

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT**

| | | |
|---|---|---|
| CS WANG & ASSOCIATE, et al., |) | |
| |) | |
| Plaintiffs, |) | Case No. 1:16-cv-11223 |
| |) | |
| v. |) | Chief Judge Rebecca R. Pallmeyer |
| |) | |
| WELLS FARGO BANK, N.A., et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

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 your business received at least one telephone call from International Payment Services, LLC between March 7, 2011 through May 7, 2014 in an effort to set an in-person sales appointment. Based on those records, your business is eligible for a settlement payment if you sign and return the enclosed Claim Form or if you submit a claim online at www.CIPAsettlement.com on or before November 1, 2021.

The settlement provides for an **estimated minimum payment of approximately \$40 for each eligible appointment-setting 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 appointment-setting calls to California businesses. On August 16, 2021, the Court preliminarily approved a settlement of the Lawsuit. The purpose of this Notice is to inform your business of the Lawsuit and the proposed settlement. In addition, this Notice will advise you of what to do if your business wants to remain a part of the Lawsuit, what to do if your business wants to exclude itself from the Lawsuit, and how joining or not joining the Lawsuit may affect your business’s legal rights.

II. What is the Lawsuit about?

On December 9, 2016, a class action lawsuit was filed in the United States District Court for the Northern District of Illinois, Eastern Division, now entitled *CS Wang & Associate, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 1:16-cv-11223 (the “Lawsuit”). The Lawsuit alleged that an independent sales organization named International Payment Services, LLC (“IPS”) recorded certain calls to California businesses 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 First Data Merchant Services, LLC (“First Data”) (collectively, “the Wells Fargo Defendants”), both of whom are named as defendants in the Lawsuit. The Wells Fargo Defendants deny any wrongdoing or liability in connection with the Lawsuit.

III. What are the benefits of the proposed settlement?

Under the proposed settlement, the Wells Fargo Defendants will make a payment of \$28,000,000 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 \$40, 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.

IV. How does my business receive a settlement payment?

In order to receive the cash payment described in this Notice, you must complete and sign the enclosed Claim Form for your business and mail it to the Settlement Administrator, or you can submit your claim online through the settlement website at www.CIPAsettlement.com, by the DUE DATE of November 1, 2021. A pre-paid, self-addressed envelope is provided with this Notice that you can use to mail in your Claim Form.

Regardless of whether you mail the Claim Form or submit a claim online, **you must do so by the DUE DATE of November 1, 2021** to be eligible to receive a payment. Settlement payments will be issued only if the proposed settlement is granted final approval by the Court.

V. Why is there a proposed settlement?

The Court has not decided in favor of either side in the Lawsuit. Plaintiffs and Settlement Class Counsel believe the claims have merit. The Wells Fargo Defendants do not believe the claims have merit. The Wells Fargo Defendants are settling to avoid the expense, inconvenience, and inherent risk of litigation. Plaintiffs and Settlement Class Counsel believe that the proposed settlement is in the best interest of Settlement Class Members because it provides appropriate 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 August 16, 2021, the Court certified the Lawsuit as a class action for settlement purposes and defined the class as follows:

All businesses that received a telephone call from a call center operated by International Payment Services, LLC or one of its affiliates between March 7, 2011 through May 7, 2014, while the call recipient was physically present in California, and who did not sign a contract for merchant processing services with First Data Merchant Services, LLC.

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 December 6, 2021 at 12:00 PM (Noon) CT before the Honorable Rebecca R. Pallmeyer in Courtroom 2541 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 60604. The final approval hearing may be conducted remotely via teleconference. Please check the settlement website for information on whether the final approval hearing will be conducted remotely via teleconference and, if so, how to participate: www.CIPAsettlement.com.

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. Your business or its attorney may attend the hearing, at your business’s own expense. Your business does not need to attend this hearing to have a properly-filed and served written objection considered by the Court.

IX. How can my business 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 for your business to be excluded from the case, you must mail a written request to the Settlement Administrator at the address set forth below stating that your business wants to be excluded from the class. All exclusion requests must include (i) the name and case number of the Lawsuit: *CS Wang & Associate, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 1:16-cv-11223; (ii) the full name, address, telephone number, and email address of the Settlement Class Member electing exclusion; (iii) a statement that the Settlement Class Member elects to be excluded from the Lawsuit and elects not to participate in the settlement; (iv) the full name, title, business address, business telephone number, and business email address of the person submitting the written election for the Settlement Class Member; and (v) a representation that the person submitting the written election has the authority to do so on behalf of the Settlement Class Member. A Settlement Class Member’s exclusion request must be postmarked no later than **the DUE DATE of October 25, 2021** and sent to the following address: *CS Wang v. Wells Fargo Bank* Settlement Administrator, P.O. Box 43160, Providence, RI 02940-3160.

