

Herrera et al. v. Wells Fargo Bank, N.A. et al.
Case No. 8:18-cv-00332-JVS-MRW

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

This Notice of Proposed Settlement of Class Action (“Notice”) was authorized by the United States District Court for the Central District of California.¹ It is not a solicitation from a lawyer.

IF YOU ARE RECEIVING THIS NOTICE BY MAIL OR EMAIL, YOU HAVE BEEN IDENTIFIED AS A STATUTORY REFUND SUBCLASS MEMBER IN A CLASS ACTION SETTLEMENT

YOUR SETTLEMENT ADMINISTRATION CLAIM NUMBER IS PRINTED ABOVE

- A proposed Settlement has been reached in a class action lawsuit that may affect your rights.
- The Settlement resolves a class action lawsuit against Wells Fargo. The lawsuit alleges that Wells Fargo failed to provide customers with a partial refund of the fees paid for Guaranteed Asset Protection or Guaranteed Auto Protection (“GAP”) after customers paid off their Finance Agreements early. Wells Fargo denies any wrongdoing because, among other reasons, it claims that to the extent a refund is due and has not been made, Wells Fargo is not the party responsible for making the refund.

¹ Capitalized terms in this Notice have the same meaning as they are defined in the Settlement Agreement. The Settlement Agreement is posted on the Settlement Website, www.GAPRefundSettlement.com.

Questions? Call 1-833-636-2118 or visit www.GAPRefundSettlement.com

- You are a Class Member if (1) you entered into a Finance Agreement with a GAP Agreement that was assigned to Wells Fargo; (2) your Finance Agreement terminated as the result of an Early Payoff that occurred during the Class Period; and (3) you did not receive a GAP refund.²
- The Court has not decided whether to finally approve the Settlement.

YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You have been identified as a member of the Statutory Subclass for the vehicle identified on the front of this Notice. You do not need to do anything to receive the benefits of this Settlement for that vehicle.
EXCLUDE YOURSELF FROM THE SETTLEMENT BY <u>OCTOBER 6, 2021</u>	You may file a written request to exclude yourself or “opt out” from the Settlement by <u>OCTOBER 6, 2021</u> . If you do so, you will not receive any money from the Settlement Fund and you will not release your claims in this lawsuit. (See Section 11) If the Settlement is granted final approval by the Court and you did not timely “opt out” of the Settlement, then you will release the claims described in Section 19 below.
OBJECT TO THE SETTLEMENT BY <u>OCTOBER 6, 2021</u>	If you believe the Settlement is unfair or inadequate, you may file a written objection to the Settlement by <u>OCTOBER 6, 2021</u> , so long as you do not file a request to exclude yourself from the Settlement. (See Section 17)

THESE OPTIONS AND THE DEADLINES TO EXERCISE THEM ARE FURTHER DETAILED IN THIS NOTICE.

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² The Class also includes the Statutory Subclass Members defined in Section 5 below.

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BASIC INFORMATION

1. WHY AM I RECEIVING THIS NOTICE?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about your options before the Court decides whether to grant final approval of the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights. Judge James V. Selna of the United States District Court for the Central District of California is overseeing this case and has exclusive jurisdiction over the Settlement. This litigation is known as *Herrera, et al. v. Wells Fargo Bank, N.A.*, Case No., 8:18-cv-00332-JVS-MRW.

2. WHAT IS THIS LAWSUIT ABOUT?

GAP is sold by auto dealers to customers who enter into a retail installment sales contact (referred to in this Notice as a “Finance Agreement”) to finance their vehicle purchase. GAP provides additional protection beyond that provided by typical automobile insurance policies. For example, in the event of a total loss to the vehicle due to an accident or theft, GAP can help pay part of the amount owed under the Finance Agreement that is not covered by the auto insurance policy.

In the event that the Finance Agreement is paid off early, the customer may be entitled to a partial refund of the amount paid for GAP for the unused term of the Finance Agreement. This refund is referred to in this Notice as a “GAP Refund” or “Early Payoff GAP Refund.”

Your Finance Agreement was sold by your Dealer and assigned to Wells Fargo. Plaintiffs allege that, after the assignment, Wells Fargo took over the contractual obligation to issue the GAP refund. Plaintiffs further contend that certain States have laws, in effect at various times, that require the assignee of the Finance Agreement (like Wells Fargo) to issue the GAP refund after an early payoff (“State Refund Statutes”).

