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8 *themselves and all others similarly situated*

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 SHAHRIAR JABBARI and KAYLEE
HEFFELFINGER, on behalf of themselves
14 and all others similarly situated,

15 Plaintiffs,

16 v.

17 WELLS FARGO & COMPANY and
18 WELLS FARGO, N.A.,

19 Defendants.

Case No: 3:15-cv-02159-VC

**ALEX CHERNAVSKY AND WILLIAM
CASTRO'S NOTICE OF MOTION AND
MOTION FOR AN AWARD OF
ATTORNEYS' FEES**

Date: March 20, 2018
Time: 10:00 AM
Place: Courtroom 4 – 17th Floor
Judge: Honorable Vince Chhabria

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MOTION FOR AN AWARD OF ATTORNEYS' FEES

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, consistent with this Court’s prior Scheduling Order, on March 20, 2018, at 10:00 a.m., or on such other date or time as this matter may be called, in the courtroom of the Honorable Judge Vince Chhabria, located at the San Francisco Courthouse, Courtroom 4, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs Alex Chernavsky and William Castro (in the related case of *Chernavsky, et al. v. Wells Fargo Bank, N.A.*, 3:16-cv-06326-VC (“*Chernavsky Action*”)) will and hereby do move for an order granting the attached Motion for Attorneys’ Fees. The motion will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, the Declaration of S. Clinton Woods, the filings in this action and the related *Chernavsky Action*, and such other filings and arguments that may be submitted, and the [Proposed] Order filed herewith.

Dated January 19, 2018

Respectfully submitted,

By: /s/ William M. Audet

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situated*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Alex Chernavsky and William Castro (hereinafter the “*Chernavsky* Plaintiffs”)
 4 respectfully move this Honorable Court for an award of attorneys’ fees due to the significant,
 5 concrete and substantial benefits their counsel, Audet & Partners, LLP., (hereinafter the “*Chernavsky*
 6 Counsel”) obtained and conferred upon the settlement class in the final settlement now before this
 7 Court. The award sought, as detailed below, is both consistent with applicable Ninth Circuit
 8 authority and justified by the substantial enhancement conferred by the *Chernavsky* Plaintiffs on the
 9 eventual settlement presented to this Court.

10 As the record establishes, prior to and after the announcement of the Initial Settlement
 11 (defined as the \$110 million settlement announced during the JPML hearing), the Second Settlement
 12 (the settlement submitted to the Court during preliminary approval, Dkt. No. 100, *et al.*) and the
 13 Final Settlement currently before the Court, the *Chernavsky* Plaintiffs diligently and effectively
 14 achieved beneficial and concrete results by advocating for significant changes to the terms and
 15 conditions of the settlement agreement. As is well-supported in the record, the *Chernavsky*
 16 Plaintiffs’ suggestions and requests to Counsel for the *Jabbari* Plaintiffs and the Wells Fargo
 17 Defendants (hereinafter the “Settlement Parties”) and submissions to this Court over the past year
 18 and a half has resulted in significant improvements to the ultimate settlement now before the Court.
 19 Among other concrete benefits, the *Chernavsky* Plaintiffs not only significantly expanded the claims
 20 period, narrowed the scope of the proposed release, drastically simplified the claims process, but
 21 also advocated for and obtained additional Court oversight of the settlement claims process.

22 By way of this Motion, the *Chernavsky* Plaintiffs request the Court award up to
 23 \$4,260,000.00 of the settlement fund (based on a request for 3% of the overall \$142 Million
 24 settlement fund), or, alternatively, no less than \$3,200,000.00 (based on a request for 10% of the \$32
 25 Million increase in the initial settlement amount announced by the Settlement Parties before the
 26 MDL hearing)¹. The amount requested is well within reason, consistent with Ninth Circuit law on

27 _____
 28 ¹ To be clear, the *Chernavsky* Plaintiffs do not claim that they alone obtained the increase in the
 initial settlement fund amount by 32 million dollars. However, the increased amount is a useful

1 this issue and well-justified by the substantial benefits conferred by the *Chernavsky* Plaintiffs to the
 2 Final Settlement. Accordingly, the undersigned counsel respectfully seek an award of reasonable
 3 attorneys' fees in the amounts noted above.

