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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **COUNTY OF SAN FRANCISCO**

24 IN RE WELLS FARGO & COMPANY )  
25 AUTO INSURANCE DERIVATIVE )  
26 LITIGATION )

Lead Case No. CGC-17-561118

**PROSPECTIVE INTERVENOR'S  
REPLY IN SUPPORT OF EX PARTE  
APPLICATION TO CONTINUE  
HEARING DATE ON PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL**

27 This Document Relates To: )  
28 ALL ACTIONS )  
29 WELLS FARGO & COMPANY, )

30 Nominal Defendant, )

JUDGE: Hon. Teri Jackson  
DEPT: 613  
HEARING DATE: May 10, 2019  
TIME: 9:30 a.m.

31 R.A. FEUER, )  
32 )  
33 Plaintiff/Intervenor. )

1 Prospective Intervenor R.A. Feuer (“Mr. Feuer”) respectfully submits this Reply in  
2 support of his *Ex Parte* Application to Continue the Hearing Date of Plaintiffs’ Motion for  
3 Preliminary Approval, filed May 1, 2019. For the reasons stated below and in Mr. Feuer’s *Ex*  
4 *Parte* Application, the hearing on Plaintiffs’ Motion for Preliminary Approval should be  
5 continued from May 10, 2019 to May 31, 2019 so the motion can be considered at the same time  
6 that the Court considers Mr. Feuer’s Motion to Intervene.

7 **I. INTRODUCTION**

8 Plaintiffs oppose Mr. Feuer’s request for a brief 3-week continuance of the hearing date  
9 for consideration of their Preliminary Approval Motion, arguing that because, as a shareholder of  
10 Wells Fargo, Mr. Feuer will receive notice of the proposed settlement in due course after  
11 preliminary approval and have an opportunity to intervene and/or object to final approval, there  
12 is no irreparable harm, immediate danger, or other statutory basis for *ex parte* relief, as required  
13 by California Rules of Court, rule 3.1202(c). *See* Plaintiffs’ Opposition to Prospective  
14 Intervenor’s *Ex Parte* Application to Continue Hearing Date on Plaintiffs’ Motion for  
15 Preliminary Approval of Settlement, filed May 2, 2019 (“Pltfs’ Opp”) at 1-4. Additionally,  
16 Plaintiffs assert that hearing the two motions on the same date would supposedly not accomplish  
17 the result Mr. Feuer seeks, since intervention and the setting of a schedule for submission of  
18 formal objections to preliminary approval would necessarily need to precede the preliminary  
19 approval hearing, rather than be heard on the same day. *Id.* at 4. For the reasons outlined below,  
20 these arguments are without merit.

21 **II. ARGUMENT**

22 **A. *Ex Parte* Relief Is Necessary to Prevent Irreparable Harm**

23 As set forth in the Supplemental Declaration of Richard D. Greenfield (“Supp. Greenfield  
24 Decl.”), filed contemporaneously herewith, the *ex parte* relief requested by Mr. Feuer is  
25 necessary to prevent irreparable harm to Mr. Feuer’s ability to present his objections to  
26 preliminary approval and preserve his appellate rights should this Court enter an order  
27 preliminarily approving the proposed settlement. Supp. Greenfield Decl., ¶ 2. As set forth in the  
28

1 Initial Declaration of Richard D. Greenfield filed in support of the *Ex Parte* Application (“Initial  
2 Greenfield Decl.”), Mr. Greenfield is the attorney principally responsible for representing Mr.  
3 Feuer, and he will be out of the country from May 1-19, 2019.<sup>1</sup> He therefore is unavailable to  
4 attend the May 10, 2019 preliminary approval hearing. Initial Greenfield Decl., ¶¶ 1-2.  
5 Moreover, although Plaintiffs signed their settlement agreement on March 3, 2019 and filed their  
6 Motion for Preliminary Approval on April 16, 2018, it did not appear on the public docket until  
7 April 22, 2019, and Mr. Feuer moved to intervene as soon as feasible after he became aware of  
8 the pending Motion for Preliminary Approval. *Id.*, ¶¶ 3-4. If he is not permitted to intervene and  
9 present his objections to preliminary approval *before* Plaintiffs’ Motion for Preliminary  
10 Approval is decided, there is a substantial likelihood that Mr. Feuer will be foreclosed from  
11 making the objections he seeks to raise with respect to preliminary (although not final) approval  
12 of the proposed settlement.<sup>2</sup>

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13 <sup>1</sup> Wolf Haldenstein Adler Freeman & Herz LLP is acting as local counsel for Greenfield &  
14 Goodman, LLC.