If your business properly and timely elects to exclude itself from the case, your business will not have any rights as a Settlement Class Member pursuant to the proposed settlement, it will not be eligible to receive any monetary payment under the proposed settlement, it will not be bound by any further orders or the judgment entered in the Lawsuit, and it will remain able to pursue any claims alleged in the Lawsuit against the Wells Fargo Defendants on its own and at its own expense and with its own counsel. If your business proceeds on an individual basis after excluding itself from the Lawsuit, it may receive more, or less, of a benefit than it would otherwise receive under this proposed settlement, or no benefit at all. If your business does not exclude itself from the case, it will be deemed to have consented to the Court's jurisdiction and to have released the claims at issue against the Wells Fargo Defendants as explained below, and will otherwise be bound by the proposed settlement.

X. How can my business object to the settlement?

If your business does not exclude itself from the Lawsuit, it can comment in opposition to the settlement, including the amount requested for attorneys' fees and costs or the requested incentive awards, which is known as an objection, and your business has the right to appear before the Court to express its opposition. Your written objection must be submitted in writing and filed with the Clerk of Court by **the DUE DATE of October 25, 2021**. The address for the Clerk of the Court is: Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 60604. You must also send copies of your written objection to the attorneys for the parties at the following addresses:

Settlement Class Counsel:

Myron M. Cherry
Jacie C. Zolna
Benjamin R. Swetland
Myron M. Cherry & Associates, LLC
30 North LaSalle Street,
Suite 2300
Chicago, IL 60602

Counsel for the Wells Fargo Defendants:

John H. Mathias, Jr.
Megan B. Poetzel
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456
Counsel for First Data

John Peterson
Polsinelli
401 Commerce Street
Suite 900
Nashville, TN 37219
Counsel for First Data and Wells Fargo

To be valid and considered by the Court, any such written objection must include the following information: (i) the name and case number of the Lawsuit: *CS Wang & Associate, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 1:16-cv-11223; (ii) the Settlement Class Member's name, address, telephone number, and email address; (iii) the full name, title, business address, business telephone number, and business email address of the person submitting the objection for the Settlement Class Member; (iv) a representation that the person submitting the objection has the authority to do so on behalf of the Settlement Class Member; (v) a statement of each objection and the relief that the Settlement Class Member is requesting; and (vi) a statement of whether the Settlement Class Member intends to appear at the final approval hearing. Settlement Class Members may retain counsel to object to the settlement and/or appear at the final approval hearing. If a Settlement Class Member is not a 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. If a Settlement Class Member makes an objection or appears at the final approval hearing through an attorney, the Settlement Class Member will be responsible for his or her personal attorney's fees and costs. Any Settlement Class Member who fails to file a timely objection shall have waived any right to object to this Agreement and shall not be permitted to object at the final approval hearing 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 your business 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 the Wells Fargo Defendants 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 recording of calls as alleged in the Lawsuit, including but not limited to claims based on calls that are covered under the class definition set forth above (“Eligible Calls”) or 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 recording of telephone calls. Notwithstanding the above, and for the avoidance of doubt, this release does not apply to or limit any action based on telephone calls other than Eligible Calls, whether pursued through the Lawsuit or any other claim or proceeding, by any Plaintiffs or Class Members against Fifth Third Bank, N.A., Vantiv, Inc., National Processing Company, Fidelity National Information Services, Inc., Worldpay, Inc., Ironwood Financial, LLC, John Lewis, Dewitt Lovelace, International Payment Services, LLC, Brian Bentley, Adam Bentley, or Andrew Bentley.

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 Settlement Class Members?

The following lawyers (“Settlement 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, IL 60602
(312) 372-2100 (telephone)
(312) 853-0279 (facsimile)

From the beginning of the case to the present, Settlement 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. Settlement 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 after deducting incentive awards and settlement administration costs, as well as an additional amount for partial reimbursement of actual costs, which Settlement Class Counsel currently estimates will be between \$95,000-\$100,000. If the Court approves Settlement 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 Settlement Class Counsel. You do not need to hire your own lawyer because Settlement 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.

Settlement Class Counsel may also petition the Court for incentive awards in the amount of \$5,000 each to the Settlement Class representatives who helped the Settlement Class Counsel on behalf of the whole Settlement Class.

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

This Notice provides only a summary of the Lawsuit. You can view the Settlement Agreement and obtain more information about the settlement at www.CIPASettlement.com. In order to see the complete case file, including the Settlement Agreement and all other pleadings and papers filed in the Lawsuit, you may also examine the court file at the office of the Clerk of the Court in the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 60604.

PLEASE DO NOT CONTACT THE COURT (INCLUDING THE CLERK OF THE COURT OR THE JUDGE) OR DEFENDANTS WITH QUESTIONS ABOUT THE SETTLEMENT OR THE LAWSUIT.

PLEASE ADDRESS ANY FURTHER CONTACT TO THE SETTLEMENT ADMINISTRATOR AT:

CS Wang v. Wells Fargo Bank Settlement Administrator
P.O. Box 43160
Providence, RI 02940-3160
admin@CIPASettlement.com

Dated: September 3, 2021

BY ORDER OF THE UNITED STATES DISTRICT COURT