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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GARY HEFLER, MARCELO MIZUKI, GUY SOLOMONOV, UNION ASSET MANAGEMENT HOLDING AG, and CITY OF HIALEAH EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

WELLS FARGO & COMPANY, JOHN G. STUMPF, JOHN R. SHREWSBERRY, CARRIE L. TOLSTEDT, TIMOTHY J. SLOAN, DAVID M. CARROLL, DAVID JULIAN, HOPE A. HARDISON, MICHAEL J. LOUGHLIN, AVID MODJTABAI, JAMES M. STROTHER, JOHN D. BAKER II, JOHN S. CHEN, LLOYD H. DEAN, ELIZABETH A. DUKE, SUSAN E. ENGEL, ENRIQUE HERNANDEZ JR., DONALD M. JAMES, CYNTHIA H. MILLIGAN, FEDERICO F. PEÑA, JAMES H. QUIGLEY, JUDITH M. RUNSTAD, STEPHEN W. SANGER, SUSAN G. SWENSON, and SUZANNE M. VAUTRINOT,

Defendants.

Case No. 3:16-cv-05479-JST

CLASS ACTION

LEAD PLAINTIFF'S NOTICE OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Judge: Hon. Jon S. Tigar
Courtroom: 9
Date: September 6, 2018
Time: 2:00 p.m.

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NOTICE OF UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on September 6, 2018, or as soon as counsel may be heard before the Honorable Jon S. Tigar, United States District Judge, at the United States District Court for the Northern District of California, Phillip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Lead Plaintiff Union Asset Management Holding, AG, will and does hereby move for an order: (1) preliminarily approving the proposed settlement of this Action; (2) certifying a class for purposes of implementing the proposed settlement; (3) approving the form and manner of giving notice of the proposed settlement to the Settlement Class; and (4) scheduling a hearing before the Court to determine whether the proposed Settlement, proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, should be approved.[1]

The grounds for this motion are that the proposed settlement is within the range of what could be found to be fair, reasonable, and adequate and that notice of its terms is appropriate and may be disseminated to members of the proposed Settlement Class and a hearing for final approval of the proposed settlement scheduled.

This motion is supported by the following memorandum of points and authorities in support thereof, and the Stipulation and Agreement of Settlement dated July 30, 2018, and exhibits thereto, which embody the terms of the proposed Settlement between the parties, submitted herewith, the previous filings and orders in this case, and such other and further representations as may be made by Counsel at any hearing on this matter.

[1] Unless otherwise indicated, capitalized terms shall have their meaning as defined in the Stipulation, submitted herewith.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the proposed $480 million cash settlement of this Action is within the range of fairness, reasonableness, and adequacy to warrant the Court's preliminary approval and the dissemination of notice of its terms to members of the proposed Settlement Class.

2. Whether a Settlement Class should be certified for purposes of the Settlement.

3. Whether the proposed form of settlement notice and proof of claim and release form and the manner for dissemination to the Settlement Class should be approved.

4. Whether the Court should set a date for a hearing for final approval of the proposed Settlement, the proposed Plan of Allocation, and the application of Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Lead Plaintiff Union Asset Management Holding, AG ("Union" or "Lead Plaintiff") respectfully submits this memorandum of points and authorities in support of its unopposed motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for preliminary approval of the proposed settlement (the "Settlement") of this class action.

The Settlement, as set forth in the Stipulation and Agreement of Settlement dated as of July 30, 2018 (the "Stipulation"), attached hereto as Exhibit 1, provides for the payment of $480 million in cash for the benefit of the Settlement Class.[2] Lead Plaintiff submits that the Settlement represents an excellent result for the Settlement Class and ultimately should be approved by this Court, especially given the substantial challenges the Settlement Class would face in establishing Defendants' liability, proving loss causation, and demonstrating the full amount of the Settlement Class's damages. Depending upon the outcome of numerous disputes concerning loss causation and damages, maximum potential damages for Plaintiffs, if they were successful at trial and all class members submitted valid claims post-trial, are estimated to be in the range of $351.3 million to $3.0639 billion. The proposed settlement of $480 million represents over a 15% recovery of even the highest damages estimates for Plaintiffs after trial, notwithstanding the substantial risks.

For example, Plaintiffs would have faced significant challenges in proving loss causation and demonstrating damages, including based on Defendants' arguments that Wells Fargo's stock price did not decline in response to the announcements allegedly correcting Defendants' fraud and that subsequent declines in the price of Wells Fargo common stock were not in response to corrective disclosures and could not be used to claim damages. Even if just some of these arguments prevailed, Plaintiffs' recoverable damages would have been dramatically reduced as demonstrated by the wide range of Plaintiffs' damage estimates and detailed in the accompanying

[2] Plaintiffs also file contemporaneously herewith (and with a motion to file under seal) the confidential Supplemental Agreement discussed in ¶ 37 of the Stipulation. *See Thomas v. MagnaChip Semiconductor Corp.*, No. 14-cv-1160-JST, slip op. (N.D. Cal. July 18, 2016) (granting preliminary approval of class action settlement and motion to seal confidential supplemental agreement).

declaration of Plaintiffs' damages expert. *See* Declaration of Chad W. Coffman, CFA ("Coffman Decl."), attached hereto as Exhibit 2, at ¶¶34-35. Plaintiffs also faced challenges in proving that Defendants' alleged misstatements about Wells Fargo's cross-selling business model and their failure to disclose widespread misconduct concerning employees' opening of unauthorized accounts for bank customers were materially false and misleading. Specifically, Defendants would have argued that the alleged fake-account fraud had only a small impact on the Company's reported cross-selling metrics, and that the employee misconduct never required the Company to restate its cross-selling metrics or reported financial results. Plaintiffs also would have faced hurdles in showing that Defendants had an intent to defraud investors. Defendants would have argued that Wells Fargo's senior management believed that the sales misconduct at the Company was not widespread (particularly given the large size of Wells Fargo), and that Defendants took extensive affirmative measures to monitor and reduce the misconduct at issue – which they would argue is contrary to any fraudulent intent. At this stage, the Court is not asked to finally approve the proposed settlement, but to find that it is within the range of reasonableness, without any obvious deficiencies, so that notice may issue to the class prior to a final approval hearing.

Lead Plaintiff requests that this Court enter the [Proposed] Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order") attached as Exhibit A to the Stipulation and as Exhibit 3 hereto. The Preliminary Approval Order, among other things: (i) schedules a final hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement, the proposed Plan of Allocation of the Net Settlement Fund, and Lead Counsel's application for attorneys' fees and expenses (the "Settlement Hearing"); (ii) preliminarily approves the Settlement as fair, reasonable and adequate to the Settlement Class, pending the Settlement Hearing; (iii) certifies the Settlement Class for settlement purposes only; (iv) approves the form and method of disseminating notice to the Settlement Class; (v) appoints the claims administrator recommended by Lead Counsel to disseminate notice and administer the Settlement; and (vi) establishes procedures and deadlines for Settlement Class Members to submit Claim Forms for payments from the Net Settlement Fund, request exclusion from the Settlement Class, or object to the terms of the Settlement, Plan of Allocation, and/or requested fees and expenses.