4 II. RELEVANT PROCEDURAL HISTORY

5 The *Jabbari* Complaint was filed on May 13, 2015, alleging class claims stemming from
 6 Wells Fargo's practice of fraudulently opening unauthorized accounts for its retail customers. (Dkt.
 7 No. 1.²) The putative class definition in *Jabbari* did not differentiate between those customers who
 8 had internal accounts opened without authorization (*e.g.*, checking, savings), and those who had
 9 external accounts opened without authorization (*e.g.*, credit card accounts). (*Id.*) Wells Fargo moved
 10 to compel arbitration. (Dkt. No. 29.) The Court granted that motion on September 23, 2015. (Dkt.
 11 No. 69.) The *Jabbari* Plaintiffs appealed. (Dkt. No. 70.) On September 13, 2016, the *Jabbari*
 12 Plaintiffs and Wells Fargo stipulated to dismiss the appeal and announced that a "classwide"
 13 settlement had been reached by the parties. (Dkt. No. 72.)

14 On November 2, 2016, the *Chernavsky* Plaintiffs filed their complaint in this District, and the
 15 Court granted the request to relate its case with the *Jabbari* matter. (*Chernavsky* Dkt. 1³; Dkt. Nos.
 16 76, 79.) On November 14, 2016, the *Chernavsky* Plaintiffs amended their complaint, specifically
 17 now including a Privacy Subclass (defined as members of the putative class who had external
 18 accounts opened without authorization), and adding additional claims and causes of action that had
 19 not been pled at that point. (*Chernavsky* Dkt. No. 11.)

20 On November 15, 2016, a case management conference was held where the Court set a
 21 deadline of December 9, 2016, for the *Jabbari* Plaintiffs to file their motion for preliminary approval
 22 of the settlement. (Dkt. No. 81.) On December 8, 2016, one day before the deadline to file the
 23 motion for preliminary approval, the *Jabbari* Plaintiffs and Wells Fargo stipulated to extend the
 24 deadline for filing the motion for preliminary approval to December 30, 2016. (Dkt. Nos. 83, 84,
 25

26 benchmark to determine an appropriate amount of fees due to the *Chernavsky* Counsel in light of the
 27 substantial enhancements they conferred upon the Final Settlement.

28 ² Unless otherwise noted, all docket references are to the *Jabbari* Docket, *Jabbari v. Wells Fargo & Company, et al.*, N.D. Cal., Case No: 3:15-cv-02159-VC.

³ *Chernavsky v. Wells Fargo Bank, N.A., et al.*, N.D. Cal., 3:16-cv-06326-VC.

1 85.) On December 28, 2016, two days before the deadline to file the motion for preliminary
2 approval, the *Jabbari* Plaintiffs and Wells Fargo once again filed a stipulation to extend the deadline
3 to file the motion for preliminary approval to January 30, 2017. (Dkt. Nos. 86, 88.) On January 10,
4 2017, a second case management conference was held where the *Jabbari* Plaintiffs represented that
5 they intended to file a motion for preliminary approval by the new January 30, 2017 deadline. No
6 motion for preliminary approval was filed by that deadline. On February 14, 2017, a third case
7 management conference was held where the *Jabbari* Parties indicated that they were still working
8 towards a settlement. (Dkt. No. 94.) On March 28, 2017, the *Jabbari* Parties filed a notice of
9 settlement containing no terms other than the overall amount of the settlement (\$110,000,000) and
10 that this settlement would purport to dispose of all claims, presumably including those now alleged
11 in the *Chernavsky* Plaintiffs' Complaint. (Dkt. No. 96.)

