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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 613

IN RE WELLS FARGO & COMPANY AUTO  
INSURANCE DERIVATIVE LITIGATION

Lead Case No. CGC-17-561118  
Consolidated With CGC-17-561968

TENTATIVE RULING RE PLAINTIFFS’  
RENEWED MOTION FOR PRELIMINARY  
APPROVAL OF PROPOSED DERIVATIVE  
SETTLEMENT

**TENTATIVE RULING**

The Court denied motions for preliminary approval of two consolidated derivative actions involving nominal defendant Wells Fargo & Company for contemporaneous hearings. Plaintiffs have filed renewed motions in both actions. Those motions are set for contemporaneous hearings. While significant progress has been made, the Court tentatively expects that a supplemental filing will be necessary before preliminary approval can be granted in either action.

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**I. Fairness**

The Court has expressed the need to develop a record establishing the interplay between this action and the other actions that have been settled, including the claim valuation, the value obtained

1 through settlement, and the reasons for a settlement discount. (See Prior Cross-Selling Tentative, 4, 8.)  
2 The parties have developed a record that is adequate to the task. The Court finds, on the present record,  
3 that the settlement is within the range for which final approval may be granted. However, the Court does  
4 not credit all of Plaintiffs’ arguments in reaching this conclusion. Some of those arguments are briefly  
5 discussed here.

6 First, Plaintiffs maintain that the settlements are “unconnected.”<sup>1</sup> While the term “unconnected” is  
7 ambiguous, there is clearly a connection between the settlements – the settlements are invalid unless the  
8 others are approved. (See Proposed Cross-Selling Settlement ¶ 50; Proposed CPI Settlement ¶ 40.)  
9 Moreover, the relief obtained in the various settlements clearly overlaps. (See, e.g., Morrissey Cross-  
10 Selling Decl. ¶ 46; Morrissey CPI Decl. ¶ 49; Weinstein Cross-Selling Decl. ¶ 14; Weinstein CPI Decl. ¶  
11 16.)

12 Second, and relatedly, Plaintiffs ask the Court to consider the relief obtained in other settlements  
13 but to value the relief obtained in this settlement as if it were exclusively caused by this settlement,  
14 irrespective of whether the same relief is a condition of another settlement agreement. (See, e.g.,  
15 Weinstein Decl. ¶ 14.) At the same time, Plaintiffs ask the Court to consider the value of the claims in  
16 this case exclusive of the value of overlapping claims. (See, e.g., Cross-Selling Motion, 23-25.) This  
17 leads Plaintiffs to take the untenable position that, for example, the Cross-Selling Plaintiffs secured relief  
18 valued at \$160 million on claims valued between \$100 and \$200 million. (See *id.*) This line of argument  
19 is not credible.

20 Rather, the Court concludes that the fairness of the settlements must be considered holistically  
21 because the settlements are expressly conditioned on judicial approval of the others. Accordingly, the  
22 Court will consider the total value of all of the claims that were resolved in all of the settlements and the  
23 total value of all of the relief obtained as well as each separate settlement individually. As derived from  
24 the preliminary approval order in the federal action and the evidence submitted in these actions, the cross-  
25 selling claims may be valued at anywhere between at least \$1.1 billion and \$3.5 billion. As derived from  
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28 <sup>1</sup> For example, this claim is made on page 11 of the long form notice.

1 the filing in support of the CPI settlement, the CPI claims are valued at approximately \$1.5 billion.  
2 Accordingly, the aggregate value is up to \$5 billion.

3 The claimed settlement relief includes a \$240 million payment in the federal action, \$60 million in  
4 clawbacks that may be credited in full or in part to either or both of the federal and state cross-selling  
5 actions, and corporate governance reforms valued at anything up to \$560 million that may be attributed in  
6 whole or in part to each of the actions. (See, e.g., Thepot Cross-Selling Decl., Ex. 2 at 10-11 [expressing  
7 skepticism regarding the claimed valuation of the clawbacks and governance reforms, which appear to  
8 include the same \$60 million in clawbacks claimed in this case but included only \$20 million as the  
9 claimed value for the governance reforms]; Morrissey Cross-Selling Decl. ¶ 46 [offering an opinion as to  
10 the monetary value of the governance reforms that are common to the settlements];<sup>2</sup> Morrissey CPI Decl.  
11 ¶ 49.)

