

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**In re: WELLS FARGO COVID
FORBEARANCE
SETTLEMENT LITIGATION**

Case No. 2:24-cv-01026-MHW-EPD

Judge Michael H. Watson

**Magistrate Judge Elizabeth Preston
Deavers**

CLASS ACTION

ORDER PRELIMINARILY APPROVING SETTLEMENT

Plaintiffs in *In re Wells Fargo COVID Forbearance Settlement Litigation* (“Plaintiffs”), and Defendants Wells Fargo Bank, N.A. and Wells Fargo & Co. (“Defendants”) (collectively, the “Parties”) have reached a proposed settlement, which is set forth in the Parties’ First Amended Settlement Agreement “(the Settlement” or “Settlement Agreement.”) Now before the Court are Plaintiffs’ requests for preliminary approval of the Settlement and certification of the Class. Wells Fargo has indicated that it does not oppose the motion. The Court has considered the Parties’ papers, relevant legal authority, and the record in this case, and the Court hereby GRANTS the request and preliminarily approves the Settlement Agreement and certifies the Class.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order hereby incorporates all defined terms as set forth in the Settlement Agreement, and all capitalized terms used herein shall have the same meaning as set forth in the Settlement Agreement;

2. This Court has jurisdiction over the subject matter of this litigation and over the Settling Parties.

3. The Court does hereby preliminarily approve the Settlement and its exhibits, subject to further consideration at the Final Approval Hearing described below and directs the Settling Parties to perform and satisfy the terms and conditions of the Settlement Agreement that are hereby triggered.

Class Certification for Settlement Purposes

4. The Court hereby certifies, for settlement purposes only pursuant to Rule 23 of the Federal Rules of Civil Procedure, a Settlement Class defined as follows:

The “Settlement Class” or “Class” means all persons in the United States who: (a) had a mortgage serviced by Wells Fargo that was placed into a COVID mortgage forbearance without adequate informed consent between March 1, 2020, and December 31, 2021 (“At-Issue Forbearance”); (b) were not a debtor or the co-borrower of a debtor in a Chapter 13 bankruptcy case on the date that the mortgage was placed into the forbearance; and (c) are not Wells Fargo’s officers, directors, and employees, Counsel for Wells Fargo, Class Counsel, or any judge involved in this action or their immediate families. The Class and Class Members include all individuals who signed the deed of trust, mortgage or other security document associated with a Mortgage even if they did not sign the underlying promissory note or loan.

“Without Adequate Informed Consent” means for the purposes of the Settlement only:

- a. the Mortgage entered Forbearance via Wells Fargo’s online banking or interactive voice response (“IVR”) portal before May 11, 2020, unless the customer (i) made no payments from the date that the Forbearance was requested and continuing during the entire Forbearance period¹; (ii) also requested Forbearance via Wells Fargo’s online banking or IVR portal on or after May 11, 2020; or (iii) requested a Forbearance extension; or
- b. the Mortgage entered Forbearance as a result of a Proactive Wells Fargo Business Decision, unless the customer (i) requested forbearance online or through the IVR portal on or after May 11, 2020; or (ii) requested a Forbearance extension; or
- c. Wells Fargo previously determined that the Forbearance was provided in error.

¹ This exclusion shall not apply to customers who were set up on forbearance before April 15, 2020 and for whom Wells Fargo turned off automatic ACH mortgage payments.

“Proactive Wells Fargo Business Decision” means for the purposes of the Settlement only:

- a. Customers who requested Forbearance on one Mortgage account between March 9, 2020 and April 7, 2020, and were provided a Forbearance on one or more other Mortgage accounts;
- b. Customers who contacted Wells Fargo by phone between March 9, 2020 and March 31, 2020, expressing COVID-19 impact and who were provided a Forbearance without an express request;
- c. Customers who sent a secured email to Wells Fargo conveying COVID-19 impact or hardship, or requesting assistance or information, between March 20, 2020 and April 2, 2020, and who were provided a Forbearance without an express request;
- d. Customers who had a pending application in the home preservation process as of March 25, 2020 and who were provided a Forbearance without an express request; and
- e. Customers who were in an active Chapter 7, 11 or 12 bankruptcy case and who filed a document with the bankruptcy court expressing COVID impact or requesting payments relief between March 18, 2020 and June 8, 2020 and who were provided a Forbearance without an express request.

5. This Court preliminarily finds that the Settlement meets all the requirements of Rule 23(a) of the Federal Rules of Civil Procedure: (a) the members of the class are so numerous that their joinder in the Action is impracticable; (b) there are questions of law and fact common to members of the Class that predominate over any questions affecting only individual members of the Class; (c) Plaintiffs’ claims are typical of the claims of the Class; and (d) Plaintiffs and their respective counsel have fairly and adequately represented and protected the interests of the Class.

6. This Court preliminarily finds that the Settlement meets the requirements of Federal Rule 23(e)(2), as the Settlement appears to have been negotiated at arms’ length; the relief provided for the Class is adequate; the Settlement does not improperly grant preferential treatment to the Class Representatives or segments of the Class; and it appears to be fair, reasonable, and adequate.