12 On December 28, 2016, the plaintiffs in another action pending in the District of Utah filed a
13 motion to consolidate all pending cases relating to the Wells Fargo account-opening fraud with the
14 Judicial Panel for Multidistrict Litigation. (MDL No. 2766, Dkt. No. 1.) On March 28, 2017, two
15 days before the panel hearing, Wells Fargo filed a 'notice' of Settlement with the JPML, claiming
16 that the 'parties' had come to a class wide settlement (but provided no details of the material terms
17 of the settlement). (MDL No. 2766, Dkt. No. 51.)

18 The Settlement Parties filed a motion for preliminary approval on April 20, 2017. (Dkt. No.
19 100). The Second Settlement extended the class period back to 2002, and increased the fund from
20 the previously-reported \$110 million figure to \$142 million. (Dkt. No. 100.) Additionally, the
21 Second Settlement created two separate classes of recovery, Net Settlement Pool 1 and Net
22 Settlement Pool 2, as defined in Paragraphs 2.31 and 2.32 of the Second Settlement. Under the Plan
23 of Allocation, these two classes would be awarded different amounts from the settlement fund.
24 (Second Settlement at ¶ 9, *et seq.*). The Second Settlement's Notice Plan suggested that Class
25 Members would only have between 20-60 days to excise the right to opt out or object to the
26 settlement. (Second Settlement at p. 11, ¶¶ 2.11-2.22.) As outlined below, and in the record before
27 this Court, the *Chernavsky* Plaintiffs had legitimate concerns with a number of key aspects of the
28

1 proposed settlement and successfully fought to improve many of the terms and conditions of this
2 proposed settlement.

3 **III. THE *CHERNAVSKY* PLAINTIFFS' CONTRIBUTION TO THE SETTLEMENT**

4 Prior to and during this same time period, the *Chernavsky* Plaintiffs repeatedly reached out
5 to the Settlement Parties in an effort to modify certain sections of the Settlement. This advocacy
6 for the settlement class contributed to significant modifications of critical terms in the final
7 settlement. (*See* Declaration of S. Clinton Woods (“Woods Decl.”) at Exhs. 1-14.) On April 20,
8 2017, the Settlement Parties filed a motion to preliminarily approve the proposed Second
9 Settlement.

10 However, the Second Settlement still contained a number of problems and issues that needed
11 to be addressed. Accordingly, left with no other alternative, on May 4, 2017, the *Chernavsky*
12 Plaintiffs filed objections to the Second Settlement. (Dkt. No. 116, hereinafter “*Chernavsky*
13 Objection”) Specifically, the *Chernavsky* Objections noted, among other issues, that the settlement
14 presented to the Court had the following problems: (1) the claims period was far too short of a time
15 period for the settlement class members to sufficiently file claims; (2) the release was extremely
16 overbroad; (3) the notice to the class was confusing and less than clear in many respects; (4) the
17 opt-out procedures were complex and extremely strict and burdensome; and (5) the Second
18 Settlement invested too much final oversight authority in the settlement administrator. (Dkt. No.
19 116). While formally overruling the objections, the Court did require the Settlement Parties to
20 modify the proposed agreement in the following ways directly attributable to the issues contained in
21 the *Chernavsky* Objection:

- 22 1. ***Significantly Extended Claims Period:*** As noted in the *Chernavsky* Objection (at p. 6-
23 7), the *Chernavsky* Plaintiffs raised concerns with the extremely short period of time for
24 the class members to file claims. (Dkt. No. 100.) The Second Settlement essentially
25 limited the claims period to a 20 to 60 day window. After reviewing the *Chernavsky*
26 Objection, the Settlement Parties agreed with the *Chernavsky* Plaintiffs’ suggestion to
27 extend the claims period to 210 days after preliminary approval and 30 days after final
28

1 approval. (Dkt. No. 133 p. 18.)⁴ As noted in *Jabbari* Plaintiffs’ filing, the modification
 2 to this critical term was a direct result of the *Chernavsky* Objection. The *Chernavsky*
 3 Plaintiffs’ efforts resulted in the revised and lengthened claims period as reflected in the
 4 Final Settlement. (Dkt. No. 162.)

