

1 JOSEPH W. COTCHETT (36324)
jcotchett@cpmlegal.com
2 MARK C. MOLUMPY (168009)
mmolumphy@cpmlegal.com
3 GINA STASSI (261263)
gstassi@cpmlegal.com
4 **COTCHETT, PITRE & McCARTHY, LLP**
840 Malcolm Road, Suite 200
5 Burlingame, CA 94010
Telephone: (650) 697-6000

6 *Attorneys for Plaintiff Donna Maxwell*

7 [Additional Counsel on Signature Page]

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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' MEMORANDUM OF POINTS**
15) **AND AUTHORITIES IN SUPPORT OF**
16) **MOTION FOR PRELIMINARY APPROVAL**
17) **OF SETTLEMENT**
18)
19 This Document Relates To:) Date: May 10, 2019
20 ALL ACTIONS) Time: 10:00 a.m.
21) Dept. 613
22) Hon. Teri L. Jackson
23)
24)
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1 **I. INTRODUCTION**

2 Plaintiffs Donna Maxwell and Douglas Duran, as Trustee of the John & Irene Duran Family
3 Trust (the “CPI Plaintiffs”) submit this memorandum in support of their Motion for an Order granting
4 preliminary approval of the settlement set forth in the Stipulation and Agreement of Compromise,
5 Settlement and Release (“Stipulation” or “Settlement”), authorization to send notice, and setting a
6 schedule for final approval.¹

7 The proposed Settlement resolves all claims brought in these consolidated shareholder
8 derivative actions on behalf of Wells Fargo & Company (“Wells Fargo”) against certain of its current
9 and former officers and directors, including John G. Stumpf, Timothy J. Sloan, Carrie L. Tolstedt,
10 Franklin Codel, Dawn Martin Harp, Avid Modjtabai, John D. Baker II, John S. Chen, Lloyd H. Dean,
11 Elizabeth A. Duke, Enrique Hernandez, Jr., Donald M. James, Cynthia H. Milligan, Karen B. Peetz,
12 Federico F. Peña, James H. Quigley, Stephen W. Sanger, Ronald L. Sargent, Susan G. Swenson, and
13 Suzanne M. Vautrinot (collectively, the “Individual Defendants”) and National General Insurance
14 Company (“National General Insurance”), in connection with Wells Fargo’s automobile collateral
15 protection insurance (“CPI”), automobile Guaranteed Asset Protection (“GAP”) programs, home
16 mortgage rate-lock (“Rate-Lock”) programs, and the Servicemembers Civil Relief Act (“SCRA”).

17 The Settlement provides immediate, certain and valuable relief that will benefit Wells Fargo
18 and its shareholders today and for years to come, because it involves the implementation and
19 continued funding of important corporate governance reforms at Wells Fargo (“Corporate Governance
20 Reforms”). The Corporate Governance Reforms, detailed in Exhibit A to the Settlement, include the
21 discontinuation of force-placed automobile CPI, amendment to corporate charters and bylaws,
22 increased oversight and monitoring of business units, leadership changes and creation of certain new
23 positions, increased reporting from business units, and payments to impacted customers. The
24 Corporate Governance Reforms are specifically designed to address and remedy issues alleged in this
25 Action relating to Wells Fargo’s CPI, GAP and Rate-Lock programs and the SCRA, and were
26 negotiated with the assistance of one of the nation’s most prominent mediators, the Honorable Daniel
27

28 ¹ The Stipulation is attached as Exhibit 1 to the Molumphy Declaration, filed herewith. Except as otherwise noted, all capitalized terms herein have the same meaning as defined in the Stipulation.

1 Weinstein (Ret.), who also oversaw the mediation of shareholder derivative claims pursued on behalf
2 of Wells Fargo concerning Improper Sales Practices. *See* Declaration of the Honorable Daniel H.
3 Weinstein (Ret.) (“Weinstein Declaration”), filed herewith. The Settling Defendants, who deny
4 liability, will receive releases of claims that were or could have been brought in the CPI Derivative
5 Actions. Wells Fargo has also agreed to pay attorneys’ fees and expenses to CPI Plaintiffs’ Counsel
6 (from which any Reimbursement Awards to the CPI Plaintiffs will be paid), in recognition of the
7 substantial benefits conferred as a result of their efforts in the derivative actions.