Wells Fargo denies any wrongdoing in this lawsuit. Wells Fargo contends that the obligation to issue the GAP refund belongs to the Dealer or GAP Administrator identified in the GAP Agreements, not Wells Fargo. Wells Fargo further contends that, depending on the language in the GAP Agreements, customers may be required to provide written notice of the early payoff or a written request for a refund as a prerequisite for the refund. Wells Fargo further contends that unless the GAP Agreement is subject to a State Refund Law, customers are required to request a refund in writing from the party specified in their GAP Agreement as a condition precedent to receiving a refund.

The First Amended Complaint in this lawsuit, which provides greater details about Plaintiffs’ claims, can be viewed on the Settlement Website at www.GAPRefundSettlement.com

3. WHY IS THIS A CLASS ACTION?

A class action lawsuit allows a large number of people with a common complaint to sue collectively while being represented by members of the group called the “Class Representatives.” In this case, the Class Representatives have brought this lawsuit on behalf of themselves and others

with similar claims. Together, all the individuals with similar claims (with the exception of those who request exclusion or “opt out” from the Class) are referred to as “Class Members.”

4. WHAT ARE THE REASONS FOR THE SETTLEMENT?

The Court has not ruled in favor of either the Plaintiffs or Wells Fargo. Instead, both sides agreed to a Settlement that they believe is a fair, reasonable and adequate compromise of their respective positions. The parties reached this Settlement after litigating this case for over three years, conducting substantial discovery, and with the assistance on an experienced neutral mediator and former U.S. District Court judge.

By agreeing to the Settlement, the parties avoid the costs, delay, and uncertainty of further litigation, and Class Members receive the benefits described in this Notice. As in any litigation, Plaintiffs and the Class would face an uncertain outcome if they did not agree to the Settlement, and the case could continue for a long period of time. Continuation of the case could result in a judgment greater or less than the Settlement. Plaintiffs and Class Counsel believe this Settlement provides a fair and reasonable resolution of the claims asserted in this lawsuit for the benefit of the Class.

Wells Fargo denies any wrongdoing and the Settlement shall in no event be construed or deemed to be evidence or an admission or concession on the part of Wells Fargo with respect to any claim or of any fault, liability, wrongdoing, or damage.

THE SETTLEMENT

5. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

There are two classes who are part of this Settlement: the Class and the Statutory Subclass.

The “Class” means all persons in the United States (a) who entered into Finance Agreements with GAP Agreements that were assigned to Wells Fargo, (b) whose Finance Agreements terminated as the result of an Early Payoff that occurred during the Class Period, and (c) who did not receive a GAP Refund. The Class Period is different depending on the State where you entered your Finance Agreement. You can find a list of the Class Periods on the Settlement Website at www.GAPRefundSettlement.com. The Class also includes the Statutory Subclass Members.

The “Statutory Subclass” means those persons (a) who entered into Finance Agreements with GAP Agreements that were assigned to Wells Fargo, (b) whose Finance Agreements were subject to State Refund Laws; (c) whose Finance Agreements terminated as the result of an Early Payoff that occurred during the Statutory Subclass Period, and (d) who did not receive a GAP Refund from Wells Fargo, or for whom Wells Fargo did not receive written confirmation from a Dealer or GAP Administrator that the GAP Refund was paid.

For purposes of this Settlement only, the Parties have agreed to a list of the States with State Refund Laws that apply to the Class and the time periods those laws were in effect during the Class Period. You can find this list on the Settlement Website at www.GAPRefundSettlement.com.

You are a Class Member if you fit within either definition. Class Members who are not also members of the Statutory Subclass are referred to as “Non-Statutory Subclass Members.”

If you received a copy of this Notice, you have been identified as a member of the Statutory Subclass.

If you did not receive a copy of this Notice, but believe that you are a Class Member or Statutory Subclass Member, you can contact the Claims Administrator at the number below or visit the Settlement Website at www.GAPRefundSettlement.com for further information.

6. WHAT BENEFITS DOES THE SETTLEMENT PROVIDE?

Under the Settlement, Wells Fargo has agreed to provide the following benefits as consideration for the resolution and release of the Class Members' claims:

- **Business Practice Change.** No later than **January 1, 2022**, Wells Fargo will implement processes to directly provide to customers, on a go-forward basis, Early Payoff GAP Refunds within a reasonable time after receipt of an Early Payoff so long as (1) the customer purchased GAP from a Dealer at the time they entered into their Finance Agreement; (2) the customer chose to finance the cost of GAP and such cost is included in a Finance Agreement assigned to Wells Fargo; (3) Wells Fargo received the Early Payoff from the customer; (4) the customer's GAP Agreement provides for an Early Payoff GAP Refund in the event of an Early Payoff; and (5) the customer has not previously received a GAP Refund. Customers who meet these criteria will not be required to take any action other than completing an Early Payoff to receive an Early Payoff GAP Refund. This obligation will continue until **January 1, 2026**. Plaintiffs' expert's estimate of the impact of this business practice change is included in Plaintiffs' motion for preliminary approval of the settlement, which can be found at www.GAPRefundSettlement.com.

