

1 **GREENFIELD & GOODMAN, LLC**

2 Richard D. Greenfield
3 Marguerite R. Goodman
4 Ann M. Caldwell
5 Ilene F. Bookler (SBN 269422)
6 whitehatrdg@earthlink.net
7 250 Hudson Street, 8th Floor
8 New York, NY 10013
9 Telephone: (917) 495-4446

10 **WOLF HALDENSTEIN ADLER**
11 **FREEMAN & HERZ LLP**

12 Betsy C. Manifold (SBN 182450)
13 manifold@whafh.com
14 Brittany N. DeJong (SBN 258766)
15 dejong@whafh.com
16 Symphony Towers
17 750 B Street, Suite 1820
18 San Diego, CA 92101
19 Telephone: (619) 239-4599
20 Fax: (619) 234-4599

21 *Attorneys for Prospective Intervenor R.A. Feuer*

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

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

**PROSPECTIVE INTERVENOR'S
NOTICE OF EX PARTE APPLICATION
AND EX PARTE APPLICATION TO
CONTINUE HEARING DATE ON
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL**

31 Nominal Defendant,)
32 _____)
33 R.A. FEUER,)
34 Plaintiff/Intervenor.)

JUDGE: Hon. Teri Jackson
DEPT: 613
HEARING DATE: May 3, 2019
TIME: 10:00 A.M.

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
05/01/2019
Clerk of the Court
BY:ERNALYN BURA
Deputy Clerk

1 TO THE COURT, THE PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on May 3, 2019, at 10:00 a.m., in Department 613 of the
3 Superior Court of the State of California, County of San Francisco, located at 400 McAllister St.,
4 San Francisco, CA 94102, Prospective Intervenor R.A. Feuer (“Mr. Feuer”) will apply *ex parte* for
5 an order continuing the hearing date on Plaintiffs’ Motion for Preliminary Approval so it can be
6 heard concurrently with Mr. Feuer’s Motion to Intervene, which was filed on April 29, 2019. This
7 application is made pursuant to California Rules of Court, rule 3.1200, *et seq.* Good cause exists
8 to grant the application because counsel for Mr. Feuer will be out of the country on May 10, 2019.

9 The contact information for plaintiffs’ counsel is as follows:

10 Joseph W. Cotchett
11 Mark C. Molumphy
12 COTCHETT, PITRE & McCARTHY, LLP
13 840 Malcolm Road, Suite 200
14 Burlingame, CA 94010
15 Tel: 650/697-6000; Fax: 650/697-0577
16 jcotchett@cpmlegal.com
17 mmolumphy@cpmlegal.com

18 *Attorneys for Plaintiff Donna Maxwell*

Francis A. Bottini, Jr.
BOTTINI & BOTTINI, INC.
7817 Ivanhoe Ave, Suite 102
La Jolla, CA 92037
Tel: 858/914-2001; Fax: 858/914-2002
fbottini@bottinilaw.com

Attorneys for Plaintiff Donna Maxwell

16 William H. Parish
17 WILLIAM H. PARISH, PC
18 1919 Grand Canal Blvd., Suite A5
19 Stockton, CA 95207-8114
20 Tel: 209/952-1992; Fax: 209/952-0250
21 parish@parishlegal.com

22 *Attorneys for Plaintiff Douglas Duran, as
23 Trustee of the John & Irene Duran Family
24 Trust*

25 The contact information for defense counsel is as follows:

23 Brendan P. Cullen
24 SULLIVAN & CROMWELL LLP
25 1870 Embarcadero Rd.
26 Palo Alto, CA 94303
27 Tel: 650/461-5600; Fax: 650/461-5700
28 cullenb@sullcrom.com

*Attorneys for Nominal Defendant Wells Fargo
& Co.*

Jaculin Aaron
John F. Cove Jr.
SHEARMAN & STERLING LLP
599 Lexington Ave
New York, NY 10022
Tel: 212/848-4000
jaaron@shearman.com

*Attorneys for Defendants John D. Baker II,
John S. Chen, Lloyd H. Dean, Elizabeth A.
Duke, Enrique Hernandez, Jr., Donald M.*