A. FACTUAL BACKGROUND

The allegations and claims in this Action are familiar to the Court, and Lead Plaintiff provides only a brief overview of them at this preliminary approval stage. Lead Plaintiff will provide additional details regarding the history of the litigation, and Lead Plaintiff and Lead Counsel's efforts in the prosecution of this case, in connection with Lead Plaintiff's motion for final approval of the Settlement, in the event that the Court grants preliminary approval as requested. In short, Lead Plaintiff alleges that, from February 26, 2014 through September 20, 2016 (the "Class Period"), Defendants made misrepresentations and omissions to investors about a key element of Wells Fargo's business – its "cross-selling" business model. This included Defendants' alleged failure to disclose that thousands of Wells Fargo employees had opened unauthorized deposit and credit card accounts without the knowledge or consent of the bank's customers, that those misrepresentations and omissions artificially inflated the price of Wells Fargo stock during the Class Period, and that the stock price fell when the truth began to enter the market in September 2016. Plaintiffs also allege that certain of the Defendants personally profited by selling Wells Fargo common stock during the Class Period while in possession of adverse, material non-public information.

B. PROCEDURAL HISTORY

On September 26 and 28, 2016, investors filed two related class action complaints in this Court asserting violations of federal securities laws against Wells Fargo and certain of the Individual Defendants. On January 5, 2017, the Court consolidated the two securities class actions and appointed Union as lead plaintiff for the Action.[3]

On March 6, 2017, Lead Plaintiff and named plaintiffs Gary Hefler, Marcelo Mizuki, and Guy Solomonov filed their Consolidated Class Action Complaint for Violations of the Federal Securities Laws (the "Consolidated Complaint"). The Consolidated Complaint asserted claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5

[3] The Order approved Union's selection of Motley Rice LLC as lead counsel and Robbins Geller Rudman & Dowd LLP as liaison counsel. On May 17, 2017, the Court approved Union's motion to substitute Bernstein Litowitz Berger & Grossmann LLP for Motley Rice LLP as Lead Counsel.

promulgated thereunder against Wells Fargo and Stumpf, Sloan, Tolstedt, Carroll, Modjtabai, Loughlin and Shrewsberry; Exchange Act Section 20A against Carroll, Loughlin, Modjtabai, Sloan, Stumpf and Tolstedt; and Exchange Act Section 20(a) against all Defendants.

On June 19, 2017, Defendants filed eight motions to dismiss the Consolidated Complaint. On August 21, 2017, Lead Plaintiff opposed Defendants' motions to dismiss, and on September 25, 2017, Defendants filed their replies in further support of their motions to dismiss.

On February 27, 2018, the Court entered its Order granting and denying in part Defendants' motions to dismiss. The Court dismissed, without prejudice, the Section 10(b) and 20A claims against Carroll, Loughlin, and Modjtabai and the Section 20A claims against Tolstedt. In all other respects, the Court denied Defendants' motions. On March 8, 2018, Wells Fargo began production of documents to Lead Plaintiff, including the documents it had produced to plaintiffs in *In re Wells Fargo & Company Shareholder Deriv. Litig.*, No. 16-CV-5541-JST (N.D. Cal.).

On March 15, 2018, Lead Plaintiff, named plaintiffs Hefler, Mizuki and Solomonov, and additional named plaintiff City of Hialeah Employees' Retirement System (collectively, "Plaintiffs") filed the Second Consolidated Class Action Complaint for Violations of Federal Securities Laws (the "Complaint"). The Complaint sought to add back claims under Section 20A of the Exchange Act against Defendant Tolstedt and to maintain all other claims allowed to proceed by the Court in its February 27, 2018 Order.

C. SETTLEMENT NEGOTIATIONS AND DUE DILIGENCE DISCOVERY

While Defendants' motions to dismiss were pending, the Parties agreed to discuss the possibility of resolving the Action through settlement and scheduled a mediation with former United States District Judge Layn R. Phillips. In advance of the mediation, the Parties prepared and exchanged detailed mediation statements addressing liability, loss causation, and damages issues. The Parties participated in a full-day mediation session before Judge Phillips in New York City on February 6, 2018, but the Parties did not reach an agreement at that time.

The Parties scheduled a second mediation session before Judge Phillips for April 13, 2018. In advance of that session, at the direction of the mediator, the Parties held a telephonic meet-and-confer to discuss damages with the participation of their damages experts and, thereafter,

exchanged supplemental mediation statements. After a day and a half of intensive negotiations on Friday, April 13 and Saturday, April 14, and with the assistance of Judge Phillips, the Parties reached an agreement in principle to settle the Action subject to due diligence discovery that the Parties memorialized in a term sheet executed on April 14, 2018. Subject to their confirmation of facts and risks by reviewing Defendants' contemporaneous documents, Plaintiffs agreed to settle and release all claims asserted against Defendants in return for a cash payment of $480 million for the benefit of the Settlement Class to be paid by Wells Fargo on behalf of all Defendants.

Lead Counsel conducted extensive due diligence discovery regarding the strengths and weaknesses of Plaintiffs' claims to ensure the reasonableness of the proposed Settlement. The Parties repeatedly met and conferred and eventually resolved their disputes over the custodians to be searched and the volume of documents to be produced to Plaintiffs. In total, Plaintiffs obtained and reviewed more than three million pages of discovery produced by Wells Fargo, including documents from 65 custodians negotiated by the Parties. This due diligence discovery has confirmed Lead Plaintiff's and Lead Counsel's belief that the proposed Settlement is fair, reasonable and adequate. The extensive documents obtained and reviewed by Plaintiffs demonstrate substantial risks with proving that the named Defendants were aware of the alleged sales misconduct or acted with the intent to deceive Wells Fargo investors. On July 30, 2018, the Parties executed the Stipulation setting forth the full terms and conditions of the Settlement.

II. THE PROPOSED SETTLEMENT

A. The Terms Of The Settlement

The Settlement provides that Wells Fargo will pay or cause to be paid $480 million in cash into an interest-bearing escrow account for the Settlement Class. The Settlement Amount, plus accrued interest, after the deduction of attorneys' fees and Litigation Expenses awarded by the Court, Notice and Administration Costs, and Taxes and related expenses (the "Net Settlement Fund"), will be distributed among Settlement Class Members who submit valid Claim Forms ("Authorized Claimants"), in accordance with a plan of allocation to be approved by the Court.

