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

12 IN RE WELLS FARGO & COMPANY AUTO)
INSURANCE DERIVATIVE LITIGATION)

Lead Case No. CGC-17-561118

13) **DECLARATION OF HON. DANIEL**
14) **WEINSTEIN IN SUPPORT OF MOTION**
15) **FOR PRELIMINARY APPROVAL OF**
16) **PROPOSED DERIVATIVE SETTLEMENT**

17 This Document Relates To:
18 ALL ACTIONS

19) Date: May 10, 2019
20) Time: 10:00 a.m.
21) Dept. 613
22) Hon. Teri L. Jackson
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**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
04/22/2019
Clerk of the Court
BY: CAROL BALISTRERI
Deputy Clerk

1 I, DANIEL H. WEINSTEIN, hereby declare as follows:

2 1. I am a retired California state court jurist, having served as California Supreme Court
3 Justice (Pro Tem), Court of Appeal Justice (1st Dist.), and California Superior Court Judge (San
4 Francisco Cty.). I am currently a mediator with and a founder of JAMS in San Francisco, California,
5 and served as the mediator in these consolidated shareholder derivative actions (the "Action"). I
6 submit this Declaration in support of the Parties' request for approval of the proposed Settlement in
7 the Action. I make this declaration based on personal knowledge and if called and sworn as a witness
8 could and would testify competently thereto.

9 2. The Action involves allegations that current and former officers and directors of Wells
10 Fargo & Company ("Wells Fargo" or the "Company") breached their fiduciary duties in connection
11 with certain alleged practices at Wells Fargo concerning its automobile collateral protection insurance
12 ("CPI"), automobile Guaranteed Asset Protection ("GAP") and home mortgage rate-lock ("Rate-
13 Lock") programs, and the Servicemembers Civil Relief Act ("SCRA").

14 3. The Parties in this Action have come to an agreement to settle the case (the
15 "Settlement"). The Settlement will benefit Wells Fargo and its shareholders today and for years to
16 come, including benefits from the implementation and continued funding of important corporate
17 governance reforms at the Company ("Corporate Governance Reforms").

18 4. The Corporate Governance Reforms, detailed in Exhibit A to the Settlement, include
19 the discontinuation of forced-placed automobile CPI, amendments to corporate charters and bylaws,
20 increased oversight and monitoring of business units, leadership changes and creation of certain new
21 positions, increased reporting from business units, and payments to impacted customers. The
22 Corporate Governance Reforms are specifically designed to address and remedy issues alleged in this
23 Action relating to Wells Fargo's CPI, GAP, and Rate-Lock programs and the SCRA, and were
24 negotiated at length between the Parties with my assistance.

25 **BACKGROUND AND QUALIFICATIONS**

26 5. From 1978 through 1988, I served on the bench of the California Supreme Court, the
27 Superior Court of San Francisco, and the Municipal Court of San Francisco. During this time, I
28 presided over numerous trials.

1 6. Prior to my appointment to the bench, I served as the Chief Assistant District Attorney,
2 San Francisco County, and specialized in federal court litigation in private practice.

3 7. After having served as a jurist on all three California State courts, I returned to private
4 practice as a mediator. I was a founder of JAMS, the world's largest provider of mediation and
5 arbitration services.

6 8. I was a recipient of the 2014 International Advocate for Peace Award from the Cardozo
7 Journal of Conflict Resolution, whose past honorees have included former Presidents Jimmy Carter
8 and Bill Clinton, Ambassador Richard Holbrooke, and Nobel Peace Prize winner Bishop Desmond
9 Tutu. I have been recognized as (i) an "ADR Champion," National Law Journal, 2017-2018; (ii) Best
10 Lawyer, Alternative Dispute Resolution Category, Best Lawyers in America, 2006-2015; and (iii) one
11 of the 500 Leading Judges in America, Lawdragon Magazine, 2006.

12 9. Over the past 30 years, I have devoted a considerable amount of my professional life to
13 serving as a mediator in connection with large, complex, multi-party, high-stakes cases such as this
14 one. I have successfully mediated dozens of shareholder derivative actions.