12 The Court is persuaded, on the present record and before considering any objections that may be  
13 filed after notice is disseminated, that the value Plaintiffs have secured through the connected settlements  
14 is within the range for which final approval may be granted when taking into consideration the serious  
15 risks posed by shareholder derivative actions generally and these shareholder derivative actions in  
16 particular. The Court finds the procedural history of the two actions pending before it particularly  
17 important in this regard.

## 18 **II. Notice**

### 19 **A. Process**

20 The Court has two remaining concerns regarding the notice process.

21 First, the parties selected different publications through which to publish notice in this case as  
22 compared to the federal case. (Thepot Cross-Selling Decl. ¶¶ 9, 12.) At the same time, Plaintiffs have not  
23 provided detailed information – as opposed to anecdotal speculation – regarding the reach of the  
24 publications they intend to use in this action. (See *id.* at ¶ 9.) The Court requires more detail regarding  
25 the anticipated effectiveness of the proposed publication notice.

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27 <sup>2</sup> The Cross-Selling Plaintiffs assert that Morrissey valued the governance reforms they obtained at \$100  
28 million. (Cross-Selling Motion, 24.) Morrissey did not separately value the governance reforms obtained  
by the Cross-Selling Plaintiffs. (Compare Morrissey CPI Decl. ¶ 49.)

1 Second, the timing regarding the submission of objections and the final approval hearing date  
2 appear unduly constrictive. The hearing date is 65 days from the notice date. The final approval briefing  
3 is due 16 court days before the hearing. The objections must be either filed or mailed to counsel with a  
4 postmark date 9 court days before the hearing. Responses to the objections must be filed 5 court days  
5 before the hearing. It may be better to require submissions of the final approval briefing at least 21 court  
6 days before the hearing, with objections filed or mailed postmarked 16 court days before the hearing, and  
7 all objections mailed to counsel and responses to all objections filed 5 court days before the hearing.  
8 Moreover, the Court intends to set a hearing date that, consistent with the other deadlines, affords 60  
9 days' notice to the shareholders prior to the objection deadline.

10 **B. Substance**

11 **1. Cross-Selling Settlement**

12 The Court proposes the following changes to the long form notice.

- 13 1. Page 6, 19-20: In describing the contents of the Court's online docket, the parties should disclose  
14 that it contains free electronic copies of all documents filed in this action. This option should be  
15 reiterated where the parties provide directions for accessing the hard copy files in person.
- 16 2. Page 11: The Court does not agree that the CPI Settlement is unconnected with the Cross-Selling  
17 Settlement. (See, e.g., Proposed Cross-Selling Settlement ¶ 50.) The words "(but unconnected)"  
18 should be removed.
- 19 3. Pages 13-16: The notice includes several pages of quoting the release. The release is described at  
20 page 3 of the notice in plain terms. Given the length of the notice and the density of the language,  
21 the parties should remove the lengthy quotation of the release and instead indicate where the full  
22 text of the release and all pertinent definitions can be found within the settlement agreement where  
23 the release is explained in plain terms.
- 24 4. Page 17, First Paragraph: This paragraph should be condensed into one sentence in plain  
25 language.
- 26 5. Page 18: Objections must contain the objector's full name, signature, and "appropriate proof" of  
27 stock ownership. First, is a signature by counsel acceptable? Second, do Plaintiffs intend to file  
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1 any objections they contend are invalid (i.e., because there is no signature) subject to their  
2 argument that the objections should be disregarded or do Plaintiffs intend to withhold objections  
3 they contend are invalid?