Under the Settlement terms, the Parties will agree to the certification of a Settlement Class. The proposed Settlement Class is the same as the class proposed in Lead Plaintiff's Complaint: all

persons and entities who purchased Wells Fargo common stock from February 26, 2014 through September 20, 2016, inclusive. *Compare* Stipulation ¶1(ss) *with* Complaint ¶2. The only differences between the proposed Settlement Class and the class alleged in the Complaint are minor refinements in the list of persons and entities excluded from the class by definition because of their affiliation with Defendants.[4]

In exchange for the payment of the Settlement Amount, Settlement Class Members will release the "Released Plaintiffs' Claims," which include any and all claims "that both (i) concern, arise out of, relate to, or are based upon the purchase, acquisition, or ownership of Wells Fargo common stock during the Class Period and (ii) were asserted or could have been asserted in this Action by Lead Plaintiff or any other member of the Settlement Class against any of the Defendants' Releasees that arise out of, relate to, or are based upon any of the allegations, circumstances, events, transactions, facts, matters, occurrences, statements, representations or omissions involved, set forth, or referred to in the Complaint." Stipulation ¶1(nn). The scope of this release is reasonable as it is limited to claims that relate to purchases or ownership of Wells Fargo common stock during the same Class Period ***and*** that relate to the same factual allegations as set forth in the Complaint. While the release includes unknown claims and other claims that "could have been asserted" in the Action (but were not), the release of such claims is fully appropriate because all released claims arise out of the identical factual predicate as the asserted claims. *See, e.g.*, *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010); *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1287-88 (9th Cir. 1992); N.D. Cal. Procedural Guidance for Class Action

[4] Excluded from the Settlement Class are: (i) Defendants; (ii) Immediate Family Members of any Individual Defendant; (iii) any person who was a director or member of the Operating Committee of Wells Fargo during the Class Period and their Immediate Family Members; (iv) any parent, subsidiary or affiliate of Wells Fargo; (v) any firm, trust, corporation, or other entity in which Defendants or any other excluded person or entity has, or had during the Class Period, a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded persons or entities. Notwithstanding the foregoing exclusions, no Investment Vehicle (as defined in the Stipulation) shall be excluded from the Settlement Class. *See* Stipulation ¶1(ss); *compare* Complaint ¶251 ("Excluded from the Class are Defendants and their families, the officers and directors and affiliates of Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entities in which Defendants have or had a controlling interest.").

Settlements ("N.D. Cal. Guid.") ¶1(c) (preliminary approval motion should set forth any differences between settlement release and complaint claims). The proposed settlement does not release other pending derivative and ERISA claims against Defendants.

The proposed Settlement is an excellent recovery on the claims asserted in this Action, and is in all respects fair, adequate, reasonable, and in the best interests of the Settlement Class.

B. The Plan Of Allocation

The proposed Plan of Allocation, which is set forth in the Notice to be mailed to Settlement Class Members, is comparable to plans of allocation approved in numerous other securities class actions. The Plan allocates the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms on a *pro rata* basis based on the amount of each claimant's Recognized Claim. The formula for determining each claimant's Recognized Claim is based on Lead Plaintiff's damages expert's calculations of the amounts by which the price of Wells Fargo common stock was artificially inflated at various points during the Class Period, and takes into consideration when the claimant purchased the shares and, if the claimant sold the shares, when it sold them. Lead Plaintiff submits that the Plan of Allocation mirrors Plaintiffs' anticipated damages methodology for trial, is fair and reasonable, and should be approved together with the Settlement at the Settlement Hearing.

III. ARGUMENT

A. The Court Should Grant Preliminary Approval Of The Proposed Settlement

Strong judicial policy favors settlement of class actions. *See Class Plaintiffs*, 955 F.2d at 1276; *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998); *West v. Circle K Stores, Inc.*, 2006 WL 1652598, at *1 (E.D. Cal. June 13, 2006) ("*West*"). Settlements of complex cases greatly contribute to the efficient utilization of scarce judicial resources and achieve the speedy resolution of justice. A motion seeking preliminary approval of a settlement agreement in a putative class action may be granted if the proposed settlement "[1] appears to be the product of serious, informed, noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of possible approval ...." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d

1078, 1079 (N.D. Cal. 2007) (citation omitted).[5] Because some of the factors bearing on the propriety of a settlement cannot be assessed prior to the final approval hearing, "a full fairness analysis is unnecessary at this stage." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal. 2008). Under these standards, the Settlement merits preliminary approval.[6]

1. The Proposed Settlement Is The Product Of Good Faith, Arm's-Length Negotiations Among Experienced Counsel Mediated By An Experienced Private Mediator

The fact that the Parties reached the Settlement after arm's-length negotiations between experienced counsel and with the assistance of an experienced mediator creates a presumption of its fairness. *See In re Netflix Privacy Litig.*, 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18, 2013) ("Courts have afforded a presumption of fairness and reasonableness of a settlement agreement where that agreement was the product of non-collusive, arms' length negotiations conducted by capable and experienced counsel"); *see also Linney*, 1997 WL 450064, at *5.

During the two mediation sessions and intervening conference call with their damages experts, the Parties fully explored the strengths and weaknesses of their respective claims and defenses. The negotiations focused on the highly complex and heavily disputed issues of whether Wells Fargo or any of the Individual Defendants acted with the requisite scienter, on loss causation issues, and the proper measure of damages. Throughout this process, Lead Plaintiff actively participated in, and was informed of, the negotiations.

The mediation process demonstrates that the Settlement was hard-fought and negotiated at arm's length. An experienced mediator facilitated the mediation process. As courts in this District and elsewhere have found, "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell*, 2007 WL 1114010, at *4; *In re Indep. Energy Holdings PLC Sec. Litig.*, 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) ("the fact

[5] *See Fraley v. Facebook, Inc.*, 2012 WL 6013427, at *1 (N.D. Cal. Dec. 3, 2012) (preliminary approval granted where proposed settlement was non-collusive, had no obvious defects, and was within the range of possible settlement approval); *Satchell v. Fed. Express Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) (same).

[6] Plaintiffs will more fully address the reasonableness of the Settlement at final approval.

that the Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable").

Courts have also given considerable weight to the opinion of experienced and informed counsel who support settlement. In deciding whether to approve a proposed settlement of a class action, "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Stewart v. Applied Materials, Inc.*, 2017 WL 3670711, at *6 (N.D. Cal. Aug. 25, 2017); *accord In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (same). Here, Lead Counsel has a thorough understanding of the merits and risks of the Action and extensive experience in securities litigation. Lead Counsel's and Lead Plaintiff's beliefs in the fairness and reasonableness of this Settlement warrant a presumption of reasonableness.

Moreover, while the Parties reached the agreement to settle only at the outset of formal discovery, the extensive due diligence process undertaken by Lead Counsel before agreeing to the Settlement allowed Lead Plaintiff and Lead Counsel to ascertain that the $480 million Settlement was fair and reasonable given the risks of the case. Following numerous meet and confers, Lead Counsel obtained and reviewed millions of pages of documents belonging to 65 Wells Fargo custodians, including every Individual Defendant as well as other of the Company's most relevant senior executives and employees, to determine whether the documentary evidence substantially altered Lead Counsel's understanding of the risks of proving Plaintiffs' claims. That review added significant depth and context to Defendants' likely arguments that Plaintiffs would be unable to prove scienter and materiality – including that Wells Fargo undertook extensive efforts to detect, analyze and eliminate perceived abusive sales practices – and further supports Lead Counsel's belief that the Settlement is exceptionally fair and reasonable.

