

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MONTE RUSSELL and DANIEL
FRIEDMAN, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

WELLS FARGO AND COMPANY and
WELLS FARGO BANK, N.A.,

Defendants.

Case No.: C 07-3993 CW

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**NOTIFICATION OF
COLLECTIVE ACTION**

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**IMPORTANT NOTIFICATION TO POTENTIAL MEMBERS
OF COLLECTIVE ACTION**

THIS IS NOT A LAWSUIT AGAINST YOU.

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED.**

TO: Current and former employees of Wells Fargo & Company and Wells Fargo Bank, N.A. ("Wells Fargo"), who held the position of **PC/LAN Engineer 3, PC/LAN Engineer 4, or PC/LAN Engineer 5.**

THE RECIPIENTS OF THIS NOTICE INCLUDE CURRENT AND FORMER EMPLOYEES WHO HAVE RECEIVED A PAYMENT OF PAST WAGES DUE FROM WELLS FARGO. THESE INDIVIDUALS MAY BE ENTITLED TO AN ADDITIONAL PAYMENT.

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Deleted: FOR THESE INDIVIDUALS, THE AMOUNT YOU WERE PAID MAY NOT REPRESENT THE FULL AMOUNT OWED

RE: YOUR RIGHT TO JOIN A CURRENTLY PENDING LAWSUIT TO RECOVER UNPAID WAGES

DATE: _____, 2008

I. PURPOSE OF NOTICE

The purpose of this Notice is to:

- (1) inform you of the **existence of a collective action lawsuit in which you are potentially eligible to participate** because you may be “similarly situated” to the former Wells Fargo employees who brought the lawsuit,
- (2) advise you of **how your rights may be affected** by this lawsuit,
- (3) instruct you on **the procedure for participating** in this lawsuit if you so desire, and
- (4) provide notice that **you may still participate in this lawsuit even if you previously accepted a payment of back wages from Wells Fargo** and that you may be entitled to additional back wages from Wells Fargo.

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As described more fully below, if you are eligible and wish to participate in the collective action, you must complete and submit the Consent to Join form attached to this Notice.

II. DESCRIPTION OF THE LAWSUIT

A. THE ALLEGATIONS

Plaintiffs Monte Russell and Daniel Friedman (“Named Plaintiffs”) brought this lawsuit in the United States District Court for the Northern District of California, Oakland Division, against Wells Fargo on August 2, 2007. The Named Plaintiffs contend that Wells Fargo incorrectly classified PC/LAN Engineers 3, PC/LAN Engineers 4, and PC/LAN Engineers 5 as “exempt” from federal overtime laws. The Named Plaintiffs, former Wells Fargo employees, bring their claims under the Fair Labor Standards Act (“FLSA”). The Named Plaintiffs seek overtime compensation at a rate of one and one-half (1.5) times the regular rate of pay for all hours worked over 40, liquidated or “doubled” damages, attorneys’ fees and costs under the FLSA.

B. WELLS FARGO’S POSITION

Wells Fargo generally denies all of the Named Plaintiffs’ claims and does not admit any liability. Wells Fargo generally claims that PC/LAN Engineers 3, 4, and 5 were exempt from overtime. Wells Fargo also contends that, to the extent there was any violation of the FLSA, it was an innocent error, that all actions were taken in good faith, and that reasonable minds could differ as to the proper classification of PC/LAN Engineers 3, 4, and 5 as either exempt or non-exempt from the laws requiring payment of overtime such that there is no basis to award liquidated damages.

C. THE CURRENT STAGE OF THE LAWSUIT

This lawsuit is currently in the early pretrial stage. On _____, the Court authorized this Notice to be sent to you so that you might have the option to join this lawsuit.

Deleted: <#>THE DAMAGES YOU MIGHT RECEIVE ¶
The Named Plaintiffs seek monetary damages for themselves and other similarly situated Wells Fargo employees, including you, should you decide to join this lawsuit. In particular, they seek:¶
<#>unpaid overtime compensation at a rate of one and one-half (1.5) the regular rate of pay for all hours worked over 40 during the time Wells Fargo incorrectly classified PC/LAN Engineers 3, 4, and 5 as “exempt”;¶
<#>liquidated or “doubled” damages as allowed by law;¶
<#>attorneys’ fees to be paid by Wells Fargo as allowed by law; and ¶
<#>costs to be paid by Wells Fargo as allowed by law.¶
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III. BACKGROUND ON THE FAIR LABOR STANDARDS ACT CLAIM

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A. COMPOSITION OF THE FLSA COLLECTIVE ACTION

The Named Plaintiffs seek to sue on behalf of themselves and all other similarly situated persons who are/were employed by Wells Fargo as a PC/LAN Engineer 3, PC/LAN Engineer 4, or PC/LAN Engineer 5, and who were paid a salary and treated as exempt from the laws requiring overtime at any time after November 1, 2004.

