

## **PROPOSED PLAN OF ALLOCATION**

The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund to those Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The calculations made pursuant to the Plan of Allocation are not estimates of, nor indicative of, the amounts that Class Members may potentially recover after a trial, or the amounts that will be paid to Authorized Claimants pursuant to the Settlement, unless otherwise specified. The computations under the Plan of Allocation are a method to weigh the claims of Authorized Claimants against one another for the purpose of making pro rata allocations of the Net Settlement Fund.

In the Action, Class Plaintiffs allege that Defendants assisted the Apex Entities, Triangle Entities, and Tarr Entities (which misled consumers into monthly subscriptions and products), by opening bank accounts for dozens of companies and transferring millions of dollars into their third-party bank accounts. The Receiver brought similar claims in a separate but related lawsuit relating to Triangle and Apex only.

The Plan of Allocation is generally based on (i) Plaintiffs' theory that charges to Triangle, Apex, and Tarr consumers, less refunds of those charges, represent an alleged loss to the consumer; and (ii) the Receiver's theory that Wells Fargo's conduct allegedly caused harm to the Receivership Entities themselves. For that reason, Plaintiffs contend the damages in the McNamara Action overlap with the damages in the McCraner Action. The Plan of Allocation is based in part on Class Counsel's assessment of the strengths and weaknesses associated with the claims in the Action (including different damages calculation methodologies, potential difficulties of proof with respect to each of the Triangle, Apex, and Tarr enterprises, and the lack of Receiver claims with respect to Tarr).

The Net Settlement Fund will be allocated and distributed to Class Members through different processes depending on (i) whether they paid money to Triangle, Apex, and/or Tarr, and (ii) whether they have previously received a distribution payment from the FTC in connection with the FTC's Triangle Action or Apex Action (the two cases where a receiver was appointed). Class Members who previously received payments from the FTC in the Triangle Action or the Apex Action do not need to submit a claim form to be eligible to receive a distribution in the Settlement. Class Members who did not receive a payment from the FTC in the Triangle Action or the Apex Action, or who were enrolled in recurring billing with Tarr must submit a claim form to be eligible to receive a distribution in the Settlement.

The initial allocation of the Net Settlement Fund shall be 45.17% for charges imposed by Triangle ("Initial Triangle Allocation"), 32.26% for charges imposed by Apex ("Initial Apex Allocation"), and 22.57% for charges imposed by Tarr ("Initial Tarr Allocation"), which allocations are based on the net losses, adjusted by Plaintiffs' assessment of the available causes of action and evidence, associated with each enterprise.

### **Tarr Consumers**

The Initial Tarr Allocation shall be distributed to Authorized Claimants based on their Recognized Loss. In order to have a Recognized Loss and be eligible to receive a distribution from the Net

Settlement Fund with respect to charges imposed by Tarr Entities, a consumer must timely submit a claim form that is accepted by the Settlement Administrator (such a Class Member is a “Tarr Claimant”).

If a claimant does not provide documentation of their charges imposed by Tarr Entities, or does not provide such documentation that is acceptable to the Settlement Administrator, the claimant must (i) briefly describe or name the product(s) involved, (ii) describe how they obtained the product(s), (iii) identify the date when they purchased the product(s), (iv) confirm enrollment in a recurring billing program, (v) confirm they did not receive a refund, chargeback, or reimbursement of any kind (including from FTC refund programs for Apex or Triangle, from a Triangle- or Apex Entity, or from his/her credit card company), and (vi) attest in a sworn statement under penalty of perjury to the truth of their statements. A claimant who meets these conditions will be eligible to receive a distribution of \$20.00 (a “Qualifying Tarr Payment”). A claimant may only receive one Qualifying Tarr Payment regardless of how many products the claimant was charged for. No more than 50% of the Initial Tarr Allocation shall be allocated to Qualifying Tarr Payments. Claims and distributions may be rejected if they, for example: (i) contain significant indicators of fraud, (ii) are untimely, or (iii) are incomplete, to ensure the integrity of the Claims Process. If Qualifying Tarr Payments would otherwise exceed that 50% threshold, they shall be reduced proportionally such that Qualifying Tarr Payments are allocated only 50% of the Initial Tarr Allocation. The amount of the Net Settlement Fund so allocated for payment of Qualifying Tarr Payments is the “Qualifying Tarr Payments Amount.”

If a claimant provides documentation to support the claimant’s out-of-pocket losses incurred from the Tarr Entities that the Settlement Administrator finds acceptable (which may include credit card statements, bank statements, and/or email receipts), that claimant’s total Recognized Loss shall be the claimant’s total documented charges imposed by Tarr Entities, less the claimant’s total refunds received (“Claimed Tarr Loss”).

Distributions are subject to verification and anti-fraud checks and may be disallowed on such grounds. All Claim Forms will be submitted under penalty of perjury. Claimants must specifically attest to the accuracy of the information provided in sworn statements under the penalty of perjury, and must specifically aver that they did or did not receive refunds, chargebacks, or other forms of reimbursement, of any kind (including from the FTC refund program, from a Tarr-related Entity, or from a credit card company).