2. The Proposed Settlement Has No Obvious Deficiencies And Does Not Improperly Grant Preferential Treatment To Class Representatives Or Segments Of The Settlement Class

The Settlement "has no obvious deficiencies [and] does not improperly grant preferential treatment to class representatives or segments of the class[.]" *Young v. Polo Retail, LLC*, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006). The $480 million recovery constitutes a significant and certain benefit for Settlement Class Members. Plaintiffs will receive distributions from the Net

Settlement Fund in accordance with the Plan of Allocation in the same manner as all other Settlement Class Members, and may also seek reimbursement of costs incurred as a result of their representation of the Settlement Class, as authorized by the PSLRA. Subject to Court approval, and pursuant to Lead Plaintiff's approval, Lead Counsel will seek attorneys' fees not to exceed 20% of the Settlement Fund, and reimbursement of no more than $750,000 in Litigation Expenses.

In sum, the substantial recovery to the Settlement Class, the arm's-length nature of the negotiations, and the participation of sophisticated counsel throughout the Action support a finding that the proposed Settlement is fair, reasonable, and adequate to justify notice to the Settlement Class and a hearing on final approval.

3. The Proposed Settlement Falls Well Within The Range Of Reasonableness And Warrants Notice And A Hearing On Final Approval

"[A]t this preliminary approval stage, the court need only 'determine whether the proposed settlement is within the range of possible approval.'" *West*, 2006 WL 1652598, at *11 (citation omitted). The proposed $480 million Settlement is an excellent result for the Settlement Class given the risks of continued litigation, and falls well within a range of what is considered fair, reasonable, and adequate. If approved, the Settlement would be one of the largest securities class action settlements in the Ninth Circuit.

In considering whether to enter into the Settlement, Lead Plaintiff, represented by counsel experienced in securities litigation, weighed the risks inherent in establishing all the elements of their claims, including risks of proving materiality, Defendants' scienter, loss causation, and recoverable damages, as well as the expense and likely duration of the Action. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004) (citing risk, expense, complexity, and likely duration of further litigation as factors supporting final approval of settlement).

Lead Plaintiff agreed to settle this Action on these terms based on its careful investigation and evaluation of the facts and law relating to the allegations in the Complaint and consideration of the facts and views expressed by the mediator and Defendants and their damages expert during the settlement negotiations. *See Louie v. Kaiser Found. Health Plan, Inc.*, 2008 WL 4473183, at *6 (S.D. Cal. Oct. 6, 2008) ("Class counsels' extensive investigation, discovery, and research weighs

in favor of preliminary settlement approval.").

As discussed above, Lead Plaintiff and Lead Counsel were aware that, in order to defeat a summary judgment motion and prevail at trial, they would have to prove not only that Defendants' statements about Wells Fargo's cross-selling metrics and related practices were false or misleading, but that those statements were material; that the Individual Defendants knew or were reckless in not knowing that their statements were false when made; and that those statements were corrected and caused recoverable damages for the Class. Indeed, Defendants would argue that the fake account fraud inflated Wells Fargo's reported cross-sell metrics by mere hundredths (*e.g.*, from 6.12 to 6.16). Proof of scienter would have also been challenged here as the Individual Defendants would argue the Company actively took steps to prevent employees from opening unauthorized accounts and that any alleged sales misconduct was under control. According to Defendants, it is not plausible that senior executives boosted Wells Fargo's cross-sell numbers by causing tens of thousands of employees to engage in millions of violations of Wells Fargo's policies, and then fired a large number of those employees for that exact misconduct. According to them, they would never have instituted reviews and monitoring methods to identify and deal with sales misconduct if they actually initiated those improper sales practices to inflate the stock price. Defendants argue that even if their conduct was "mismanagement" or a failure to exercise effective oversight, it was not intentional securities fraud. If Defendants successfully convinced the Court or a jury that they did not act with scienter, this would have resulted in zero recovery for the Class.

The Class would have also recovered nothing if Defendants successfully convinced the Court or a jury that Plaintiffs' claims were barred by the two-year statute of limitations. Defendants would have argued that two articles in the *L.A. Times* – from October 2013 and December 2013 – informed investors of the alleged cross-selling fraud more than two years before investors filed suit in September 2016. For example, the December 2013 *L.A. Times* article reported, "To meet quotas, employees have opened unneeded accounts for customers, ordered credit cards without customers' permission and forged client signatures on paperwork." The allegations in the article were not limited to a specific Wells Fargo branch or geographic area, but instead "from interviews with 28 former and seven current Wells Fargo employees who worked at bank branches in nine states,

including California." Indeed, this Court held in the related derivative action that the December 2013 *L.A. Times* article was "directly relevant to Board knowledge" of the alleged misconduct.

Lead Plaintiff also faced substantial challenges in proving that the revelation of the truth about Defendants' false and misleading statements caused the declines in the price of Wells Fargo's stock, and establishing the amount of class-wide damages. Defendants had substantial arguments that the price declines on many of Plaintiffs' alleged corrective disclosure dates were not due to revelation of the alleged misstatements or omissions. Indeed, at summary judgment, trial and appeal, Defendants would challenge each of the claimed corrective disclosures as inadequate to support loss causation. Such specific risks included that on September 8, 2016, when Wells Fargo first disclosed that it had settled regulators' claims of creating fake or unauthorized accounts for $185 million, Wells Fargo's stock price did not decline in value, but, in fact, increased from the prior day's close. Moreover, Defendants would argue that: (i) the decline in Wells Fargo's stock price the following day was not statistically significant, and was not sufficient to establish either loss causation or damages; (ii) all subsequent stock price declines (on September 12, 13, 15 and 21) were too late, or not caused by the revelation of new, actionable information because Defendants had already disclosed the alleged fraud on September 8; and (iii) subsequent actions taken by the government and any admissions by Wells Fargo did not materially add to the mix of information already in the market as of September 8, 2016, and thus the price declines following those actions and admissions were not caused by revelation of the alleged fraud. In addition, on September 20, 2016 (when Stumpf publicly testified that the Wells Fargo Board of Directors was aware of fraudulent accounts by at least 2013), Wells Fargo's stock price did not decline in value, but, in fact, again increased from the prior day's close. Defendants would further argue that the stock price decline on September 21, 2016 was caused by independent third-party commentary on Stumpf's testimony, and not the revelation of new facts concerning the alleged fraud; and that investors' gains attributable to the alleged fraud on shares of Wells Fargo common stock purchased before the Class Period must be used to offset any claimed losses arising from the fraud. Defendants would also argue that the expert trading model Plaintiffs used to calculate damages, especially at the higher end of Plaintiffs' estimated recovery range, makes unsupportable

assumptions that are contradicted by the facts and would not withstand a challenge under *Daubert*. These were serious risks to recovery.