8 The Settlement achieves an excellent result for Wells Fargo and its current shareholders,
9 avoids lengthy and costly litigation and trial, and mitigates the risk and expense of proceeding in
10 multiple forums. The Settlement is the product of extensive arm’s-length negotiations between the
11 Settling Parties with the assistance of an independent mediator. As detailed herein, the Settlement is
12 unquestionably fair, reasonable, and adequate, and warrants preliminary approval.

13 Accordingly, the CPI Plaintiffs, on behalf of the Parties, respectfully request that the Court
14 enter an order in substantially the same form as the [Proposed] Order Preliminarily Approving
15 Settlement and Providing for Notice, attached as Exhibit B to the Stipulation, which: (1) preliminarily
16 approves the proposed Settlement as within the range of what is fair, reasonable, and adequate; (2)
17 directs that notice be provided to current Wells Fargo shareholders; and (3) schedules a hearing at
18 which the Court will consider final approval of the Settlement, the application for an award of
19 attorneys’ fees and expenses and Reimbursement Awards, and entry of Judgment dismissing this
20 action with prejudice (the “Settlement Hearing”).

21 **II. BACKGROUND OF THE SHAREHOLDER DERIVATIVE ACTIONS AND** 22 **SETTLEMENT NEGOTIATIONS**

23 **A. Commencement of the Action**

24 On September 5, 2017, Donna Maxwell filed a putative shareholder derivative complaint in San
25 Francisco County Superior Court against the Individual Defendants and Wells Fargo (as nominal
26 defendant), alleging, among other things, unlawful conduct relating to automobile insurance and home
27 lending practices at Wells Fargo, and that the Individual Defendants breached their fiduciary duties to
28

1 Wells Fargo or engaged in insider trading and were unjustly enriched with respect to this conduct (the
2 “Maxwell Action,” Case No. CGC-17-561118).

3 On October 18, 2017, plaintiff Douglas Duran filed a substantively identical action in San
4 Francisco County Superior Court (the “Duran Action,” Case No. CGC-17-561968). On November 17,
5 2017, the Court entered a stipulation and order consolidating the *Maxwell* and *Duran* Actions under the
6 above-titled caption, *In re Wells Fargo & Company Auto Insurance Derivative Litigation*, Lead Case
7 No. CGC-17-561118 (the “Action”).

8 The CPI Plaintiffs filed a consolidated amended complaint on December 11, 2017 (the
9 “Consolidated Complaint”). The Consolidated Complaint named as defendants the Individual
10 Defendants, National General Insurance, various Doe defendants, and Wells Fargo as nominal
11 defendant. The Consolidated Complaint alleged breaches of fiduciary duty, aiding and abetting
12 breaches of fiduciary duty (the sole claim as to National General Insurance), unjust enrichment, breach
13 of fiduciary duty for insider selling and misappropriation of information, and violations of California
14 Corporations Code § 25402, focusing on Wells Fargo’s CPI and Rate-Lock programs.

15 In January 2018, defendants in this Action demurred to the Consolidated Complaint. After
16 extensive briefing and argument, on May 8, 2018, the Court sustained the demurrers in part with leave to
17 amend and in part without leave to amend. On May 30, 2018, the CPI Plaintiffs filed a further amended
18 complaint (the “First Amended Consolidated Complaint”), integrating additional information uncovered
19 based on their investigation over the prior five months. Defendants demurred again in June 2018.

20 On September 25, 2018, after argument on the defendants’ demurrers, the Court sustained these
21 demurrers, again with further leave to amend. Following additional research and with the aid of certain
22 discovery information disclosed in a putative consumer class-action litigation concerning CPI, the CPI
23 Plaintiffs filed the Second Amended Consolidated Complaint on November 23, 2018.

24 **B. Mediation and Settlement**

25 Beginning in October 2018, the Parties engaged in arm’s-length discussions and negotiations
26 regarding a potential resolution of the Action. Mediation concerning the Action was led by the
27 Honorable Daniel Weinstein (Ret.), who also oversaw the mediation of federal and state court
28 shareholder derivative actions concerning Improper Sales Practices.

1 On December 20, 2018, the Parties filed a stipulation and proposed scheduling order postponing
2 the filing of, and briefing on, defendants' demurrers to the Second Amended Consolidated Complaint
3 pending further settlement negotiations. The Court entered this stipulation on December 21, 2018.

