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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN FRANCISCO**

12 IN RE WELLS FARGO & COMPANY AUTO ) Lead Case No. CGC-17-561118  
13 INSURANCE DERIVATIVE LITIGATION )  
14 \_\_\_\_\_ ) **PLAINTIFFS' OPPOSITION TO**  
15 ) **"PROSPECTIVE INTERVENOR'S" EX**  
16 This Document Relates To: ) **PARTE APPLICATION TO CONTINUE**  
17 ALL ACTIONS ) **HEARING DATE ON PLAINTIFFS' MOTION**  
18 ) **FOR PRELIMINARY APPROVAL OF**  
19 ) **SETTLEMENT**  
20 ) Date: May 3, 2019  
21 ) Time: 10:00 a.m.  
22 ) Dept. 613  
23 ) Hon. Teri L. Jackson  
24 )  
25 )  
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28 )

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**05/02/2019**  
Clerk of the Court  
BY: BOWMAN LIU  
Deputy Clerk

1 **I. Introduction**

2 “Prospective Intervenor” R.A. Feuer, the plaintiff in a derivative action filed in federal court,  
3 moves *ex parte* to continue next week’s scheduled hearing on Plaintiffs’ motion for preliminary  
4 approval of the proposed Settlement, asking that it be reset to be “concurrently” heard with his motion  
5 to intervene on May 31, 2019. Mr. Feuer claims that “good cause” exists for the continuance because  
6 he needs additional time to intervene and object to the settlement. The application should be denied  
7 on several grounds.

8 First, there is no basis for relief, let alone on an *ex parte* basis — which requires Mr. Feuer to  
9 make an affirmative factual showing that he would suffer irreparable harm. Next week’s hearing only  
10 involves preliminary approval and, if granted, will permit notice of the Settlement to be disseminated  
11 to Wells Fargo shareholders. Mr. Feuer, like every other Wells Fargo shareholder, will then have the  
12 opportunity to further review the Settlement and submit objections to the Court prior to the final  
13 approval hearing, which won’t be considered until, at the earliest, **July 2019**. Second, while one  
14 attorney is traveling, Mr. Feuer’s other attorneys are available and located in California. Finally, to  
15 the extent that Mr. Feuer supposedly wants the opportunity to intervene to object prior to preliminary  
16 approval, his request to move the May 10 preliminary approval hearing so that it can be heard  
17 “concurrently” with his May 31 motion to intervene hearing would not accomplish that goal since he  
18 would have neither been granted leave to intervene nor filed an objection to preliminary approval by  
19 his proposed May 31 hearing date. In any event, because Mr. Feuer can later intervene and object  
20 prior to final approval, he cannot meet the required showing of irreparable harm.

21 The application should be denied.

22 **II. The Proposed Settlement and Schedule for Court Approval**

23 This is a consolidated shareholder derivative action filed by Wells Fargo shareholders Donna  
24 Maxwell and Douglas Duran, as Trustee of the John & Irene Duran Family Trust (“CPI Plaintiffs”).  
25 The action was filed in September 2017 in San Francisco County Superior Court against the  
26 Individual Defendants and Wells Fargo (as nominal defendant), alleging, among other things,  
27 unlawful conduct relating to automobile insurance and home lending practices at Wells Fargo.  
28

1 Earlier this year, after extensive investigation and hard-fought litigation, the Parties reached a  
2 Settlement that resolves all claims and requires Wells Fargo to implement, maintain, and/or fund  
3 important Corporate Governance Reforms specifically designed to remedy the issues alleged in this  
4 Action. The Reforms include discontinuing automobile CPI products, a process to re-engage in the  
5 business only after the review of related policies and procedures with an outside consultant, amending  
6 certain corporate charters and bylaws, increasing oversight and monitoring of business units, leadership  
7 changes, the creation of certain new positions, payments to impacted customers, and the increased  
8 reporting from business units. Courts have long recognized the value of similar reforms to public  
9 corporations and approved them as consideration to resolve derivative claims. The reforms here were  
10 also negotiated with the assistance of one of the nation's most prominent mediators, the Honorable  
11 Daniel Weinstein (Ret.), formerly with this Court.

12 The Court set a hearing for next Friday, May 10, 2019, to consider Plaintiffs' motion for  
13 *preliminary approval* of the Settlement, permission to disseminate *notice of the Settlement* to Wells  
14 Fargo's shareholders, and the scheduling of a future Settlement Hearing to consider *final approval*.  
15 Thus, Wells Fargo shareholders will receive notice and the opportunity to object to the Settlement  
16 terms. Indeed, Plaintiffs' proposed schedule provides a minimum of 45 days between the Notice Date  
17 and the Settlement Hearing in order to allow Wells Fargo shareholders the opportunity to review and  
18 comment to the Settlement terms.

