 1712, the Court may also consider the presence of a  
27 governmental participant, if any, and the reaction of the Settlement Class Members to the proposed  
28 settlement.

1 relief to the class, including the method of processing class-member claims; and (iii) the terms of  
2 any proposed award of attorney’s fees, including timing of payment; and (4) the settlement treats  
3 Settlement Class Members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(A)-(D).  
4 The Court finds that no agreement required to be identified under Rule 23(e)(3) exists here.

5 7. For purposes of settlement only, the Court certifies the following Settlement Class  
6 pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

7 All businesses or individuals who received a telephone call from The Credit  
8 Wholesale Company, Inc. on a telephone in California between October 22, 2014  
and November 17, 2023.

9 Excluded from the class are (i) the Judge and Magistrate Judge presiding over this Lawsuit and  
10 members of their immediate families, and (ii) Defendants and their employees, contracted sales  
11 agents, subsidiaries, parent companies, successors, and predecessors

12 8. With respect to the Settlement Class, the Court finds, for purposes of settlement  
13 only, that:

- 14 a. the members of the Settlement Class are so numerous that joinder of all class  
15 members would be impracticable;
- 16 b. there are questions of law and fact common to the Settlement Class Members;
- 17 c. the claims of the Plaintiffs are typical of the claims of the Settlement Class  
18 Members;
- 19 d. Plaintiffs and Settlement Class Counsel will fairly and adequately represent the  
20 interests of the Settlement Class Members;
- 21 e. questions of law and fact common to the Settlement Class Members predominate  
22 over any questions affecting only individual Settlement Class Members; and
- 23 f. a class action is superior to other available methods for the fair and efficient  
24 adjudication of the controversy.

25 9. For settlement purposes only, the Court appoints Aguilar Auto Repair, LLC and  
26 Central Coast Tobacco Company, LLC as representatives of the Settlement Class (the “Settlement  
27

1 Class Representatives”) and Myron M. Cherry, Jacie C. Zolna, and Benjamin R. Swetland as class  
2 counsel for the settlement class (the “Settlement Class Counsel”).

3 10. The Court preliminarily finds that the Settlement Agreement is fair, reasonable, and  
4 adequate, is within the range of possible final judicial approval under Federal Rule of Civil  
5 Procedure 23(e)(2), and is in the best interests of the Settlement Class. The Court finds that the  
6 settlement resulted from arm’s-length negotiations conducted without collusion and in good faith  
7 by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with  
8 experienced legal counsel. The Court further finds that the Settlement Agreement substantially  
9 fulfills the purposes and objectives of the class action, and provides substantial relief to the  
10 Settlement Class without the risks, burdens, costs, or delay associated with continued litigation,  
11 trial, and/or appeal. The Court also finds that the Settlement Agreement meets all applicable  
12 requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness  
13 Act, 28 U.S.C. § 1715, meets the criteria set forth in the Northern District of California’s Procedural  
14 Guidance for Class Action Settlements, and is not a finding or admission of liability by Defendants  
15 or any other parties. The Settlement Agreement, and the settlement contemplated therein, is hereby  
16 preliminarily approved.

17 11. The Court approves the Notice plan as set forth in the Settlement Agreement, as well  
18 as the modified form of the Notice, Claim Form, and Long Form Notice attached thereto as Exhibits  
19 1 and 2. The Court finds that the modified Notice and Long Form Notice provide a sufficiently  
20 clear and concise description of the Lawsuit, the definition of the class certified, the benefits and  
21 other terms of the settlement, how to be excluded from the class or object to the settlement, and  
22 how Settlement Class Members’ legal rights are affected by remaining in or opting out of the class.  
23 The Court further finds that the method of providing notice by direct mail, publication of the  
24 Settlement Website, and internet Publication Notice as set forth in the Settlement Agreement is the  
25 best means practicable under the circumstances. The Court also finds that the Notice and Long  
26 Form Notice, as modified, fully comply with the Federal Rules of Civil Procedure and the criteria

1 set forth in the Northern District of California’s Procedural Guidance for Class Action Settlements,  
2 and satisfies the requirements of due process and other applicable law, such that the terms of the  
3 Settlement Agreement, and this Court’s final judgment, will be binding on all Settlement Class  
4 Members. The Settling Parties, by agreement, may revise the Notice, Claim Form, and Long Form  
5 Notice in ways that are not material, or in ways that are appropriate to update those documents for  
6 purposes of accuracy or formatting for publication.