A comparison of the $480 million recovery to the potential damages that might be recovered for the Settlement Class at trial, given the risks of the litigation, supports the reasonableness of the Settlement. *See* N.D. Cal. Guid. ¶1(d) (preliminary approval motion should set forth "potential recovery if plaintiffs were to prevail" and "likely recovery per plaintiff" under the settlement). Lead Plaintiff's damages expert has estimated that the ***maximum*** damages that could be established at trial, assuming complete success in proving liability and loss causation and 100% valid claims from the Class post-trial would be approximately $3.0639 billion. Coffman Decl. ¶¶34-35.[7] However, if certain of Defendants' loss causation and damages arguments were accepted, the maximum damages that could be established at trial might have been as low as $351.3 million, assuming any damages could be proven. *Id*. Indeed, given the numerous arguments available to Defendants concerning loss causation and damages, maximum damages for Plaintiffs in this case are best represented by a wide range of $351.3 million to $3,0639 billion, depending upon which arguments may have prevailed prior to, during, or after trial. Accordingly, the $480 million Settlement represents a recovery of approximately 16% to 137% of the maximum potential damages for the Settlement Class. Lead Plaintiff submits that this is a very favorable outcome given the substantial risks of continuing with this complex litigation, and the uncertainty inherent in establishing liability, as well as the advantages of obtaining an immediate cash benefit for Settlement Class Members and avoiding the substantial expenses of further litigation.[8]

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[7] Maximum estimated damages are no higher than $3.0639 billion notwithstanding additional revelations related to the fake account fraud in November 2016 and thereafter, because at and after that point in time, the price of Wells Fargo common stock had risen due to unrelated factors to above what it was during the Class Period.

[8] *See, e.g.*, *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *11 (N.D. Cal. Feb. 11, 2016) ("Settlement Amount represent[ing] approximately 14 percent of likely recoverable aggregate damages at trial" was "well within the range of percentages approved in other securities-fraud related actions"); *In re Biolase, Inc. Sec. Litig*., 2015 WL 12720318, at *4 (C.D. Cal. Oct. 13, 2015) (settlement representing "approximately 8% of the maximum recoverable damages … equals or surpasses the recovery in many other securities class actions"); *Omnivision*, 559 F. Supp. 2d at 1042 (settlement representing 9% of maximum damages fair and reasonable and "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"). Also, as set

Lead Plaintiff, having considered the serious risks of continued litigation, respectfully submits that if the Court preliminarily approves the Settlement, the Court ultimately will find that the Settlement is fair, reasonable, and adequate and is deserving of final approval.

B. The Proposed Settlement Class Satisfies Rule 23

The Ninth Circuit has long recognized that courts may certify class actions for settlement purposes only. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998). Rule 23(a) sets forth the following four prerequisites to class certification: (i) numerosity, (ii) commonality, (iii) typicality, and (iv) adequacy of representation. In addition, the class must meet one of the three requirements of Rule 23(b). *See* Fed. R. Civ. P. 23; *In re UTStarcom, Inc. Sec. Litig.*, 2010 WL 1945737, at *3 (N.D. Cal. May 12, 2010) (citing *Hanlon*, 150 F.3d at 1019).

The proposed Settlement Class is the same as the class proposed in Lead Plaintiff's Complaint: all persons and entities who purchased Wells Fargo common stock from February 26, 2014 through September 20, 2016, inclusive.[9]

Courts routinely endorse the use of the class action device to resolve claims brought under the federal securities laws. *E.g.*, *Hodges v. Akeena Solar Inc.*, 274 F.R.D. 259, 266 (N.D. Cal. 2011); *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 642 (C.D. Cal. 2009). "[C]lass actions commonly arise in securities fraud cases as the claims of separate investors are often too small to justify individual lawsuits, making class actions the only efficient deterrent against securities fraud. Accordingly, the Ninth Circuit and courts in this district hold a liberal view of class actions in securities litigation." *In re Adobe Sys., Inc. Sec. Litig.*, 139 F.R.D. 150, 152-53 (N.D. Cal. 1991). This Action is no exception, and the proposed Settlement Class satisfies the requirements of Rules 23(a) and 23(b)(3).

1. Numerosity

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is

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forth in the proposed Notice, the estimated average recovery (before the deduction of Court-approved fees, expenses and costs) per eligible share is $0.44.

[9] Excluded from the Settlement Class are the persons identified in footnote 4, as well as anyone who excludes him or herself by submitting a request for exclusion that is accepted by the Court.

impracticable. The Ninth Circuit has stated that "'impracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). Indeed, classes consisting of 25 members are large enough to justify certification. *See Perez-Funez v. Dist. Director, Immigration & Naturalization Serv.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984). In addition, the exact size of the class need not be known so long as general knowledge and common sense indicate that the class is large. *Id.*; *see Schwartz v. Harp*, 108 F.R.D. 279, 281-82 (C.D. Cal. 1985) ("A failure to state the exact number in the proposed class does not defeat class certification, . . . and plaintiff's allegations plainly suffice to meet the numerosity requirement of Rule 23.").

Here, Wells Fargo common stock was traded on the New York Stock Exchange, with more than five billion shares outstanding during the Class Period and an average daily trading volume during the Class Period of over 16.9 million shares. Accordingly, the proposed Settlement Class consists of thousands (or tens of thousands) of investors. *See Akeena Solar*, 274 F.R.D. at 266. A class of this size is sufficiently numerous to make individual joinder impracticable. *See UTStarcom*, 2010 WL 1945737, at *4; *Yamner v. Boich*, 1994 WL 514035, at *3 (N.D. Cal. Sept. 15, 1994). Thus, the numerosity element is satisfied.

2. Commonality

Rule 23(a)(2) is satisfied where the proposed class representatives share at least one question of fact or law with the claims of the prospective class. *Wehner v. Syntex Corp.,* 117 F.R.D. 641, 644 (N.D. Cal. 1987). Further, commonality exists even if there are varying fact situations among class members so long as the claims of the plaintiffs and other class members are based on the same legal or remedial theory. *Blackie v. Barrack,* 524 F.2d 891, 902 (9th Cir. 1975).

The common questions of fact and law here include: (i) whether Defendants violated the Exchange Act; (ii) whether Defendants omitted or misrepresented material facts in public statements and filings with the SEC; (iii) whether Defendants knew or recklessly disregarded that their statements were false and misleading; (iv) whether the price of Wells Fargo common stock was artificially inflated; and (v) the extent of damage sustained by Settlement Class Members, and the appropriate measure of damages. Complaint ¶253.

Courts routinely hold that securities actions containing such common questions are prime candidates for class certification. *See, e.g.*, *UTStarcom*, 2010 WL 1945737, at *4 (finding common questions of law and fact as to whether "Defendants engaged in a fraudulent scheme and omitted or misrepresented material facts," the "publicly traded securities were artificially inflated," and "Defendants'…omissions caused class members to suffer economic losses"). Because the core complaint of all Settlement Class Members is that they purchased Wells Fargo common stock at artificially inflated prices, Rule 23(a)(2)'s commonality required is satisfied.