If you never worked over 40 hours in any one week while you were employed by Wells Fargo as PC/LAN Engineer 3, 4 and/or 5, you are not eligible to join this lawsuit. However, if you have a good faith belief that you worked over 40 hours in any one week or are unsure whether you worked over 40 hours in any one week while you were employed by Wells Fargo as PC/LAN Engineer 3, 4, and/or 5, you are eligible to join this lawsuit. **You are eligible to join if you fit in the definition above even if you received a payment of back wages from Wells Fargo.**

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B. YOUR RIGHT TO PARTICIPATE IN THE FLSA COLLECTIVE ACTION

If you fit the definition in Paragraph III.A. above, you may join in the FLSA claim raised in this lawsuit by completing and mailing a signed copy of the "Consent to Join" form (attached to this Notice) to the Notice Administrator in the enclosed envelope. **Your Consent to Join form must be postmarked by no later than _____, 2008.** The Notice Administrator will file with the Court all Consent to Join forms that have been filled out, signed, and postmarked on or before _____, 2008. Having a Consent to Join form filed does not guarantee that you will be able to participate in a mediation or trial of this lawsuit, because your ability to participate might ultimately depend upon a final ruling from the Court that you and the Named Plaintiffs are "similarly situated" under federal law. **If you fail to complete and mail a Consent to Join form postmarked on or before the deadline, you cannot participate in any monetary settlement or judgment resulting from this lawsuit.**

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C. YOU HAVE A RIGHT TO PARTICIPATE IN THE FLSA COLLECTIVE ACTION EVEN IF WELLS FARGO PREVIOUSLY PAID YOU BACK WAGES

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IF YOU RECEIVED A PAYMENT FROM WELLS FARGO FOR PAST OVERTIME HOURS WORKED OR OTHER UNPAID WAGES, YOU STILL MAY STILL PARTICIPATE IN THIS FLSA COLLECTIVE ACTION. Wells Fargo has paid sums of money to certain PC/LAN Engineers who reported that they worked overtime hours during the time their positions were classified as "exempt." These PC/LAN Engineers may be entitled to additional sums of money under the FLSA.

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Some of the PC/LAN Engineers who received sums of money signed a form entitled "Payment Advice and Resolution" or other similar release. These forms suggest that the person signing it agreed to release any and all legal claims related to unpaid wages or other compensation. **A release of an employee's rights under the FLSA is not valid.** You may still participate in this lawsuit if you received a sum of money from Wells Fargo and/or signed a purported release.

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You may contact class counsel if you have any questions related to a payment of, or offer to pay, back wages by Wells Fargo.

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D. EFFECT OF JOINING THE FLSA COLLECTIVE ACTION

If you submit a Consent to Join form and the Court permits the Named Plaintiffs to represent your claims at trial as part of a collective action, you will be bound by any judgment regarding the claims in the lawsuit, whether favorable or unfavorable to the Named Plaintiffs and the class. By returning the Consent to Join form, you are agreeing to designate the Named Plaintiffs as your agents to make decisions on your behalf concerning this lawsuit, including decisions as to the method and manner of conducting this lawsuit. While this lawsuit is pending, you might be required to provide information, appear for a deposition in your hometown, or otherwise participate in the action.

If you submit a Consent to Join form and “opt-in” to this lawsuit, **you will not be required to pay attorneys’ fees or expenses.** If the Named Plaintiffs prevail at trial, the FLSA provides for the recovery of attorneys’ fees, and attorneys’ fees will be paid either by Wells Fargo or as a percentage of any monetary judgment in favor of the Named Plaintiffs as ordered by the Court. If the lawsuit settles by mutual agreement of the parties, the Named Plaintiffs’ counsel will receive attorneys’ fees paid either by Wells Fargo or as a percentage of the settlement obtained. Any settlement **must** be approved by the Court.

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E. EFFECT OF NOT JOINING THE FLSA COLLECTIVE ACTION

If you choose not to join in this FLSA lawsuit, you will not be affected by any judgment on the FLSA claim, whether it is favorable or unfavorable to the Named Plaintiffs and the class. If you choose not to file a Consent to Join this FLSA lawsuit, you are free to file your own lawsuit.

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IV. NO RETALIATION PERMITTED

FEDERAL LAW PROHIBITS WELLS FARGO FROM TAKING ANY ACTION AGAINST YOU BECAUSE YOU ELECT TO JOIN THIS ACTION BY FILLING OUT AND RETURNING THE CONSENT TO JOIN FORM, OR OTHERWISE **EXERCISE** YOUR RIGHTS UNDER THE FLSA.

