

1 THE LAW OFFICES OF ANDREW J. BROWN  
Andrew J. Brown, SBN 160562  
2 Brian J. Ellsworth SBN 326756  
501 W. Broadway, Ste. 1490  
3 San Diego, CA 92101  
Telephone: (619) 501-6550  
4 [andrewb@thebrownlawfirm.com](mailto:andrewb@thebrownlawfirm.com)  
[briane@thebrownlawfirm.com](mailto:briane@thebrownlawfirm.com)

5 THOMPSON CONSUMER LAW GROUP, PC  
6 Russell S. Thompson, IV SBN 325944  
[rthompson@thompsonconsumerlaw.com](mailto:rthompson@thompsonconsumerlaw.com)  
7 11445 E Via Linda, Ste. 2 #492  
Scottsdale, AZ 85259  
8 T: (888) 332-7252 | F: (866) 317-2674

9 *Attorneys for Plaintiff Michael Stoff,*  
10 *and the Class*

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO**

13 MICHAEL STOFF, an individual, on behalf of  
14 himself and all others similarly situated,

15 Plaintiff,

16 vs.

17 WELLS FARGO BANK, N.A.; and DOES 1  
through 10,

18 Defendants.

Case No. 37-2020-00020808-CU-BT-CTL  
Assigned for All Purposes to:  
Hon. Katherine Bacal  
Dept. C-69

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION TO PROVIDE NOTICE OF  
PENDENCY TO CLASS MEMBERS  
PURSUANT TO RULE OF COURT 3.766**

Date: September 20, 2024  
Time: 11:00AM  
Dept.: C-69

Reservation No. 3088242

Action Filed: June 18, 2020  
Trial Date: TBD

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**02/09/2024** at 08:21:00 PM  
Clerk of the Superior Court  
By Andrea Naranjo, Deputy Clerk

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**PLEASE TAKE NOTICE THAT** Plaintiff’s Motion to Provide Notice of Pendency to Class Members of this certified class action (the “Motion”), will be heard on September 20, 2024 at 11:00AM in Department 69 located in the Hall of Justice. Fifth Floor, 330 W Broadway, San Diego, CA 92101.

At the date, time and location set forth above, Plaintiff Michael Stoff will, and hereby does, respectfully move the Court for an Order to provide notice to class members of the pendency of this certified class action, along with the ability to request exclusion if they so choose. The grounds for the Motion are that, pursuant to California Rule of Court 3.766(c), the court “must” make an order, “as soon as practicable” determining whether notice is necessary, and if so, must enter an order concerning the form and content of that notice. See, Cal. R. Ct. 3.766 et seq. Additionally, Cal. R. Ct. 3.766(b) requires the “class proponent” to submit a statement regarding class notice, and Plaintiff hereby does so in the attached Memorandum of Points and Authorities in support of the instant Motion.

Plaintiff’s motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Justin Parks and Brian Ellsworth and exhibits thereto, the pleadings and records on file in this case, and any additional argument or evidence the court may consider.

Dated: February 9, 2024

Respectfully submitted,  
LAW OFFICES OF ANDREW J. BROWN

By: s/ Andrew J. Brown  
Andrew J. Brown

Brian J. Ellsworth  
501 W. Broadway, Ste. 1490  
San Diego, CA 92101  
T : (619) 501-6550  
[andrewb@thebrownlawfirm.com](mailto:andrewb@thebrownlawfirm.com)

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[rthompson@thompsonconsumerlaw.com](mailto:rthompson@thompsonconsumerlaw.com)  
11445 E Via Linda, Ste 2 #492<sup>a</sup>  
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*Attorneys for Plaintiff Michael Stoff and the Class*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiff and Class Representative Michael Stoff, on behalf of himself and all others similarly situated (hereinafter “Plaintiff”), respectfully submits this Memorandum of Points and Authorities in Support of his Motion To Provide Notice of Pendency of this certified class action.

**I. Statement of Relevant Facts And Procedures**

On November 17 and February 5, the Court issued Minute Orders that, together, granted Plaintiff’s Motion for Class Certification on behalf of a defined class of California mortgage borrowers, appointed Mr. Stoff as Class Representative, and appointed Class Counsel. See, ROA Nos. 417 and 445.

In response to those Orders, Plaintiff, through counsel, has developed a Notice Plan that is designed to provide the best notice practicable under the circumstances to class members, concerning the Pendency of this certified class action. More specifically, the Notice Plan provides:

- 1. The appointment of an experienced Notice Administrator for the purpose of ensuring prompt and effective personal notice is provided to class members;
- 2. Prompt email and/or U.S. mail notice to every known class member based upon the records to be provided by Defendant Wells Fargo Bank, N.A.;
- 3. Creation of a website to provide information to class members concerning the lawsuit, including relevant documents and orders filed in this case;
- 4. Content of the Notice to class members that includes basic information concerning the claims in the lawsuit, is written in plain, understandable English, and provides information and an opportunity for class members to request exclusion from the class; and,
- 5. The content of the Notice otherwise complies with all requirements set forth in Cal. R. Ct. 3.766(d).