7. The Court will address the appointment of Class Counsel pursuant to Federal Rule 23(g) by separate order. This Court preliminarily finds that the Class Representatives have fairly

and adequately represented the interests of the Class, and, therefore, hereby appoints them as Class Representatives.

Class Notice

8. The Court approves, as to form and content, the Class Notice attached as Exhibit A to the First Amended Settlement Agreement. The Court further finds that the proposed Notice Plan, including the form of the proposed Class Notice, substantially meets the requirements of Rule 23 and due process, is the best notice practicable under the circumstances, and shall constitute due process and sufficient notice to all persons entitled thereto.

9. The Court confirms and appoints Epiq Class Action & Claims Solutions, Inc. as the Administrator to administer the terms of the Settlement Agreement and to notify and pay the Class Members. The Administrator shall commence all aspects of the approved Notice Plan, including mailing direct notice and establishing a dedicated website, as more fully set forth in the Declaration Regarding Dissemination of Class Notice, in accordance with the schedule set forth below.

10. No later than thirty (30) days from the entry of this Order, the Administrator shall cause the full versions of the Settlement Agreement and the Preliminary Approval Order to be published on a public website.

11. No later than forty-five (45) days from Preliminary Approval, the Administrator shall have completed the Notice Plan to the Class by sending direct notice by email, where an email address is available in Wells Fargo's records, or by postcard, where no email address is known, substantially in the form as Exhibit A to the Settlement Agreement, to all members of the Class ("Notice Deadline"). The Settlement Administrator will use reasonable efforts to update and confirm the accuracy of the Class Members' contact information provided by Wells Fargo through the United States Postal Service change of address system.

12. All reasonable expenses incurred in identifying and notifying members of the Class, as well as administering and distributing the settlement funds, shall be paid for as set forth in the Settlement Agreement.

13. No later than fourteen (14) days before the Final Approval Hearing, Class Counsel shall file with the Court a declaration from a representative of the Administrator confirming that the Notice Plan has been accomplished in accordance with the Settlement Agreement and this order (“Notice Declaration”).

Final Approval Hearing

14. A Final Approval Hearing shall be held before this Court on December 10, 2024, at 11:00 a.m./p.m., at the Joseph P. Kinneary Federal Courthouse located at 85 Marconi Boulevard, in Courtroom 120 [not earlier than 145 calendar days after entry of this order], to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Class Members and should be approved by the Court; whether final judgment should be entered; the amount of the Fee and Expense Award that should be awarded to Class Counsel; and the amount of any Service Awards to be awarded to the Class Representatives. Attendance at the Final Approval Hearing is not mandatory and Class Members need not appear or take any other action to indicate their approval of the Settlement Agreement. The Court may change the day of the Final Approval Hearing without further notice to the Class, except all such information shall be posted on the Settlement website.

Objections and Exclusions

15. Any person who desires to request exclusion from the Settlement shall do so by mailing their exclusion request to the address provided in the Notice so they are received by the

Settlement Administrator or postmarked no later than sixty (60) days from the Notice Deadline.

Requests for Exclusion must include the following:

- a. The name, address, and telephone number of the person requesting exclusion;
- b. A statement that “I do not want to be a member of the Class in *In Re: Wells Fargo Covid Forbearance Settlement Litigation*, pending in the United States District Court for the Southern District of Ohio. I understand that I will not receive compensation under the Settlement and it will be my responsibility to pursue any claims I may have, if I so desire, on my own and at my expense”; and
- c. The signature of the person requesting exclusion and the date.

All persons who submit valid and timely requests for exclusion shall have no rights under the Settlement Agreement, shall not share in the distribution of the settlement funds, and shall not be bound by the final judgment entered in the litigation. No later than five (5) days after the Exclusion/Objection Deadline, the Administrator shall provide Class Counsel and Counsel for Wells Fargo with a complete and final list of Opt-Outs, including the name, city, and state of the person requesting exclusion (the “Opt-Out List”). Class Counsel shall file the Opt-Out List with the Motion for Final Approval of the Settlement.

Wells Fargo may challenge the validity of any Opt-Out by filing a motion with the Court within five (5) days after the Administrator provides Counsel for Wells Fargo with the Opt-Out List.

16. Any member of the Class who has not requested exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement including objections to the application for attorneys’ fees, reimbursement of costs and expenses, and class representative incentive awards. All written objections and supporting papers must (a) clearly identify the case

name and number, *In Re: Wells Fargo Covid Forbearance Settlement Litigation*, No. 2:24-cv-01026-MHW-EPD, (b) be submitted to the Court by mailing them to the Clerk, United States District Court for the Southern District of Ohio, located at Office of the Clerk, Joseph P. Kinneary U.S. Courthouse, Room 121, 85 Marconi Boulevard, Columbus, OH 43215, and (c) be filed or postmarked no later than sixty (60) days from the Notice Deadline.