7 12. The Court approves the appointment of Verita Global as the Settlement  
8 Administrator under the Settlement Agreement. The Settlement Administrator shall cause the  
9 Notice plan to be completed in accordance with the Settlement Agreement. Settlement Class  
10 Counsel shall, prior to the Final Approval Hearing, file with the Court a declaration executed by  
11 the Settlement Administrator attesting to the completion of the notice plan.

12 13. Members of the Settlement Class who wish to exclude themselves from the  
13 Settlement Class may do so if, on or before the Opt-Out Deadline of [49 days after the Notice Date],  
14 they comply with the exclusion/opt-out procedures set forth in the Settlement Agreement and Long  
15 Form Notice. Any members of the Settlement Class so excluded shall neither be bound by the terms  
16 of the Settlement Agreement nor entitled to any of its benefits. Settlement Class Members who do  
17 not timely and validly request exclusion will be bound by all terms of the Settlement Agreement  
18 and by the Final Approval Order and judgment.

19 14. To be valid, an Opt-Out Election must be in writing, must be mailed to the  
20 Settlement Administrator at the address specified in the Long Form Notice, and must be postmarked  
21 on or before the Opt-Out Deadline. To submit a valid Opt-Out Election a class member need only  
22 state: (i) the name and case number of the Lawsuit: *Aguilar Auto Repair, LLC, et al. v. Wells Fargo*  
23 *Bank, N.A., et al.*, Case No. 3:23-cv-06265; (ii) the name, address, and telephone number of the  
24 Settlement Class Member electing exclusion; (iii) if the Settlement Class Member is a business, the  
25 name and title of the person submitting the opt-out election for the Settlement Class Member and  
26 a representation that he or she has authority to do so on behalf of the Settlement Class Member;

1 and (iv) a statement to the effect that the Settlement Class Member elects to be excluded from the  
2 Lawsuit and elects not to participate in the settlement. An Opt-Out Election that is not postmarked  
3 within the time specified shall be invalid and the person or business making such a request shall be  
4 deemed to remain a Settlement Class Member and shall be bound as a Settlement Class Member  
5 by the Settlement Agreement, if approved. No person or business may request to be excluded from  
6 the Settlement Agreement through “mass” or “class” opt-outs.

7 15. Any Settlement Class Member who has not submitted a timely Opt-Out Election  
8 may object to the fairness, reasonableness, or adequacy of the Settlement Agreement, to the  
9 attorneys’ fees and costs requested by Settlement Class Counsel, or the requested incentive awards  
10 to the Settlement Class Representatives as set forth in the Settlement Agreement and Long Form  
11 Notice. Settlement Class Members who choose to object do so at their own expense.

12 16. To object, Settlement Class Members must, on or before the Objection Deadline of  
13 ~~[49 days after the Notice Date]~~, submit a written objection to the Court either by filing it  
14 electronically or in person at any location of the United States District Court for the Northern  
15 District of California or by mailing them to the Class Action Clerk, United States District Court for  
16 the Northern District of California, 450 Golden Gate Avenue, 16<sup>th</sup> Floor, San Francisco, California  
17 94102. All objections will be scanned into the electronic case docket, and the parties will receive  
18 electronic notice of filings. To be valid, the written objection must comply with the objection  
19 procedures set forth in the Settlement Agreement and Long Form Notice, and must clearly identify  
20 the case name and number: *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case  
21 No. 3:23-cv-06265. An objecting Settlement Class Member may, but is not required to, appear at  
22 the final approval hearing. If a Settlement Class Member objects and/or appears through their own  
23 attorney, the Settlement Class Member will be responsible for hiring and paying that attorney.

24 17. No Settlement Class Member wishing to be heard orally in opposition to the  
25 approval of the Settlement Agreement and/or the request for attorneys’ fees and costs and/or the  
26 request for incentive awards to the Settlement Class Representatives will be heard unless that

1 Settlement Class Member has filed a valid and timely written objection as set forth above, or  
2 demonstrated, to the Court's satisfaction, good cause to waive the requirement for a valid and  
3 timely written objection. The Court retains discretion to hear from a Settlement Class Member who  
4 objects at the Final Approval Hearing without having filed a written objection in advance. However,  
5 requests to waive the written objection requirement will be disfavored. No non-party, including  
6 members of the Settlement Class who have validly and timely opted-out, will be heard at the Final  
7 Approval Hearing, either in person or through their own attorney.