15 <sup>2</sup> In his Motion to Intervene and supporting memorandum of points and authorities, Mr. Feuer  
16 outlined generally the nature of some of the principal objections he seeks to assert to preliminary  
17 approval. As an initial matter, the preliminary approval papers are inadequate for this Court to make a  
18 reasoned and factually informed determination regarding whether the proposed settlement is within the  
19 range of possible final approval (i.e. may be fundamentally fair, adequate, reasonable and non-collusive),  
20 and thus entitled to preliminary approval, or not. As California appellate courts have recognized, “an  
21 informed evaluation [of a proposed settlement] cannot be made without an understanding of the amount  
22 that is in controversy and the realistic range of outcomes of the litigation.” *Kullar v. Foot Locker Retail,  
23 Inc.*, 168 Cal. App. 4th 116, 120 (2008). *See also Clark v. American Residential Services LLC*, 175 Cal.  
24 App. 4th 785, 799-800 (2009).

25 There is no cash component of the settlement, except of course the commitment to pay Plaintiffs’  
26 counsel up to \$2.5 million in attorneys’ fees for entering into the proposed settlement. The parties have  
27 not submitted any information whatsoever regarding the value of the claims that would be released. As  
28 Mr. Feuer will demonstrate when he files his formal objections after he has formally intervened, based on  
publicly available information, the monetary losses sustained by Wells Fargo on account of the CPI  
scandal and other scandals covered by the proposed settlements can be specifically documented and  
range between \$500 million to \$ 1 billion.

Further, although the asserted “corporate governance” changes are the only proffered  
consideration for the proposed settlement, those corporate governance changes – which will be made by  
Wells Fargo and not the culpable officer and director defendants whose derelictions gave rise to these  
losses in the first instance, amount to little more than unremarkable stipulations that the officers and  
directors will think through the long and short term implications of their actions, which is what they are  
required to do under the most rudimentary principles of applicable law. Board resolutions or guidelines to  
that effect add nothing of real value. Moreover, as Mr. Feuer will demonstrate when he files his formal  
objections, the “therapeutic” measures also add nothing of substance to the corporate governance reforms  
that Wells Fargo and its Board have been required by regulatory and oversight bodies (such as the Federal

1 Plaintiffs' opposition ignores this point, and conflates the standards applicable to  
2 preliminary and final approval, treating them as essentially one, inter-changeable determination.  
3 Preliminary approval and final approval are two separate and distinct steps with different legal  
4 standards that must be met.<sup>3</sup> The fact that Mr. Feuer can intervene at a later date and/or object to  
5 final approval as a Wells Fargo shareholder, after notice, is not determinative of whether he will  
6 be irreparably harmed if not permitted to intervene prior to preliminary approval and have his  
7 objections to preliminary approval heard.

8 In their opposition to Mr. Feuer's *Ex Parte* Application, as in their Motion for  
9 Preliminary Approval, Plaintiffs treat the preliminary approval hearing, and the analysis this  
10 Court must undertake at the preliminary approval stage, as non-adversarial and *pro forma*,  
11 asserting that the final approval hearing is the "point at which the Court will evaluate any and all  
12 objections from Wells Fargo shareholders." Pltfs' Opp at 3. Plaintiffs incorrectly suggest there  
13 is no separate analysis the Court must undertake at the preliminary approval stage, asserting that  
14 "[n]ext week's hearing on preliminary approval will not impact Mr. Feuer's opportunity to  
15 intervene or submit any objection he may have to the Settlement." *Id.* at 4.

16 That is not true. Preliminary approval is not, as Plaintiffs' opposition presumes, a  
17 foregone conclusion. Numerous courts have denied preliminary approval where the record is

18  
19 Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Federal Reserve)  
20 to adopt and implement in the wake of the grievous oversight failures at Wells Fargo. The ill-described  
21 "corporate governance reforms" that the proponents use to justify this settlement with are little more than  
22 "window dressing."

23 The only clear benefit of this proposed settlement is to Plaintiffs' counsel, who stand to receive a  
24 payment of up to \$2.5 million in fees in exchange for their willingness to agree to the proposed  
25 settlement.

26 <sup>3</sup> At the preliminary approval stage the Court must determine, *inter alia*, based on *facts in the*  
27 *record*, whether the proposed settlement falls within the range of possible approval. *E.g., Cordy v. USS-*  
28 *Posco Industries*, No. 12-cv-00553-JST, 2013 U.S. Dist. LEXIS 108952, at \*1 (N.D. Cal. July 31, 2013)  
(denying preliminary approval). At the final approval hearing the court must determine whether the  
proposed settlement is, in fact, fair, adequate and reasonable based on an analysis of various factors  
relevant to that determination. *See, e.g., Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).  
In *Dunk*, cited and relied upon by Plaintiffs, unlike here, the court was made aware of the maximum  
damages that each class member had sustained and the value of the coupons that each class member  
would receive under the proposed settlement. *Id.* at 1802. This information – the damages sustained by  
Wells Fargo and the value that its shareholders would receive – is completely absent from Plaintiffs'  
Preliminary Approval Motion.