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V. CLASS COUNSEL: THE ATTORNEYS REPRESENTING THE EMPLOYEES OF WELLS FARGO (THE NAMED PLAINTIFFS AND THE CLASS)

T. Joseph Snodgrass
Kelly A. Swanson
Larson King, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
1-877-373-5501
(651) 312-6500
kswanson@larsonking.com

William M. Audet
Adel Nadji
Audet & Partners, LLP
221 Main Street, Suite 1460
San Francisco, California 94105

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VI. THE ATTORNEYS REPRESENTING WELLS FARGO

Glenn L. Briggs
Theresa A. Kading
Hodel Briggs Winter, LLP
8105 Irvine Center Drive, Suite 1400
Irvine, CA 92618
Telephone: (949) 450-8040

VII. FURTHER INFORMATION

To obtain further information about this Notice, the deadline for filing a Consent to Join form, or other information about this lawsuit, please contact the Named Plaintiffs' attorneys, toll free, at 1-877-373-5501, and ask for Pat Nally.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION. ALTHOUGH THE COURT HAS AUTHORIZED THE SENDING OF THIS NOTICE, THIS DOES NOT MEAN THAT THE COURT WILL FIND IN FAVOR OF ANY PLAINTIFF OR GRANT ANY RELIEF.

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Dated: _____, 2008

The Honorable Claudia Wilken
United States District Judge

FILING INSTRUCTIONS

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Consent to Join

If you choose to join in the FLSA claim, your Consent to Join form must be completed, signed and returned in the Business Reply Envelope included with this packet.

***** Your Consent to Join form must be postmarked by no later than _____, 2008. *****

1. CHANGE OF ADDRESS

If you move or change your address, please advise the Notice Administrator:

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[Notice Administrator's contact information.]

Deleted: T. Joseph Snodgrass ¶
Kelly A. Swanson¶
Attn: Pat Nally¶
Larson King, LLP¶
2800 Wells Fargo Place ¶
30 East Seventh Street ¶
St. Paul, MN 55101¶
1-877-373-5501¶
(651) 312-6500¶
pnally@larsonking.com¶

2. FURTHER INFORMATION

To obtain further information about this lawsuit including your right to "opt-in," please contact class counsel:

T. Joseph Snodgrass
Attn: Kelly Swanson
Larson King, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
1-877-373-5501
(651) 312-6500
kswanson@larsonking.com

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MONTE RUSSELL and DANIEL
FRIEDMAN, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

Case No.: C 07-3993 CW

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CONSENT TO JOIN FORM

WELLS FARGO AND COMPANY and
WELLS FARGO BANK, N.A.,

Defendants.

IF YOU WISH TO JOIN THE FLSA COLLECTIVE ACTION, THIS FORM MUST BE
COMPLETED, SIGNED AND RETURNED WITH A POSTMARK ON OR BEFORE
_____, 2008

Please type or print in ink the following:

| | | |
|--|-----------------|----------------|
| Name:* | | |
| Street and Apartment Number, if any:* | | |
| City:* | State:* | Zip Code:* |
| Home Telephone:* | Work Telephone: | Cell Telephone |
| E-Mail: | | |
| Name and Phone Number of Alternative Contact Person: | | |
| Social Security Number (this information will be kept confidential; contact <u>class counsel</u> if you have any questions or concerns): | | |

* Denotes required field.

Information obtained will be filed with the Court. The Notice Administrator will use the information obtained solely for the purposes of prosecuting this lawsuit. Social Security Numbers will be kept confidential. Contact class counsel if you have any questions or concerns.

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1. I understand that this lawsuit includes a claim under the federal Fair Labor Standards Act. I have read and I understand the Notice of Collective Action that accompanied my copy of this Consent. I hereby consent to become a member of this collective action and consent to be bound by any adjudication by the Court regarding the Fair Labor Standards Act in this lawsuit.
2. I hereby authorize the Notice Administrator to file this Consent on my behalf with the Clerk of the United States District Court for the Northern District of California, Oakland Division.
3. By my signature below, I represent to the Court that I have been employed by Wells Fargo & Company and/or Wells Fargo Bank, N.A., as a PC/LAN Engineer 3, PC/LAN Engineer 4, and/or PC/LAN Engineer 5, at some time after November 1, 2004. I further represent that I have a good faith belief that I worked over 40 hours in any one workweek, or that I am unsure whether I worked over 40 hours in any one workweek, while I was employed by Wells Fargo as PC/LAN Engineer 3, PC/LAN Engineer 4, and/or PC/LAN Engineer 5. My signature below further indicates that I want to become a member of this collective action:

Signature: _____

Date: _____

COMPLETE AND RETURN THIS FORM IN THE BUSINESS REPLY ENVELOPE INCLUDED WITH THIS PACKET TO:

[Notice Administrator's address]

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Deleted: LARSON · KING, LLP
ATTN: PAT NALLY
2800 WELLS FARGO PLACE
30 E. 7TH STREET
ST. PAUL, MINNESOTA 55101-4922
(651) 312-6500

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