4 The Parties continued their negotiations throughout the remainder of 2018 and into January and
5 February 2019. The Parties' mediation efforts culminated in a mediators' proposal for settlement, which
6 consisted of the continued maintenance or implementation of the proposed Corporate Governance
7 Reforms, further described in Exhibit A to the Stipulation. The Corporate Governance Reforms
8 included policies and practices undertaken by Wells Fargo to address the conduct at issue in this action
9 (in whole or in part) including, but not limited to, discontinuing automobile CPI products and agreeing
10 not to re-engage in that business without first thoroughly reviewing related policies and procedures with
11 an outside consultant, amending certain corporate charters and bylaws, increasing oversight and
12 monitoring of business units, leadership changes, the creation of certain new positions, payments to
13 impacted customers, and the increased reporting from business units.

14 After further discussion, the Parties accepted the mediators' proposal.

15 The contemporaneous resolution of this Action was and is a condition to the settlement of the
16 shareholder derivative actions concerning Improper Sales Practices. A proposed settlement of the
17 federal Improper Sales Practices shareholder derivative actions consolidated as *In re Wells Fargo & Co.*
18 *Shareholder Derivative Litigation*, No. 3:16-cv-05541-JST (N.D. Cal.), has been submitted for approval
19 to the Hon. Jon S. Tigar. Contemporaneously herewith, the parties to the state court Improper Sales
20 Practices shareholder derivative actions consolidated as *In re Wells Fargo & Company Derivative*
21 *Litigation*, Lead Case No. CGC-16-554407 (S.F. Super.), are filing with the court a motion for
22 preliminary approval of the settlement reached in that action.

23 **C. The Negotiated Fees and Expenses**

24 After negotiating and reaching agreement on the principal Settlement terms, with the
25 assistance of Judge Weinstein, CPI Plaintiffs' Counsel and Wells Fargo separately negotiated an
26 appropriate amount of attorneys' fees and expenses to be paid based on the benefits obtained for
27 Wells Fargo from the Settlement. Pursuant to the agreement, and subject to the Court's approval,
28 Wells Fargo agreed to pay CPI Plaintiffs' Counsel an award of \$2,500,000 for attorneys' fees and

1 expenses as compensation for their work. Wells Fargo and the CPI Plaintiffs also agreed that CPI
2 Plaintiffs' Counsel could seek approval of Reimbursement Awards in the amount of \$5,000 for each
3 of the CPI Plaintiffs, to be paid out of any fee and expense award.

4 **III. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL**

5 **A. California Law Favors Consensual Settlement of Derivative Litigation**

6 California has a well-established and strong public policy favoring compromises of litigation.
7 *See Hamilton v. Oakland Sch. Dist.*, 219 Cal. 322, 329 (1933) (“It is the policy of the law to
8 discourage litigation and to favor compromises”); *Bell v. Am. Title Ins. Co.*, 226 Cal. App. 3d 1589,
9 1607 (1991). This policy is particularly compelling in complex shareholder derivative actions. *See* 7-
10 *Eleven for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000); *see also Cohn v.*
11 *Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) (“Settlements of shareholder derivative actions are
12 particularly favored because such litigation ‘is notoriously difficult and unpredictable.’”); *Maher v.*
13 *Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983) (same); *see also In re GMC Pick-Up Truck Fuel Tank*
14 *Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (settlements are favored “particularly in class
15 actions and other complex cases where substantial judicial resources can be conserved by avoiding
16 formal litigation”).

17 **B. The Settlement Satisfies the Standards for Preliminary Approval Because It is** 18 **Within the “Range of Possible Approval” and Is Presumptively Fair, Reasonable** **and Adequate**

19 Under California law, plaintiffs who prosecute claims in a representative capacity, such as
20 plaintiffs in a shareholder derivative action, cannot settle or dismiss actions without court approval.
21 *See* 9 Witkin, Summary of Cal. Law (10th ed. 2005), Corporations, §178 (citing *Whitten v. Dabney*,
22 171 Cal. 621, 631 (1915)); *Spellacy v. Superior Court*, 23 Cal. App. 2d 142, 148 (1937); *Ensher v.*
23 *Ensher, Alexander & Barsoom*, 187 Cal. App. 2d 407, 410 (1960)). At the preliminary approval stage,
24 the *sole* issue before the court is whether the proposed settlement is within a range of what might be
25 found fair, reasonable, and adequate, so that notice of the proposed settlement can be given to
26 shareholders and a date set for a final hearing to consider final settlement approval. Ann. Manual for
27 Complex Litigation §21.632; §21.633; §13; §14 (4th ed. 2016) (emphasis added). As the Manual for
28 Complex Litigation explains:

1 If the preliminary evaluation of the proposed settlement does not disclose grounds to
2 doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of
3 class representatives or of segments of the class, or excessive compensation for
4 attorneys, and appears to fall within the range of possible approval, ... A trial court's
5 approval of a class action settlement as fair is a two-step process: a preliminary
6 evaluation of the fairness of the settlement; and a formal fairness hearing where
7 arguments for and against settlement are put forth.

