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Attorneys for Lead Plaintiff

16 UNITED STATES DISTRICT COURT
 17
 18 NORTHERN DISTRICT OF CALIFORNIA

19 PURPLE MOUNTAIN TRUST, Individually)
 and on Behalf of All Others Similarly Situated,)

20 Plaintiff,

21 vs.

22 WELLS FARGO & COMPANY, et al.,)

23 Defendants.)

Case No. 3:18-cv-03948-JD

CLASS ACTION

DECLARATION OF SCOTT H. SAHAM IN
 SUPPORT OF: (1) LEAD PLAINTIFF’S
 MOTION FOR FINAL APPROVAL OF
 CLASS ACTION SETTLEMENT AND
 APPROVAL OF PLAN OF ALLOCATION;
 AND (2) LEAD COUNSEL’S MOTION FOR
 AN AWARD OF ATTORNEYS’ FEES AND
 EXPENSES, AND AWARD TO CLASS
 REPRESENTATIVE PURSUANT TO 15
 U.S.C. §78u-4(a)(4)

DATE: August 17, 2023

TIME: 10:00 a.m.

CTRM: 11, 19th Floor

JUDGE: Honorable James Donato

1 I, SCOTT H. SAHAM, declare as follows:

2 1. I am an attorney duly licensed to practice before all courts of the State of California.
3 I am a partner of the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller” or “Class
4 Counsel”), and counsel for Construction Laborers Pension Trust for Southern California (“Lead
5 Plaintiff” or “Class Representative”). I have been actively involved in the prosecution and
6 settlement of this action since July 2019 and am closely familiar with its proceedings (the
7 “Litigation”).¹ I have personal knowledge of the majority of the matters set forth herein based upon
8 my active participation in and supervision of all material aspects of this Litigation. As to the
9 remaining matters, I have reviewed our litigation files and consulted with other attorneys and support
10 staff who have worked on this case. I could and would testify competently to the matters set forth
11 herein if called upon to do so.

12 2. I submit this declaration in support of Lead Plaintiff’s motion for approval of: (a) the
13 \$300,000,000.00 all-cash settlement reached on behalf of the Class (the “Settlement”); (b) the
14 proposed Plan of Allocation (the “Plan”); (c) Class Counsel’s application for an award of attorneys’
15 fees and expenses; and (d) an award to Class Representative in accordance with 15 U.S.C. §78u-
16 4(a)(4).

17 **I. PRELIMINARY STATEMENT**

18 3. This declaration is not intended to detail every event that occurred since the
19 commencement of this Litigation in 2018. Rather, it provides the Court with key highlights of the
20 Litigation, the extensive fact and expert discovery, Class Counsel’s unwavering preparation for trial,
21 the events leading up to the Settlement, and the bases upon which Class Counsel and Class
22 Representative recommend the Settlement’s approval.

23 4. The \$300,000,000.00 proposed Settlement is the culmination of nearly five years of
24 tireless, hard-fought litigation. As detailed below, Class Counsel zealously prosecuted Lead
25 Plaintiff’s and the Class’s claims at every stage of the Litigation and defended these claims against
26 Defendants’ repeated attacks. The Settlement is estimated to represent 31% to 47% of the estimate

27 ¹ Unless otherwise noted, all capitalized terms have the meaning ascribed to them in the
28 Stipulation of Settlement. ECF 220-2.

1 of damages recoverable at trial, and is an excellent result for the Class as it falls significantly above
2 the typical range of recoveries. The recovery will likely rank within the top 100 largest securities
3 class action settlements of all time. *See* ISS Sec. Class Action Servs. 2023, The Top 100 U.S. Class
4 Action Settlements of All Time (as of December 31, 2022), at 8-12 (attached hereto as Ex. E).

5 5. As detailed herein, proceeding to a jury trial presented substantial risks. In agreeing
6 to settle the Litigation just weeks before trial, Class Representative and Class Counsel were fully
7 informed about the various strengths of their case, as well as the substantial risks they would face at
8 trial and, if successful, during the appellate process. In opting to settle, Class Representative and
9 Class Counsel concluded that settlement on the terms they obtained was in the Class's best interest
10 and in fact was a remarkable recovery for the Class. Class Representative remained well-informed
11 throughout the Litigation and settlement negotiations and ultimately approved the Settlement. *See*
12 *generally* Declaration of Robert O. Glaza ("Glaza Decl."), attached hereto as Ex. A.

13 6. Class Counsel achieved the proposed Settlement after nearly five years of litigation,
14 during which time Class Counsel, *inter alia*:

- 15 • successfully moved for appointment of Construction Laborers Pension Trust for
16 Southern California as Lead Plaintiff and Robbins Geller as Lead Counsel in June
17 2018, and subsequent transfer of the action to this Court;
- 18 • conducted an extensive investigation, including the review of publicly available
19 information and interviews of confidential witnesses, culminating in the filing of the
20 detailed Consolidated Complaint for Violation of the Federal Securities Laws
21 ("Complaint") on August 31, 2018;
- 22 • prepared extensive briefing in 2018 and conducted oral argument in February 2019 to
23 defeat Defendants' motion to dismiss the Complaint;
- 24 • conducted extensive party and third-party fact discovery, including: (a) review of
25 over a half a million pages (more than 88,000 documents) from over 40 Wells Fargo
26 custodians; (b) taking 19 fact witness depositions; (c) responding to Defendants'
27 various discovery requests; (d) issuing subpoenas to 35 third parties, which yielded
28 the production of an additional half a million documents; and (e) reviewing over 150
pages of admissions and sworn interrogatory responses provided by Defendants;
- achieved certification, in August 2022, of a class of all persons and entities who
purchased or otherwise acquired the common stock of Wells Fargo during the period
from November 3, 2016, through August 3, 2017, inclusive, and were damaged
thereby (the "Class");

- 1 • moved successfully for appointment of Construction Laborers Pension Trust for
2 Southern California as Class Representative and Robbins Geller as Class Counsel;
- 3 • engaged in multiple lengthy and contentious discovery-related disputes concerning
4 the scope of fact discovery and document production, Defendants' privilege log and
5 assertions of privilege over various materials, and several other issues discussed
6 below;
- 7 • conducted complex expert discovery on a variety of issues (including loss causation,
8 damages, insurance practices, Congressional investigations, and corporate disclosure
9 requirements and processes), including the exchange of expert reports from six
10 experts, preparing for and taking (or defending) seven expert depositions, and the
11 voluminous production of expert-related documents and supporting data;
- 12 • briefed oppositions to Defendants': (a) motion for summary judgment; and (b)
13 motions to exclude or strike the opinions of: (i) Lead Plaintiff's loss causation expert;
14 (ii) Lead Plaintiff's expert on the reputations and statements of publicly-owned
15 companies, market participants and market expectations, and the preparation and
16 presentation of Congressional testimony; and (iii) Lead Plaintiff's expert on
17 insurance practices and regulations;
- 18 • drafted numerous motions *in limine* and exchanged preliminary witness and exhibit
19 lists with Defendants in preparation for trial; and
- 20 • prepared for trial by: (a) analyzing and designating trial exhibits from a pool of over
21 4 million pages of documents; (b) reviewing 90 hours of deposition testimony and
22 preparing deposition designations; (c) identifying trial witnesses; (d) analyzing and
23 drafting objections to Defendants' preliminary exhibit list; (e) researching and
24 drafting proposed jury instructions and verdict form; (f) compiling various witness
25 files and exhibits; (g) creating trial demonstratives; (h) preparing an opening
26 statement; and (i) drafting an initial joint pretrial statement and statement of
27 undisputed facts.

28 7. The substantial fact and expert discovery, motion practice, and trial preparation outlined herein informed Class Counsel of the case's many strengths, but also potential weaknesses. Class Counsel considered this information in determining the best course of action for the Class.

