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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE WELLS FARGO & COMPANY
SHAREHOLDER DERIVATIVE
LITIGATION

This Document Relates To:
ALL ACTIONS.

Lead Case No. 3:16-cv-05541-JST

**DECLARATION OF HON. DANIEL
WEINSTEIN (RET.) IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF DERIVATIVE
SETTLEMENT**

The Honorable Jon S. Tigar

1 I, HON. DANIEL WEINSTEIN (RET.), hereby declare as follows:

2 1. I am a mediator with and a founder of JAMS in San Francisco, California. I
3 submit this Declaration in support of Co-Lead Plaintiffs' Motion for Preliminary Approval of
4 Settlement in the above-captioned action (the "Derivative Action"), for which I served as a
5 mediator. I make this declaration based on personal knowledge and if called and sworn as a
6 witness could and would testify competently thereto.

7 2. The Derivative Action involves allegations that current and former officers and
8 directors of Wells Fargo & Company ("Wells Fargo" or the "Company") knew or consciously
9 disregarded that the Company's employees were illicitly creating millions of customer accounts
10 without those customers' knowledge or consent in breach of their fiduciary duties to the
11 Company.

12 3. The Parties in the Derivative Action have come to an agreement to settle the case
13 (the "Settlement"). The Settlement calls for (i) a cash payment of \$240 million from Defendants'
14 2014-2015 Directors and Officers Side A insurers to Wells Fargo, and (ii) an acknowledgment
15 from Wells Fargo that facts alleged in the Derivative Action were "significant factors" taken into
16 account by the Company and its Board of Directors in implementing corporate governance
17 reforms at the Company and causing compensation reductions or forfeitures for several Wells
18 Fargo senior officers and others that the Parties have agreed have a combined value to Wells
19 Fargo of \$80 million, for a total settlement value to Wells Fargo of \$320 million.

20 **BACKGROUND AND QUALIFICATIONS**

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

24 5. I was a recipient of the 2014 International Advocate for Peace Award from the
25 Cardozo Journal of Conflict Resolution, whose past honorees have included former Presidents
26 Jimmy Carter and Bill Clinton, Ambassador Richard Holbrooke, and Nobel Peace Prize winner
27 Bishop Desmond Tutu. I have been recognized as (i) an "ADR Champion," *National Law*
28 *Journal*, 2017-2018; (ii) Best Lawyer, Alternative Dispute Resolution Category, *Best Lawyers in*

1 *America*, 2006-2015; and (iii) one of the 500 Leading Judges in America, *Lawdragon Magazine*,
2 2006.

3 6. In light of my experience, I am asked by litigants and their attorneys to serve as a
4 mediator in complex civil cases such as this. For over twenty years, I have presided over the
5 mediation of countless disputes, including many of the most complex multi-party disputes
6 throughout the United States. For example, I have mediated dozens of federal securities class
7 actions involving public companies such as Enron, Qwest, Adelphia, New Century, Broadcom,
8 Aviva, Marsh & McLennan, PIMCO and other major New York Stock Exchange and NASDAQ
9 corporations. I have devoted a considerable amount of my professional time over the last several
10 years to mediating complex shareholder class actions and derivative actions.

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

12 7. I became involved in this Action in July 2018. On September 20, 2018, I, together
13 with Mr. Jed Melnick, Esq., also of JAMS, conducted an in-person mediation session in New
14 York City. (Throughout the mediation negotiations, Mr. Melnick and I worked cooperatively and
15 closely; he attended all the mediation sessions referenced herein and participated in numerous
16 separate communications with the Parties both with me and independently). In advance of the
17 mediation, I spoke separately with counsel to both sides to understand and probe their respective
18 positions. The Parties also exchanged and submitted detailed mediation statements and exhibits.
19 I found these submissions to be extremely valuable in helping me understand the relative merits
20 of each Party's positions, and identifying the issues that would drive and present obstacles to
21 reaching a resolution of the Derivative Action. Counsel for the Parties presented significant
22 arguments regarding their clients' respective positions, and it was apparent that each side faced
23 risks in proceeding with the case. While the contents of the mediation statements and arguments
24 are confidential, they were evidently the product of hard work, presented complex and novel legal
25 arguments, and were highly adversarial.