3. Typicality

The typicality requirement of Rule 23(a)(3) is satisfied when the claims or defenses of the party or parties representing the class are typical of the claims or defenses of the other class members. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (common-issues test readily met in securities cases). Differences in the amount of damage, size or manner of purchase, nature of the purchaser, and date of purchase also will not defeat class certification. *See Alfus v. Pyramid Tech. Corp.*, 764 F. Supp. 598, 606 (N.D. Cal. 1991). Typicality exists "even if there are factual distinctions between the claims of the named plaintiffs and those of other class members." *Gonzales v. Arrow Fin. Servs. LLC*, 489 F. Supp. 2d 1140, 1155 (S.D. Cal. 2007), *aff'd*, 660 F.3d 1055 (9th Cir. 2011); *see also West*, 2006 WL 1652598, at *5.

Here, Plaintiffs' claims arise from the same events or course of conduct that give rise to claims of other Settlement Class Members, and the claims asserted are based on the same legal theory. *See UTStarcom*, 2010 WL 1945737, at *5 (explaining that the test for typicality is "whether 'other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct'"). Here, the claims of all Settlement Class Members derive from the same legal theories and allege the same set of operative facts. Plaintiffs allege that the Wells Fargo stock they, like all other Settlement Class Members, purchased during the Class Period was artificially inflated as a result of Defendants' conduct and that they suffered damages when Defendants' fraudulent conduct was disclosed to the market, causing Wells Fargo's stock price to decline. All members of the Settlement Class were victims of this same common course of alleged

fraudulent conduct throughout the Class Period, and sustained damages as a result.

The proof that Plaintiffs would present to establish their claims also would prove the claims of the rest of the Settlement Class. Plaintiffs are also not subject to any unique defenses that could make them atypical members of the prospective Settlement Class. Plaintiffs' claims thus meet the typicality requirement. *See Akeena Solar*, 274 F.R.D. at 266-67; *Cooper*, 254 F.R.D. at 635-36.

4. Adequacy

The representative parties must satisfy Rule 23(a)'s adequacy requirement by showing that they will fairly and adequately protect the interests of the Settlement Class. To satisfy this requirement, the proposed class representative must be free of interests that are antagonistic to the other members of the class, and counsel representing the class must be qualified, experienced and capable of conducting the litigation. *See Lerwill v. Inflight Motion Pictures, Inc*., 582 F.2d 507, 512 (9th Cir. 1978); *Hanlon*, 150 F.3d at 1020.

As described above, Plaintiffs have claims that are typical of and coextensive with those of the Settlement Class. Plaintiffs have also retained counsel highly experienced in securities class action litigation who have successfully prosecuted many securities and other complex class actions.[10] Thus, Plaintiffs are adequate representatives of the Settlement Class, and their counsel are qualified, experienced and capable of prosecuting this Action, in satisfaction of Rule 23(a)(4).

5. Predominance And Superiority

This case also satisfies Rule 23(b)(3), which requires that common questions of law or fact predominate over individual questions, and that a class action is superior to other available methods of adjudication. *See Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011); *In re LDK Solar Sec. Litig.*, 255 F.R.D. 519, 525 (N.D. Cal. 2009).

Here, common questions of law and fact predominate and a class action is clearly the superior method available to fairly and efficiently litigate this securities action. As discussed above, there are a number of common questions of law and fact that warrant class certification of this matter. These questions clearly predominate over individual questions because Defendants'

[10] *See* Lead Counsel's Firm Resume. ECF No. 94-1.

alleged conduct affected all Settlement Class Members in the same manner. *See, e.g.*, *Cooper*, 254 F.R.D. at 632 ("The common questions of whether misrepresentations were made and whether Defendants had the requisite scienter predominate over any individual questions of reliance and damages."). Indeed, issues relating to Defendants' liability are common to all members of the Settlement Class. *Id*.; *see LDK Solar*, 255 F.R.D. at 530. Falsity, materiality, scienter, and loss causation are issues that "affect investors alike," and whose proof "can be made on a class-wide basis" because they "affect[] investors in common." *Schleicher v. Wendt*, 618 F.3d 679, 682, 685, 687 (7th Cir. 2010). As a result, common questions of law and fact predominate.

Further, the superiority of class actions to resolve the claims of large, geographically dispersed class of investors in large securities cases is well recognized. *See Amchem Prods.*, 521 U.S. at 625.[11] In light of the foregoing, all of the requirements of Rule 23(a) and (b) are satisfied, and there are no issues that would prevent the Court from certifying this Settlement Class for settlement purposes, appointing Plaintiffs as class representatives, and appointing Lead Counsel as counsel for the Settlement Class.

IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Lead Plaintiff also seeks preliminary approval of the proposed Plan of Allocation of the settlement proceeds, which is set forth in the Notice to be mailed to Settlement Class Members. The Court's review of the proposed plan of allocation for a class action settlement under Rule 23 is governed by the same standards of review applicable to the settlement itself – the plan must be fair and reasonable. *See Class Plaintiffs*, 955 F.2d at 1284. The Plan of Allocation, which Lead Counsel developed with the assistance of Lead Plaintiff's damages expert, provides a fair, reasonable and equitable basis to allocate the Net Settlement Fund among all Settlement Class Members who submit an acceptable Claim Form. *See* N.D. Cal. Guid. ¶1(e) (preliminary approval motion should cover "fairness of the allocation of the settlement fund among class members").

[11] When certifying a class for settlement purposes only, the standards for satisfying the class certification element of "superiority" under Rule 23(b)(3) may be relaxed because the Court does not need to consider the difficulties of managing the class in any future litigation or at trial. *See, e.g.*, *Ybarrondo v. NCO Fin. Sys., Inc.*, 2009 WL 3612864, at *7 n.3 (S.D. Cal. Oct. 28, 2009); *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 477 (E.D. Cal. 2010).

In developing the Plan of Allocation, Lead Plaintiff's expert calculated the estimated amount of artificial inflation in the per share closing prices of Wells Fargo's common stock that was allegedly proximately caused by Defendants' alleged false and misleading statements and omissions by considering the price changes in Wells Fargo common stock in reaction to the public disclosures that allegedly corrected the alleged misrepresentations and omissions and adjusting those prices for market and industry factors. *See* Notice ¶55.

The Plan of Allocation calculates a "Recognized Loss Amount" for each purchase of Wells Fargo common stock during the Class Period that is listed in the Claim Form and for which adequate supporting documentation is provided. The calculation of Recognized Loss Amounts will depend upon several factors, including when the stock was purchased and sold and the purchase and sales price. In general, Recognized Loss Amounts will be the lower of: (i) the difference between the estimated artificial inflation on the date of purchase and the estimated artificial inflation on the date of sale, and (ii) the difference between the actual purchase price and sales price. Notice ¶59. For shares sold during or after the 90-day period following the end of the Class Period, the Plan also limits Recognized Loss Amounts based on the average price of stock during that 90-day period, consistent with the PSLRA. Notice ¶¶59(c), (d). Under the Plan of Allocation, claimants who purchased shares during the Class Period but did not hold those shares through at least one of the alleged corrective disclosures will have no Recognized Loss Amount as to those transactions because any loss they suffered would not have been caused by revelation of the alleged fraud. Notice ¶57. The sum of a claimant's Recognized Loss Amounts for all his, her or its Class Period purchases is the Claimant's "Recognized Claim," and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Notice ¶67.