For an objection to be considered, the objection must set forth:

- a. The objector's name, address, and telephone number;
- b. A statement saying that the objector objects to the Settlement in *In Re: Wells Fargo Covid Forbearance Settlement Litigation*, No. 2:24-cv-01026-MHW-EPD, and describing the nature of the objection;
- c. A statement describing whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class;
- d. The specific grounds for the objection;
- e. Any legal authority that supports the objection;
- f. A list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- g. The signature of the objector (an attorney's signature is not sufficient).

If an attorney is asserting an objection on behalf of an objector, the lawyer must also:

- h. File a notice of appearance with the Court on or before the Exclusion/Objection Deadline;
- i. File a sworn declaration attesting that he or she represents the objector; and

- j. File a sworn declaration that specifies the number of times during the prior five-year period that he or she has objected to a class action settlement on his or her own behalf or on behalf of a class member.

17. Class Counsel shall file their responses to any objections to the Settlement Agreement, or to the application for attorneys' fees, reimbursement of costs and expenses, and class representative incentive awards, no later than seven (7) days before the Final Approval Hearing.

Other Provisions

18. All non-settlement-related proceedings in this action are stayed pending final approval of the proposed Settlement.

19. The Court further approves the Allocation Plan.

20. Counsel shall file their motion for attorney fees, costs, and service awards, and all supporting documentation and papers, no later than forty-five (45) days after the Notice Deadline.

21. Class Counsel shall file their motion for final approval of the Settlement, and all supporting documentation and papers, no later than fourteen (14) days before the Final Approval Hearing.

22. If for any reason the Settlement Agreement is not finally approved by the Court, the Settlement Class shall be decertified, each Party's rights to litigate will be restored to the same extent as if the Settlement Agreement had never been entered into, and neither Settling Party shall assert that the other is estopped from taking any position relating to class certification.

23. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession

by Plaintiffs or Defendants of the truth or falsity of any of the allegations in this lawsuit, or of any liability, fault, or wrongdoing of any kind.

24. Upon Preliminary Approval, Plaintiffs and all Class Members are barred and enjoined from commencing or instituting any new action or any proceeding of any kind (including, but not limited to, an action for actual damages, statutory damages, and/or exemplary or punitive damages) in any court of law, arbitration tribunal, administrative forum, or other forum of any kind worldwide, based on the Class Released Claims.

25. All Class Members shall be bound by all determinations and orders in this lawsuit concerning the Settlement, whether favorable or unfavorable to the Class Members.

Schedule and Procedures

26. The Court adopts the procedures set forth in the Settlement Agreement and adopts the following schedules and deadlines:


Event	Date
Preliminary Approval	Date of entry of this Order (see below)
Deadline for Wells Fargo to provide Class Member contact information to Administrator	5 calendar days after Preliminary Approval
Deadline for establishing dedicated settlement website	30 calendar days after Preliminary Approval
Notice Deadline (Date by which the Administrator must complete the Notice Plan)	45 calendar days after Preliminary Approval
Deadline for Wells Fargo to make the Settlement Fund deposit	45 calendar days after Preliminary Approval
Deadline for filing motion for attorneys' fees, costs, expenses, and service awards	45 calendar days after the Notice Deadline (90 calendar days after Preliminary Approval)

Deadline to opt out of the Settlement	60 calendar days after the Notice Deadline (105 calendar days after Preliminary Approval)
Deadline to file objections to the Settlement or to the motion for attorneys' fees, costs, expenses, and service awards	60 calendar days after the Notice Deadline (105 calendar days after Preliminary Approval)
Deadline for Settlement Administrator to provide report of number of Class Opt-Outs to Class Counsel	5 calendar days after the Exclusion/Objection Deadline (110 calendar days after Preliminary Approval)
Deadline for Wells Fargo to challenge the validity of any Opt-Out	5 calendar days after receipt of the Opt-Out List (115 calendar days after Preliminary Approval)
Deadline for Class Counsel to file motion for Final Approval	14 calendar days before Final Approval Hearing
Deadline for Class Counsel to file Notice Declaration from the Administrator	14 calendar days before Final Approval Hearing
Last day to respond to any objections to the Settlement Agreement, including objections to the application for attorneys' fees, reimbursement of costs and expenses, and class representative incentive awards	7 calendar days before Final Approval Hearing
Deadline for Eligible Class Members to submit Claims Form	120 days from the Notice Deadline (165 calendar days after Preliminary Approval)
Final Approval Hearing	<u>December 10</u> , 2024, at <u>11:00</u> a.m./p.m. (not earlier than 145 calendar days after Preliminary Approval)

27. The Court reserves the right to modify this schedule or adjourn, continue, or otherwise change the date of the Final Approval Hearing, with notice to the Class Members provided through the Settlement Website, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Class

Members are advised to confirm the date of the Final Approval Hearing as set forth in the Class Notices. The Court may approve the Settlement Agreement, with such modifications as may be agreed to by the Parties, if appropriate, with notice to the Class Members provided through the Settlement Website.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT