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15 *Retirement and Relief System and Co-Lead Counsel*

16   UNITED STATES DISTRICT COURT

17   NORTHERN DISTRICT OF CALIFORNIA

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20 IN RE WELLS FARGO & COMPANY   Lead Case No. 3:16-cv-05541-JST
    SHAREHOLDER DERIVATIVE
21 LITIGATION   **JOINT DECLARATION OF RICHARD M.**
                                         HEIMANN AND JOSEPH E. WHITE, III IN
22   **SUPPORT OF MOTION FOR**
                                         PRELIMINARY APPROVAL OF
23   **SETTLEMENT**

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1   We, Richard M. Heimann and Joseph E. White, III, jointly declare and state as follows:

2   1.   Richard M. Heimann is an attorney duly licensed to practice law in the State of

3   California and admitted to practice in this Court and the other federal courts of the State of

4   California (and other courts). Mr. Heimann is a partner at the law firm Lieff Cabraser Heimann

5   & Bernstein, LLP ("Lieff Cabraser"), which, along with the law firm Saxena White P.A.

6   ("Saxena White") serves as Co-Lead Counsel for the Fire and Police Pension Association of

7   Colorado and the City of Birmingham Retirement and Relief System ("Co-Lead Plaintiffs"),

8   Court-appointed Co-Lead Plaintiffs in this shareholder derivative action.

9   2.   Joseph E. White, III is an attorney duly licensed to practice law in the States of

10   Florida, New York, Massachusetts, and Pennsylvania and admitted to practice in this Court *pro*

11   *hac vice.* Mr. White is a shareholder at the law firm Saxena White, which, along with Lieff

12   Cabraser, serves as Co-Lead Counsel for the Co-Lead Plaintiffs in this action.

13   3.   Mr. Heimann and Mr. White make this Joint Declaration in support of Co-Lead

14   Plaintiffs' Motion for Preliminary Approval of Settlement.

15   **Settlement Agreement**

16   4.   In this Action, Co-Lead Plaintiffs allege that Defendants, each a current or former

17   officer or director of Wells Fargo & Company ("Wells Fargo" or the "Company"), knew or

18   consciously disregarded that the Company's employees were illicitly creating millions of

19   customer accounts without those customers' knowledge or consent (the "Improper Sales

20   Practices").

21   5.   The Settlement follows seven in-person mediation sessions under the guidance of

22   experienced and prominent mediators, as well as numerous direct negotiations between counsel.

23   In 2017, following the Court's denial of Wells Fargo's motion to dismiss for demand futility, Co-

24   Lead Plaintiffs, Defendants, and Wells Fargo (collectively, the "Parties") began preliminary

25   settlement discussions. In September 2018, following months of discovery and Co-Lead

26   Plaintiffs' successful efforts to stay or consolidate related derivative actions pending in other

27   jurisdictions and before this Court, the Parties restarted negotiations under the supervision of the

28   Honorable Daniel Weinstein (Ret.), and Mr. Jed Melnick, Esq.

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1   6.   On December 12, 2018, following a December 5, 2018 mediators' proposal, the

2 Parties reached an agreement in principle to settle this action.

3   7.   On February 26, 2019, the Parties executed the Settlement being filed concurrently

4 herewith.

5   8.   The Settlement is the product of arm's-length negotiations among experienced and

6 well-informed counsel. The negotiations were contested and conducted in the utmost good faith.

7   **Co-Lead Plaintiffs' and Co-Lead Counsel's Vigorous Advocacy**

8   9.   Shortly after the public revelations of the Improper Sales Practices, Co-Lead

9 Plaintiffs individually undertook considerable investigation and filed detailed complaints against

10 the Defendants.[1]

11   10.   After being appointed Co-Lead Counsel and Co-Lead Plaintiffs by the Court on

12 January 12, 2017, Co-Lead Plaintiffs and Co-Lead Counsel conducted further investigation and

13 filed a comprehensive 189-page consolidated complaint.

14   11.   The Parties then briefed two rounds of motions to dismiss, involving six separate

15 motions and fourteen briefs. On May 4, 2017, the Court largely denied Wells Fargo's motion to

16 dismiss the Complaint for a failure to adequately plead demand futility. Dkt. 129 ("Demand

17 Futility Order"). On October 4, 2017, the Court largely denied Defendants' motions to dismiss.

18 Dkt. 174 ("12(b)(6) Order").

19   12.   Following the Court's favorable decisions, Co-Lead Plaintiffs made an extensive

20 effort to intervene and stay a host of cases pending in state courts in California and Delaware, in

21 order to protect the interests of the Company and its shareholders, and ensure efficient, non-

22 duplicative pursuit of the Improper Sales Practices claims.

23   13.   Co-Lead Plaintiffs sought and eventually obtained complete stays or voluntary

24 dismissals of all related derivative actions. These efforts, which spanned over fourteen months,

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[1] *See* Verified Stockholder Derivative Compl., *Fire & Police Pension Ass'n of Colorado v.*
27 *Stumpf*, No. 3:16-cv-06631-JST (N.D. Cal. Nov. 15, 2016), Dkt. 1; Verified Stockholder
Derivative Compl., *City of Birmingham Ret. & Relief Sys. v. Baker*, No. 3:16-cv-05915-JST (N.D.
28 Cal. Oct. 12, 2016), Dkt. 1.

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1   required submission of at least thirteen briefs on behalf of Co-Lead Plaintiffs, as well as

2   attendance (and argument) in at least seventeen hearings.