5 2. ***Substantially Narrowed Release:*** As noted in the *Chernavsky* Objection (at p. 8-9), the
 6 *Chernavsky* Plaintiffs specifically objected to the overbroad (and confusing nature) of
 7 the Initial Settlement’s proposed scope of release. Specifically, the *Chernavsky* Plaintiffs
 8 noted that the Initial Settlement’s release had “no practical limitation” and would release
 9 claims that “may or may not be related to the underlying litigation.” The Court
 10 apparently agreed with this objection, ordering the Settlement Parties to change the
 11 release “to make clear that the class members are only releasing claims based on the
 12 identical factual predicate as the claims asserted in [the *Jabbari* matter].” (Dkt. No. 155.)
 13 The Final Settlement makes that change. (*See* Final Settlement at ¶ 2.49.)

14 3. ***Claim Form Simplified:*** As noted in the *Chernavsky* Objection (at p. 6-7), the
 15 *Chernavsky* Plaintiffs raised concerns with the confusing, technical, and opaque nature
 16 of the Settlement Parties’ proposed claim form. As noted in the submission, the claim
 17 form appeared to be designed to place significant burden on the claimants to recall
 18 details that Wells Fargo likely already possessed in the company’s files. (*Id.*) The Court
 19 agreed with the *Chernavsky* Plaintiffs’ concerns over the notice and the claim form.
 20 Among other changes, the Court requested that the parties revise the claim form to
 21 include an opportunity for claimants to provide a written explanation and suggested a
 22 more thorough notice procedure. (Dkt. No. 155.) The Settlement Parties then made the
 23 *Chernavsky* Plaintiffs’ and the Court’s suggested changes, vastly simplifying the notice
 24 procedure and the notices themselves. (Dkt. No. 160, *generally.*)

25
 26 _____
 27 ⁴ As noted in the Plaintiffs’ Reply Memorandum in support of Preliminary Approval filed by Class
 28 Plaintiffs: “The *Chernavsky* Objectors say that the deadline to submit a claim comes too early....***In***
light of this objection, Plaintiffs propose that the deadline to submit claim forms fall 210 days after a
 preliminary approval order and 30 days after final approval.” (Dkt. No. 133 p. 18.) (emphasis added)
 (citation omitted).

- 1 4. **Removal of Court Seal:** The *Chernavsky* Objection specifically raised concerns over
2 having a claim form containing the Court ‘seal’ (as noted in the filing, the seal itself may
3 “have the effect of scaring off potential claimants who are unfamiliar with legal
4 documents.”) (*Chernavsky* Objection at p. 7.) The Settlement Parties then removed the
5 Court Seal. (Dkt. No. 162-4, 162-5.)
- 6 5. **Improved Objection and Opt-Out Procedure:** As noted in the *Chernavsky* Objection (at
7 p. 7-8), no provision in the Second Settlement provided any online information
8 regarding objecting to or opting out of the settlement. Further, the *Chernavsky* Plaintiffs
9 noted to the Court that the settlement failed to have an online process for class members
10 to object to or opt-out of the settlement. The Court apparently agreed with this objection
11 as well, requiring the Settlement Parties to allow for ‘substantial compliance’ as the
12 standard for objections and opt-outs, and provide a “mechanism for online objections
13 and opt-outs.” (Dkt. No. 155.) The Final Settlement makes that change. (*See* Dkt. No.
14 160 at p. 4-5, ¶¶ 12.1, 12.6.)
- 15 6. **Court Oversight Over Settlement Administrator:** As noted in the *Chernavsky* Objection
16 (at p. 7), the *Chernavsky* Plaintiffs had concerns that the Second Settlement invested the
17 settlement administrator with absolute and final approval of the determination of the
18 validity of a claim and the amounts that a claimant may recover. Specifically, the
19 *Chernavsky* Plaintiffs were concerned with the lack of oversight or guidance given to the
20 settlement administrator and the proposed finality of the settlement administrator’s
21 judgment on claims issues. The Court concurred with those concerns, ordering the
22 Settlement Parties to modify the terms of the agreement and allow for Court scrutiny and
23 approval of the settlement administrator’s determinations. (Dkt. No. 155.) This scrutiny
24 and approval ordered by the Court included the potential for appointment of a special
25 master. (*Id.*) The Final Settlement makes these changes. (Dkt. No. 160 at p. 2-3.)