1 inadequate to evaluate the reasonableness of the proposed settlement. *E.g., In re Yahoo! Inc.*  
2 *Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2019 U.S. Dist. LEXIS 15034 (N.D.  
3 Cal. Jan. 30, 2019) (denying preliminary approval for, among other reasons, failure to adequately  
4 disclose the scope of non-monetary relief and benefits offered); *Paggos v Resonant, Inc.*, No. CV  
5 15-01970 SJO (VBKx), 2017 U.S. Dist. LEXIS 124760, at \*29 (C.D. Cal. May 15, 2017)  
6 (denying preliminary approval where plaintiffs asserted generally that the settlement was  
7 “reasonable under the circumstances” without any explanation as to how they arrived at the  
8 settlement amount or why it was reasonable). Most recently, in the context of a motion for  
9 preliminary approval of when a proposed settlement of a shareholder derivative settlement  
10 involving one of the other serveral Wells Fargo scandals, the presiding Court entered an Order  
11 directing the proposed settling parties to provide information concerning the value of the claims  
12 proposed to be settled. *See In re Wells Fargo & Co. Shareholder Derivative Litig.*, Lead Case  
13 No. 16-cv-05541-JST, Dkt. 270 (N.D. Cal. Mar. 20, 2019). The granting of Mr. Feuer’s instant  
14 *Ex Parte* Application would allow time for similar scrutiny by the Court in this case.

15 Further, Plaintiffs disregard the fact that Mr. Feuer is not simply another Wells Fargo  
16 shareholder who may wish to object to the proposed settlement after receiving notice, in due  
17 course. Indeed, as outlined fully in his pending motion to intervene, Mr. Feuer is the named  
18 plaintiff in a related shareholder derivative action on behalf of Wells Fargo pending in federal  
19 court, where he has been actively litigating the same CPI claims Plaintiffs seek to have released  
20 via the proposed settlement, and where, unlike here where plaintiffs’ initial Complaints have  
21 already been dismissed twice without prejudice and are poised to be dismissed with prejudice  
22 pursuant to pending demurrers, defendants’ motions to dismiss remain pending. The proposed  
23 settling parties have taken the position that if this Court approves their settlement, Mr. Feuer’s  
24 claims asserted in federal court would be extinguished. (a position that Mr. Feuer does not  
25 concede under these circumstances). As such, his interest is immediate and real and extends far  
26 beyond those of other Wells Fargo sharcholders who are not concurrently committed to securing  
27 a real recovery for Wells Fargo on account of the CPI claims which have already cost Wells  
28 Fargo dearly both in terms of tangible monetary loss and grievous reputational damage.

1           Plaintiffs’ opposition loses sight of the fact that the granting of preliminary approval, and  
2 the issuance of notice that would follow, to some extent will be viewed as this Court’s tacit  
3 approval as to the of the fairness and adequacy of the proposed settlement or, at a minimum, a  
4 finding by the Court that it falls within the range of reasonableness such that it could receive  
5 final approval. Mr. Feuer submits that it does not, and that he should be permitted to make a  
6 record on this point before preliminary approval is considered. There must be sufficient evidence  
7 *in the record before this Court at the preliminary approval stage*<sup>4</sup> that the proposed settlement  
8 falls within the range of what might, at the final approval hearing, be found to be fair, adequate  
9 and reasonable. Mr. Feuer respectfully submits that, given the glaring red flags that are raised  
10 with respect to this proposed settlement, it will be an inefficient expenditure of time, effort and  
11 resources to grant preliminary approval now to a proposed settlement that is just as fatally flawed  
12 now as it will be if the Court were to follow the course proposed by the proposed settling parties.