3   14.   In addition, Co-Lead Plaintiffs have, to date, submitted at least four briefs (to this

4   Court and the Ninth Circuit) concerning the consolidation of *Hannon v. Loughlin*, No. 3:17-cv-

5   07236-JST (N.D. Cal.), and engaged in extensive coordination with parties in *Feuer v. Baker*, No.

6   3:18-cv-02866-JST (N.D. Cal.), in order to avoid unnecessary duplication and conflict with those

7   cases.

8   15.   Co-Lead Plaintiffs aggressively pursued document discovery from Wells Fargo,

9   Defendants, and several non-parties, in compliance with the Court-approved discovery schedule.

10 Co-Lead Plaintiffs served a total of 204 document requests, and conducted extensive and iterative

11 negotiations regarding the appropriate scope of discovery. In total, Co-Lead Plaintiffs received

12 707,835 documents from Wells Fargo, 19,844 documents from Defendants, and 62 documents

13 from non-parties.

14   16.   Co-Lead Plaintiffs manually reviewed and carefully analyzed over 332,000

15 documents, first using manual review and, later, technology-assisted review ("TAR") software to

16 identify the documents most likely to be relevant to the central issues in the case.

17   17.   Starting in July 2018, the Co-Lead Plaintiffs commenced a first level review of

18 documents and identified some key or "hot" and "highly relevant" from documents produced by

19 Wells Fargo. These selected documents were further subjected to a second-level review by a

20 team of experienced staff and associate attorneys. The second-level review then resulted in a

21 refined set of key documents which were confirmed to be "hot" or "highly relevant" (the "Seed

22 Set") for the issues in the case. Co-Lead Plaintiffs' document database was configured for TAR

23 in the Continuous Active Learning ("CAL") mode. In the TAR-CAL mode, the computer learns

24 from the content of the Seed Set and is trained to identify more of the same types of documents

25 from additional un-reviewed documents as they are produced. The computer identifies and feeds

26 new proposed hot or highly relevant documents to a team of staff and associate attorneys on a

27 priority basis for further review. These attorneys review and either affirm or correct the

28 computer's proposed coding. The computer automatically "digests" the decisions made by the

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1   attorneys and re-calibrates its learning process on a continuous basis, hence the term "Continuous

2   Active Learning." Through this iterative process between attorneys and the computer's

3   intelligence, Co-Lead Plaintiffs identified key hot and highly relevant documents quickly and on

4   a priority basis. A total of 109,401 documents produced by Wells Fargo were subjected to TAR-

5   CAL and in a few months, Co-Lead Plaintiffs identified 12,780 documents of these documents as

6   hot or highly relevant. These hot or highly relevant documents were then used and analyzed for

7   deposition preparation.

8   18.   Overall, including documents fed in to the TAR-CAL process, Co-Lead Plaintiffs'

9   team reviewed and carefully analyzed over 332,761 documents produced by Wells Fargo and

10   Defendants.

11   19.   Co-Lead Plaintiffs began a comprehensive process of preparing for the depositions

12   of over forty anticipated fact witnesses, including the twenty named Defendants. Among other

13   things, counsel used information it gained through its prior analyses of documents, targeted

14   document searches, and the TAR software, to develop detailed summaries and outlines of key

15   issues.

16   20.   Concurrently, Co-Lead Plaintiffs consulted with experts in corporate governance,

17   regulatory matters, insurance coverage, and damages.

18   21.   Co-Lead Counsel has incurred a total lodestar of approximately $20,490,000,

19   covering more than 47,000 hours of work. These numbers are subject to a final audit.

20   **Contributions of Co-Lead Plaintiffs**

21   22.   Based on our collective experience in complex commercial litigation and

22   derivative actions, it is our professional opinion that Co-Lead Plaintiffs, Fire & Police Pension

23   Association of Colorado and the City of Birmingham Retirement and Relief System, willingly,

24   constructively, and effectively contributed to the prosecution of the claims on behalf of Wells

25   Fargo.

26   23.   Each Co-Lead Plaintiff participated in the Lead Plaintiff application process,

27   participated in discussions with Co-Lead Counsel concerning significant developments in the

28   litigation, reviewed and conferred with Co-Lead Counsel on Rule 26(a) initial disclosures,

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1   reviewed and commented on significant pleadings and briefs, attended hearings, attended

2   mediation sessions, consulted with Co-Lead Counsel concerning the settlement negotiations as

3   they progressed, and evaluated, approved, and recommended the approval of the proposed

4   settlement to each Co-Lead Plaintiffs' respective board.

5   24.   Given the substantial efforts described above, each Co-Lead Plaintiff spent

6   significant time to contribute to the prosecution of this case. In light of this commitment of time,

7   effort, and dedication, and the cost to each Co-Lead Plaintiffs' entity for devoting time to

8   representing Wells Fargo that would have otherwise been work done on behalf of their respective

9   organizations, we believe it is appropriate under applicable Ninth Circuit and Northern District

10 precedent that each Co-Lead Plaintiff receive a reimbursement award, not to exceed $25,000

11 each, to be paid from Co-Lead Counsel's fee award. Accordingly, Co-Lead Plaintiffs intend to

12 seek an award for reimbursement in connection with their motion for attorney's fees.

13   We declare under penalty of perjury under the laws of the United States of America that

14 the foregoing is true and correct.

15   Executed on this 28th day of February, 2019, at San Francisco, California and Boca

16 Raton, Florida.

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19   By: */s/ Richard M. Heimann*   By: */s/ Joseph E. White, III*
                Richard M. Heimann   Joseph E. White, III

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