

1 JOSEPH W. COTCHETT (SBN 36324)
2 jcotchett@cpmlegal.com
3 MARK C. MOLUMPY (SBN 168009)
4 mmolumpy@cpmlegal.com
5 GINA STASSI (261263)
6 gstassi@cpmlegal.com
7 **COTCHETT, PITRE & McCARTHY, LLP**
8 840 Malcolm Road, Suite 200
9 Burlingame, CA 94010
10 Telephone: (650) 697-6000
11 Facsimile: (650) 697-0577

12 *Lead Counsel for Derivative Plaintiffs*

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Superior Court of California,
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Clerk of the Court
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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN FRANCISCO**

15 COORDINATION PROCEEDING
16 SPECIAL TITLE [RULE 3.550]

17 WELLS FARGO DERIVATIVE CASES

18 Included Actions:
19 Superior Court of California
20 County of San Francisco
21 *In re Wells Fargo & Company Derivative*
22 *Litigation*
23 No. CGC-16-554407

24 San Mateo County Superior Court
25 *Herron v. Stumpf, et al.*
26 No. 18-CIV-00466

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4966

CJC-18-004966

**DECLARATION OF HON. DANIEL
WEINSTEIN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
PROPOSED DERIVATIVE SETTLEMENT**

Date: May 10, 2019
Time: 10:00 a.m.
Dept. 613
Hon. Teri L. Jackson

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

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

9 2. The Action involves allegations of unlawful conduct relating to fictitious customer
10 accounts created at Wells Fargo. Plaintiffs, who are Wells Fargo shareholders, allege that certain
11 of the Director and Officer Defendants breached their fiduciary duties to Wells Fargo, engaged in
12 insider trading, and were unjustly enriched with respect to this alleged conduct. Plaintiffs also
13 alleged that the Company's Board failed to act on alleged "red flag" warnings of illegal conduct
14 and to exercise appropriate risk management and oversight of the Bank, allegedly resulting in
15 Wells Fargo opening accounts without consumers' consent, funding the accounts through
16 unauthorized transfers of funds, submitting credit card applications and issuing debit cards without
17 consumers' consent, and enrolling consumers in online-banking services without their consent
18 ("Improper Sales Practices"). Defendants deny these allegations.

19 3. The Parties in this Action have come to an agreement to settle the case (the
20 "Settlement"). The Settlement will benefit Wells Fargo and its shareholders today and for years to
21 come, and includes an acknowledgment by Wells Fargo that the facts alleged in the Action were
22 significant factors taken into account in conducting the investigation respecting Improper Sales
23 Practices and in recommending or taking the compensation-related actions ("Clawbacks") and that
24 facts alleged in the Action, as well as certain proposals made by Plaintiffs in connection with the
25 prosecution and proposed resolution of the Action, were significant and contributing factors taken
26 into account by Wells Fargo in implementing corporate governance reforms at the Bank (the
27 "Corporate Governance Reforms") including, but not limited to, amending certain corporate
28 charters and bylaws, increasing oversight and monitoring of business units, leadership changes,

1 and increased reporting from business units detailed in Exhibit A to the Settlement. The Corporate
2 Governance Reforms are specifically designed to address and remedy issues that gave rise to this
3 Action relating to Wells Fargo's alleged Improper Sales Practices, and were negotiated at length
4 by the Parties with my assistance.

5 **BACKGROUND AND QUALIFICATIONS**

6 4. From 1978 through 1988, I served on the bench of the California Supreme Court,
7 the Superior Court of San Francisco, and the Municipal Court of San Francisco. During this time,
8 I presided over numerous trials.

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

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

14 7. I was a recipient of the 2014 International Advocate for Peace Award from the
15 Cardozo Journal of Conflict Resolution, whose past honorees have included former Presidents
16 Jimmy Carter and Bill Clinton, Ambassador Richard Holbrooke, and Nobel Peace Prize winner
17 Bishop Desmond Tutu. I have been recognized as (i) an "ADR Champion," National Law Journal,
18 2017-2018; (ii) Best Lawyer, Alternative Dispute Resolution Category, Best Lawyers in America,
19 2006-2015; and (iii) one of the 500 Leading Judges in America, Lawdragon Magazine, 2006.

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

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

24 9. My involvement in this matter began in October 2018, when I was contacted by the
25 Parties about the possibility of serving as a mediator. At the time, I was also serving as the
26 mediator in other shareholder derivative actions filed on behalf of Wells Fargo related to allegations
27 of Improper Sales Practices pending in federal court ("Federal Sales Practices Derivative Action"),
28 and then later served as the mediator in shareholder derivative actions filed on behalf of Wells

1 Fargo related to certain of the Bank's automobile lending insurance practices (the "CPI Derivative
2 Actions") in California state court. After gaining an understanding of the allegations and defenses
3 in this Action, I agreed to mediate the negotiations. Ultimately, the contemporaneous (but
4 unconnected) resolution of this Action was a condition for resolution of the Federal Sales Practices
5 Derivative Action and the CPI Derivative Actions.

6 10. During these negotiations, the Parties provided me with detailed information
7 regarding their respective positions, as well as their views on corporate governance reforms, a critical
8 component of any potential derivative settlement. I found these submissions to be extremely
9 valuable in helping me understand the relative merits of each Party's positions, and to identify the
10 issues that were likely to serve as primary drivers and obstacles to achieving a settlement. Counsel
11 for the Parties presented significant arguments regarding their clients' respective positions, and it
12 was apparent to me that all sides possessed strong, non-frivolous arguments, and that no side was
13 assured of victory. Because the Parties submitted their positions and arguments in the context of a
14 confidential mediation process, I cannot reveal their content. I can say, however, that the arguments
15 and positions asserted by all involved were the product of much hard work, and they were complex
16 and highly adversarial. After reviewing all of the information, I concluded that a trial of this matter
17 would be long, contentious, and expensive and that the outcome would be uncertain.

18 11. Following these initial discussions, I engaged in extensive efforts to try to establish
19 common ground between the Parties' respective positions. During this period, I engaged in
20 additional communications with counsel by phone and e-mail in an ongoing effort to resolve the
21 Action. The continuing negotiations, while cordial and professional, were contentious and
22 hard-fought.

23 12. I then made a mediator's proposal to the Parties to settle the Action, premised on
24 the Clawbacks and the Company's implementation and/or maintenance of the Corporate
25 Governance Reforms for the benefit of Wells Fargo. The collection of reforms agreed to by the
26 Parties also addresses the issues that gave rise to the Action and, importantly, will continue to be
27 maintained in the future as set forth in the Parties' Stipulation and Agreement of Compromise,
28 Settlement and Release and Exhibit A thereto.