19 This schedule refutes the need for *ex parte* relief. If the Court grants preliminary approval,  
20 authorizes notice, and adopts the proposed schedule at next week's hearing, the final approval hearing  
21 won't be set until, *at the earliest, July 1, 2019*. Similarly, Mr. Feuer's motion to intervene is set on  
22 May 31, 2019, more than a month before any final approval determination.

23 Thus, all Wells Fargo shareholders – including Mr. Feuer – will have ample opportunity to  
24 review the Settlement terms and any request for fees and expenses, to submit objections, and to  
25 appear at the Settlement Hearing, where the Court will then determine whether to grant *final approval*  
26 of the Settlement.

1 **III. The *Ex Parte* Application Should Be Denied**

2 California Rule of Court 3.1202(c) sets forth the affirmative factual showing required for a party  
3 seeking relief on an *ex parte* basis, rather than on normal noticed motion:

4 “An applicant must make an affirmative factual showing in a declaration  
5 containing competent testimony based on personal knowledge of  
6 irreparable harm, immediate danger, or any other statutory basis for  
7 granting relief *ex parte*.”

8 Emphasis added.

9 Here, Mr. Feuer does not even cite this standard, let alone try to meet it. Mr. Feuer does not (and  
10 cannot) claim that he will suffer any “irreparable harm” or “immediate danger” if preliminary approval  
11 occurs before he can file his objections.<sup>1</sup> To the contrary, he will have ample opportunity to both  
12 intervene (if his motion is granted at his scheduled May 31, 2019 hearing) and object (with or without  
13 intervening) prior to the final approval hearing, which is the point at which the Court will evaluate any  
14 and all objections from Wells Fargo shareholders. The final approval hearing won’t be set until, at the  
15 earliest, **July 1, 2019**.

16 Ignoring the *ex parte* standard, Mr. Feuer relies instead on the 2-page declaration of his  
17 counsel, Richard Greenfield, who claims there is “good cause” to continue the hearing merely because  
18 he will be traveling out of the country in May. However, putting aside the incorrect legal standard  
19 applied, Mr. Feuer does not dispute that his other attorneys at Wolf Haldenstein, located in California,  
20 can attend the hearing on preliminary approval (indeed, they scheduled the hearing on this *ex parte*  
21 application for a date during which Mr. Greenfield is supposedly traveling). Further, Mr. Feuer’s  
22 California counsel has already issued a notice of telephonic appearance via CourtCall for the May 3 *ex*  
23 *parte* hearing; he has not explained why counsel could not appear on May 10<sup>th</sup> telephonically. More to  
24 the point, even if they cannot attend the hearing, Mr. Feuer and his counsel will still have the

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26 <sup>1</sup> Preliminary approval does not require the trial court to answer the ultimate question – whether a  
27 proposed settlement is fair, reasonable and adequate. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4<sup>th</sup>  
28 1794, 1801. Rather, the ultimate determination of fairness is made at the final approval stage. Here,  
while California law (unlike federal law) does not require notice to shareholders in a derivative action,  
the Settling Parties have agreed to provide notice to shareholders and give them the opportunity to  
comment on the Settlement. *See* Manual for Complex Litigation (4<sup>th</sup> ed. 2016) §§21.633-634.

1 opportunity to appear and object to the Settlement at the final approval hearing — just like every other  
2 Wells Fargo shareholder.

3 Finally, Mr. Feuer’s requested *ex parte* relief – moving the May 10 preliminary approval  
4 hearing so that it can be heard “concurrently” with his motion to intervene on May 31 – makes no  
5 practical sense and would not even accomplish the result he supposedly seeks. In his motion to  
6 intervene, Mr. Feuer asks the Court to set a schedule to object to preliminary approval, a process that  
7 would necessarily have to *precede* the preliminary approval hearing which he proposes be set for May  
8 31. Alternatively, Mr. Feuer’s motion to intervene seeks the chance to object to final approval.  
9 However, as noted above, Mr. Feuer (like all other Wells Fargo shareholders) already has that right  
10 regardless of the timing of his intervention.

11 **IV. Conclusion**

12 In sum, *ex parte* relief is unsupported and unnecessary. Next week’s hearing on preliminary  
13 approval will not impact Mr. Feuer’s opportunity to intervene or submit any objection he may have to  
14 the Settlement. The application should be denied.

15 Dated: May 2, 2019

COTCHETT, PITRE & McCARTHY LLP

16 By: /s/ Mark C. Molumphy  
17 MARK C. MOLUMPHY

18 Dated: May 2, 2019

BOTTINI & BOTTINI, INC.

19 By: /s/ Francis A. Bottini, Jr.  
20 FRANCIS A. BOTTINI, JR.

21 *Attorneys for Plaintiff Donna Maxwell*

22 Dated: May 2, 2019

WILLIAM H. PARISH, PC

23 By: /s/ William H. Parish  
24 WILLIAM H. PARISH

25 *Attorneys for Plaintiff Douglas Duran, as Trustee of*  
26 *the John & Irene Duran Family Trust*  
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