- **Past GAP Refunds to Statutory Subclass Members.** Members of the Statutory Subclass have received or will receive a payment directly from Wells Fargo equal to the amount of their Early Payoff GAP Refund (without any deduction for cancellation fees) plus compensation for the loss of use of these funds based on the one-year constant U.S. maturity treasury rate, compounded annually from the date of the Early Payoff. Wells Fargo represents and warrants that it has paid \$33,357,919.81 collectively to the members of the Statutory Subclass between December 20, 2018 and March 31, 2021. In the event that Wells Fargo identifies any additional members of the Statutory Subclass who have not yet received these payments, then Wells Fargo represents and warrants that it will do so pursuant to the terms of the Settlement. These amounts have been or will be paid directly by Wells Fargo and are in addition to and separate and apart from the Settlement Fund described below. In addition, each Statutory Subclass Member will also receive a payment of up to \$5.00 ("Additional Compensation") to be paid out from the Settlement Fund described below.

- **Past GAP Refunds to Non-Statutory Subclass Members.** Class Members whose Finance Agreements were not governed by the State Refund Laws (the "Non-Statutory Subclass Members") who submit a claim verifying that they did not previously receive a GAP refund, will be eligible to receive a settlement payment up to the full amount of the Early Payoff GAP Refund without any deduction for cancellation fees (an "Approved Claim"). The settlement payments to the Non-Statutory Subclass Members may be reduced on a prorated basis depending on the amounts remaining in the Settlement Fund as discussed below.

- **Settlement Fund.** Wells Fargo will establish a settlement fund ("Settlement Fund") totaling \$45,000,000.00 to pay: (1) the Approved Claims for GAP Refunds to the Non-Statutory Subclass Members; (2) the \$5.00 Additional Compensation payments to the Statutory Subclass Members; (3) the Fee and Expense Awards to Class Counsel approved by the Court; and (4) any Service Awards to the Class Representatives approved by the Court. If the collective total of these

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items exceeds \$45,000,000.00, then the settlement payments to the Non-Statutory Subclass Members and the \$5.00 Additional Compensation payments to the Statutory Subclass Members will be reduced on a prorated basis to account for the difference. Each Class Member's payment from the Settlement Fund will be reduced by the same percentage.

- **Notice and Administration Costs.** Wells Fargo will separately pay for the cost of providing Notice to the Class and the administrative expenses incurred by the Claims Administrator. These costs will be paid directly by Wells Fargo and will not reduce the Settlement Fund.

NOTE: Early Payoff GAP Refunds will be calculated using the pro rata method. No cancellation fee shall be applied. The Claims Administrator will be responsible for calculating the Early Payoff GAP Refunds based on the information provided by Wells Fargo.

7. DO I NEED TO DO ANYTHING TO RECEIVE A PAYMENT?

No. If you received a copy of this Notice, then it has been determined that You are a member of the Statutory Subclass for the Vehicle identified on the front of this Notice.

If you are a member of the Statutory Subclass, You do not need to do anything to receive the monetary benefits owed under this Settlement. Wells Fargo has already provided you with a check for the Early Payoff GAP Refund, or Wells Fargo will mail you a check. You will also receive a check from the Claims Administrator for the Additional Compensation owed under the Settlement if the Court grants final approval of the Settlement and the Settlement is not successfully challenged on appeal.

8. WHY DID I RECEIVE MULTIPLE NOTICES?

If You received more than one Notice and the front of the Notice identifies different vehicles, then it has been determined that You owned multiple vehicles that are covered by this Settlement. If so, You may need to complete a separate Claim Form for that other vehicle. Please follow the instructions in the Notice and Claim Form for that other vehicle.

9. WHAT CAN I DO IF I BELIEVE MY SETTLEMENT PAYMENT WAS NOT CALCULATED PROPERLY?

If you believe that your payment was improperly calculated, you can contact the Claims Administrator by phone or email and provide your relevant information. If the Settlement Administrator or Wells Fargo determines that your payment was improperly calculated, your payment will be updated and a new check will be issued.

10. HOW WILL THIS SETTLEMENT AFFECT MY RIGHTS?

If this Settlement is granted final approval by the Court and you do not "opt-out" or request exclusion from the Settlement, then you will release certain claims against Wells Fargo as described in Section 19 below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

If you do not want to be a part of the Settlement, then you must take steps to request exclusion from the Settlement.