8. The proposed Settlement of \$300,000,000.00 cash is the direct product of Class Representative's and Class Counsel's efforts over the past five years, including those described in this declaration. The Settlement is also the product of the parties' numerous arm's-length negotiations and mediation sessions facilitated by the Honorable Layn R. Phillips (Ret.), one of the nation's foremost mediators, over the course of several years. These negotiations were conducted by

1 experienced counsel with an intimate understanding of the case and ultimately resulted in a
2 mediator's proposal that was accepted by both sides just ten weeks before trial was set to commence.

3 9. Class Counsel also seeks approval of the proposed Plan, which Class Counsel submits
4 is fair and reasonable. Class Counsel drafted the Plan based on the analysis of Lead Plaintiff's
5 damages and loss causation expert, Professor Steven P. Feinstein, Ph.D., CFA. As further described
6 below and in the Notice, the Plan provides formulas for calculating the recognized claim of each
7 Class Member that submits a Proof of Claim form based on when the Claimant purchased and/or
8 sold their Wells Fargo common stock on the open market. Each Authorized Claimant, including the
9 Class Representative, will receive a *pro rata* distribution pursuant to the Plan, and Class
10 Representative will be subject to the same formula for distribution of the Net Settlement Fund.
11 Importantly, the Plan does not treat the Class Representative nor any other Class Member
12 preferentially.

13 10. Class Counsel prosecuted the Litigation on a wholly contingent and "at risk" basis,
14 advancing and incurring substantial litigation expenses, charges, and costs over the years. Class
15 Counsel shouldered substantial risk in doing so, and, to date, have not received any compensation for
16 its efforts. Accordingly, in consideration of Class Counsel's extensive efforts on behalf of the Class,
17 Class Counsel is applying for an award of attorneys' fees in the amount of 25% of the Settlement
18 Amount and an award of \$1,965,687.14 in litigation expenses, and any interest on such amounts at
19 the same rate and for the same period as earned by the Settlement Fund.

20 11. As set forth in the accompanying Memorandum of Points and Authorities in Support
21 of an Award of Attorneys' Fees and Expenses, and Award to Class Representative Pursuant to 15
22 U.S.C. §78u-4(a)(4) (the "Fee Memorandum"), the requested fee is within the range of fees awarded
23 in large Private Securities Litigation Reform Act of 1995 ("PSLRA") securities class action
24 settlements, is in accord with the Ninth Circuit's presumptively reasonable 25% benchmark rate, and
25 is justified in light of the substantial benefits conferred on the Class, the risks undertaken, the quality
26 of representation, and the nature and extent of the legal services Class Counsel performed in this
27 complex litigation. To date, no Class Member has objected. Class Counsel submits that the fee
28 application is fair to the Class, under all applicable standards, and warrants the Court's approval.

1 12. Class Counsel also seeks an award in the amount of \$1,965,687.14 (plus interest
2 accrued thereon) for expenses, costs, and charges reasonably and necessarily committed to the
3 prosecution of the Litigation over the last five years. These expenses include: (a) the substantial fees
4 and expenses of experts and consultants whose services were required for the successful prosecution
5 and resolution of this case; (b) the costs of conducting and defending dozens of fact and expert
6 witness depositions over the years, which included court reporter and videographer fees and travel
7 expenses; (c) photocopying, imaging, shipping, and managing a database of over 4 million pages of
8 documents; (d) online factual and legal research; and (e) mediation expenses.

9 13. Class Representative seeks an award in the amount of \$9,794.98 pursuant to 15
10 U.S.C. §78u-4(a)(4), directly relating to its representation of the Class, including time spent
11 discussing litigation strategy, case development, and settlement negotiations with Class Counsel.
12 Class Representative actively monitored the Litigation and supervised Class Counsel. Class
13 Representative also dedicated time and resources to discovery, which included gathering documents
14 and information responsive to Defendants' discovery requests. After detailed discussions with Class
15 Counsel, Class Representative approved the Settlement.

16 **II. HISTORY OF THE ACTION**

17 14. The following summarizes the principal events during the Litigation and the legal
18 services Class Counsel provided to Class Representative and the Class.

19 **A. Appointment of Lead Plaintiff and Lead Counsel and Transfer to this** 20 **Court**

21 15. On February 14, 2018, a class action complaint was filed in the United States District
22 Court for the Southern District of New York, asserting violations of the federal securities laws, and
23 seeking to recover on behalf of a class of investors who purchased or otherwise acquired Wells
24 Fargo common stock between January 13, 2017 and July 27, 2017 (the "New York Action"). ECF 1
25 at 1-2. On April 16, 2018, Construction Laborers Pension Trust for Southern California moved for
26 appointment as lead plaintiff and to appoint Robbins Geller as Lead Counsel. ECF 15.
27 Subsequently, for the convenience of the parties and witnesses, Construction Laborers Pension Trust
28 for Southern California sought to transfer the New York Action to this Court. ECF 21. On June 20,

1 2018, Judge Ramos of the United States District Court for the Southern District of New York
2 appointed Construction Laborers Pension Trust for Southern California as Lead Plaintiff, appointed
3 Robbins Geller Lead Counsel, and ordered the New York Action transferred to this Court. ECF 24;
4 *see also* Clerk’s Notice: Informing All Parties that this Case is now with the United States District
5 Court for the Northern District of California (ECF 27).

6 **B. Lead Plaintiff’s Factual Investigation, the Complaint, and Successful**
7 **Opposition to Defendants’ Motion to Dismiss**

8 16. Following the appointment of Construction Laborers Pension Trust for Southern
9 California as Lead Plaintiff and Robbins Geller as Lead Counsel on June 20, 2018, Robbins Geller
10 conducted an extensive factual investigation consisting of the review of over ten thousand pages of
11 conference call transcripts, Wells Fargo’s public filings with the Securities and Exchange
12 Commission (the “SEC”), trading data, analyst reports, Congressional hearing testimony,
13 Congressional reports and related records, regulatory consent orders, customer complaints, and news
14 articles, covering the span of several years. Lead Counsel also interviewed percipient witnesses
15 believed to have first-hand knowledge of the facts of the case and alleged fraud and submitted
16 Freedom of Information Act requests to the Consumer Financial Protection Bureau and the Office of
17 the Comptroller of the Currency. Following that extensive investigation, Lead Plaintiff filed the
18 Complaint on August 31, 2018. ECF 46.

19 17. The 83-page Complaint alleges violations of §§10(b) and 20(a) of the Securities
20 Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder on behalf of all persons who
21 purchased or otherwise acquired Wells Fargo common stock between November 3, 2016 and August
22 3, 2017, inclusive. *Id.* at 1. The Complaint alleges that Defendants violated the securities laws by
23 making materially false and misleading statements and omissions and by engaging in a fraudulent
24 scheme pertaining to Wells Fargo’s insurance products, namely its Collateral Protection Insurance
25 (“CPI”) and Guaranteed Asset (or Auto) Protection (“GAP”) products. The Complaint further
26 alleges that when the true facts regarding the alleged misstatements and omissions were revealed
27 through a partial disclosure in July 2017, and subsequent disclosure in August 2017, artificial
28 inflation dissipated from Wells Fargo’s share price, causing the Class to suffer damages.