8 ~~18. Settlement Class Members who fail to timely file written objections in compliance~~  
9 ~~with the requirements set forth above and the Settlement Agreement shall be deemed to have~~  
10 ~~waived any right to object to this Agreement, the requested attorneys' fees and costs, and the~~  
11 ~~requested incentive awards, and shall not be permitted to object at the Final Approval Hearing and~~  
12 ~~shall be foreclosed from seeking any review of this settlement by appeal or other means.~~

13 19.18. The Court finds that the proposed incentive awards of \$7,500 each to Plaintiffs  
14 Aguilar Auto Repair, LLC and Central Coast Tobacco Company, LLC are within the range of  
15 possible final judicial approval and are preliminarily approved. The Court finds that Settlement  
16 Class Counsel's request for an award of attorneys' fees in the amount of one-third of the Settlement  
17 Fund and for reimbursement of costs in the amount of approximately \$30,000-\$35,000 is within  
18 the range of possible final judicial approval and is preliminarily approved. Settlement Class  
19 Counsel shall file their petition for attorneys' fees and costs and incentive awards no later than 35  
20 days prior to the deadline to object.

21 20.19. The Court directs Plaintiffs and Defendants to perform their duties set forth in the  
22 Settlement Agreement, including causing the Settlement Administrator to implement the Notice  
23 plan and administer the claims process.

24 21.20. In the event this Court does not finally approve the Settlement Agreement, or the  
25 Settlement Agreement is terminated, set aside, or deemed or declared null and void *ab initio* for  
26 any other reason, then: (i) any and all rights of the Settling Parties existing prior to the execution  
27



1 of the Settlement Agreement, including, but not limited to, Plaintiffs' right to seek and Defendants'  
2 right to oppose class certification in the Lawsuit, shall be preserved, and the Lawsuit shall proceed  
3 in all respects as if the Settlement Agreement had not been entered; (ii) this Order and any other  
4 orders related to the Settlement Agreement shall be vacated and of no further force or effect  
5 whatsoever, as if they had never been entered; (iii) none of the terms of the Settlement Agreement  
6 shall be admissible in any way or otherwise used against any Settling Party, except to enforce the  
7 terms thereof that relate to the Settling Parties' obligations in the event of termination. Defendants  
8 shall have no right of reimbursement from any person, including Plaintiffs, Settlement Class  
9 Counsel, and the Settlement Administrator, for any settlement administration costs incurred.

10 ~~22-21.~~ The Final Approval Hearing shall be held before this Court on May  
11 20 [REDACTED], 2025 at 10:30 am to determine: (i) whether the proposed settlement of the  
12 claims against Defendants in the Lawsuit on the terms and conditions provided for in the Settlement  
13 Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (ii)  
14 whether a judgment and order of dismissal of the claims against Defendants with prejudice should  
15 be entered; (iii) whether to finally approve the payment of attorneys' fees and costs to Settlement  
16 Class Counsel; and (iv) whether to finally approve the payment of incentive awards to the  
17 Settlement Class Representatives. The Court may postpone, adjourn, or continue the Final  
18 Approval Hearing without further notice to the Settlement Class Members.

19 ~~23-22.~~ The deadlines preceding the Final Approval Hearing relating to the Settlement  
20 Agreement are as follows:

- 21 a. On or before February 14, 2025~~[21 days from date of Preliminary Approval Order]~~,  
22 the Settlement Administrator shall mail the Notice and Claim Form to Settlement  
23 Class members covered by the settlement in accordance with the Settlement  
24 Agreement.
- 25 b. Any written objections by Settlement Class Members to the settlement must be filed  
26 no later than ~~[49 days after the Notice Date]~~.



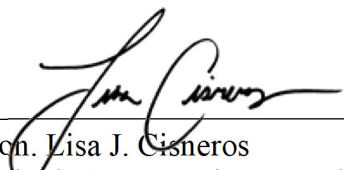
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- c. Requests by Settlement Class Members to opt-out of the class and settlement must be postmarked no later than ~~[49 days after the Notice Date]~~.
- d. On or before ~~[35 days prior to Objection Deadline]~~, Settlement Class Counsel shall file their petition for attorneys' fees and costs and incentive awards.
- e. On or before ~~May 13, 2025~~~~[7 days prior to Final Approval Hearing]~~, Plaintiffs shall file their motion for final approval of the settlement. Plaintiffs shall include in their motion a list of all Settlement Class Members who elected to opt-out of the settlement.
- f. All other dates and deadlines set forth in the Settlement Agreement are preliminarily approved.

~~24,23.~~ The Court retains jurisdiction to consider all further matters arising out of or connected with the Settlement Agreement

**IT IS SO ORDERED**

DATED: January 24, 2025

  
\_\_\_\_\_  
Hon. Lisa J. Cisneros  
United States Magistrate Judge

# **Exhibit 1**

You or your business are eligible to share in a \$19,500,000 settlement if you sign and return the attached claim form or if you submit a claim online at [\[insert settlement website address\]](#) by [\[insert date fifty-six days after the Notice Dateinsert date\]](#). The estimated minimum settlement payment is approximately \$86 for each eligible call you received from The Credit Wholesale Company, Inc. and could be as high as \$5,000 per call, but you need to submit a claim to receive payment.

[\[insert Spanish translation of prior paragraph\]](#)

Para una notificación en español, visite [\[insert settlement website address\]](#)

### What is this notice about?

On [January 24, 2025](#)[\[insert date\]](#), the United States District Court for the Northern District of California granted preliminary approval of this class action settlement. The Court directed the parties to send this notice. This notice summarizes the proposed settlement. A Long Form Notice, the settlement agreement, and other information can be viewed at [\[insert settlement website address\]](#).

### What is the Lawsuit about?

The lawsuit, entitled *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265 (the “Lawsuit”), alleges that The Credit Wholesale Company, Inc. (“Wholesale”) recorded certain calls to California residents without disclosing that the call was being recorded in violation of the California Invasion of Privacy Act. The Lawsuit further alleged that the purpose of these calls was to set appointments to sell credit card processing equipment and services on behalf of Wells Fargo Bank, N.A., Priority Technology Holdings, Inc., and Priority Payment Systems, LLC, all of whom, along with Wholesale, are named as defendants in the Lawsuit. Defendants deny any wrongdoing or liability in connection with the Lawsuit. The Court has not decided who is right.

### How do you get a payment?

**In order to receive a settlement payment you must complete and sign the attached claim form for yourself or your business and mail it to the settlement administrator, or you can submit your claim online at [\[insert settlement website address\]](#), by the DUE DATE of [\[insert date fifty-six days after the Notice Dateinsert date\]](#).** Settlement payments will only be issued if the proposed settlement is granted final approval by the Court.

### Who is affected?

You may be eligible to receive a payment if you or your business received a call from Wholesale on a telephone in California between October 22, 2014 and November 17, 2023.

### What are your other options?

If you do not want to be legally bound by the settlement, you may send a request for exclusion (“opt-out”). You will not receive any money, but you will keep your right to sue Defendants for the claims in this case. If you do not opt-out, you may object to the settlement. You will still be bound by the settlement if your objection is rejected. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the Lawsuit will continue. For details on how to opt-out or object, read the Long Form Notice available at [\[insert settlement website address\]](#). Opt-outs and objections must be postmarked by [\[insert date forty-nine days after the Notice Dateinsert date\]](#). The Court will hold a Fairness Hearing on [May 20, 2025 at 10:30](#)

am ~~[insert date and time]~~ before the Honorable Lisa J. Cisneros in San Francisco, California to consider whether to approve the settlement, attorneys' fees up to one-third of the settlement fund, costs of approximately \$30,000-\$35,000, and incentive awards of \$7,500 to the two Plaintiffs. These amounts will be deducted from the \$19,500,000 settlement fund. You may ask to attend the Fairness Hearing, on your own or through counsel, but you do not have to do so. The date and time of the final approval hearing may change without further notice to the class. You can check to see if the time, manner, or location of the final approval hearing has changed by accessing the Court docket in this case, for a fee, at <https://ecf.cand.uscourts.gov> or at ~~[insert settlement website address]~~.

**Who are the lawyers for Plaintiffs and class members?**

The following lawyers are serving as Class Counsel: Myron M. Cherry, Jacie C. Zolna, and Benjamin R. Swetland of Myron M. Cherry & Associates, LLC, 30 North LaSalle Street, Suite 2300, Chicago, Illinois 60602. You can contact Class Counsel ~~can be contacted~~ at [jzolna@cherry-law.com](mailto:jzolna@cherry-law.com) or (312) 372-2100 if you have questions about the lawsuit or settlement.