To request exclusion or “opt out” from the Settlement, you must mail a written Request for Exclusion to the Claims Administrator at the following address:

Herrera v. Wells Fargo
c/o JND Legal Administration
PO Box 91338
Seattle, WA 98111

The Request for Exclusion must be post-marked on or before **OCTOBER 6, 2021**.

Your Request for Exclusion must include the following information:

1. Your name, address, and telephone number;
2. Your settlement administration claim number provided on the front of this Notice;
3. A statement that “I do not want to be a member of the Class in *Herrera, et al. v. Wells Fargo Bank, N.A.*, Case No., 8:18-cv-00332-JVS-MRW pending in the United States District Court for the Central District of California. I understand that it will be my responsibility to pursue any claims I may have, if I so desire, on my own and at my expense”; and
4. Your signature and date.

Your Request for Exclusion must be specific to yourself. Attempts to exclude multiple individuals as part of single Request for Exclusion are not allowed and shall be of no force or effect.

12. IF I DO NOT REQUEST EXCLUSION, CAN I SUE DEFENDANTS FOR THE SAME CLAIMS LATER?

No. Unless you request exclusion from the Settlement, you will give up the right to sue Wells Fargo for the claims that this Settlement resolves as described in Section 19 below.

13. IF I EXCLUDE MYSELF, MAY I STILL RECEIVE COMPENSATION FROM THE SETTLEMENT FUND?

If you exclude yourself from the Settlement, you will not be eligible to submit a Claim or receive any payment from the Settlement Fund.

THE LAWYERS REPRESENTING YOU

14. DO I HAVE A LAWYER IN THIS CASE?

Yes. The Court has appointed the following law firms to represent you and the other Class Members as “Class Counsel.” You can contact Class Counsel at the addresses or telephone numbers listed below. They are:

Jason M. Frank
Andrew D. Stolper
Scott H. Sims
**FRANK SIMS &
STOLPER LLP**
19800 MacArthur Blvd.,
Suite 855
Irvine, CA 92612
Telephone: (949) 201-2400
Facsimile: (949) 201-2405

Franklin D. Azar
**FRANKLIN D. AZAR &
ASSOCIATES, P.C.**
14426 East Evans Avenue
Aurora, CO 80014
Telephone: (303) 757-3300
Facsimile: (303) 759-5203

Charles E. Shaffer
**LEVIN SEDRAN &
BERMAN**
510 Walnut Street, Suite 500
Philadelphia, PA 19106
Telephone: (215) 592-1500
Facsimile: (215) 592-4663

You will not be charged for contacting these lawyers. If you want to be represented by a different lawyer, you may hire one at your own expense.

15. HOW WILL THE LAWYERS BE PAID FOR THEIR SERVICES?

Class counsel will apply to the Court for an award of attorneys’ fees and costs to compensate them for their legal services and expenses incurred in this matter. The application for an award of attorneys’ fees and costs will be posted to the Settlement Website at www.GAPRefundSettlement.com Pursuant to the terms of the Settlement, Class Counsel intends to request an award of \$23,100,000 in legal fees and reimbursement of their expenses in an amount not to exceed \$500,000.

Any fee and expense awards approved by the Court will be paid out from the Settlement Fund.

16. WILL CLASS REPRESENTATIVES RECEIVE SERVICE AWARDS?

Class Counsel will file an application for Service Awards to be paid to each of the Class Representatives in recognition of the time and effort they provided in this lawsuit on behalf of the Class. The application for Service Awards will be posted to the Settlement Website at www.GAPRefundSettlement.com Pursuant to the terms of the Settlement, Class Counsel intends to request a Service Award of \$7,500 for each of the Class Representatives.

Any Service Awards approved by the Court will be paid out from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

17. HOW DO I INFORM THE COURT IF I OBJECT TO THE SETTLEMENT?

If you are a member of the Class, and do not Request Exclusion or “opt out” from the Settlement, you can object to any part of the Settlement. You can give reasons why you think the Court should not approve the entire Settlement or parts of it.

To object, you must timely file a written objection with the Court and mail the same to the Claims Administrator at the following address:

Herrera v. Wells Fargo
c/o JND Legal Administration
PO Box 91338
Seattle, WA 98111

The objection must be filed on or before **OCTOBER 6, 2021**, and mailed to the Claims Administrator with a post-mark date on or before **OCTOBER 6, 2021**.