1 18. Wells Fargo moved to dismiss the Complaint on November 2, 2018, raising various
2 challenges under Federal Rules of Civil Procedure 9(b), 12(b)(6), and the PSLRA. ECF 55.
3 Individual defendants joined in Wells Fargo’s motion and submitted additional arguments in favor of
4 dismissal. ECF 56, 59-61. Defendants challenged the sufficiency of the pleadings, including: (a)
5 whether the Complaint adequately alleged falsity and scienter; and whether (b) Lead Plaintiff’s
6 alleged losses were caused by any of the alleged false statements or omissions. *Id.* On December
7 21, 2018, Lead Plaintiff filed an opposition to Defendants’ motion to dismiss (ECF 63), and on
8 January 25, 2019, Defendants filed a reply (ECF 65). On February 28, 2019, the Court held oral
9 argument, during which the Court directed Lead Plaintiff to submit a chart summarizing the
10 Complaint’s allegations on a statement-by-statement basis (the “False Statement Summary Chart”).
11 ECF 66.

12 19. On March 14, 2019, Lead Plaintiff submitted its False Statement Summary Chart,
13 summarizing each of the statements alleged in the Complaint to have been misleading during the
14 Class Period. ECF 71. The detailed chart included the name of the speaker, together with the time
15 and location of the statement, along with the reason or reasons why the statement was allegedly false
16 and misleading, and summarized the facts giving rise to a strong inference of scienter on a statement-
17 by-statement basis. *Id.* On March 28, 2019, Defendants filed a supplemental memorandum in
18 support of their motion to dismiss, challenging the sufficiency of the allegations relating to each of
19 the allegedly false statements identified in the False Statement Summary Chart. ECF 72.

20 20. The Court subsequently denied (in part) Defendants’ motion to dismiss, paving the
21 way for the Litigation to proceed against Wells Fargo and Timothy Sloan. ECF 74.

22 **C. Over Defendants’ Challenges, Lead Plaintiff Successfully Obtains**
23 **Class Certification**

24 21. Defendants answered the Complaint on February 28, 2020, substantially denying the
25 Complaint’s allegations while also raising a number of affirmative defenses. ECF 79-80. The
26 parties exchanged initial disclosures the same day. On April 9, 2020, the parties filed a joint case
27 management statement. ECF 88. The Court thereafter issued a scheduling order setting forth
28

1 deadlines for class certification briefing, fact and expert discovery, dispositive motion briefing, and
2 trial. ECF 95.

3 22. Class Counsel drafted and filed a motion for class certification and for the
4 appointment of Class Representative and approval of Class Counsel on October 15, 2020. ECF 102.
5 In the motion, Class Counsel detailed how the requirements for class certification under Fed. R. Civ.
6 P. 23 were readily satisfied. In particular, Class Counsel described how the numerosity,
7 commonality, typicality, and adequacy requirements of Rule 23(a) were met, in addition to the
8 superiority and predominance mandates posed by Rule 23(b). In answering the Rule 23(b) inquiry,
9 Class Counsel addressed the fraud-on-the-market presumption of reliance, and in so doing, described
10 how the market for Wells Fargo's common stock was efficient during the Class Period. That
11 undertaking required Class Counsel's thorough review and consideration of all five of the *Cammer v.*
12 *Bloom*, 711 F. Supp. 1264 (D.N.J. 1989) factors – which courts routinely consider in addressing
13 class certification. *Id.* Class Counsel also filed the expert report of Bjorn I. Steinholt, CFA, in
14 connection with the motion for class certification. ECF 102-4. In addition to the *Cammer* factors,
15 Mr. Steinholt also gave thoughtful consideration to the additional factors included in *Krogman v.*
16 *Sterritt*, 202 F.R.D. 467 (N.D. Tex. 2001), before ultimately opining that the market for Wells Fargo
17 stock was efficient during the Class Period. *Id.* Mr. Steinholt also opined that class-wide damages
18 could be calculated using a common damages methodology.

19 23. Defendants filed an opposition to the motion for class certification on November 19,
20 2020. ECF 105. With their opposition, Defendants included the Expert Report of Douglas J.
21 Skinner to refute the opinions of Mr. Steinholt. Class Counsel thereafter drafted and filed a reply in
22 support of class certification, responding to Defendants' challenges to market efficiency and class-
23 wide damage methodology. ECF 106. Concurrent with the parties' briefing, Class Counsel prepared
24 for and defended the deposition of Mr. Steinholt and prepared for and took Dr. Skinner's deposition.

25 24. On May 12, 2022, the Court heard oral argument on Lead Plaintiff's motion to certify
26 the class. At that hearing, the Court set the trial date for this Litigation for February 27, 2023. On
27 August 15, 2022, the Court certified the Class, appointed Construction Laborers Pension Trust for
28

1 Southern California as Class Representative, and approved Robbins Geller as Class Counsel. ECF
2 211.

3 25. As reflected in the Joint Proposal for Dissemination of Notice to the Class (ECF 213)
4 and Amended Proposal for Dissemination of Class Notice by Email (ECF 216), Class Counsel,
5 together with the administrator, developed a comprehensive notice plan to alert potential class
6 members of the pendency of the Litigation. After receiving guidance from the Court regarding email
7 notice, Class Counsel thereafter caused the distribution of the Notice Plan to potential class
8 members. *See* ECF 219 (October 28, 2022, Order Approving Amended Proposal for Dissemination
9 of Notice to the Class). As of the date of the exclusion deadline, Class Counsel had received 65
10 timely and valid requests to opt-out of the Litigation. ECF 220-4.

11 **D. Lead Plaintiff Sought Significant Discovery from Defendants and**
12 **Third Parties**

13 26. Fact discovery in this Litigation was thorough. Shortly after defeating Defendants'
14 motion to dismiss the Complaint, Class Counsel drafted and propounded on Defendants the first set
15 of document requests, which were followed shortly by requests for admission and interrogatories.
16 Defendants also served their own document requests and interrogatories on Lead Plaintiff. All told,
17 Class Counsel reviewed over 150 pages of admissions and sworn interrogatory responses provided
18 by Defendants. In responding to Defendants' requests, Class Counsel worked closely with Lead
19 Plaintiff in identifying, reviewing, and producing to Defendants documents and information
20 responsive to Defendants' requests. Class Counsel also formulated responses and objections to
21 Defendants' requests, and engaged in numerous written and telephonic conferrals with Defendants
22 regarding various discovery issues.

23 27. Document discovery was voluminous. Lead Plaintiff responded to Defendants'
24 discovery, including dozens of requests for documents, pursuant to which Lead Plaintiff produced
25 records and documents. Class Counsel also served a total of seven sets of requests for production of
26 documents on Wells Fargo and Timothy Sloan, seeking document discovery in response to 56
27 requests.
28

1 28. Class Counsel crafted the requests, which were tailored to seek various categories of
2 documents necessary for proving the alleged fraud and its impact on Wells Fargo's share price. The
3 parties conferred extensively over each set of requests, negotiating over such matters as Defendants'
4 objections to the requests, the temporal and subject matter scope of document discovery with respect
5 to each of the requests, relevant production custodians and search terms, Defendants' assertions of
6 privilege, work product protections, assertions of the Bank Examiner Privilege, and the contours of
7 discovery based on the Federal Rules of Civil Procedure and Lead Plaintiff's claims and Defendants'
8 defenses.

9 29. In addition to requests for production to Defendants, Class Counsel prepared and
10 propounded document request subpoenas on 35 non-parties in an effort to obtain additional
11 documentary evidence of the alleged fraud. These non-parties included current and former
12 employees of Wells Fargo, Wells Fargo's external counsel and various public relations firms
13 associated with the Company's internal investigation into its unauthorized accounts scandal and
14 subsequent fallout, transcript service providers, and Wells Fargo's third-party CPI vendor. Class
15 Counsel diligently worked to identify the non-parties most likely to possess relevant information,
16 drafted the document requests, and located and served the non-parties. Class Counsel then
17 negotiated the scope of document productions with each non-party and reviewed the extensive
18 information those non-parties produced.

