



Settlement set forth in the Settlement Agreement, Wells Fargo provided an estimate of size of the settlement class, which was 3,385,048 unique cellular telephone numbers used or subscribed to by Settlement Class Members. Dkt. No. 57-2, at 15 (Section 2.27 of the Settlement Agreement). This preliminary class size was subject to confirmatory discovery. *Id.* at 18 (Section 4.01 of the Settlement Agreement). If confirmatory discovery revealed that the class size differed from the preliminary class estimate, then the total amount paid by Wells Fargo into the non-reversionary settlement fund would be adjusted pro rata based on the number of confirmed class members. *Id.* at 18-19 (Sections 4.02 and 4.03 of the Settlement Agreement).

Included in Plaintiff's filings with the Court in support of preliminary approval of the Settlement was a proposed long form notice (*see* Dkt. No. 57-2, at 57-67) and post card notice (*see* Dkt. No. 57-2, at 68-69). Both of these notices stated that Wells Fargo would pay \$15,740,473 into a non-reversionary settlement fund—the amount consistent with the preliminary estimate of the Settlement class.

On April 18, 2017, Alexander H. Burke of Burke Law Offices, LLC, one of the counsel for Plaintiff, took the confirmatory deposition of Timothy Rae of Wells Fargo in Dallas, Texas. *See* Exhibit A, Declaration of Alexander H. Burke, at ¶ 3. During that deposition, Mr. Rae testified that the actual number of unique cellular

telephone numbers was 3,190,120, a difference of 194,928. This difference is attributable to additional de-duplication of the preliminary estimate to avoid double-counting unique cellular telephone numbers. As a result, the total amount Wells Fargo is required to fund is \$14,834,058, not the \$15,740,473 previously estimated. Because the settlement has always been based on a per class member amount, the value of the settlement per class member remains the same.

The deadline for printing the approved notice and complying with the previously-ordered deadline for providing notice was May 8, 2017. Shortly before that date, the parties realized that the already-printed notice contained the (now) erroneous \$15,740,473 number, rather than the correct \$14,834,058 number. After some discussion, including under the auspices of the mediator Hunter Hughes, the parties agree that it is appropriate to revise the notice to accurately report the final correct number to the Class in the notice, even though it does not impact the per-class-member value. Accordingly, the parties have revised the long form and post card notices to reflect this corrected sum. *See* Exhibit B (revised long-form notice); Exhibit C (revised post-card notice).

In addition, settlement administrator KCC informed the parties that it will take fifteen days from the date of the Court's approval of the revised notice for KCC to print the revised notice and distribute that notice to class members. The

printing of the revised notice will cause KCC to incur some additional costs (approximately \$200,000) beyond those contemplated in KCC's initial estimates. Wells Fargo and Class counsel have agreed to split those costs themselves on an equal basis, so that the Class will not incur *any* additional costs beyond those contemplated in Plaintiff's initial filings with the Court. Class counsel will fund their share from any attorney's fees awarded, and not seek reimbursement of that amount from the fund as part of their cost request.

This new notice will require the current schedule to be extended. As such, the parties respectfully propose the following revised settlement administration deadlines:

<u>Date</u>	<u>Event</u>
[15 days after approval of the revised notice]	Deadline to Provide Class Notice
[50 days after approval of the revised notice]	Deadline for Plaintiff's Motion for Attorney's Fees and Incentive Award
[80 days after approval of the revised notice]	Deadline for Class Members to File Objections or submit Requests for Exclusion
[110 days after approval of the revised notice]	Deadline for Settlement Class Members to Submit a Claim Form
[120 days after approval of the revised notice]	Deadline for Parties to File the following: <ol style="list-style-type: none"> <li>1. List of Class Members who Made Timely</li> </ol>

	<p>and Proper Requests for Exclusion;</p> <p>2. Proof of Class Notice and CAFA Notice (to be filed by the Administrator); and</p> <p>3. Motion and Memorandum in Support of Final Approval, including responses to any Objections.</p>
To be Set by the Court	Final Approval Hearing

For these reasons, the parties jointly move the Court to: (1) approve the revised long form notice attached as Exhibit B and the revised post-card notice attached as Exhibit C; and (2) enter the proposed order attached as Exhibit D, setting the above referenced deadlines for the notice and approval process.

Dated: May 24, 2017

Respectfully submitted,

By:  /s/ Alexander H. Burke

By:  /s/ Stephen W. Riddell

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**CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to Local Rules 5.1.C and 7.1.D of the Northern District of Georgia, that the foregoing was prepared in 14-point Times New Roman font.

Dated: May 24, 2017

/s/ Alexander H. Burke

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, May 24, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

/s/Alexander H. Burke