- 4 6. Clean-Up: The parties should correct any typos, such as a paragraph that was not indented on  
5 page 8 and the numbering on page 19.
- 6 7. The parties should be prepared to discuss whether the notice should disclose that the settlement is  
7 conditioned on final approval of two other settlements and the extent to which the settlement  
8 consideration between the settlements overlaps. (See Proposed Cross-Selling Settlement ¶ 50;  
9 Morrissey Cross-Selling Decl. ¶ 46.)

## 10 2. CPI Settlement

11 The points made in ¶¶ 1, 3, 5-7 in the preceding section apply to the CPI notice as well. In  
12 addition, the parties should consider the following points.

- 13 1. Pages 7-9: To what extent is the discussion of other actions helpful and not confusing? The  
14 Cross-Selling notice deals with other actions in a brief paragraph. The CPI notice contains a  
15 lengthier discussion. This difference appears to flow from the fact that the Delaware CPI  
16 Plaintiffs will, pursuant to the modified settlement, seek a payment of fees and incentive awards in  
17 connection with the approval of this settlement. The parties have not briefed the present motion as  
18 a settlement of the Delaware CPI claims and the Court has not considered it as such.<sup>3</sup>  
19 Accordingly, the discussion of the procedural history of the Delaware actions appears  
20 unnecessary. Moreover, the discussion is likely to be confusing. For example, the first paragraph  
21 of the section regarding “The Delaware Actions” refers to “Improper Sales Practices,” but this  
22 term is not defined in the notice. This appears to be a reference to cross-selling allegations, but an  
23 individual reading the notice would not know that.
- 24 2. Pages 9-10: First, the discussion of the settlement does not address the fact that the Proposed CPI  
25 Settlement is tied to the settlements in the federal action and the Cross-Selling Action. As noted

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27 <sup>3</sup> If any other actions raise claims that could affect the value of the release in this case, the parties must  
28 bring that fact to the Court’s attention at the preliminary approval hearing. This means, for example, if a  
Delaware action will effectively be foreclosed by this settlement but could support a claim for additional  
damages not yet disclosed, the parties must bring this to the Court’s attention.

1 above, this should be disclosed. Second, the discussion of the separate settlement discussions in  
2 the CPI Action and the Delaware CPI Actions is vague. It appears that there may be some dispute  
3 as to the extent to which the Delaware Actions caused the governance changes contained in the  
4 Propose CPI Settlement, a dispute that may be further developed during the motion practice on  
5 attorney’s fees. To the extent this is germane and timing is relevant, the timing should be made  
6 clear. The Court does not presently rule on the propriety of any contemplated requests for  
7 attorney’s fees.<sup>4</sup>

8 3. Pages 10-11: The section entitled “Benefits to Wells Fargo from the Settlement” does not explain  
9 the benefits to Wells Fargo from the settlement. Instead, it contains the parties’ boilerplate  
10 endorsements of the settlement and arguments for why the settlement should be approved.

11 **III. Miscellaneous Provisions**

12 In the Court’s previous tentative, the Court stated: “First, one of the triggering events for the  
13 effective date of the settlement is an entry of a final judgment that dismisses the claims in these actions  
14 with prejudice. In the class action context, California courts are not permitted to enter such orders. (Cal.  
15 Rules of Court, Rule 3.769(h).) Moreover, it is not apparent that the entry of such a judgment is  
16 practically necessary. To the extent the parties believe such a judgment is necessary, the parties are asked  
17 to explain the need for such a judgment and to identify authority confirming that such a judgment is  
18 appropriate.” In the briefing, Plaintiffs represented that the dismissal of the claims in these actions with  
19 prejudice is no longer a triggering event. (Cross-Selling Motion, 8 n.2; CPI Motion, 3-4 n.2.) However,  
20 the settlements still appear to require dismissal of the claims in these actions with prejudice. (See  
21 Proposed Cross-Selling Settlement ¶¶ 49-50, Ex. E at ¶ 6; Proposed CPI Settlement ¶¶ 11-12, 32, 39-40,  
22 Ex. E at ¶ 6.)

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28 <sup>4</sup> The Proposed CPI Settlement is not conditioned on the Court’s approval of the requests for attorney’s  
fees. (See Proposed CPI Settlement ¶¶ 43-46.)