15 **THE ARM'S-LENGTH NEGOTIATIONS**

16 10. My involvement in this matter began in October 2018, when I was contacted by the
17 Parties about the possibility of serving as a mediator. At the time, I was also serving as the mediator in
18 other shareholder derivative actions filed on behalf of Wells Fargo related to allegations of improper
19 sales practices, which were pending in both California state court and federal court (the "Sales Practices
20 Derivative Actions"). After gaining an understanding of the allegations and defenses in this Action, I
21 agreed to mediate the negotiations. Ultimately, the contemporaneous (but unconnected) resolution of
22 this Action became a condition for resolution of the Sales Practices Derivative Actions.

23 11. During these negotiations, the Parties provided me with detailed information regarding
24 their respective positions, as well as their views on corporate governance reforms, a critical component
25 of any potential derivative settlement. I found these submissions to be extremely valuable in helping me
26 understand the relative merits of each Party's positions, and to identify the issues that were likely to
27 serve as primary drivers and obstacles to achieving a settlement. Counsel for the Parties presented
28 significant arguments regarding their clients' respective positions, and it was apparent to me that all sides

1 possessed strong, non-frivolous arguments, and that no side was assured of victory. Because the Parties
2 submitted their positions and arguments in the context of a confidential mediation process, I cannot
3 reveal their content. I can say, however, that the arguments and positions asserted by all involved were
4 the product of much hard work, and they were complex and highly adversarial. After reviewing all of
5 the information, I concluded that a trial of this matter would be long, contentious, and expensive and that
6 the outcome would be uncertain.

7 12. Following these initial discussions, I engaged in extensive efforts to try to establish
8 common ground between the Parties' respective positions. Progress was made and, in December
9 2018, the Parties filed a stipulation and proposed scheduling order postponing the filing of, and
10 briefing on, defendants' demurrers to the Second Amended Consolidated Complaint pending
11 further settlement negotiations. The Court entered this stipulation on December 21, 2018.

12 13. With my assistance, the Parties continued their negotiations. During this period, I
13 engaged in additional communications with counsel by phone and e-mail in an ongoing effort to
14 resolve the Action. The continuing negotiations, while cordial and professional, were contentious
15 and hard-fought.

16 14. I then made a mediator's proposal to the Parties to settle the Action, premised on the
17 Company's implementation and continued funding of the Corporate Governance Reforms described
18 above. The collection of reforms agreed to by the Parties also addresses the allegations made in the
19 Action and, importantly, will continue to be applied in the future.

20 15. Only after the Parties had agreed on these settlement terms did they begin to discuss
21 issues relating to an award of attorneys' fees and expenses to be paid to Plaintiffs' Counsel for the
22 benefits conferred on Wells Fargo by the Settlement. Again, I served as the mediator in such
23 negotiations and, ultimately, Wells Fargo agreed to pay a fee and expense amount of \$2,500,000.00
24 to Plaintiffs' Counsel for their efforts, subject to Court approval.

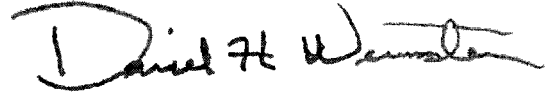
25 16. In sum, this Settlement was the product of an extremely hard-fought negotiation. While
26 I cannot delve into the specifics regarding each Party's positions and thinking because many
27 discussions occurred during confidential mediation communications, I can say that there were many
28 complex issues that required significant thought and practical solutions. I can also attest that the

1 negotiations were vigorous, fully at arm's-length, and conducted in good faith, with no collusion
2 whatsoever.

3 **THE SETTLEMENT REPRESENTS A FAIR COMPROMISE**

4 17. Based on my experience as a mediator, a former judge and a litigator, I believe that this
5 Settlement represents an outcome that is reasonable, fair, and adequate and in the best interests of
6 Wells Fargo and its shareholders. I further believe it was in the best interests of all of the Parties that
7 they avoid the burdens and risks associated with taking a case of this size and complexity to trial, and
8 that they agree on the Settlement now presented to the Court for approval.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct. Executed on April 10 2019, in San Francisco, California.

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HON. DANIEL WEINSTEIN (RET.)