26 Without dispute, the *Chernavsky* Plaintiffs diligently and repeatedly sought to engage the
27 Settlement Parties to modify terms and conditions of the settlement. When a number of issues raised
28 had not been addressed, the *Chernavsky* plaintiffs had no choice but to directly raise these issues

1 with the Court. (Woods Decl. at ¶¶ 5-25, Exhs. 1-14.) This effort is reflected not just in the
 2 Objections filed with the Court, but with the dozens of letters and emails to the counsel for the
 3 Settlement Parties – all with the sole goal of enhancing the final settlement for the class members.
 4 (Woods Decl. at Exhs. 1-14.) These efforts proved fruitful, as it is clear that the *Chernavsky*
 5 Plaintiffs were able to achieve substantial and extensive enhancements to the Final Settlement now
 6 before this Court.

7 IV. ARGUMENT

8 A. LEGAL STANDARD

9 Where, as here, an objector provides ‘substantially enhanced’ benefits to a proposed class
 10 settlement, the objector’s counsel is entitled to seek and be awarded attorneys’ fees. *See Rodriguez v.*
 11 *Disner (Rodriguez II)*, 688 F.3d 645, 658 (9th Cir. 2012). In order to receive an award of attorneys’
 12 fees, objectors need only show that they either increased the settlement fund *or* “substantially
 13 enhanced benefits to the class” in the settlement. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052
 14 (9th Cir. 2002); *Stetson v. Grissom*, 821 F.3d 1157, 1164 (9th Cir. 2016); *Etter v. Thetford Corp.*,
 15 2017 U.S. Dist. LEXIS 59814 at *9-12 (C.D. Cal. Apr. 14, 2017) (awarding fees to objector counsel
 16 when objections directly and indirectly led to an improved settlement); *In re Transpacific Passenger*
 17 *Air Transp. Antitrust Litig.*, 2015 U.S. Dist. LEXIS 106943 at *12-14 (N.D. Cal. Aug. 13, 2015)
 18 (same). Courts in this District have held that objections that result in the narrowing of the scope of
 19 releases constitutes a “substantially enhanced benefits to the class” sufficient to justify a fee award.
 20 *See Hendricks v. Starkist Co.*, 2016 U.S. Dist. LEXIS 134872 at *48 (N.D. Cal. Sept. 29, 2016).

21 Objectors can play a valuable role in class action settlements by creating a necessary
 22 adversarial process at a time when both the plaintiffs and defendants may be united in advocating for
 23 approval of terms and conditions that the subject of a proposed agreement. *Zucker v. Occidental*
 24 *Petroleum Corp.*, 192 F.3d 1323, 1329 (9th Cir. 1999) (Court noted that the contribution an
 25 objector’s attorney made, by providing an adversarial context in which the district court could
 26 evaluate the fairness of attorneys’ fees, was substantial.) When meritorious objections reveal
 27 weaknesses in a settlement and result in a tangible benefits to the class (financially or otherwise),
 28 courts are encouraged to award fees to objectors. *Eubank v. Pella Corp.*, 753 F.3d 718, 720 (7th Cir.