8 Ann. Manual for Complex Litigation §21.662 (4th ed. 2016).

9 Thus, preliminary approval does not require the trial court to answer the ultimate question –
10 whether a proposed settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.
11 App. 4th 1794, 1801 (1996). Rather, the ultimate determination is made at the final approval stage.
12 Here, while California law (unlike federal law) does not require notice to shareholders in a derivative
13 action, the Settling Parties desire to provide notice of the Settlement to shareholders and to give them
14 the opportunity to comment on the Settlement. *See* Manual for Complex Litigation §§21.633, 21.634
15 (4th ed. 2016).

16 At the final approval stage, the court's role in evaluating a proposed settlement will be similar
17 to that applicable when the court evaluates settlements of class actions. *See Robbins v. Alibrandi*, 127
18 Cal. App. 4th 438, 449 n.2 (2005) (in reviewing a derivative settlement, “[t]he duty of a court
19 reviewing a settlement of a class action provides a useful analogy”); *see also* 7 Newberg on Class
20 Actions, §22.110 (4th ed. 2016) (“The role of the court and the criteria to be considered in evaluating
21 the adequacy and fairness of a derivative settlement are substantially the same as in a class action.”).
22 Therefore, it is instructive to examine case law regarding settlements in class actions, while
23 recognizing that not all factors will be applicable to a derivative action. Similarly, federal law
24 interpreting Fed. R. Civ. P. 23.1, which governs a district court's analysis of the fairness of a
25 settlement of a shareholder derivative action, is also instructive. *See e.g.*, Fed. R. Civ. P. 23; *Wiener v.*
26 *Roth*, 791 F.2d 661 (8th Cir. 1986).

27 Under California law, a settlement is presumptively fair where: “(1) the settlement is reached
28 through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and
the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
objections is small.” *Dunk*, 48 Cal. App. 4th at 1802; *see also Zepeda v. PayPal, Inc.*, 2017 WL

1 1113293, at *16 (N.D. Cal. Mar. 24, 2017) (where counsel “have significant experience ... handling
2 complex litigation, the Court accords weight to their opinion”); *In re Omnivision Techs., Inc.*, 559 F.
3 Supp. 2d 1036, 1043 (N.D. Cal. 2008) (“The recommendations of plaintiffs’ counsel should be given a
4 presumption of reasonableness.”). Moreover, for final approval, the Court can consider other relevant
5 factors, such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
6 further litigation, the risk of maintaining class action status through trial, the amount offered in
7 settlement, the extent of discovery completed and the stage of the proceedings. the experience and
8 views of counsel, the presence of a governmental participant, and the reaction ... to the proposed
9 settlement.” *Id.* at 1801; *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117–18
10 (2009). This list of factors “is not exhaustive and should be tailored to each case.” *Dunk*, 48 Cal.
11 App. 4th at 1801.

12 Finally, the court must exercise “sound discretion” in approving settlement. *Ellis v. Naval Air*
13 *Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) *aff’d*, 661 F.2d 939 (9th Cir. 1981); *Torrisi v.*
14 *Tuscan Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993). In exercising its discretion, however, “the
15 court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties
16 to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is
17 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
18 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v.*
19 *Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). The Ninth Circuit defines the limits of the
20 inquiry to be made by the court in the following manner:

21 Therefore, the settlement or fairness hearing is not to be turned into a trial or rehearsal
22 for trial on the merits. Neither the trial court nor this court is to reach any ultimate
23 conclusions on the contested issues of fact and law which underlie the merits of the
24 dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful
25 and expensive litigation that induce consensual settlements. The proposed settlement is
26 not to be judged against a hypothetical or speculative measure of what might have been
27 achieved by the negotiators.

28 *Id.*

1 **IV. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

2 Based upon the record in the Action and the terms of the Settlement, each of the above-detailed
3 factors supports the Settlement and warrants its preliminary approval.

