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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

05/17/2019
Clerk of the Court
BY: EDNALEEN ALEGRE
Deputy Clerk

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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 MOTION**
16) **TO INTERVENE**

17) Date: May 23, 2019
18) Time: 10:00 a.m.
19) Dept. 613
20) Hon. Teri L. Jackson
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1 **I. Introduction**

2 Plaintiffs in this consolidated shareholder derivative action respectfully oppose the motion by
3 “Prospective Intervenor” R.A. Feuer, the plaintiff in a derivative action filed in federal court, seeking
4 to intervene in this state court action in order to object to the proposed settlement between the parties.
5 As noted below, none of the reasons cited by Mr. Feuer support intervention, let alone intervention at
6 this stage of the case.

7 **II. Background**

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

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

24 The Court set a hearing for next Thursday, May 23, 2019, to consider Plaintiffs’ motion for
25 preliminary approval of the Settlement, permission to disseminate notice of the Settlement to Wells
26 Fargo’s shareholders, and the scheduling of a future Settlement Hearing to consider final approval.
27 Thus, if preliminary approval is allowed, all Wells Fargo shareholders (including Mr. Feuer) will
28 receive notice and the opportunity to object to the Settlement terms. Indeed, Plaintiffs’ proposed

1 schedule provides a minimum of 45 days between the Notice Date and the Settlement Hearing in
2 order to allow Wells Fargo shareholders the opportunity to review and comment to the Settlement
3 terms.

4 This schedule refutes the need for intervention. If the Court grants preliminary approval,
5 authorizes notice, and adopts the proposed schedule at next week's hearing, the final approval hearing
6 won't be set until, at the earliest, July 2019. Thus, all Wells Fargo shareholders – including Mr. Feuer
7 – will have ample opportunity to review the Settlement terms and any request for fees and expenses,
8 to submit objections, and to appear at the Settlement Hearing, where the Court will then determine
9 whether to grant *final* approval of the Settlement.

10 **III. There is No Basis for Mandatory or Permissive Intervention**

11 Mr. Feuer's motion, while lengthy, essentially asks the Court for permission to intervene in
12 order to object to the proposed Settlement of this action, as well to preserve his right to appeal in the
13 event this Court ultimately grants final approval of the Settlement. This is an insufficient basis for
14 mandatory or permissive intervention.

15 *First*, there is no need to intervene in order to **object** to the proposed Settlement. Mr. Feuer,
16 like all other Wells Fargo shareholders, can object without intervening. Because Mr. Feuer can
17 already object to the Settlement, his ability to protect his interests will not be impacted by the
18 Settlement and intervention is unnecessary. *Edwards v. Heartland Payment Systems, Inc.* (2018) 29
19 Cal.App.5th 725, 733-34 (denying motion for mandatory and permissive intervention in order to object
20 to settlement based on existing right to object even without intervention). Here, if the Court grants
21 preliminary approval of the Settlement at or following the hearing set on May 23, 2019, notice of the
22 Settlement will then be disseminated and all Wells Fargo shareholders (including Mr. Feuer) will have
23 the opportunity to submit objections to the Court prior to the final approval hearing proposed to be set
24 in July 2019.

25 *Second*, there is no need to intervene in order to **appeal** an order by this Court approving the
26 Settlement. Mr. Feuer suggests otherwise, relying on *Hernandez v. Restoration Hardware, Inc.*
27 (2018) 4 Cal. 5th 260 and *Eggert v. Pac. States S & L Co.* (1942) 20 Cal. 2d 199, 201. However, as
28 Mr. Feuer concedes, both cases merely held that the right to appeal is preserved where intervention

1 occurs before a judgment becomes final. Here, final approval won't even be considered until, at the
2 earliest, July 2019, and a shareholder will then have 60 days thereafter to appeal any judgment, or
3 until September 2019. Thus, Mr. Feuer's own cases demonstrate that there is absolutely no reason to
4 intervene at this stage of the case, months before a motion for final approval has even been filed, let
5 alone ruled upon, by the Court.

6 More importantly, the California Supreme Court did not hold in *Hernandez* that intervention
7 was required in order to appeal a settlement, and California courts have rejected this interpretation.
8 Rather, as recently held by the Court of Appeal in *Edwards*, there are two ways to obtain standing to
9 appeal: (1) intervening before a final judgment or (2) filing a motion to set aside and vacate a
10 judgment under Code of Civil Procedure Section 663. *Edwards, supra*, 29 Cal.App.5th at 823-24.
11 Indeed, in *Edwards*, the Court of Appeal affirmed the trial court's denial of intervention based on its
12 conclusion that intervention was unnecessary since plaintiffs could preserve their right to appeal by
13 filing a Section 663 motion. The same is true here.

14 ***Finally***, Mr. Feuer has asked the Court to set a schedule to object to preliminary approval, a
15 process that would necessarily have to precede the preliminary approval hearing. However,
16 preliminary approval is set for hearing on May 23, 2019 — the same date as the hearing on Mr.
17 Feuer's motion to intervene. Thus, even if Mr. Feuer's intervention were to be granted, that would
18 not accomplish the result he supposedly seeks. More to the point, intervention merely to object at the
19 preliminary approval stage is unnecessary since, as noted above, Mr. Feuer (like all other Wells Fargo
20 shareholders) will have the right to object at the final approval stage. There is no reason to give Mr.
21 Feuer any special privileges, and certainly no reason (nor authority) to intervene to conduct discovery
22 in order to assert objections.

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1 In sum, intervention is unwarranted and unnecessary. Next week's hearing on preliminary
2 approval will not impact Mr. Feuer's opportunity to submit any objection he may have to the Settlement
3 at the final approval stage or, if he disagrees with the Court's decision on any future motion on final
4 approval, to move to set aside such ruling with a right to appeal. The motion should be denied.

5 Dated: May 17, 2019

COTCHETT, PITRE & McCARTHY LLP

6 By: /s/ Mark C. Molumphy
MARK C. MOLUMPY

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8 Dated: May 17, 2019

BOTTINI & BOTTINI, INC.

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

10 *Attorneys for Plaintiff Donna Maxwell*

11 Dated: May 17, 2019

WILLIAM H. PARISH, PC

12 By: /s/ William H. Parish
13 WILLIAM H. PARISH

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

1 **PROOF OF SERVICE**

2 I am employed in the County of San Mateo; I am over the age of 18 years and not a party to the
3 within cause. My business address is the Law Offices of Cotchett, Pitre & McCarthy, LLP, San
4 Francisco Airport Office Center, 840 Malcolm Road, Suite 200, Burlingame, California, 94010. On
5 this day, I served the following document(s) in the manner described below:

6 **PLAINTIFFS' OPPOSITION TO PROSPECTIVE INTERVENOR'S MOTION TO
7 INTERVENE**

8 X **VIA ELECTRONIC TRANSMISSION:** By electronically transmitting the document(s)
9 listed above to File & Serve Xpress, an electronic service provider at www.fileandservexpress.com.

10 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true
11 and correct. Executed at Burlingame, California, on May 17, 2019.

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14 Jeanine Acosta
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