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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE WELLS FARGO & COMPANY
SHAREHOLD DERIVATIVE
LITIGATION

Lead Case No. 16-cv-05541-JST

This Document Relates To:
ALL ACTIONS

**ORDER REQUESTING
SUPPLEMENTAL BRIEFING**

Re: ECF No. 270

United States District Court
Northern District of California

Before the Court is Plaintiffs’ unopposed motion for preliminary approval of a derivative action settlement. ECF No. 270. Because the motion omits argument on an important consideration, the Court now orders supplemental briefing.

Under the proposed settlement, Individual Defendants’ insurers will pay \$240 million to Wells Fargo & Co. ECF No. 270-1 at 18. The parties further claim that \$80 million in Wells Fargo’s executive compensation clawbacks and corporate governance reforms should be attributed to Plaintiffs’ prosecution of this case, increasing the total settlement value to \$320 million. ECF No. 270 at 8. The Court cannot evaluate the reasonableness of this figure, however, because Plaintiffs’ motion does not provide the Court with any information regarding the value of the claims being released.

As this Court has previously explained, it “cannot determine whether the settlement amount is fair or reasonable . . . until the parties provide an estimate of the Plaintiffs’ range of recovery if they were to prevail on their . . . claims.” *K.H. v. Sec’y of Dep’t of Homeland Sec.*, No. 15-CV-02740-JST, 2018 WL 3585142, at *5 (N.D. Cal. July 26, 2018). Accordingly, the Court “has more than once denied motions for approval where the plaintiffs ‘provide[d] no information about the maximum amount that the putative class members could have recovered if they

1 ultimately prevailed on the merits of their claims.” *Id.* (quoting *Cordy v. USS-Posco Indus.*, No.
2 12-CV-00553-JST, 2013 WL 4028627, at *4 (N.D. Cal. Aug. 1, 2013)); *see also Thomas v.*
3 *MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST, 2017 WL 4750628, at *6 (N.D. Cal.
4 Oct. 20, 2017); *cf. Hefler v. Wells Fargo & Co.*, No. 16-CV-05479-JST, 2018 WL 4207245, at *9
5 (N.D. Cal. Sept. 4, 2018) (granting preliminary approval in a case where plaintiffs’ expert
6 provided a range of the “maximum potential damages the class could have won at trial” based on
7 different scenarios). And since November 1, 2018, this district’s *Procedural Guidance for Class*
8 *Action Settlements* has likewise instructed parties to address “[t]he anticipated class recovery
9 under the settlement, the potential class recovery if plaintiffs had fully prevailed on each of their
10 claims, and an explanation of the factors bearing on the amount of the compromise.” Northern
11 District of California, *Procedural Guidance for Class Action Settlements* § 1(e),
12 <https://www.cand.uscourts.gov/ClassActionSettlementGuidance>.

13 The Court acknowledges that Plaintiffs have provided information regarding other
14 derivative action settlements in support of their assertion that the Settlement’s benefits “compris[e]
15 the largest shareholder derivative recovery in history.” ECF No. 270 at 23. While relevant, the
16 terms of other agreements do not substitute for evaluating the potential value of the claims in this
17 case had it proceeded to trial. Only with that information can the Court determine whether
18 Plaintiffs’ counsel has vigorously represented the class and whether the proffered settlement is a
19 fair and reasonable resolution of the lawsuit.

20 Accordingly, the Court will allow the parties an additional opportunity to submit the
21 required information. Plaintiffs shall file a supplemental brief of no more than five pages by April
22 11, 2019. Defendants may also file a supplemental brief of no more than five pages by April 11,
23 2019, but they need not do so. The parties are not required to submit supporting declarations or
24 other evidence, but such evidence will not count against the page limit.

25 The Court hearing on the motion for preliminary approval scheduled for April 4, 2019 is
26 vacated.

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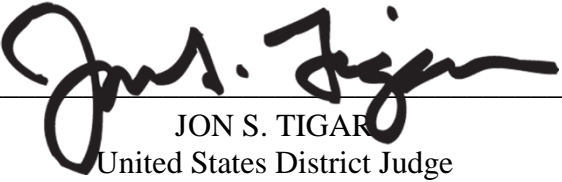
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After receiving the supplemental brief required by this order, the Court will either take the motion under submission or set a hearing if necessary.

IT IS SO ORDERED.

Dated: March 20, 2019



JON S. TIGAR
United States District Judge

United States District Court
Northern District of California