4 **A. The Settlement Was Reached Via Arm’s-Length Bargaining**

5 The Settlement is the product of lengthy and vigorous arm’s-length negotiations between the
6 Parties, who were represented by highly experienced attorneys. Plaintiffs’ counsel has significant
7 experience in securities and other complex class action litigation and has negotiated numerous
8 settlements of derivative actions. Moreover, the negotiations were conducted with the assistance of an
9 independent mediator. In *Dunk*, the Court of Appeal noted in support of its conclusion that a
10 settlement was fair and reasonable that “[t]he independent mediator, a retired superior court judge and
11 appellate justice with substantial experience and respect in the legal community,” had recommended
12 the settlement. Here, the Settlement is similarly supported by a declaration of Judge Weinstein
13 recommending that the Settlement be approved.

14 **B. The Settlement Was Negotiated After Substantial Investigation by Counsel with**
15 **Extensive Experience in Similar Complex Derivative Litigation**

16 In light of Plaintiffs’ Counsel’s background and experience, and their extensive knowledge of
17 the issues in the CPI Derivative Actions, Plaintiffs’ Counsel agreed to a Settlement that confers
18 significant benefits to Wells Fargo. Plaintiffs’ Counsel concluded that the proposed Settlement is fair,
19 reasonable, and in the best interests of Wells Fargo and its current shareholders following substantial
20 investigation, analysis, and evaluation. In reaching this determination, Plaintiffs’ Counsel reviewed
21 and analyzed data from many sources, including: (1) Wells Fargo’s public filings with the SEC, press
22 releases, announcements, transcripts of investor conference calls, and news articles; (2) investigations
23 conducted by CPI Plaintiffs’ Counsel; (3) securities analyst, business, and financial media reports
24 about Wells Fargo; and (4) filings in related class actions. Plaintiffs’ Counsel have also (1) researched
25 the applicable law with respect to the claims asserted (or which could be asserted) in the CPI
26 Derivative Actions and the potential defenses thereto; (2) researched, drafted, and filed complaints,
27 and oppositions to demurrers; and (3) prepared for and participated in extensive settlement discussions
28 with counsel for the Settling Defendants. Thus, Plaintiffs’ Counsel were able to fully assess the

1 strengths and weaknesses of the claims in the CPI Derivative Actions.

2 As to the legal merits of Plaintiffs' claims, Plaintiffs' counsel expended significant time and
3 resources litigating two rounds of demurrers.

4 Further, the arm's-length negotiations of the Settlement were conducted by highly qualified
5 counsel experienced in shareholder derivative litigation. Cotchett, Pitre & McCarthy, Bottini &
6 Bottini, and William Parish have extensive experience in shareholder and other complex litigation.
7 Based on their considerable prior litigation experience and similar settlements obtained for the benefit
8 of many other public companies, Plaintiffs' Counsel submit that the Settlement provides substantial
9 benefits to Wells Fargo and its current shareholders. *See Nat'l Rural Telecomms. Coop. v. DIRECTV,*
10 *Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“‘Great weight’ is accorded to the recommendation of
11 counsel, who are most closely acquainted with the facts underlying litigation.”); *7-Eleven Owners for*
12 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152 (2000). The “experience and
13 views of counsel” thus favors preliminarily approval.

14 **C. The Strengths, Risks, Complexity and Duration of the Case Weigh In Favor of**
15 **Preliminary Approval**

16 The “settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
17 merits” (*7-Eleven*, 85 Cal. App. 4th at 1145-50) and, here, the outcome of the suit was far from
18 certain. Indeed, continued litigation posed substantial risks to all Parties.

19 Defendants are subject to the risk that Plaintiffs will prevail on their claims at trial. Plaintiffs
20 similarly face risks. While Plaintiffs continue to believe the derivative claims have substantial merit,
21 Plaintiffs had yet to overcome challenges on demurrer and, even if this case proceeded to discovery
22 and trial, Plaintiffs would need to overcome the high and difficult burden of proving the Individual
23 Defendants' breaches of fiduciary duty under applicable Delaware law.

24 Plaintiffs also had to take into account the risk that Defendants could receive a favorable
25 judgment on all, or substantial portions, of Plaintiffs' claims, thereby substantially reducing the
26 recovery to Wells Fargo. Even if Plaintiffs were successful and prevailed at trial, there would be
27 complex issues regarding proof of damages, and Defendants would have the opportunity to appeal,
28 which would further delay final resolution of this Action and would cause all Parties to incur

1 additional and significant costs.