1		<i>James, Cynthia H. Milligan, Federico F. Peña, James H. Quigley, Stephen W. Sanger, Susan G. Swenson and Suzanne M. Vautrinot</i>
2		
3	Enu A. Mainigi WILLIAMS & CONNOLLY LLP 725 Twelfth St., N.W. Washington, D.C. 20005 Tel: 212/434-5000; Fax: 202/434-5029 emainigi@wc.com	Jeffrey Faucette SKAGGS FAUCETTE LLP One Embarcadero Center, Suite 500 San Francisco, CA 94111 Tel: 650/617-3226; Fax: 650/644-0200 jeff@skaggsfaucette.com
4		
5		
6	<i>Attorneys for Defendant Carrie Tolstedt</i>	<i>Attorneys for Defendant Carrie Tolstedt</i>
7	Nanci L. Clarence Josh a. Cohen CLARENCE DYER & COHEN LLP 899 Ellis St. San Francisco, CA 94109 Tel: 415/749-1800; Fax: 415/749-1694 nclarence@clarencedyer.com jcohen@clarencedyer.com	Grant P. Fondo GOODWIN PROCTER LLP 601 Marshall St. Redwood City, CA 94063 Tel: 650/752-3100; Fax: 650/853-1038 gfondo@goodwinlaw.com
8		
9		
10		
11	<i>Attorneys for Defendant Timothy J. Sloan</i>	<i>Attorneys for Defendant John G. Stumpf</i>
12		
13	Ismail Ramsey Katharine Kates RAMSEY & EHRlich LLP 803 Hearst Ave Berkeley, CA 94710 Tel: 510/548-3600; Fax: 510/291-3060 izzy@ramsey-ehrllich.com katharine@ramsey-ehrllich.com	Douglas R. Young C. Brandon Wisoff FARELLA BRAUN + MARTEL LLP 235 Montgomery St., 17th Fl., Russ Building San Francisco, CA 94104 Tel: 415/954-4400; Fax: 415/954-4480 bwisoff@fbm.com
14		
15		
16		
17	<i>Attorneys for Defendant Franklin Codel</i>	<i>Attorneys for Defendant Avid Modjtabai</i>
18	Carolyn Kubota Monica Ramirez Almadani COVINGTON & BURLING LLP 1999 Avenue of the Stars Los Angeles, CA 90067 Tel: 424/332-4800 ckubota@cov.com	Robert P. Vance, Jr. QUINN EMANUEL URQUHART & SULLIVAN, LLP 865 S. Figueroa St., 10th Floor Los Angeles, CA 90017-2543 Tel: 213/443-3000; Fax: 213/443-3100 bobbyvance@quinnemanuel.com
19		
20		
21		
22	<i>Attorneys for Defendant Dawn Martin Harp</i>	Michael Carlinsky Jane M. Byrne Corey Worcester Renita Sharma QUINN EMANUEL URQUHART & SULLIVAN, LLP 51 Madison Ave, 22nd Floor New York, NY 10010 Tel: 212/849-7000; Fax: 212/849-7100 michaelcarlinsky@quinnemanuel.com janebyrne@quinnemanuel.com coreyworcester@quinnemanuel.com renitasharma@quinnemanuel.com
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This is the first *ex parte* application Mr. Feuer has made requesting this relief.

This application is based on this *ex parte* application, the memorandum of points and authorities, the declaration of Richard Greenfield, the pleadings and other files in this case, and on such other written and oral argument as shall be present at or before the hearing on this application.

Respectfully submitted,

Dated: April 29, 2019

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

By: /s/ Brittany N. DeJong
BRITTANY N. DEJONG

Betsy C. Manifold (SBN 182450)
manifold@whafh.com
Brittany N. DeJong (SBN 258766)
dejong@whafh.com
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whitehatrdg@earthlink.net
250 Hudson Street, 8th Floor
New York, NY 10013
Telephone: (917) 495-4446

*Attorneys for Plaintiff/Intervenor
R.A. Feuer*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 Prospective Intervenor R.A. Feuer (“Mr. Feuer”) requests that this Court continue the
4 hearing on Plaintiffs’ Motion for Preliminary Approval, currently scheduled for May 10, 2019, so
5 it can be heard concurrently with Mr. Feuer’s Motion to Intervene which was filed on April 29,
6 2019. The requested continuance of the hearing on preliminary approval is immaterial and will not
7 prejudice the parties in this action. The parties in this action waited nearly two months after the
8 settlement agreement was signed before moving for preliminary approval. Therefore, a modest
9 continuance should not be material.

10 This is a case where plaintiffs’ complaint has been twice dismissed at the demurrer stage
11 and teeters on the brink of a likely third (and final) dismissal. The individual defendants, facing
12 claims for losses to Wells Fargo in excess of \$1 billion from widespread alleged wrongdoing,
13 negotiated a proposed settlement to release those valuable claims for no monetary consideration
14 whatsoever to Wells Fargo and its shareholders. Instead, this settlement only provides purported
15 corporate therapeutic relief that Mr. Feuer believes is largely illusory and superfluous, in exchange
16 for a \$2.5 million payment of attorneys’ fees to plaintiffs’ counsel.

17 Meanwhile, Mr. Feuer is the named plaintiff in a shareholder derivative action pending in
18 federal court in the Northern District of California asserting substantively similar claims, captioned
19 *R.A. Feuer, derivatively on behalf of Wells Fargo & Co. v. John D. Baker, et al.*, No. 3:18-cv-
20 02866-JST (“the Federal CPI Action”). As required by applicable Delaware and federal law, Mr.
21 Feuer made a pre-suit demand on Wells Fargo’s Board of Directors, unlike the plaintiffs in this
22 action. Plaintiffs’ failure to file a pre-suit demand in this action was the basis for this Court twice
23 dismissing this case. Mr. Feuer submits that this Court should press the pause button with respect
24 to any decision on preliminary approval to permit him to intervene and object to preliminary
25 approval, and, if necessary, final approval of the proposed settlement. Mr. Feuer filed a motion to
26 intervene and supporting memorandum and proposed complaint in intervention on April 29, 2019.