26 8. These factors, and many others, were in play during the in-person mediation
27 session that took place on September 20, 2018 in New York City. This mediation session, as all
28 mediation sessions over which I presided in this Action, was attended by Co-Lead Plaintiffs Fire

1 & Police Pension Association of Colorado and The City of Birmingham Retirement and Relief
2 System; Co-Lead Counsel Lief Cabraser Heimann & Bernstein LLP and Saxena White, P.A.;
3 counsel for Defendants; counsel for Wells Fargo; and numerous insurers and insurers' counsel. I
4 engaged in extensive discussions to establish common ground between the Parties' respective
5 positions. This session included presentations from counsel for both Plaintiffs and Defendants.
6 These presentations, as well as others throughout the mediation process, were ably delivered and
7 contained helpful information and pertinent detail regarding the claims and defenses in this case.

8 9. Following the September 20, 2018 mediation session, the Parties engaged in two
9 consecutive days of mediation in San Francisco on October 15 and October 16, 2018. In advance
10 of the mediation sessions, I continued to speak separately with counsel to both sides. The Parties
11 also exchanged another round of detailed mediation statements and exhibits. These submissions
12 were extremely valuable in narrowing the issues required in order to reach resolution and in
13 allowing me to understand the merits of each side's positions. Following the October 16, 2018
14 mediation session, the Parties scheduled a mediation session in New York City on December 4,
15 2018.

16 10. Between the October 2018 mediation sessions and December 4, 2018, I continued
17 to speak with counsel for both sides in hopes of reaching a resolution.

18 11. On December 4, 2018, the Parties engaged in a final day-long in-person mediation
19 session.

20 12. On December 5, 2018, I issued a mediator's proposal to settle the action for (i) a
21 monetary payment of \$240 million to Wells Fargo; (ii) acknowledgement from Wells Fargo that
22 facts alleged in the Derivative Action were a significant factor in causing certain corporate
23 governance changes undertaken by Wells Fargo during the pendency of the Action (the
24 "Corporate Governance Reforms"); and (iii) acknowledgement from Wells Fargo that facts
25 alleged in the Derivative Action were a significant factor in causing certain remedial
26 compensation reductions and forfeitures undertaken by Wells Fargo during the pendency of the
27 Action (the "Clawbacks"). Among other things, the Corporate Governance Reforms enhanced
28 oversight of conduct and compliance risk, changed the compensation incentives for employees of

1 the Company, and updated Board-level reporting structures. The mediator's proposal placed a
2 combined value of \$80 million on the non-monetary Corporate Governance Reforms and
3 Clawbacks. The mediator's proposal, in response to the Insurers' insistence that the CPI
4 Derivative Actions be resolved at the same time, also required the contemporaneous (but
5 unconnected) resolution of the so-called CPI derivative actions. The Parties accepted the
6 mediator's proposal on December 12, 2018.

7 **THE SETTLEMENT REPRESENTS A FAIR COMPROMISE**

8 13. In my presence, the Parties had extensive, detailed and hard-fought discussions
9 regarding the strengths and weaknesses of the case. I can readily attest that the negotiations
10 between counsel for Co-Lead Plaintiffs, counsel for Wells Fargo, and counsel for Defendants
11 were conducted at arm's-length and were non-collusive.

12 14. I believe that the Settlement of the Derivative Action represented a well-reasoned
13 and sound resolution of highly uncertain litigation. The Court, of course, will make
14 determinations as to the "fairness" of the Settlement under applicable legal standards. From a
15 mediator's perspective and based on my years as a Judge and attorney, I recommend the proposed
16 Settlement as reflective of the risks and potential rewards of the claims asserted. Although I have
17 not directly observed the Parties during the course of litigating the Derivative Action, my review
18 of the papers presented to me and discussions with counsel have led me to conclude that both
19 sides have litigated the Derivative Action in a vigorous, professional, and exceptionally thorough
20 manner. Counsel on each side expressed respect for opposing counsel and the Parties' mediation
21 submissions demonstrated that each had carefully analyzed the relevant facts and applicable law.
22 It was also clear to me that both sides were well-prepared and fully capable of proceeding to trial,
23 if a settlement could not be achieved.

24 15. Notwithstanding the Parties' beliefs in the merits of their respective claims and
25 defenses and the strengths of their respective settlement positions, all Parties understand the
26 benefits to Wells Fargo of resolving this Action without a trial. Thus, after extensive effort on my
27 part and that of my colleague Jed Melnick, as mediators and significant concessions made by the
28 Parties, the Parties were able to effect the compromise set forth in the Settlement.