19 30. In all, over a half-million documents (encompassing several million pages) were
20 produced in this Litigation by the parties and third-parties. To effectively prosecute this complex
21 action, Class Counsel organized a team of skilled attorneys to assist with the document review and
22 discovery efforts and to help evaluate the merits of Lead Plaintiff's allegations and Defendants'
23 defenses.

24 31. In addition to the extensive discovery sought via subpoena, Class Counsel continued
25 to monitor the evolving public record, including reviewing the Congressional record from
26 subsequent Congressional hearings, Congressional reports, the Attorneys General action, regulatory
27 orders, and private litigation developments concerning Wells Fargo's CPI and GAP programs. Class
28 Counsel also obtained and reviewed substantial documentary evidence from its Freedom of

1 Information Act requests, including from the Consumer Financial Protection Bureau and the Office
2 of the Comptroller of the Currency (the “OCC”). These documents included approximately 40
3 transcripts and approximately 2,000 exhibits from the OCC’s administrative enforcement action
4 against former Wells Fargo employees following the Company’s unauthorized accounts scandal, all
5 of which were reviewed by Class Counsel’s team of skilled attorneys.

6 32. This universe of documentary evidence proved critical in Class Counsel’s preparation
7 for the 19 fact witness depositions taken by Class Counsel between February 2021 and December
8 2022. The deponents in this matter included Individual Defendant Timothy Sloan, the Company
9 itself, various current and former Wells Fargo executives and employees, and Wells Fargo’s external
10 counsel retained by the Company to assist it in responding to the Senate’s questions for the record in
11 the fall of 2016 as part of the examination into Wells Fargo’s unauthorized accounts scandal.

12 33. Each of the 19 fact depositions required extensive preparation on Class Counsel’s
13 part. Class Counsel capably and efficiently reviewed and analyzed large volumes of documents in
14 compressed timeframes, while preparing to take a host of fact witness depositions on a variety of
15 topics concerning the administration and termination of the Company’s CPI program, the harm the
16 CPI and GAP programs caused consumers and Defendants’ knowledge of that harm, and the
17 circumstances surrounding Wells Fargo’s response to questions from the Senate following the
18 unauthorized account scandal.

19 34. Class Counsel’s preparation included spending months searching for, identifying, and
20 analyzing documentary evidence that could be used during depositions or otherwise utilized in
21 preparing for them, preparing witness files, and reviewing thousands of pages of testimony from
22 other relevant actions. Two of the depositions were conducted pursuant to Federal Rule of Civil
23 Procedure 30(b)(6), which required Class Counsel to negotiate the scope of the deposition topics in
24 advance. During several of the depositions, defense counsel instructed the witnesses not to answer
25 on privilege grounds, requiring Class Counsel to seek relief from the Court. *See, e.g.*, ECF 138-4,
26 142-4.

27 35. Class Counsel also served on Wells Fargo requests for admission, and subsequently
28 negotiated a stipulation concerning the admissibility and authenticity of hundreds of documents

1 produced by Wells Fargo in this Litigation for use at trial. Likewise, Class Counsel served 26
2 requests for admission on Defendant Timothy Sloan.

3 **E. Class Counsel Litigated Multiple Discovery Disputes and Vigorously**
4 **Pursued Additional Discovery on Behalf of the Class**

5 36. A number of fact discovery disputes arose between the parties, requiring extensive
6 written correspondence, countless telephonic conferrals, and hours upon hours of negotiations
7 between the parties. Throughout the course of fact discovery, Wells Fargo produced or filed more
8 than 15 privilege logs, which required Class Counsel to devote substantial time reviewing and
9 analyzing thousands of rows of data to ascertain the propriety of Wells Fargo's privilege assertions.
10 Numerous discovery motions were ultimately filed, requiring the Court to evaluate the sufficiency of
11 Wells Fargo's privilege assertions.

12 37. The discovery disputes throughout the Litigation primarily concerned (1) Wells
13 Fargo's (and its external counsel's) preparation of the Company's written responses to the Senate's
14 questions for the record; (2) Wells Fargo's presentations to the Department of Justice and State
15 Attorneys General concerning CPI and GAP; (3) Wells Fargo's assertion of privilege over its
16 litigation loss reserves during the Class Period; (4) whether Defendants believed CPI constituted
17 misconduct; (5) Wells Fargo's proffered "not a sales practice" defense; (6) the sufficiency of
18 Defendants' document productions concerning an August 15, 2016, board committee meeting; and
19 (7) the withholding of documents concerning CPI and GAP during the time period within which
20 Wells Fargo was preparing a response to the Senate's questions for the record. *See, e.g.*, ECF 180
21 (joint letter summarizing outstanding discovery disputes); *see also* ECF 195 (letter seeking to
22 compel production of documents related to CPI and GAP).

23 38. These disputes required Class Counsel to research, analyze, and craft various
24 arguments, including those related to "sword and shield" and other equitable justifications for
25 production of withheld documents based on Defendants' state of mind and various affirmative
26 defenses, the scope and potential for subject matter waiver and the crime-fraud exception to
27 attorney-client privilege, whether the attorney-client privilege was justifiably asserted and potential
28 abuses of those assertions, and the parties' obligations under the Federal Rules of Civil Procedure to

1 produce information that support the claims and defenses at issue. Class Counsel also reviewed and
2 analyzed hundreds of pages of deposition testimony and documents, and diligently reviewed over
3 one dozen privilege logs and thousands of entries to identify documents and communications that
4 undermined Wells Fargo's privilege assertions. ECF 132-4, 195.

5 **F. The Parties Engaged in Extensive Expert Discovery**

6 39. On April 9, 2021, the Court entered an Amended Scheduling Order, setting forth the
7 deadlines by which the parties were to complete expert discovery and file dispositive motions. ECF
8 126.

9 40. During the summer and fall of 2021, the parties conducted expert discovery covering
10 a wide range of areas, including loss causation, damages, insurance practices, Congressional
11 investigations, and corporate disclosure requirements and processes.

12 41. In addition to the expert report of Mr. Steinholt submitted with Class Counsel's
13 motion to certify the class, Class Counsel produced three additional expert reports to Defendants. In
14 response, Defendants produced two rebuttal expert reports. Class Counsel deposed both of
15 Defendants' experts and defended the depositions of each of Class Counsel's three experts. Class
16 Counsel also exchanged and analyzed hundreds of documents the experts cited in their reports or
17 relied upon in forming their opinions. Class Counsel spent considerable time reviewing Defendants'
18 experts' reports and dissecting their opinions and conclusions in preparation for each deposition.

19 **G. Class Counsel Opposed Defendants' Motion for Summary Judgment
20 and Motions to Exclude each Expert**

21 42. On January 14, 2022, Defendants moved for summary judgment on the Class's
22 claims. ECF 162. Defendants' brief and supporting exhibits (61 in all) comprised nearly 1,600
23 pages. *Id.*

24 43. Class Counsel opposed Defendants' summary judgment motion on February 23,
25 2022, supporting the 30-page opposition brief with documentary evidence highlighting the myriad
26 factual disputes at issue in the Litigation. ECF 167-168. Class Counsel's opposition brief was laden
27 with evidence regarding Defendants' conduct concerning the Company's CPI and GAP programs,
28 the escalation of those issues to Defendant Timothy Sloan, and the known harm caused by the

1 Company's conduct in administering the programs prior to the alleged false statements at issue.
2 Class Counsel also responded to Defendants' loss causation challenges, highlighting the decline in
3 Wells Fargo's stock price on each of the corrective disclosure dates. Defendants filed a reply in
4 further support of their summary judgment motion on March 25, 2022, offering 12 additional
5 exhibits. ECF 183, 183-2.

6 44. Together with their motion for summary judgment, Defendants also filed motions to
7 exclude or strike the opinions of each of the three experts offered by Class Counsel. ECF 158-160.
8 Class Counsel also drafted and filed oppositions to each of those motions. ECF 169-171.
9 Defendants filed their replies on March 28, 2022. ECF 181-182, 184.