Lead Counsel believe that the Plan of Allocation will result in a fair and equitable distribution of the Settlement proceeds among Settlement Class Members who submit valid claims.

The Plan of Allocation also identifies the Investor Protection Trust as the proposed *cy pres* recipient of any residual funds that may remain after one or more distributions of the Net Settlement Fund to Eligible Claimants. *See* N.D. Cal. Guid. ¶8 (the "parties should address their

chosen *cy pres* awardees"). Notably, however, in contrast to some other types of class actions settlements, here 100% of the Net Settlement Fund will be distributed to Eligible Claimants and, if any funds remain after that initial distribution, as a result of uncashed or returned checks or other reasons, further subsequent distributions to Eligible Claimants will also be conducted as long as they are cost effective. Specifically, payment will only be made to charity when the residual amount left for re-distribution to Settlement Class Members is so small that a further re-distribution would not be cost effective (for example, where the costs of conducting the additional distribution would largely subsume the funds available). The Investor Protection Trust, a 501(c)(3) nonprofit organization devoted to investor education, is an appropriate *cy pres* recipient because of the nature of the securities fraud claims asserted in the Action and this District has approved it in other similar actions, including *In re Geron Corp. Securities Litigation*, No. 3:14-CV-01224-CRB (N.D. Cal.) and *In re HP Securities Litigation*, No. 3:12-CV-05980-CRB (N.D. Cal.).

V. THE COURT SHOULD APPROVE THE PROPOSED FORM OF NOTICE AND PLAN FOR PROVIDING NOTICE TO THE SETTLEMENT CLASS

The Court should approve the form and content of the proposed Notice and Summary Notice. *See* Stipulation, Exs. A-1 and A-3. The Notice is written in plain language and clearly sets out the relevant information and answers to most questions that Settlement Class Members will have. Consistent with Rules 23(c)(2)(B) and 23(e)(1), the Notice objectively and neutrally apprises all Settlement Class Members of (among many other disclosures) the nature of the Action, the definition of the Settlement Class, the claims and issues, that the Court will exclude from the Settlement Class any Settlement Class Member who requests exclusion (and sets forth the procedures and deadlines for doing so), and the binding effect of a class judgment on Settlement Class Members under Rule 23(c)(3)(B). *See* N.D. Cal. Guid. ¶4.

With respect to items relating to the Settlement, the Notice also satisfies the separate disclosure requirements imposed by the PSLRA. *See* 15 U.S.C. § 78u-4(a)(7). It states the amount of the settlement on an absolute and per-share basis; provides a statement concerning the issues about which the Parties disagree; states the amount of attorney's fees and Litigation Expenses that Lead Counsel will seek; provides the names, addresses, and telephone numbers of Lead Counsel,

who will be available to answer questions from Settlement Class Members; and provides a brief statement explaining the reasons why the Parties are proposing the Settlement. *Id*.

The Notice also meets the Northern District of California Procedural Guidance for Class Action Settlements in that it includes (1) "contact information for class counsel to answer questions"; (2) the web address for the settlement website; and (3) "instructions on how to access the case docket." N.D. Cal. Guid. ¶3. The Notice will also disclose the date, time, and location of the Settlement Hearing and the procedures and deadlines for the submission of Claim Forms, requests for exclusion from the Settlement Class, and objections to any aspect of the Settlement, the Plan of Allocation, or attorney's fees and expenses.

The proposed notice program, which is set forth in the Preliminary Approval Order submitted herewith, also readily meets the standards under the Federal Rules and due process. Rule 23(c)(2)(B) requires the court to direct to a class certified under Rule 23(b)(3) "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1) requires the court to "direct notice in a reasonable manner to all class members who would be bound" by a proposed settlement, voluntary dismissal, or compromise. Fed. R. Civ. P. 23(e)(1).

Lead Plaintiff proposes that the notice and claims process be administered by Epiq Class Action & Mass Tort Solutions, Inc. ("Epiq"), an independent settlement and claims administrator selected by Lead Plaintiff after a competitive bidding process. If the Court preliminarily approves the Settlement, Wells Fargo will provide contact information of potential Settlement Class Members to Epiq for the purpose of identifying and giving notice to the Settlement Class and Epiq will mail the Notice and Claim Form (the "Notice Packet") to all identified potential Settlement Class Members. Epiq will also use reasonable efforts to give notice to brokerage firms and other nominees who purchased Wells Fargo common stock during the Class Period on behalf of other beneficial owners. These nominee purchasers will either forward the Notice Packet or provide the names and addresses of the beneficial owners to Epiq, which will then promptly send the Notice Packet by first class mail to such identified beneficial owners. Epiq will also cause the Summary Notice, which provides an abbreviated description of the Action and the proposed Settlement and

explains how to obtain the more detailed Notice, to be published once each in *The Wall Street Journal* and the *Los Angeles Times* and transmitted over the *PR Newswire*, a national business-oriented wire service, and will publish the Notice and other materials on a website to be developed for the Settlement.

Courts routinely find that comparable notice programs, combining individual notice by first class mail to all class members who can reasonably identified, supplemented with publication notice, meet all the requirements of Rule 23 and due process. *See In re Portal Software, Inc.*, 2007 WL 1991529, at *7 (N.D. Cal. June 30, 2007) (holding that "notice by mail and publication is the 'best notice practicable under the circumstances,' as mandated by FRCP 23(c)(2)(B)"); *In re Sorbates Direct Purchaser Antitrust Litig.*, 2002 WL 31655191, at *1 (N.D. Cal. Nov. 15, 2002).