Your objection must state all of the following:

1. Your name, address, and telephone number;
2. Your settlement administration claim number provided on the front of this Notice;
3. A statement saying that you object to the Settlement in *Herrera, et al. v. Wells Fargo Bank, N.A.*, Case No., 8:18-cv-00332-JVS-MRW and describing the nature of your objection;
4. A statement describing whether your objection applies only to yourself, to a specific subset of the Class, or to the entire Class;
5. The specific grounds for your objection;
6. Any legal authority that supports your objection; and
7. Your signature.

If a lawyer is asserting an objection on your behalf, the lawyer must also:

1. File a notice of appearance with the Court on or before **OCTOBER 6, 2021**;
2. File a sworn declaration attesting that he or she represents you; and
3. 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.

If You wish to appear at the Final Approval Hearing, You (or your attorney) must file a Notice of Intention to Appear with the Court indicating that You (or your attorney) would like to speak at the hearing. The Notice of Intention to Appear must be filed with the Court on or before **OCTOBER 6, 2021**. If You (or your attorney) do not file a timely Notice of Intention to Appear, You (or your attorney) will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

You (or your attorney) must file your written objection and any additional documents required above with Courtroom 10C of the United States District Court for the Central District of California,

the Honorable James V. Selna presiding, located at 411 West Fourth Street, Santa Ana, California 92701-4517.

18. WHAT IS THE DIFFERENCE BETWEEN OBJECTING TO THE SETTLEMENT AND REQUESTING EXCLUSION?

Objecting is notifying the Court that you think something about the Settlement is unfair, unreasonable, or inadequate. You can only object to the Settlement if you are a Class Member. Requesting exclusion from the Settlement is notifying the Court that you do not want to remain a Class Member. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

RELEASE OF CLAIMS

19. WHAT CLAIMS ARE BEING RELEASED AS PART OF THE SETTLEMENT?

Upon Final Approval of the Settlement by the Court, each Class Member who does not request exclusion, individually or together, and each and every one of their former, present, or future agents, predecessors, successors, heirs, legatees, executors, administrators, insurers, assigns, trustees, spouses, and domestic partners (“Class Releasers”) releases and fully discharges Wells Fargo Bank, N.A. and Wells Fargo & Co., and each of their former, present, or future agents, insurers, predecessors, successors, subsidiaries, parent company(ies), Affiliates, officers, directors, and employees and attorneys (“Class Releasees”) from any and all past and/or present claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, under the laws of any jurisdiction, which they, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising from or relating in any way to the Class Member’s entitlement to an Early Payoff GAP Refund for an Early Payoff that occurred during the Class Period (the “Class Released Claims”). Notwithstanding the foregoing, the Class Releasees do not include any Dealers or GAP Administrators, including without limitation, those identified in the Class Members’ GAP Waiver Agreements or the Finance Agreements.

THE FINAL APPROVAL HEARING

20. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO GRANT FINAL APPROVAL TO THE SETTLEMENT?

The Court has scheduled a Final Approval Hearing for **NOVEMBER 15, 2021 at 1:30 PM** in Courtroom 10C of the United States District Court, Central District of California, Southern Division, located at the Santa Ana Courthouse - 411 West Fourth Street, Santa Ana, CA 92701. The hearing date and time is subject to change. Updates to the date and time will be posted to the Settlement Website at www.GAPRefundSettlement.com.

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At the Final Approval Hearing, the Court will consider granting final approval of the Settlement based on whether it is fair, reasonable, and adequate. The Court will also consider requests by Class Counsel for attorneys' fees and expenses related to the litigation and the Class Representative Service Awards. If there are timely and complete objections, the Court will consider those objections at the hearing as well.

At or after the hearing, a decision will be made whether to grant final approval of the Settlement. It is not known how long it will take for the Court to decide. Class Members should visit the Settlement Website at www.GAPRefundSettlement.com to stay updated about the current status of the case.

21. DO I HAVE TO ATTEND THE HEARING?

No. Attending the hearing is not required, but you are welcome to attend at your own expense.

If you send an objection, you do not have to come to Court to talk about it. As long as your objection is timely and complies with the requirements set forth in this Notice and the Settlement Agreement, the Court will consider it. You may also pay your own lawyer to attend.

GETTING MORE INFORMATION

22. HOW DO I GET MORE INFORMATION?

This Notice is a summary of the proposed Settlement. More details regarding the terms of the Settlement can be found in the Settlement Agreement posted on the Settlement Website at www.GAPRefundSettlement.com.

You may also contact the Settlement Administrator by calling the toll-free number, 1-833-636-2118, by emailing info@gaprefundsettlement.com or by writing to:

Herrera v. Wells Fargo
c/o JND Legal Administration
PO Box 91338
Seattle, WA 98111

You may also contact Class Counsel using the contact information provided above in Section 15. You will not be charged for contacting Class Counsel.