10 45. Class Counsel spent substantial time with each expert, reviewing documents and
11 preparing for each deposition. Class Counsel believes all three of the experts would have offered the
12 jury valuable and relevant insight into the issues underlying this Litigation. Adam Cole is a
13 consumer insurance expert, well versed in insurance practices and procedures, including the risks
14 and abuses of CPI, the administration of GAP, and the potential for regulatory scrutiny over CPI and
15 GAP. Former SEC Chairman Harvey Pitt was offered by Class Counsel to testify as to the
16 importance of a bank's reputation, market expectations, and the preparation and presentation of
17 Congressional testimony. Finally, Steven Feinstein was Class Counsel's expert on loss causation
18 and damages. Defendants' motions to exclude and for summary judgment were pending at the time
19 the parties achieved the Settlement.

20 **H. Class Counsel's Substantial Preparation for Trial**

21 46. On May 12, 2022, at the hearing on Lead Plaintiff's motion to certify the class, the
22 Court set the trial date for this Litigation for February 27, 2023. On August 15, 2022, the Court set
23 the pretrial conference for February 9, 2023 (ECF 212), which allowed the parties to establish the
24 deadlines by which to file, *inter alia*, joint trial materials, exchange trial exhibit lists, and serve
25 motions *in limine*. In late 2022, Class Counsel, together with counsel for Defendants, engaged in
26 meet-and-confer discussions regarding the scope of admissible evidence at trial.

27 47. Throughout the summer and fall of 2022, Class Counsel prepared for the jury trial.
28 During that time, Class Counsel conducted a mock jury study to gauge the potential reaction to Class

1 Counsel's trial themes and evidence, which required significant time and dedication to developing
2 the strongest presentation of the theory of the case and anticipating the presentation of Defendants'
3 theories and defenses. Class Counsel also dedicated considerable time and effort to building its
4 preliminary trial exhibit lists, as well as formulating objections to documents on Defendants'
5 preliminary exhibit list. On December 1, 2022, the parties exchanged preliminary trial exhibit and
6 witness lists. In formulating its preliminary trial exhibit list, which was comprised of nearly 370
7 documents, Class Counsel analyzed thousands of documents. After the exchange, Class Counsel
8 immediately began analyzing the nearly 200 documents identified in Defendants' preliminary trial
9 exhibit list and identifying objections.

10 48. In anticipation of trial, Class Counsel corresponded with counsel for third parties
11 concerning those witness' potential testimony at trial and service of subpoenas to testify. Class
12 Counsel also drafted a number of motions *in limine* to preclude or limit evidence at trial, which
13 required extensive legal research and factual analyses and careful consideration of the defenses and
14 issues remaining in the case. Class Counsel also spent considerable time drafting proposed jury
15 instructions, a proposed verdict form, and Lead Plaintiff's position for the joint pretrial statement
16 and undisputed facts, in addition to a proposed jury questionnaire and opening statement
17 presentation.

18 49. Class Counsel reviewed many hours of deposition testimony from each of the 19 fact
19 witnesses deposed in preparation for trial. With regard to witnesses who were not expected to
20 appear live at trial, Class Counsel designated portions of deposition videos that they planned to play
21 for the jury in lieu of the witnesses' live testimony. Meanwhile, with regard to those trial witnesses
22 who were expected to appear live at trial, Class Counsel evaluated those witnesses' deposition
23 transcripts in order to prepare to examine, and if necessary, impeach those witnesses at trial.

24 50. In short, Class Counsel prepared intensely at each and every step of the Litigation, all
25 with the goal of achieving a jury verdict in the Class's favor.

26 **III. THE SETTLEMENT**

27 51. The Settlement of \$300,000,000.00 was the result of extensive arm's-length
28 negotiations between the parties over a period of nearly five years. The Settlement unquestionably

1 provides the Class with a substantial benefit and eliminates the significant risks of a jury trial. Class
2 Counsel believes that the Settlement is fair, reasonable, and adequate and an excellent result for
3 Class Members, considering the risk of recovering much less, or even nothing, with a dispositive
4 decision at summary judgment, or after a jury trial. Further, even if a verdict in favor of Lead
5 Plaintiff was obtained and ultimately upheld on appeal, this post-trial process would have taken
6 years and substantially delayed any recovery for the Class.

7 **A. Reaching the Settlement**

8 52. The parties engaged the Honorable Layn R. Phillips (Ret.) in direct settlement
9 discussions during the course of the Litigation. Counsel appeared for zoom mediation sessions and
10 convened multiple additional teleconferences with Judge Phillips over the course of the Litigation.

11 53. The parties attended the first Zoom meditation session on August 3, 2021. In advance
12 of that session, Class Counsel drafted and provided Judge Phillips a comprehensive mediation
13 statement outlining the alleged fraud, citing various documents Defendants had produced in
14 discovery which supported Class Counsel's claims. Defendants, meanwhile, submitted their own
15 mediation statement, emphasizing what they perceived to be the strengths of their case and the
16 weaknesses in Class Counsel's case. Class Counsel also prepared and presented testimony and a
17 summation for Judge Phillips outlining Class Counsel's views on the merits of the Litigation and the
18 estimated damages incurred by the Class. The first mediation session was unsuccessful, and fact
19 discovery continued.

20 54. The parties also attended another Zoom mediation session with Judge Phillips on
21 January 17, 2022, which required supplemental submissions and additional evidence from Class
22 Counsel. The January 17, 2022 session came at a time when the parties had the benefit of complete
23 fact discovery (with the exception of one remaining deposition) and the parties had exchanged expert
24 reports and were considering arguments to be made at summary judgment. Like the preceding
25 session, the January 17, 2022 session ended without a resolution of the case.

26 55. Notwithstanding their unsuccessful attempts to resolve the Litigation, the parties
27 remained in contact with Judge Phillips in an ongoing effort to reach a resolution. The parties
28 continued engaging in mediation discussions throughout 2022. On December 22, 2022, after the

1 parties had exchanged preliminary trial exhibit lists and Class Counsel’s trial preparation was well
2 underway, the parties agreed to a mediator’s proposal tendered by Judge Phillips. While at that time
3 the case was settled in principal, Class Counsel continued meeting-and-conferring with counsel for
4 Defendants, facilitated by Judge Phillips, to negotiate additional terms of the settlement. That
5 negotiation process took several weeks, and required zealous advocacy by Class Counsel to obtain
6 the best possible settlement terms for the Class. Those terms were finalized just weeks before the
7 jury trial was set to commence.

8 56. Through that arm’s-length process, the parties achieved the Stipulation of Settlement,
9 which was filed along with its exhibits on February 7, 2023. ECF 220-2. That same day, Class
10 Counsel filed its unopposed motion for preliminary approval of the Settlement. ECF 220. The
11 Court held a preliminary approval hearing on March 23, 2023, and the next day, Class Counsel filed
12 a revised Proposed Order Preliminarily Approving Settlement and Providing for Notice, taking into
13 account certain deadlines and dates relevant to the final resolution of this case. ECF 224, 225. On
14 May 1, 2023, the Court issued an Order Preliminarily Approving Settlement and Providing for
15 Notice, granting preliminary approval of the parties’ Stipulation of Settlement, approving the form
16 and manner of notice to the Class, and scheduling the final approval hearing for August 17, 2023.
17 ECF 230 (the “Preliminary Approval Order”).