2 As a general matter, “unless the settlement is clearly inadequate, its acceptance and approval
3 are preferable to lengthy and expensive litigation with uncertain results.” 4 Newberg on Class Actions
4 §11.50 (4th ed. 2002); *Nat’l Telecomm’ns Coop.*, 221 F.R.D. at 526. The proposed Settlement
5 eliminates these and other risks of continued litigation, including the very real risk of no recovery after
6 several years of litigation, while providing Wells Fargo and its current shareholders substantial
7 benefits. *See Officers for Justice*, 688 F.2d at 625.

8 **D. The Settlement Serves the Best Interests of Wells Fargo and Current Shareholders**

9 The Settlement provides significant corporate reforms that will benefit Wells Fargo and its
10 shareholders for years to come.

11 California courts have long recognized the substantial benefits corporations (and shareholders)
12 receive from changes in corporate governance or policies that result from shareholder litigation. *See*
13 *Fletcher v. A.J. Indus., Inc.*, 266 Cal. App. 2d 313, 324-25 (1968) (stockholder suit where non-
14 pecuniary benefits are obtained serve an important consideration of public policy). Moreover, “[a]s
15 corporate debacles such as Enron, Tyco and WorldCom demonstrate, strong corporate governance is
16 fundamental to the economic well-being and success of a corporation.” *In re NVIDIA Corp.*
17 *Derivative Litig.*, No. C-06-06110-SBA(JCS), slip. op. at 4 (N.D. Cal. Dec. 22, 2008) (“NVIDIA
18 Preliminary Approval Order”). Indeed, “[c]ourts have recognized that corporate governance reforms
19 such as those achieved here provide valuable benefits to public companies.” *Cohn*, 375 F. Supp. 2d at
20 853.²

21 The Corporate Governance Reforms are aimed at preventing any future occurrence of the
22 alleged wrongdoing in the Action and will serve to improve the Company’s operational risk
23 management, compliance and oversight, and strengthen the Company’s operations and reporting
24 mechanisms. Plaintiffs and Wells Fargo acknowledge that these Corporate Governance Reforms
25 confer substantial benefits upon the Company and current shareholders. Therefore, this factor weights

26 _____
27 ² Delaware Courts similarly acknowledge the substantial benefits corporations and shareholders receive
28 from corporate governance reforms. *See Tandycrefts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164-
1165 (Del. 1989) (recognizing that “changes in corporate policy . . . if attributable to the filing of a
meritorious suit” are benefits to the corporation and shareholders).

1 in favor of preliminarily approving the Settlement.

2 **V. THE PROPOSED FEE AND EXPENSE AWARD IS FAIR AND REASONABLE**

3 At the preliminary approval stage, the Court need not decide whether to approve the negotiated
4 amount of fees and expenses. The details and reasons supporting the negotiated fees and expenses will
5 be addressed in connection with briefing on the motion for final approval of the Settlement. The
6 United States Supreme Court has endorsed this type of consensual resolution of attorneys' fees issues
7 in these kinds of cases as the ideal toward which litigants should strive. *Hensley v. Eckerhart*, 461
8 U.S. 424, 437 (1983) ("A request for attorney[s'] fees should not result in a second major litigation.
9 Ideally, of course, litigants will settle the amount of a fee."); *Ingram v. Coca-Cola Co.*, 200 F.R.D.
10 685, 695 (N.D. Ga 2001) (where, as here, there is no evidence of collusion and no detriment to the
11 parties, the court should give "substantial weight to a negotiated fee amount"). Additional authorities
12 will be presented by Plaintiffs in connection with its final approval papers.

13 **VI. THE [PROPOSED] NOTICE TO SHAREHOLDERS SHOULD BE APPROVED**

14 Rule 3.769 of the California Rules of Court — which applies to the settlement of class actions
15 and, therefore, is instructive but not directly applicable here — provides that "notice of the final
16 approval hearing must be given ... in the manner specified by the court." Cal. R. Ct. 3.769(f); *see*
17 *also Litwin v. iRenew Bio Energy Solutions, LLC*, 226 Cal.App.4th 877, 883 (2014). "The notice
18 must contain an explanation of the proposed settlement and procedures ... to follow in filing written
19 objections to it and in arranging to appear at the settlement hearing and state any objections to the
20 proposed settlement." *Id. See also Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
21 2004) ("Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to
22 alert those with adverse viewpoints to investigate and to come forward and be heard.'")