**CLAIM FORM**

*Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.* Case No. 3:23-cv-06265  
United States District Court for the Northern District of California

**Claim ID:**

**PIN Code:**

**INSTRUCTIONS:** Please sign below and return this Claim Form by mail. No postage is necessary if you detach and mail this postcard Claim Form.

**In order to receive your settlement payment, you must submit your claim no later than [insert date fifty-six days after the Notice Date~~insert date~~] by mailing this Claim Form to the settlement administrator or by submitting a claim online at [insert website address].** If your settlement payment is in excess of \$600, you will be required by law to submit a Form W9 to the settlement administrator either by mail or secure online portal. In the event your settlement payment is in excess of \$600, further instructions will follow on how to submit your Form W9.

Call records reflect that you received at least one call from The Wholesale Credit Company, Inc. between October 22, 2014 and November 17, 2023. By signing below you affirm that you have the authority to submit this Claim Form on behalf of the person or business identified above, and that, to the best of your knowledge, during the timeframe referenced above the person(s) who received calls did so in California.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

# **Exhibit 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AGUILAR AUTO REPAIR, LLC, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. 3:23-cv-06265
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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PLEASE READ THIS NOTICE CAREFULLY. IT RELATES TO THE PROPOSED SETTLEMENT OF A CLASS ACTION AND CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

**Call records indicate that you or your business received at least one telephone call from The Credit Wholesale Company, Inc. between October 22, 2014 and November 17, 2023. Based on those records, you or your business are eligible for a settlement payment if you sign and return a claim form or if you submit a claim online at [insert settlement website address] on or before [insert fifty-six days after Notice Date] date].**

The settlement provides for an **estimated minimum payment of approximately \$86 for each eligible call you received and could be as high as \$5,000 per call**, but you need to submit a claim as described below in order to be eligible to receive payment.

**I. What is this notice about?**

This Notice is being sent to notify you of a class action lawsuit regarding the recording of certain calls to California businesses. On **January 24, 2025**[insert date], the Court preliminarily approved a settlement of the Lawsuit. The purpose of this Notice is to inform you of the Lawsuit and the proposed settlement. In addition, this Notice will advise you of what to do if you want to remain a part of the Lawsuit, what to do if you want to be excluded from the Lawsuit, and how joining or not joining the Lawsuit may affect your legal rights.

**II. What is the Lawsuit about?**

The class action lawsuit was filed on October 10, 2023 and is currently pending in the United States District Court for the Northern District of California, entitled *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265 (the "Lawsuit"). The Lawsuit alleged that an independent sales organization named The Credit Wholesale Company, Inc. ("Wholesale") recorded certain calls to California residents without disclosing the fact that the call was being recorded in violation of Sections 632 and 632.7 of the California Invasion of Privacy Act ("CIPA"). The Lawsuit further alleged that the purpose of these calls was to set in-person sales appointments with the businesses to sell credit card processing equipment and services on behalf of Wells Fargo Bank, N.A. ("Wells Fargo") and Priority Technology Holdings, Inc. and Priority Payment Systems, LLC (together, "Priority"), all of whom, along with Wholesale, are named as defendants in the Lawsuit. Defendants deny any wrongdoing or liability in connection with the Lawsuit.



### III. What are the benefits of the proposed settlement?

Under the proposed settlement, Defendants will make a payment of \$19,500,000 to create a fund on behalf of the Settlement Class Members (the “Settlement Fund”). Settlement Class Members who do not exclude themselves from the Lawsuit are eligible for a cash payment from the Settlement Fund for each call that is covered under the class definition set forth in Section VII below (an “Eligible Call” as defined in the Settlement Agreement). Settlement Class Members who received multiple Eligible Calls are entitled to a cash payment for each Eligible Call. The minimum cash payment for each Eligible Call is estimated to be approximately \$86.00, but could be as high as \$5,000 per call depending on how many claims are submitted. It is not possible at this time, however, to know the exact amount of each payment. In addition to monetary relief, Defendant Wholesale has agreed not to record appointment-setting calls to California businesses unless it discloses at the outset of the call that the call is being recorded. Defendants will also pay settlement administration costs up to \$200,000.