18 **B. Reasons for the Settlement**

19 57. Class Representative and Class Counsel both strongly endorse the Settlement. Class
20 Representative is a sophisticated institutional investor who has actively overseen the prosecution of
21 this Litigation since 2018. Class Counsel specializes in complex securities litigation and are highly
22 experienced in such litigation. *See* Declaration of Spencer A. Burkholz Filed on Behalf of Robbins
23 Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys’ Fees and
24 Expenses/Charges (“Class Counsel Declaration”), Ex. G. Based on their experience and intimate
25 knowledge from litigating this case for nearly five years, Class Counsel and Class Representative
26 together determined that the Settlement is in the best interest of the Class.

27 58. An all cash payment of \$300,000,000 represents a significant recovery for the Class
28 in light of the opportunities to limit, or dispose of completely, the case that were still available to

1 Defendants through summary judgment, trial or appeal. Defendants have denied and continue to
2 deny the claims, contentions, and allegations made by Lead Plaintiff in the Litigation. They have
3 expressly denied and continue to deny that they have violated the federal securities laws, or have
4 otherwise misled investors as alleged. Defendants have denied and continue to deny the allegations
5 that any of the Defendants made any material misstatements or omissions or engaged in any
6 fraudulent scheme, and that any member of the Class has suffered damages resulting from the
7 conduct alleged. Defendants also maintain that they have meritorious defenses to the claims
8 asserted.

9 59. Class Counsel faced numerous risks throughout the Litigation, including up to the
10 date they agreed to the proposed settlement. One such risk concerned the amount of damages that
11 could be recovered at trial. Dr. Feinstein, Class Counsel's trial expert on market efficiency, loss
12 causation, and damages, estimated total out-of-pocket damages were up to \$2.16 per share.
13 However, even assuming Class Counsel prevailed at trial, a jury could have awarded much less than
14 the Class's estimated total damages, or no damages at all. Under prevailing case law, damages under
15 §10(b) may be reduced or eliminated if a portion (or all) of the damages are attributable to causes
16 other than the misstatements or omissions. In this case, Defendants repeatedly contended that the
17 alleged fraud did not cause large portions of the alleged stock price declines, and thus the Class's
18 losses.

19 60. Defendants undoubtedly planned to press this defense at trial. Dr. Douglas Skinner,
20 Defendants' damages and loss causation expert, was prepared to testify at trial that there was no
21 evidence that the alleged fraud caused any portion of Wells Fargo's stock price to decline for one of
22 the corrective disclosure dates, August 4, 2017, or that alternatively, only a portion of the decline
23 was attributable to the alleged fraud. According to Dr. Skinner, non-fraud confounding factors were
24 to blame for at least some of the decline in Wells Fargo's stock price on August 4, 2017, and that
25 disclosure of regulatory investigations that day were not "new news." Similarly, Dr. Skinner
26 challenged Dr. Feinstein's market efficiency analysis and opined that Dr. Feinstein's damage
27 analyses overstated any inflation in Wells Fargo's stock price.

28

1 61. In addition to challenging loss causation and damages at trial, Class Counsel expected
2 Defendants to present evidence that Defendants’ alleged misstatements and omissions were not
3 materially false or misleading and that Defendants did not act with scienter. Defendants also
4 maintained that the alleged scheme was not a fraud at all – that any harm caused by CPI and GAP
5 was related to issues of poor oversight and/or internal controls. In moving for summary judgment
6 Defendants argued that: (a) Wells Fargo’s administration of its CPI and GAP programs did not result
7 in “misconduct,” and therefore, the allegedly false statements were literally accurate and therefore
8 could not be misleading; (b) Wells Fargo’s statements concerned only its sales practices (*i.e.*, the
9 unauthorized account scandal), and CPI and GAP were not “sales practices,” and thus, Defendants’
10 statement were not false; (c) there was no evidence that Defendant Sloan knew of any issues with
11 GAP prior to the November statements; (d) there was no evidence that anyone who drafted the
12 second alleged false statement had any knowledge whatsoever of the CPI and GAP issues (and thus,
13 Lead Plaintiff could not prove scienter); and (e) loss causation could not be established as to CPI on
14 the second corrective disclosure date because there was no “new news” contained in that disclosure
15 related to CPI that could have caused any of Lead Plaintiff’s (or the Class’s) losses. Class Counsel
16 expected Defendants to rely heavily on these and other arguments at trial, posing a risk that one or
17 more of those arguments would gain traction with a jury and result in a verdict in Defendants’ favor.

18 62. The fact that many of the parties’ trial witnesses remained employed by Wells Fargo,
19 retained relationships with one or more Defendants, were represented by Defendants’ counsel, or in
20 the case of Timothy Sloan, was a Defendant himself, posed another considerable risk. Class Counsel
21 expected multiple adverse witnesses who would attempt to exculpate Defendants at trial.

22 63. The Settlement eliminates these and other risks, enabling the Class to promptly obtain
23 a sizeable recovery, while avoiding continued litigation and the unpredictability of a jury trial that
24 could potentially diminish the Class’s opportunity for recovery.

25 **C. Notice to the Class Meets the Requirements of Due Process and**
26 **Federal Rule of Civil Procedure 23**

27 64. In accordance with the Court’s May 1, 2023, Preliminary Approval Order (ECF 230),
28 beginning on May 22, 2023, Class Counsel, through Gilardi & Co. LLC (“Gilardi” or the “Claims

1 Administrator”), caused the Postcard Notice, substantially in the form annexed to the Court’s
2 Preliminary Approval Order, to be emailed or mailed by First-Class Mail (where an email was
3 unavailable) to all Class Members who could be identified with reasonable effort. In total, Gilardi
4 has emailed over 139,800 Postcard Notices and mailed over 961,800 Postcard Notices to potential
5 Class Members and their nominees as of July 12, 2023. See Declaration of Ross D. Murray
6 Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date
7 (“Murray Decl.”), ¶12, attached hereto as Ex. B.

8 65. On May 26, 2023, Gilardi caused the Summary Notice to be published in *The Wall*
9 *Street Journal* and to be transmitted over *Business Wire*. See *id.*, ¶13.

10 66. In addition, Gilardi caused a copy of the Notice and Proof of Claim to be posted on
11 the case-designated website, www.WellsFargo2018SecuritiesLitigation.com. *Id.*, ¶15. This multi-
12 faceted method of providing notice to the Class, previously approved by the Court, is wholly
13 appropriate because it directs notice in a “reasonable manner to all class members who would be
14 bound by the propos[ed judgment].” Fed. R. Civ. P. 23(e)(1)(B).

15 67. Among other things, the Notice advises Class Members of the essential terms of the
16 Settlement, the proposed Plan, the general terms of the Fee and Expense Application, the procedure
17 for objecting to the Settlement, and specifics on the date, time, and place of the Settlement Hearing.

18 68. As set forth in the accompanying Memorandum of Points and Authorities in Support
19 of Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation, the
20 Notice fairly apprises Class Members of their rights and options with respect to the Settlement, is the
21 best notice practicable under the circumstances, and complies with the Court’s Preliminary Approval
22 Order (ECF 230), Federal Rule of Civil Procedure 23, the PSLRA, and due process.

23 **D. The Plan of Allocation Is Fair and Reasonable**

24 69. Class Counsel has proposed a Plan of Allocation to govern the method by which
25 Class Members’ claims will be calculated, and how the proceeds of the Settlement will be allocated
26 among Class Members who submit valid Proofs of Claim and suffered economic losses because of
27 the alleged fraud.

28

1 70. Class Counsel, with assistance from its damage expert, developed the Plan of
2 Allocation based upon the event study and analyses Dr. Feinstein performed in this Litigation. The
3 Plan provides formulas for calculating the recognized claim of each Class Member, based on each
4 such Person's purchases or acquisitions of Wells Fargo common stock on the open market during the
5 Class Period and if or when they sold. In summary, Dr. Feinstein employed generally accepted and
6 widely used methodologies to determine how much artificial inflation resided in Wells Fargo's stock
7 price on each day of the Class Period. Dr. Feinstein reached this determination by measuring how
8 much the stock price: (a) was inflated by the alleged misrepresentations and omissions; and (b)
9 declined as a result of disclosures that corrected the alleged misrepresentations and omissions.

10 71. Under the Plan, for each Class Period purchase of Wells Fargo common stock that is
11 properly documented, a "Recognized Loss Amount" will be calculated according to the formulas
12 described in the Notice. As set forth in greater detail in the Notice, the calculation of a Claimant's
13 Recognized Loss Amount is based upon a formula that takes into account such information as: (a)
14 when a Claimant's share was purchased and if and when it was sold; (b) the amount of the alleged
15 artificial inflation per share; (c) the purchase price of the share; and (d) the purchase price minus the
16 average closing price for Wells Fargo common stock during the 90-day look-back period described
17 in §21(D)(e)(1) of the Exchange Act. Because the alleged corrective disclosures reduced the
18 artificial inflation on two separate days during the Class Period, the damages suffered by any
19 particular Claimant will vary.

20 72. In sum, the Plan represents a reliable method by which to weigh, in a fair and
21 equitable manner, the claims of Authorized Claimants against one another for the purpose of making
22 *pro rata* allocations of the Net Settlement Fund. To date, there have been no objections filed to the
23 Plan.

24 **IV. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

25 73. The successful prosecution of this Litigation required Class Counsel and its para-
26 professionals to perform more than 43,350 hours of work and incur \$1,965,687.14 in expenses, as
27 detailed in the accompanying Class Counsel Declaration, filed herewith.

28

1 74. Based on Class Counsel’s extensive efforts on behalf of the Class, including those
2 described herein, Class Counsel is applying for compensation from the Settlement Fund on a
3 percentage basis in the amount of 25% of the Settlement Fund, and for \$1,965,687.14 in litigation
4 expenses, plus interest at the same rate and for the same time as that earned on the Settlement Fund.
5 In addition, Class Representative seeks an award in the amount of \$9,794.98, pursuant to 15 U.S.C.
6 §78u-4(a)(4), for reasonable costs and expenses directly relating to its representation of the Class.

7 75. For the reasons set forth herein and in the Fee Memorandum, Class Counsel and
8 Class Representative respectfully submit that the application for fees and expenses described above
9 should be granted.

10 **A. Application for Attorneys’ Fees**

11 **1. The Requested Fee of 25% of the Settlement Amount Is Fair
12 and Reasonable**

13 76. For its extensive efforts litigating this action and achieving the substantial monetary
14 Settlement on behalf of the Class, Class Counsel is applying for compensation from the Settlement
15 Fund on a percentage basis. As set forth in the accompanying Fee Memorandum, the percentage
16 method is the appropriate method of fee recovery because, among other things, it aligns the lawyers’
17 interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery in
18 the shortest amount of time required under the circumstances, is supported by public policy and the
19 PSLRA, has been recognized as appropriate by the United States Supreme Court for cases of this
20 nature, and represents the prevailing trend in the Ninth Circuit.

21 77. The fact Class Counsel was able to obtain such an exceptional result for the Class
22 supports the requested fee. As explained in the Fee Memorandum, the \$300,000,000.00 all cash
23 Settlement represents approximately 31% to 47% of estimated damages recoverable at trial, will
24 likely rank within the top 100 largest settlements obtained to date in a securities fraud class action
25 and is many times greater (on a percentage recovery basis) than the median recoveries generally
26 obtained in securities class action cases. It also greatly exceeds the median settlement as a
27 percentage of estimated damages in the Ninth Circuit from 2013 through 2022 (4.6%) in large cases.
28

1 See Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2022 Review and*
2 *Analysis* (Cornerstone Research 2023) at 5-6, 19, attached hereto as Ex. C.

3 78. A 25% fee is fair and reasonable for attorneys' fees in common fund cases such as
4 this, is consistent with the benchmark rate of 25% that courts in the Ninth Circuit find presumptively
5 reasonable, and is well within the range of the percentages typically awarded in securities class
6 actions in the Ninth Circuit. See Fee Memorandum, §III.B.

7 **2. The Complexity and Risk Inherent in the Litigation**

8 79. The requested fee is also reasonable in light of the various risks Class Counsel faced
9 over the years, as well as the complexity of the Litigation.

10 80. The Litigation was highly complex, both procedurally and substantively, which
11 rendered the path to resolution time-consuming, extremely challenging, and fraught with risk. As set
12 forth above, Class Counsel vigorously prosecuted the Class's claims for five years against top-tier
13 law firms with significant resources to defend the case. In doing so, Class Counsel engaged in
14 substantial briefing of complex legal and factual issues on, *inter alia*, motions to dismiss, to compel,
15 for class certification, for summary judgment, and in preparation for trial.

16 81. Class Counsel conducted an extensive pre-filing investigation, filed a comprehensive
17 Complaint, engaged in complex document discovery and discovery disputes, and deposed over 20
18 fact and expert witnesses. The Litigation settled on the eve of trial, only after Class Counsel
19 overcame a relentless stream of complex legal and factual challenges, some of which could have
20 proven case dispositive.

21 82. The requested fee is also reasonable considering the substantial risks Class Counsel
22 faced. Defendants were given various opportunities to chip away at, or defeat entirely, the Class's
23 claims, including at the pleadings stage in 2018-19 and the summary judgment stage in 2022. Class
24 certification also presented a challenge – one Class Counsel overcame despite Defendants' vigorous
25 opposition.

26 83. Jury trials are notoriously unpredictable, and Class Counsel expected no shortage of
27 risks at trial. As discussed above, Class Counsel expected Defendants to present to the jury a variety
28 of defenses, a lineup of friendly witnesses, and a duo of highly qualified experts. Moreover, Class

1 Counsel knew that Defendants had to defeat only a single element of the Class's §10(b) claim to
2 prevail. Further, even if Class Counsel prevailed in proving fraud at trial, a jury could have awarded
3 damages that paled in comparison to the damages Class Counsel sought. Finally, any favorable
4 verdict could have been subjected to years of appeals or ultimate reversal.

5 84. In light of the uncertain nature and prolonged extent of the Litigation, the complexity
6 of the factual and legal issues presented at all stages of the Litigation, the substantial risks that Class
7 Counsel overcame at the pleading, class certification, fact discovery, expert discovery, and pretrial
8 phases of the Litigation, and the other factors described in the accompanying Fee Memorandum,
9 Class Counsel submits that the requested 25% fee is fair, reasonable, and should be approved.

10 **3. The Contingent Nature of the Fee and the Financial Burden**
11 **Carried by Class Counsel**

12 85. Class Counsel undertook and prosecuted this Litigation on a wholly contingent basis.
13 At the outset in 2018, Class Counsel knew they were embarking on complex and expensive litigation
14 with no guarantee of compensation for the time, resources, and effort they poured into this case over
15 its five-year lifespan. Accordingly, Class Counsel fully assumed the risk of an unsuccessful result
16 and has received no compensation to date for services rendered or the significant expenses incurred
17 in litigating this action.

18 86. In undertaking the responsibility for prosecuting the Litigation, Class Counsel assured
19 that at all times, sufficient attorney resources were dedicated to advancing the Class's claims over
20 the years, and that sufficient funds were available to advance the expenses required to zealously
21 pursue such complex litigation. Class Counsel received no compensation and, in total, incurred
22 \$1,965,687.14 in litigation expenses in prosecuting this Litigation for the benefit of the Class.

23 87. Class Counsel also shouldered the risk that no recovery would be achieved after years
24 of hard fought litigation. Class Counsel knows from experience that success in contingent-fee
25 litigation is never assured, and that the commencement of a securities class action in no way
26 guarantees a recovery. Instead, it takes diligence, commitment, and years of tireless work by skilled
27 counsel to develop the facts, theories, and evidence necessary to prevail on the merits. The Class's
28 claims could have been dismissed at the pleadings stage in 2018-19 or at summary judgment in

1 2022. Instead, its claims survived Defendants' motion to dismiss and challenges to certification
2 prior to settling. Each step forward for the Class was a result of Class Counsel's vigorous and
3 unwavering efforts and litigation expertise.

4 88. Courts have repeatedly found that having experienced and able counsel enforce the
5 securities laws promotes the public interest. Private enforcement of the federal securities laws can
6 occur only if private plaintiffs – particularly institutional investors like Class Representative – can
7 obtain some parity in representation to that which is available to large corporate defendants. If this
8 important public policy is to be carried out, courts should award fees that will adequately
9 compensate private plaintiffs' counsel, while accounting for the enormous risks inherent in
10 prosecuting securities class actions on a contingent-fee basis to the degree of success shown here.

11 89. Class Counsel will continue to faithfully fulfill its duties to the Class following final
12 approval and throughout the distribution process. Class Counsel has a long history of specializing in
13 securities fraud class actions and other complex civil litigation, including the efficient and timely
14 distribution of the proceeds of settlements and judgments, and is acutely familiar with its obligations
15 to discharge its duties to the Class until distribution is completed.

16 4. The Standing and Expertise of Class Counsel

17 90. Class Counsel is among the most experienced and skilled securities litigation law
18 firms in the field, as illustrated by Class Counsel's firm biography attached as Exhibit G to the Class
19 Counsel Declaration. Indeed, Class Counsel has consistently obtained significant recoveries for
20 defrauded investors, including (among many others) in: *In re Enron Corp. Sec. Litig.*, No. H-01-
21 3624 (S.D. Tex.) (recovering in excess of \$7.2 billion for investors); *Lawrence E. Jaffe Pension Plan*
22 *v. Household Int'l, Inc., et al.*, No. 02-c-05893 (N.D. Ill.) (largest securities class action settlement
23 following a trial: \$1.575 billion); *In re Am. Realty Cap. Props., Inc.*, No. 15-cv-00040 (recovering
24 \$1.025 billion for investors); *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658
25 (D.N.J.) (recovering \$1.21 billion); *In re UnitedHealth Group, Inc. PSLRA Litig.*, No. 06-cv-1691
26 (D. Minn.) (recovering over \$925 million); *In re Twitter Securities Litig.*, No. 4:16-cv-05314-JST
27 (SK) (N.D. Cal.) (recovering over \$809 million); *In re Cardinal Health, Inc. Sec. Litig.*, No. C2-04-
28 575 (S.D. Ohio) (recovering \$600 million); *In re HealthSouth Corp. Sec. Litig.*, No. cv-03-BE-1500-

1 S (N.D. Ala.) (obtaining a combined recovery of \$671 million); *In re Citigroup Inc. Sec. Litig.*, No.
 2 07 civ. 9901 (SHS) (DCF) (S.D.N.Y.) (\$590 million settlement); *In re Barrick Gold Sec. Litig.*, No.
 3 1:13-cv-03851-RMB (S.D.N.Y.) (\$140 million settlement); *Alaska Elec. Pension Fund v. Pharmacia*
 4 *Corp.*, No. 03-1519 (D.N.J.) (\$164 million settlement); *Bennett v. Sprint Nextel Corp.*, No. 2:09-cv-
 5 02122-EFM-KMH (D. Kan.) (\$131 million settlement); *Minneapolis Firefighters' Relief Ass'n v.*
 6 *Medtronic, Inc.*, No. 08-6324 (PAM/AJB) (D. Minn.) (\$85 million settlement).

7 91. The quality of work Class Counsel provided in attaining the Settlement should also be
 8 evaluated by considering the quality of opposing counsel in this Litigation. Over the course of the
 9 Litigation, Defendants were well represented by a team of experienced attorneys from Sullivan &
 10 Cromwell LLP and Clarence Dyer & Cohen LLP, both well-regarded law firms. Faced with
 11 knowledgeable, experienced, and zealous opposing counsel, Class Counsel was nonetheless able to
 12 develop a strong case that proceeded to the eve of trial and persuaded Defendants to settle the action
 13 for \$300,000,000.00.

14 **5. The Class's Reaction to the Settlement**

15 92. The Notice advised the Class that Class Counsel intended to request an award of
 16 attorneys' fees in an amount not to exceed 25% of the Settlement Amount, for payment of litigation
 17 expenses reasonably incurred not to exceed \$2,000,000, plus interest, and for an award to Class
 18 Representative (pursuant to 15 U.S.C. §78u-4(a)(4)) not to exceed \$15,000. The Notice provides
 19 Class Members until July 27, 2023, to submit objections to Class Counsel's fee and expense
 20 application.

21 93. While the time to object to the fee and expense application has not passed, to date, no
 22 Class Member has objected to the fee request.

23 **B. Application for Litigation Expenses, Charges, and Costs**

24 94. In addition to fees, Class Counsel requests \$1,965,687.14 for expenses, charges, and
 25 costs reasonably and necessarily incurred in prosecuting the Class's claims over the past five years.
 26 Class Counsel respectfully submits that this amount is appropriate, fair, and reasonable and should
 27 be approved.

28

1 95. Since 2018, Class Counsel has known they may never recover any of the expenses
2 they incurred in prosecuting this case. Class Counsel also understood that, even assuming the case
3 was ultimately successful, an award of expenses would not compensate them for the lost use of the
4 funds they had dedicated to this Litigation. Accordingly, Class Counsel was motivated to, and did,
5 take steps to minimize expenses where practicable without jeopardizing the vigorous and efficient
6 prosecution of this Litigation.

7 96. As set forth in the Class Counsel Declaration, the expenses, charges, and costs
8 incurred were necessary and appropriate in light of the complex nature of the action and were
9 associated with, among other things, hiring experts and consultants, service of process, reporting
10 services for depositions, travel, online legal and factual research, trial preparation, and mediation.

11 97. Class Representative also seeks an award in the amount of \$9,794.98, pursuant to 15
12 U.S.C. §78u-4(a)(4), for its time and expenses directly relating to its representation of the Class. In
13 addition to monitoring the developments in the Litigation, Class Representative dedicated time and
14 resources to gathering documents and information responsive to Defendants' discovery requests,
15 reviewed and approved case filings, and participated in settlement negotiations. *See* Glaza Decl.,
16 submitted herewith.

17 **V. MISCELLANEOUS EXHIBIT**

18 98. Attached hereto as Ex. D is a true and correct copy of Janeen McIntosh, Svetlana
19 Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year*
20 *Review* (NERA Jan. 24, 2023).

21 **VI. CONCLUSION**

22 99. In light of the \$300,000,000.00 cash Settlement obtained, the substantial risks Class
23 Counsel faced, the exceptional quality of Class Counsel's work, the contingent nature of the
24 requested fee, and the substantial complexity of the case, as described above and in the
25 accompanying memoranda in support of its motions, Class Representative and Class Counsel
26 respectfully submit that the Court should: (a) approve the Settlement and Plan of Allocation as fair,
27 reasonable, and adequate; (b) approve Class Counsel's application for an award of attorneys' fees
28

1 and expenses; and (c) approve the award to Class Representative for its time and expenses pursuant
2 to 15 U.S.C. §78u-4(a)(4).

3 * * *

4 I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th
5 day of July, 2023, at San Diego, California.

6 s/ Scott H. Saham
7 SCOTT H. SAHAM

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 13, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ SCOTT H. SAHAM
SCOTT H. SAHAM

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Mailing Information for a Case 3:18-cv-03948-JD Purple Mountain Trust v. Wells Fargo & Company et al

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