See, Declaration of Justin Parks (the “Parks Decl.”) and Declaration of Brian Elsworth (the “Elsworth Decl.”), and Exhibits attached thereto, filed concurrently herewith.

**II. Argument**

California Rule of Court 3.766(c) requires the Court, as soon as practicable upon certification

of a class, to “make an order determining,”

- 1 (1) Whether notice to class members is necessary;
- 2 (2) Whether class members may exclude themselves from the action;
- 3 (3) The time and manner of notice;
- 4 (4) The content of the notice; and
- 5 (5) The parties responsible for the cost of notice.

6 Cal. R. Ct. 3.766(c).

7 For every “opt out” class action such as this one, class members must be provided notice of  
8 the class action and an opportunity to opt out in order to satisfy due process. Without notice of the  
9 pendency of this lawsuit on their behalf, and the opportunity to request exclusion from this lawsuit,  
10 class members cannot be bound by any judgment. (*Home Sav. & Loan Assn. v. Superior Court*  
11 (1974) 42 Cal.App.3d 1006, 10111 [117 Cal. Rptr. 485]) (“The critical reason for notification of  
12 members of the class on whose behalf a class action has been brought is that notification makes  
13 possible a binding adjudication and an enforceable judgment with respect to the rights of the  
14 members of the class. Absent such notification no member of the class need be bound by the result  
15 of the litigation.”). See also, *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-174, 40 L. Ed. 2d  
16 732, 94 S. Ct. 2140 (1974) (Notice provisions of Rule 23 are designed to satisfy Constitutional due  
17 process).

18 Therefore, this opt out class action *requires* adequate notice to absent class members, and  
19 the opportunity to opt out of the litigation, i.e. to “exclude themselves.” Cal. R. Ct. 3.766(c)(1) and  
20 (2). Plaintiff’s proposed Notice Plan does just that. Ellsworth Decl., Ex. D.

21 The time and manner of the notice is reasonably designed to give personal notice to every  
22 class member, and a reasonable amount of time to request exclusion from the class, and otherwise  
23 makes sense in consideration of the factors set forth in Cal. R. Ct. 3.766(e). See, Parks Decl., ¶¶ 6  
24 – 20; Ellsworth Decl., Exs. A – C. More specifically, Defendant possesses the most current contact  
25 information for class members. By providing updated email and residential address information for  
26 all class members, the manner of notice proposed by Plaintiff will be the most efficient and effective  
27 way to provide personal notice to each class member. Parks Decl., ¶ 21.  
28

1 The content of the various forms of notice also satisfies all the requirements of Cal. R. Ct.  
2 3766(d). See, Parks Decl., ¶¶ 6 – 20; Ellsworth Decl., Exs. A, B, and C.

3 Last, if the Notice Plan is approved as requested by Plaintiff, Plaintiff will bear the costs of  
4 providing notice to absent class members. Ellsworth Decl., Ex. D

#### 5 **RULE 3.766(b) STATEMENT**

6 In light of the foregoing, and pursuant to Cal. R. Ct. 3.766(b), Plaintiff makes the following  
7 statement:

8 Class Notice is required, and Plaintiff's proposed Notice Plan provides a reasonable  
9 opportunity for class members to exclude themselves. Rule 3.766(b)(1 and 2). Plaintiff proposes  
10 the time and manner of notice to class members as set forth in the Notice Plan as set forth in the  
11 attached Parks Declaration. Rule 3.766(b)(3). Plaintiff offers to bear the cost of the Notice Plan as  
12 it is proposed. Rule 3.766(b)(4). In the event the Notice Plan is amended in a way that increases  
13 the cost of Notice, Plaintiff reserves the right to request an allocation of costs among the parties that  
14 reflects the increased cost(s). If and when that occurs, Plaintiff will provide the relevant cost  
15 estimates as required. Rule 3.766(b)(5).

#### 16 **CONCLUSION**

17 Plaintiff respectfully requests the Court enter an order directing the parties to comply with  
18 the Notice Plan proposed by Plaintiff, and set deadlines accordingly.

19 Respectfully submitted,

20  
21 Dated: February 9, 2024

LAW OFFICES OF ANDREW J. BROWN

22  
23 By: s/ Andrew J. Brown

Andrew J. Brown

24 Brian J. Ellsworth  
25 501 W. Broadway, Ste. 1490  
26 San Diego, CA 92101  
27 T : (619) 501-6550  
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andrewb@thebrownlawfirm.com  
briane@thebrownlawfirm.com  
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*Attorneys for Plaintiff Michael Stoff and the Class*

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