### IV. How do I receive a settlement payment?

**In order to receive the cash payment described in this Notice you must complete and sign the claim form that was mailed to you and mail it to the Settlement Administrator, or you can submit your claim online through the settlement website at [insert settlement website address], by the DUE DATE of [insert date fifty-six days after the Notice Dateinsert date].**

Regardless of whether you mail the claim form or submit a claim online, **you must do so by the DUE DATE of [insert date fifty-six days after the Notice Dateinsert date]** to be eligible to receive a payment. Settlement payments will only be issued if the proposed settlement is granted final approval by the Court. If your settlement payment is in excess of \$600, you will be required by law to submit a Form W9 to the Settlement Administrator either by mail or secure online portal in order to receive any payment in excess of \$600. In the event your settlement payment is in excess of \$600, further instructions will follow on how to submit your Form W9.

### V. Why is there a proposed settlement?

The Court has not decided in favor of either side in the Lawsuit. Plaintiffs and Class Counsel believe the claims have merit. Defendants do not believe the claims have merit. Defendants are settling to avoid the expense, inconvenience, and inherent risk of litigation. Plaintiffs and Class Counsel believe that the proposed settlement is in the best interest of Settlement Class Members because it provides appropriate monetary recovery and other relief now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals, including the possibility of no recovery for Settlement Class Members whatsoever.

### VI. What is a class action lawsuit?

A class action lawsuit is a legal action in which one or more people represent a large group, or class, of people. The purpose of a class action lawsuit is to resolve at one time similar legal claims of the members of the group.

### VII. Who is in the class?

On January 24, 2025[insert date], the Court certified the Lawsuit as a class action for settlement purposes and defined the class as follows:

All businesses or individuals who received a telephone call from The Credit Wholesale Company, Inc. on a telephone in California between October 22, 2014 and November 17, 2023.

Any business meeting this definition shall be referred to herein as a “Settlement Class Member” and, collectively, as the “Settlement Class” or “Settlement Class Members.”

#### VIII. When and where is the final approval hearing?

The final approval hearing has been set for **May 20, 2025 at 10:30 am** ~~insert date and time~~ before the Honorable ~~Lisa J. Cisneros Araceli Martínez-Olguín~~ in Courtroom **G10 (1519<sup>th</sup> Floor)** at **450 Golden Gate Avenue, San Francisco, California 94102**. The date and time of the final approval hearing may change without further notice to the class. You can check to see if the time, manner, or location of the final approval hearing has changed by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> or by checking the settlement website at ~~insert settlement website address~~.

The Court will hear any comments from the parties or objections concerning the fairness of the proposed settlement at the final approval hearing, including the amount requested for attorneys’ fees and costs or the requested incentive awards. You **do not** need to attend the final approval hearing to remain a Settlement Class Member or to obtain any benefits under the proposed settlement. You or your attorney may attend the hearing, at your own expense. You do not need to attend this hearing to have a properly filed and served written objection considered by the Court.

#### IX. How can I be excluded from the Lawsuit and the settlement?

Any Settlement Class Member has the right to be excluded from the Lawsuit by written request. If you wish to be excluded from the case, you must mail a written request to the Settlement Administrator at the address set forth below stating that you want to be excluded from the class. All exclusion requests must include (i) the name and case number of the Lawsuit: *Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265; (ii) the name, address, and telephone number of the Settlement Class Member electing exclusion; (iii) if the Settlement Class member is a business, the name and title of the person submitting the opt-out election for the Settlement Class Member and a representation that he or she has authority to make such an election on behalf of the Settlement Class Member; and (iv) a statement to the effect that the Settlement Class Member elects to be excluded from the Lawsuit and elects not to participate in the settlement. A Settlement Class Member’s exclusion request must be postmarked no later than **the DUE DATE of** ~~insert date forty-nine days after the Notice Date~~ ~~insert date~~ and sent to the following address: ~~insert mailing address~~. If you properly and timely elect to be excluded from the case, you will not have any rights as a Settlement Class Member pursuant to the proposed settlement, you will not be eligible to receive any monetary payment under the proposed settlement, you will not be bound by any further orders or the judgment entered in the Lawsuit, and you will remain able to pursue any claims alleged in the Lawsuit against Defendants on your own and at your own expense and with your own counsel. If you proceed on an individual basis after being excluded from the Lawsuit you may receive more, or less, of a benefit than you would otherwise receive under this proposed settlement or no benefit at all. If you do not exclude yourself from the case, you will be deemed to have consented to the Court’s jurisdiction and to have released the claims at issue against Defendants as explained below, and will otherwise be bound by the proposed settlement.