13           Here, Plaintiffs’ Motion for Preliminary Approval and supporting papers, including the  
14 Declaration of Plaintiffs’ counsel, the Stipulation of Settlement and attached exhibits provide *no*  
15 *information* whatsoever as to the value of the claims the proposed settlement would release, or  
16 the value, if any, of the purported corporate governance “reforms” constituting the sole  
17 consideration for the release. Plaintiffs have not seen fit to submit even a barebones affidavit  
18 purporting to value the corporate governance “reforms,” or any estimate whatsoever as to the  
19 potential range of recovery were Plaintiffs to prevail at trial. Plainly, the parties who are  
20 proposing to settle claims that appear on the basis of public information to be worth in the  
21 hundreds of millions of dollars are not entitled to a rubber stamp of even preliminary approval,  
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23 <sup>4</sup> Plaintiffs’ opposition appears to suggest that this Court should assume that the corporate  
24 governance reforms constituting the only consideration for the proposed settlement are within the range of  
25 reasonableness because they were purportedly “negotiated with the assistance of one of the nation’s most  
26 prominent mediators, the Honorable Daniel Weinstein (Ret.), formerly with this Court.” Plfts’ Opp at 2.  
27 As recognized by the court in *Kullar*, 168 Cal. App. 4th at 131-132, Plaintiffs’ reference to, and apparent  
28 reliance on, the parties’ mediation as evidence of its inherent fairness is no substitute for this Court’s  
*independent* evaluation of the terms of the proposed settlement to ensure they are reasonable. As stated in  
*Kullar*: “If some relevant information is subject to a privilege that the court must respect, other data must  
be provided that will enable the court to make an independent assessment of the adequacy of the  
settlement terms. *Id.* at 132.

1 which would carry with it some sense that the Court has placed even a threshold approval of the  
2 merits of this settlement when it will not have done so and (Mr. Feuer respectfully submits) will  
3 not be able to do so because the proposed settling parties have placed before the Court no  
4 tangible evidence of the value of the proposed settlement or the value of the claims being  
5 released.

6 Under these circumstances, Mr. Feuer will argue that this Court lacks sufficient  
7 information to make even a preliminary determination as to the fairness and adequacy of the  
8 proposed settlement. Mr. Feuer seeks to intervene to place these objections formally before the  
9 Court before it makes any determination as to whether Plaintiffs have met the standard necessary  
10 for preliminary approval of the proposed settlement. If he is not permitted to intervene and  
11 object prior to preliminary approval, Mr. Feuer will be irreparably harmed because he will be  
12 foreclosed from appealing the decision granting preliminary approval, should final approval  
13 eventually occur. *See Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018) (Civ.  
14 Proc. Code § 902 (governing the right to appeal) *requires* that an objector *must* be a “party” of  
15 record to a class action to gain the right to appeal the trial court’s judgment); *Eggert v. Pac.*  
16 *States Sav. & Loan Co.*, 20 Cal. 2d 199, 201 (1942) (unnamed class members do not become  
17 parties of record under section 902 with the right to appeal the class settlement, judgment or  
18 attorney fee award unless they formally intervene before the action is final).<sup>5</sup> Moreover, the  
19 Court will be deprived of information that Courts have increasingly insisted upon having before  
20 granting preliminary approval.

21 **B. The Requested Relief Is Appropriate**

22 Plaintiffs assert that the requested relief makes no practical sense and will not accomplish  
23 the result that Mr. Feuer seeks, because he would have to have already submitted his objections  
24 before May 31, 2019 for them to be considered before, or on the same day as the Motion for  
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26 <sup>5</sup> While an order granting preliminary approval, as an interlocutory order, would not be  
27 immediately appealable, in the event the proposed settlement is finally approved and final judgment is  
28 entered, Mr. Feuer will seek appellate review, which would include an appeal of a decision granting  
preliminary approval on the current record.

1 Preliminary Approval. Plaintiffs' argument, however, presupposes that this Court will enter an  
2 order granting preliminary approval on May 31, 2019, despite the issues of concern that Mr.  
3 Feuer has raised in his Motion to Intervene, and here. It is equally possible, however, for the  
4 Court to hear from all parties on May 31st and decide to defer ruling on preliminary approval  
5 and instead set a deadline for submission of Mr. Feuer's formal objections. Far from being  
6 impractical, Mr. Feuer's request will have the practical, and desired, effect of bringing all  
7 interested parties before the Court at the same time, where everyone's concerns can be aired,  
8 before a decision regarding preliminary approval is made. While Plaintiffs may prefer that this  
9 Court treat the preliminary decision as *pro forma* and not subject to challenge, Mr. Feuer  
10 respectfully submits that the better course – and the course increasingly followed by the Courts –  
11 would be for this Court to be fully informed regarding all of Mr. Feuer's objections to  
12 preliminary approval before considering and ruling upon Plaintiffs' Motion for Preliminary  
13 Approval.

### 14 **III. CONCLUSION**

15 For the reasons set forth above, Mr. Feuer will be irreparably harmed if his Motion to  
16 Intervene for purposes of objecting to preliminary approval is not considered and ruled upon  
17 prior to consideration of Plaintiffs' Motion for Preliminary Approval. Accordingly, he has met  
18 the requirements of California Rule of Court, rule 3.1202(c) for *ex parte* relief.

19 Dated: May 8, 2019

Respectfully submitted,

20 /s/ Brittany N. DeJong

21 Brittany N. DeJong

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