23 Here, the CPI Plaintiffs propose to provide Notice of the proposed Settlement to Wells Fargo
24 shareholders in the following manner. First, Wells Fargo will publish the Summary Notice,
25 substantially in the form of Exhibit D to the Settlement, in the San Francisco Chronicle, Los Angeles
26 Times and Investor Business Daily, as well as a Current Report on Form 8-K with the Securities and
27 Exchange Commission. CPI Plaintiffs' Counsel will also publish the same Summary Notice via a
28 national wire service. In addition to the Summary Notice, Wells Fargo will make the long-form Notice,

1 substantially in the form of Exhibit C of the Settlement, as well as the Settlement itself, electronically
2 available on an Internet page created by Wells Fargo that will be accessible via a link on the “Investor
3 Relations” page of <http://www.wellsfargo.com>, the address of which shall be contained in the Notice
4 and Summary Notice. Notice will also be mailed to all persons who request it by calling a hotline
5 number identified in the Summary Notice. Finally, CPI Plaintiffs’ Counsel will publish the Stipulation
6 and Notice on a dedicated website identified in the Summary Notice.

7 The proposed Notice includes all the information required by Rule 3.769 for the settlement of a
8 class action and that is otherwise necessary for shareholders to make an informed evaluation of the
9 proposed Settlement, including: (i) an explanation of the nature of the CPI Derivative Actions and the
10 claims asserted; (ii) the Settlement consideration, including the governance reforms and the scope of
11 the releases that the Settling Defendants will obtain; (iii) the Parties’ reasons for proposing the
12 Settlement; (iv) CPI Plaintiffs’ Counsel’s application for an award of attorneys’ fees and expenses not
13 to exceed \$2,500,000, as well as Reimbursement Awards for Plaintiffs to be paid from any fee award,
14 in recognition of the substantial benefits conferred; (v) how to appear at the Settlement Hearing; (vi)
15 how to object to the Settlement by filing a written objection; (vii) the deadlines for Settlement-related
16 events; and (viii) the binding effect that entry of a final judgment approving the Settlement will have
17 on current Wells Fargo shareholders.

18 The Settling Parties believe that the proposed forms of notice, and the proposed procedure for
19 providing notice, readily comport with applicable law and due process. *See* Cal. R. Ct. 3.769(f);
20 *Litwin*, 226 Cal.App.4th at 883-884.

21 Accordingly, the CPI Plaintiffs, on behalf of the Parties, request that the Court: (1) approve the
22 forms of and method for providing the Notice and Summary Notice to current Wells Fargo
23 shareholders regarding the pendency of the proposed Settlement; (2) direct that the Notice be
24 published and posted as provided in the Stipulation; and (3) set a date for the Settlement Hearing and a
25 schedule of events. In this regard, the CPI Plaintiffs propose and request that the Court establish the
26 schedule below:

Date for Distribution of Notice (“Notice Date”)	Seven (7) calendar days after the entry of the [Proposed] Order Setting Settlement Hearing and Approving Notice of Proposed Derivative Settlement
Date to file Motions for Final Approval of Settlement, Award of Attorneys’ Fees and Expenses to CPI Plaintiffs’ Counsel, and Reimbursement Awards to CPI Plaintiffs	Sixteen (16) court days prior to the Settlement Hearing
Date for Wells Fargo shareholders to file objection and/or notice of appearance	Nine (9) court days prior to the Settlement Hearing
Date to reply to any objections	Five (5) court days prior to the Settlement Hearing
Date of Settlement Hearing	At least 45 days after the Notice Date, or any such other date as may be selected by the Court

VII. CONCLUSION

For the foregoing reasons, the proposed Settlement should be preliminarily approved as provided in the Stipulation and the [Proposed] Order submitted herewith.

Dated: April 15, 2019
COTCHETT, PITRE & McCARTHY LLP
By: /s/ Mark C. Molumphy
MARK C. MOLUMPY

Dated: April 15, 2019
BOTTINI & BOTTINI, INC.
By: /s/ Francis A. Bottini, Jr.
FRANCIS A. BOTTINI, JR.

Attorneys for Plaintiff Donna Maxwell

Dated: April 15, 2019
WILLIAM H. PARISH, PC
By: /s/ William H. Parish
WILLIAM H. PARISH

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