If a potential claimant did receive a refund of any kind, the claimant must disclose the amount of the refund.

Distributions with respect to Claimed Tarr Losses shall be made pro rata from the available funds (the Initial Tarr Allocation less the Qualifying Tarr Payments Amount).

If the sum of the Qualifying Tarr Payment Amount and the total of Claimed Tarr Losses is less than the Initial Tarr Allocation, then the excess shall be added to the Initial Triangle Allocation and the Initial Apex Allocation in proportion to their respective allocations. The Initial Triangle Allocation plus any amounts added to it from the Initial Tarr Allocation is referred to as the “Post-Tarr Triangle Allocation.” The Initial Apex Allocation plus any amounts added to it from the Initial Tarr Allocation is referred to as the “Post-Tarr Apex Allocation.”

**Triangle/Apex Consumers**  
**Who Did Not Receive Payment From The FTC**

If a Class Member was charged by Apex Entities or Triangle Entities but did not previously receive a payment from the FTC, then to be eligible to receive a distribution from the Net Settlement Fund, the Class Member must timely submit a claim form that is accepted by the Settlement Administrator (such a Class Member is a “Triangle/Apex Claimant”). To avoid potential double recovery to Class Members with respect to charges imposed by Triangle Entities or by Apex Entities, Class Counsel will provide the Receiver with a list of Class Members receiving distributions from the Settlement Administrator with respect to Triangle or Apex, and the Receiver will provide that list to the FTC.

The Settlement Administrator shall distribute to Triangle Claimants a total amount (the “Triangle Claims Distribution Amount”) of the Net Settlement Fund equal to:

$$\begin{array}{ccc} \boxed{\begin{array}{c} \text{Post-Tarr} \\ \text{Triangle Allocation} \end{array}} & \times & \boxed{\begin{array}{c} \text{Triangle Claimants} \\ \hline (\text{Triangle Claimants} + 151,691^*) \end{array}} \end{array}$$

\*151,691 is the number of payment recipients in the Triangle Action. See [https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds\\_15797958402020/RefundsbyCase](https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyCase).

The remaining portion of the Post-Tarr Triangle Allocation shall be provided to the Triangle Receivership (the “Triangle Receivership Allocation”), for transmission to the FTC, for ultimate distribution to Triangle consumers, pursuant to its established refund program in the Triangle Action, as approved by the Court.

The Settlement Administrator shall distribute to Apex Claimants a total amount (the “Apex Claims Distribution Amount”) of the Net Settlement Fund equal to:

$$\begin{array}{ccc} \boxed{\begin{array}{c} \text{Post-Tarr} \\ \text{Apex Allocation} \end{array}} & \times & \boxed{\begin{array}{c} \text{Apex Claimants} \\ \hline (\text{Apex Claimants} + 153,940^*) \end{array}} \end{array}$$

\*153,940 is the number of payment recipients in the Apex Action. See [https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds\\_15797958402020/RefundsbyCase](https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyCase).

The remaining portion of the Post-Tarr Apex Allocation shall be provided to the Apex Receivership (the “Apex Receivership Allocation”), for transmission to the FTC, for ultimate distribution to Apex consumers, pursuant to its established refund program in the Apex Action, as approved by the Court.

If a claimant does not provide documentation of the charges imposed by Triangle Entities or by Apex Entities, or does not provide such documentation that is acceptable to the Settlement

Administrator, the claimant must (i) briefly describe or name the product(s) involved, (ii) describe how they obtained the product(s), (iii) identify the date when they purchased the product(s), (iv) confirm enrollment in a recurring billing program, (v) confirm they did not receive a refund of any kind (including from FTC refund programs for Apex or Triangle, from a Triangle- or Apex Entity, or from his/her credit card company), and (vi) attest in a sworn statement under the penalty of perjury to the truth of their statements. A claimant who meets these conditions will be eligible to receive a distribution of \$20.00 (a “Qualifying Triangle/Apex Payment”).

Distributions are subject to verification and anti-fraud checks and may be disallowed on such grounds. All Claim Forms will be submitted under the penalty of perjury. Claimants must specifically attest to the accuracy of the information provided in sworn statements under the penalty of perjury, and must specifically aver that they did or did not receive refunds, chargebacks, or other forms of reimbursement, of any kind (including from the FTC refund program, from an Apex-or Triangle-related Entity, or from a credit card company).

If a potential claimant did receive a refund of any kind, he/she must disclose the amount of the refund.

The amount of the Net Settlement Fund allocated for payment of Qualifying Triangle/Apex Payments is the “Qualifying Triangle/Apex Payments Amount.” If Qualifying Triangle/Apex Payments would otherwise exceed that threshold, they shall be reduced proportionally such that Qualifying Triangle/Apex Payments are allocated only 25% of the Initial Triangle/Apex Allocations.

If the claimant provides documentation of the charges imposed by Triangle Entities or by Apex Entities that is acceptable to the Settlement Administrator (which may include credit card statements, bank statements, and/or email receipts), the claimant’s total Recognized Loss with respect to such charges shall be the claimant’s total documented charges, less the claimant’s total refunds received relating to those charges (“Claimed Triangle/Apex Loss”). Distributions with respect to Claimed Triangle Losses shall be made pro rata from the available funds (the Triangle Claims Distribution Amount less the Qualifying Triangle Payments Amount). Distributions with respect to Claimed Apex Losses shall be made pro rata from the available funds (the Apex Claims Distribution Amount less the Qualifying Apex Payments Amount).