#### X. How can I object to the settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the Lawsuit will continue. If that is what you want to happen, you should object. Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the final approval hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (i) clearly identify the case name and number (*Aguilar Auto Repair, LLC, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 3:23-cv-06265), (ii) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16<sup>th</sup> Floor, San Francisco, California 94102, and (iii) be filed or postmarked on or before [insert date forty-nine days after the Notice Dateinsert date].

If a Settlement Class Member is not an individual or sole proprietorship or is otherwise a separate business entity, it may be required to make its objection or appear at the final approval hearing through an attorney. Any Settlement Class Member who fails to file a timely objection shall have waived any right to object to the Settlement Agreement and shall not be permitted to object at the final approval hearing, unless the Court grants a rare exception for good cause, and shall be foreclosed from seeking any review of this settlement by appeal or other means.

#### **XI. What is the effect of final settlement approval?**

If the Court approves the proposed settlement after the final approval hearing, it will enter a judgment dismissing the Lawsuit with prejudice and releasing all claims as described in this paragraph. If you do not exclude yourself from the case, the proposed settlement will be your sole mechanism for obtaining any relief. All Settlement Class Members who do not timely elect to opt out of the proposed settlement, and each of their respective agents, administrators, employees, representatives, successors, assigns, trustees, joint venturers, partners, legatees, heirs, personal representatives, predecessors, and attorneys release and forever discharge Defendants and First Data Merchants Services, LLC and each of their respective former, present, and future direct and indirect parents, affiliates, subsidiaries, successors, and predecessors and all of their respective former, present, and future officers, directors, shareholders, indemnitees, employees, agents, representatives, attorneys, accountants, auditors, independent contractors, successors, trusts, trustees, partners, associates, principals, divisions, insurers, reinsurers, members, brokers, consultants, and vendors and all persons acting by, through, under, or in concert with them, or any of them, from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have arising out of, relating to, or in connection with the calls placed by Wholesale between October 22, 2014 through November 17, 2023 as described in the class definition set forth above ("Eligible Calls"), including but not limited claims for violation of CIPA, including but not limited to Section 632 and Section 632.7, or any other federal, state, or local statute, regulation, or common law relating to the Eligible Calls.

If the proposed settlement is not approved, the Lawsuit will proceed as if no settlement had been reached. There can be no assurance that if the settlement is not approved and the Lawsuit resumes that Settlement Class Members will recover more than what is provided for under the proposed settlement or will recover anything at all.

#### **XII. Who are the lawyers for Plaintiffs and class members?**

The following lawyers ("Class Counsel") are serving as counsel for the Settlement Class:

Myron M. Cherry  
mcherry@cherry-law.com  
Jacie C. Zolna  
jzolna@cherry-law.com  
Benjamin R. Swetland  
bswetland@cherry-law.com  
Myron M. Cherry & Associates, LLC  
30 North LaSalle Street, Suite 2300  
Chicago, Illinois 60602  
(312) 372-2100 (telephone)  
(312) 853-0279 (facsimile)

From the beginning of the case to the present, Class Counsel has not received any payment for their services in prosecuting the Lawsuit or in obtaining this proposed settlement, nor have they been reimbursed for any out-of-pocket costs they have incurred. Class Counsel will apply to the Court for an award of attorneys' fees in the amount of no more than one-third (33.33%) of the Settlement Fund, as well as an additional amount for partial reimbursement of actual costs, which Class Counsel currently estimates will be between \$30,000-\$35,000. If the Court approves Class Counsel's petition for fees and costs, it will be paid from the Settlement Fund. Settlement Class Members will not have to pay anything toward the fees or costs of Class Counsel. You do not need to hire your own lawyer because Class Counsel is working on your behalf and will seek final approval of the settlement on behalf of the Settlement Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

Class Counsel may also petition the Court for incentive awards in the amount of \$7,500 each to the Settlement Class representatives who helped Class Counsel on behalf of the whole Settlement Class.

### **XIII. Where can I get more information about the Lawsuit?**

This notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at [insert settlement website address], by contacting the Settlement Administrator at [REDACTED], by contacting Class Counsel listed above, by accessing the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16<sup>th</sup> Floor, San Francisco, California 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE OR DEFENDANTS TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

Dated: [INSERT DATE]

BY ORDER OF THE UNITED STATES DISTRICT COURT