1 Hearing both motions on the same date would promote judicial efficiency, allowing these issues to
2 be heard together with all counsel present.

3 Counsel for Mr. Feuer, Richard D. Greenfield, will be out of country from May 1-19, 2019,
4 and therefore he cannot appear at the May 10, 2019 hearing, when plaintiffs' motion for
5 preliminary approval is currently noticed to be heard. Mr. Feuer therefore requests that the Court
6 continue the hearing on Plaintiffs' Motion for Preliminary Approval so it can be heard
7 concurrently with Mr. Feuer's Motion to Intervene and request that this Court permit him to
8 submit objections to the proposed settlement prior to preliminary approval.

9 **II. ARGUMENT**

10 **A. Good Cause Exists to Continue the Hearing on Plaintiffs' Motion for
11 Preliminary Approval**

12 As stated in the accompanying Declaration of Richard D. Greenfield (the "Greenfield
13 Declaration") submitted herewith, good cause exists to continue the hearing on Plaintiffs' Motion
14 for Preliminary Approval so that it can be hear concurrently with Mr. Feuer's Motion to Intervene.
15 Counsel for Mr. Feuer will be out of the country from May 1-19, 2019 and therefore he is unable
16 to attend the May 10, 2019 hearing. Greenfield Decl., ¶ 2. Although Plaintiffs filed their Motion
17 for Preliminary Approval on April 16, 2019, it did not appear on the public docket until April 22,
18 2019. *Id.*, ¶ 3. Even then, the Stipulation of Settlement and Exhibits thereto, including the
19 proposed corporate therapeutics constituting the only consideration for the proposed settlement,
20 were not available on the public docket. *Id.* Mr. Greenfield had repeatedly requested a full set of
21 the settlement papers from counsel for Wells Fargo, but a set of the papers was not provided to him
22 until after the close of business on April 23, 2019. *Id.* Mr. Feuer moved to intervene in this action
23 on April 29, 2019, as soon as possibly feasible after he became aware of the pending Motion for
24 Preliminary Approval and was able to obtain the Stipulation of Settlement and related exhibits.
Id., ¶ 4.

25 **B. Counsel Has Fully Complied with California Rules of Court, Rules
26 3.1203 and 3.1204**

27 Among other provisions, California Rules of Court, rule ("CRC") 3.1203 provides:
28

1 A party seeking an *ex parte* order must notify all parties no later than 10:00 a.m. the
2 court day before the *ex parte* appearance, absent a showing of exceptional
circumstances that justify a shorter time for notice.

3 CRC 3.1203(a). An *ex parte* application must also be accompanied by a declaration regarding
4 notice stating:

5 (1) The notice given, including the date, time, manner, and name of the party
6 informed, the relief sought, any response, and whether opposition is expected and
7 that, within the applicable time under rule 3.1203, the applicant informed the
opposing party where and when the application would be made;

8 (2) That the applicant in good faith attempted to inform the opposing party but
was unable to do so, specifying the efforts made to inform the opposing party; or

9 (3) That, for reasons specified, the applicant should not be required to inform
10 the opposing party.

11 CRC 3.1204(b).

12 As stated in the Greenfield Declaration, filed concurrently herewith, counsel has duly
13 complied with the notice requirements of CRC 3.1203(a) and 3.1204(b). Specifically, counsel for
14 Mr. Feuer provided notice of the subject *ex parte* hearing to all interested parties by way of
15 electronic submission to File & ServeXpress, which also described the nature of the relief to be
16 sought. *See* Greenfield Decl. ¶ 5.

17 **III. CONCLUSION**

18 In light of the foregoing facts and authorities and the matters set forth in the Greenfield
19 Declaration and evidence attached thereto, Mr. Feuer hereby submits that good cause exists for an
20 *ex parte* order continuing Plaintiffs' Motion for Preliminary Approval so that it can be heard
21 contemporaneously with Mr. Feuer's Motion to Intervene and request to submit objections to
22 preliminary approval of the proposed settlement.

23 Respectfully submitted,

24 Dated: April 29, 2019

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

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27 By: /s/ Brittany N. DeJong
BRITTANY N. DEJONG

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manifold@whafh.com
Brittany N. DeJong (SBN 258766)
dejong@whafh.com
Symphony Towers
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San Diego, CA 92101
Telephone: (619) 239-4599
Fax: (619) 234-4599

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Ilene F. Brookler (SBN 269422)
whitehatrdg@earthlink.net
250 Hudson Street, 8th Floor
New York, NY 10013
Telephone: (917) 495-4446

*Attorneys for Plaintiff/Intervenor
R.A. Feuer*

WELLS.FARGO:25605