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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  
(1) MOTION FOR FINAL APPROVAL OF  
SETTLEMENT, AND (2) MOTION FOR  
AWARD OF ATTORNEYS' FEES**

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 the pending Motion for Final Approval of Settlement and  
4 Motion for Award of Attorney’s Fees in the above-captioned action (the “Derivative Action”). I  
5 make this declaration based on personal knowledge and if called and sworn as a witness could  
6 and would testify competently thereto.

7 2. I submitted a Declaration in support of the Motion for Preliminary Approval of  
8 Settlement (Dkt. 270-3) in which I described my background, qualifications, and mediation  
9 efforts in 2018.

10 3. Beginning in July 2018, I, together with Mr. Jed Melnick, Esq., served as  
11 mediators in this Derivative Action.

12 4. Throughout the mediation process, the Co-Lead Plaintiffs, Wells Fargo, and the  
13 Defendants (together, the “Parties”), along with Defendants’ Insurers, exchanged information  
14 about their respective positions, either directly through detailed written submissions and  
15 facilitated group discussions, or indirectly through numerous individual communications with Mr.  
16 Melnick and me. I found this information invaluable in helping me understand the relative  
17 merits—and *weaknesses*—of each Party’s positions, and identifying the issues that would drive a  
18 possible resolution of the Derivative Action and those that could and initially did present  
19 obstacles to reaching a resolution.

20 5. As a result of this process, I came to understand the real and material risks each  
21 Party had faced up to that point during the course of the litigation as well as the significant risks  
22 that each Party would continue to face in litigating the Derivative Action through trial and  
23 potential appellate process. For their part, Co-Lead Plaintiffs would bear the burden of not only  
24 proving their claims before a factfinder, but also overcoming a series of thorny procedural  
25 hurdles. Defendants and their Insurers vigorously and repeatedly raised these issues during the  
26 mediation and argued that these risks justified the very modest value they placed on Co-Lead  
27 Counsel’s claims.

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1           6.       The issues raised and vigorously presented by the Defendants and their Insurers  
2 (and their experts, including former Delaware Chancery Court Vice Chancellor Stephen P. Lamb)  
3 included: (1) continued assertion of the demand futility question at summary judgment and at  
4 trial; (2) the extraordinary difficulty of proving a *Caremark* claim; (3) multiple facts and legal  
5 theories that would severely limit any recoverable damages; (4) the unknown risks of how a jury  
6 would react to a claim for billions of dollars against individual Defendants; (5) the very real  
7 possibility that continued litigation would cost the bank more than it would recover; and (6) the  
8 anticipated complexities of involvement by the Insurers at trial, on appeal and, potentially, in  
9 collateral litigation.

10           7.       Throughout the mediation process, the Parties and the Insurers vigorously  
11 negotiated with these risks in mind. The resolution of the Derivative Action was far from a  
12 foregone conclusion. Indeed, at the outset of mediation, the Parties and the Insurers made clear  
13 that they were prepared to fully litigate this case if the space between their offers was not closed.  
14 The many risks did not diminish during the mediation process. It was not until after the last of  
15 four in-person mediation sessions that the Parties' and the Insurers' positions became sufficiently  
16 close to warrant a mediator's proposal, which I issued on December 5, 2018. Even then,  
17 acceptance of the proposal was not by any means assured.

18           8.       When I issued a mediator's proposal to settle the action, it was evident to me that  
19 the Plaintiffs faced significant risks in continuing to litigate.

20           I declare under penalty of perjury of the laws of the State of California that the foregoing  
21 to be true and correct. Executed on July 24, 2019, in San Francisco, California.

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24 \_\_\_\_\_  
HONORABLE DANIEL WEINSTEIN (RET.)