#### **Additional Provisions Applicable To All Claimants**

Claims and distributions are subject to verification and anti-fraud checks established by the Settlement Administrator. Claims and distributions may be rejected if they, for example: (i) contain significant indicators of fraud, (ii) are untimely, or (iii) are incomplete, to ensure the integrity of the Claims Process. The Settlement Administrator may request additional information and/or documentation from claimants in connection with its review of their claims.

Claimants shall not receive distributions exceeding their Recognized Loss, other than the Qualifying Payments described above.

In no event shall Class Members be entitled to total distributions exceeding the amount of the Net Settlement Fund, or applicable portions thereof. Distributions shall be reduced on a pro rata basis to the extent required.

After the initial distribution of the Net Settlement Fund to Tarr Claimants and Triangle/Apex Claimants, the Settlement Administrator shall make reasonable and diligent efforts to have such claimants cash their distribution checks. To the extent any monies remain in the fund nine months after the initial distribution, they shall be provided to the Triangle Receivership and the Apex Receivership for ultimate transmission to the FTC and distribution to consumers, pursuant to the FTC's established refund programs in the Apex and Triangle Actions in proportion to the Triangle/Apex Receivership Allocations, and as approved by the Court.

**Triangle/Apex Consumers  
Who Received Payment From The FTC**

Class Members who previously received a payment from the FTC in the Triangle Action or the Apex Action do not need to submit a claim form to the Settlement Administrator to be eligible to receive a distribution in the Settlement. As described above, amounts of the Net Settlement Fund equal to the Triangle Receivership Allocation and the Apex Receivership Allocation shall be provided to the respective Receiverships for subsequent transmission to the FTC and distribution to Triangle and Apex consumers pursuant to the refund programs the FTC has established in its Triangle Action and Apex Action, respectively.

Plaintiffs' Counsel understands that in the Triangle Action and Apex Action: (i) the FTC identified Apex and Triangle enterprise consumers using the customer records maintained by the Apex and Triangle enterprises; (ii) the FTC distributed redress to consumers without requiring them to file claims to obtain redress; and (iii) the FTC determined the amounts to send to each Apex and Triangle enterprise consumer as a refund following its standard practices for its established consumer refund programs (*see* <https://www.ftc.gov/enforcement/ftc-refund-programs/how-ftc-provides-refunds>). At the time the Receiver files motions to approve this settlement in the Apex and Triangle Actions, the Receiver will seek an order from Court requiring the Receiver to transfer the remaining amounts of the Net Settlement Fund provided to it (after distribution to Tarr Claimants and Triangle/Apex Claimants) to the FTC, which shall then distribute those funds to consumers, pursuant to and consistent with, the parameters of the FTC's prior distributions to Apex and Triangle consumers in the FTC's established refund programs.

To avoid potential double recovery to Class Members with respect to charges imposed by Triangle or by Apex, Class Counsel will provide the Receiver with a list of Class Members receiving distributions from the Settlement Administrator with respect to Triangle or Apex, and the Receiver will provide that list to the FTC.

**Generally Applicable Provisions**

Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants.

The payments made to Class Members are likely to be subject to a minimum threshold. A typical minimum threshold requires a Class Member to have a claim worth \$10.00 or greater. This is routinely done by settlement administrators and the FTC, because it is not economically feasible to send checks for a lower amount (such as \$10.00), and people often do not cash checks in these lower amounts. The Net Settlement Fund will be allocated among all Authorized Class Members/Claimants

whose prorated payment is above the minimum threshold (e.g., \$10.00). If the prorated payment to any Authorized Class Member/Claimant calculates to less than any threshold that is set, it will not be included in the calculation (i.e., the Recognized Claim will be deemed to be zero) and no distribution will be made to that Authorized Class Member/Claimant. Any prorated amounts of less than the threshold will be included in the pool distributed to those whose prorated payments are above the threshold.

No Person or entity shall have any claim against Plaintiffs, Plaintiffs' Counsel, the Settlement Administrator or any other agent designated by Plaintiffs' Counsel, or Wells Fargo Releasees and/or their respective counsel, arising from distributions made substantially in accordance with the Class Agreement, the Receiver Agreement, the plan of allocation approved by the Court, or any order of the Court. Plaintiffs and Wells Fargo, and their respective counsel, and all other Releasees shall have no liability whatsoever for (1) the investment or distribution of the Settlement Fund or the Net Settlement Fund, (2) the plan of allocation, (3) the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, (4) the determination, administration, calculation, or payment of any refund or nonperformance of the FTC, (5) the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or (6) any losses incurred in connection therewith.

The Plan of Allocation set forth herein is the plan that is being proposed to the Court for its approval by Plaintiffs. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the settlement website, [www.freetrialrecurringbillingsettlement.com](http://www.freetrialrecurringbillingsettlement.com).