Epiq's fees for administration of the Settlement are charged on a per-claim basis and expenses will be billed separately (including expenses for printing and mailing the Notice Packet, publishing the Summary Notice, establishing and maintaining the settlement website, and establishing and operating the toll-free telephone helpline). Because the costs are highly dependent on how many Notice Packets are ultimately mailed and how many Claims are ultimately received and processed, at this time only a rough estimate of the total Notice and Administration Costs can be provided. At this time, Epiq estimates, based on the widely held nature of Wells Fargo common stock and length of the Class Period, that 1.5 million Notice Packets will be mailed and 300,000 claims will be processed. Based on these estimates, Epiq estimates that the total Notice and Administration Costs for the Action will be approximately $2.5 million. These costs are necessary in order to effectuate the Settlement and at approximately 0.5% of the total value Settlement are reasonable in relation to the value of the Settlement. If the Settlement is approved, the Notice and Administration Costs will be paid from the Settlement Fund. *See* N.D. Cal. Guid. ¶2 (preliminary approval motion should identify "proposed settlement administrator" and discuss "anticipated administrative costs," their reasonableness, and who will pay them).[12]

[12] The parties have also agreed that, no later than ten calendar days following the filing of the Stipulation with the Court, Defendants shall serve the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 (2005) *et seq.* ("CAFA"). *See* Stipulation ¶21; N.D. Cal. Guid. ¶10

VI. ATTORNEYS' FEES, LITIGATION EXPENSES AND PLAINTIFFS' EXPENSES

As explained in the Notice (Stipulation, Ex. A-1, at ¶¶ 5, 73), Lead Counsel intends to seek an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 20% of the Settlement Fund (*i.e.*, 20% of the Settlement Amount, plus interest earned thereon), and reimbursement of Litigation Expenses not to exceed $750,000. Lead Counsel will provide much more detailed information in support of its application in its motion for attorneys' fees and expenses, to be filed with the Court 35 days before the final Settlement Hearing. However, for purposes of the Court's preliminary review in connection with this motion for preliminary approval of the Settlement, Lead Counsel notes that the maximum fee that Lead Counsel may request, 20%, is the result of an *ex ante* negotiation by a sophisticated Lead Plaintiff, is well below the 25% benchmark percentage for attorneys' fees in the Ninth Circuit, *see Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989), and is within the range of percentage fees awarded in comparable class securities class actions with significant contingency fee risks, *see, e.g.*, *In re Pfizer Sec. Litig.*, No. 04-cv-09866, slip op. at 2 (S.D.N.Y. Dec. 21, 2016) (awarding 28% of $486 million settlement); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) (21.4% of $455 million settlement), *aff'd*, 272 F. App'x 9 (2d Cir. 2008); *Ohio Pub. Empls. Ret. Sys. v. Freddie Mac*, 2006 U.S. Dist. LEXIS 98380, at *4 (S.D.N.Y. Oct. 26, 2006) (20% of $410 million settlement); *N.J. Carpenters Health Fund v. Residential Capital LLC*, No. 08-cv-8781-HB, slip op. at 2 (S.D.N.Y. July 31, 2015) (20.75% of $335 million settlement); *see also* N.D. Cal. Guid. ¶6.

Moreover, while Lead Counsel's review of its time and time of other Plaintiffs' Counsel is not yet complete, Plaintiffs' Counsel's lodestar is in excess of $25 million and a 20% fee award would therefore represent a multiplier on counsel's lodestar estimate of less than four. Such a multiplier is within the range commonly awarded. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052-54 (9th Cir. 2002) (finding multipliers ranged as high as 19.6, with the most common range from 1.0 to 4.0); *Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007) (affirming fee representing a lodestar multiplier of 6.85 as "well within the range of multipliers that courts have

(preliminary approval motion should address the CAFA notice).

allowed").[13] Moreover, the lodestar cross-check should be applied in a flexible manner so that counsel do not have a disincentive to resolve the case at a relatively early stage, where, as here, they are able to obtain a favorable result for the class early in the litigation. *See Vizcaino*, 290 F.3d at 1050 n.5. If preliminary approval is granted, Lead Counsel will present its total lodestar and that of other Plaintiffs' Counsel in connection with its fee application at final approval.

Lead Counsel also intend to seek reimbursement of Plaintiffs' Counsel's litigation expenses in an amount not to exceed $750,000, which include costs of retaining experts. Lead Counsel also intend to seek an award for Lead Plaintiff and other named plaintiffs, pursuant to 15 U.S.C. §78u-4(a)(4), as reimbursement for their time and expenses in representing the Settlement Class in an amount up to an aggregate of $50,000. Lead Counsel believes this amount is fully supported by the substantial work that Plaintiffs did throughout the Action which will be presented to the Court in connection with Lead Plaintiffs' request for reimbursement. N.D. Cal. Guid. ¶7.

VII. PROPOSED SCHEDULE OF EVENTS

In connection with preliminary approval of the Settlement, the Court must set a final approval hearing date, dates for mailing and publication of the Notice and Summary Notice, and deadlines for submitting claims or for objecting to the Settlement.[14] The parties respectfully propose the following schedule for the Court's consideration, as agreed to by the parties and set forth in the proposed Preliminary Approval Order:

Event	Time for Compliance
Deadline to commence mailing the Notice and Proof of Claim to potential Settlement Class Members ("Notice Date")	15 business days after entry of Preliminary Approval Order
Deadline for publishing Summary Notice	10 business days after Notice Date

[13] *See also Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758, slip op. at 4 (S.D.N.Y. July 18, 2011) (4.7 multiplier); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (8.3 multiplier); *In re Enron Corp., Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 741, 803 (S.D. Tex. 2008) (5.2 multiplier); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768, 770 (S.D. Ohio 2007) (6.0 multiplier); *In re Rite Aid Sec. Litig.*, 362 F. Supp. 2d 587, 589-90 (E.D. Pa. 2005) (6.96 multiplier).

[14] The blanks for certain deadlines currently contained in the agreed-upon form of Notice will be filled in once the Court sets those dates and prior to mailing to Settlement Class Members.

Event	Time for Compliance
Deadline for filing final approval papers	35 calendar days prior to Settlement Hearing
Deadline for receipt of exclusion requests or objections	21 calendar days prior to Settlement Hearing
Deadline for filing reply papers	7 calendar days prior to Settlement Hearing
Settlement Hearing	100 days after entry of Preliminary Approval Order, or at the Court's earliest convenience thereafter
Deadline for submitting claim forms	120 calendar days after Notice Date

Lead Plaintiff requests that the Court schedule the Settlement Hearing for a date 100 calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter. Thus, if the Court enters the order on September 6 (the scheduled hearing date for this motion), the hearing could be scheduled for December 20, 2018. However, because this motion is unopposed and the Parties would like to schedule the Settlement Hearing before the December year-end holidays, Lead Counsel has requested, by separate letter to the Court and with Defendants' consent, that the Court consider this motion for preliminary approval on the papers or, if necessary, schedule the preliminary approval hearing for August 29, when the parties already will be before the Court at a status conference. If the Court decides this motion on the papers and enters the order on or before August 6, the Settlement Hearing could be scheduled for November 15, and if the Court enters the Preliminary Approval Order on August 29, the hearing could be scheduled for December 13.[15]

VIII. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement, certify the Settlement Class for settlement purposes, approve the forms and methods of notice, and enter the proposed Preliminary Approval Order.

[15] Lead Counsel and Defendants' Counsel are available on all of these proposed dates, as well as on December 6. Consistent with the Court's calendar, we have proposed only Thursdays as dates for the Settlement Hearing. If the Court wishes to hold the Settlement Hearing on a different (non-Thursday) date, Lead Counsel are available on November 14, 16, 19, and 20 and any date during the weeks of December 3, 10 or 17. Out of these additional dates, Defendants' Counsel's preferred dates are November 14 and 20 and December 3 and 10.

Dated: July 31, 2018

Respectfully Submitted,

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