1 2014) (“If their objections persuade the judge to disapprove [a settlement], and as a consequence a
 2 settlement more favorable to the class is negotiated and approved, the objectors will receive a cash
 3 award that can be substantial...”) *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 288 (7th Cir.
 4 2002) (participation by objectors and others is “encouraged by permitting lawyers who contribute
 5 materially to the proceeding to obtain a fee.”). Indeed, the Ninth Circuit has held that it is *clear error*
 6 for a district court to deny objectors’ counsel a fee in certain circumstances. *Rodriguez v. West*
 7 *Publishing Corp.*, 563 F.3d 948, 963 (9th Cir. 2009). In the present case, the *Chernavsky* Plaintiffs
 8 have significantly enhanced the settlement in both pecuniary and nonpecuniary ways.

9 **B. THE CHERNAVSKY PLAINTIFFS’ WORK CONVEYED SUBSTANTIAL**
 10 **ENHANCEMENT TO THE SETTLEMENT CLASS**

11 **1. The Chernavsky Plaintiffs Successfully Advocated the Court to Extend the Claim Period**

12 The *Chernavsky* Plaintiffs raised concerns with the extremely short time to file claims as set
 13 forth in the Second Settlement. (Dkt. No. 116.) Indeed, the *Chernavsky* Plaintiffs’ Objection directly
 14 led to the Settlement Parties immediately agreeing to extend the claims period to now be 210 days
 15 after preliminary approval and 30 days after final approval. The *Jabbari* Plaintiffs acknowledged this
 16 change as result of the Objection. (See *Jabbari* Plaintiffs’ Reply Memorandum In Support of
 17 Preliminary Approval, Dkt. No. 133 p. 18, (“In light of [the *Chernavsky* Plaintiffs]’ objection,
 18 [*Jabbari*] Plaintiffs propose that the deadline to submit claim forms fall 210 days after a preliminary
 19 approval order and 30 days after final approval.”))

20 The value of this significantly enhanced claims period cannot be overstated, as the extended
 21 claims period operates to allow a significantly larger number of class members to recover under the
 22 Final Settlement.

23 **2. The Chernavsky Plaintiffs Successfully Narrowed the Initial Overbroad Release**

24 The *Chernavsky* Objection also raised concerns with the scope of the release as proposed to
 25 the Court. (See, generally, Dkt. Nos. 113, 117, 118, 119.)

26 The scope of the proposed release in the Second Settlement was extremely overbroad and
 27 included all potential claims from unnamed class members, including claims that had not been pled
 28 in the complaint. (See Second Settlement at 2.47, 2.48, 2.55.) As noted by the *Chernavsky* Plaintiffs,

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1 there was no practical limitation to a release that waived all unknown claims which, if known,
2 “might have affected” the decision to settle the case, because literally any claim “might have
3 affected” that decision whether that claim was related to the underlying litigation or not.

4 The Court apparently agreed with the *Chernavsky* Plaintiffs’ concerns regarding the release,
5 and required the Settlement Parties to change the release “to make clear that the class members are
6 only releasing claims based on the identical factual predicate as the claims asserted in [the *Jabbari*
7 matter].” (Dkt. No. 155.). See *Hendricks*, 2016 U.S. Dist. LEXIS 134872, at *48 (objection
8 regarding the release of a proposed settlement is deemed itself a substantial enhancement warranting
9 fees).

10 **3. The *Chernavsky* Plaintiffs Raised Concerns Regarding The Notice, Claim, Objection,**
11 **and Opt-Out Procedures**

12 The *Chernavsky* Objection also outlined at length the issues and problems with the proposed
13 notices and the claims process contained in the Second Settlement. As noted in the *Chernavsky*
14 Objection, the claims procedure itself placed undue burdens to absent class members attempting to
15 recover under the settlement.

16 *First*, the *Chernavsky* Plaintiffs objected that the Claim form was too burdensome and
17 narrow in certain aspects and did not provide a mechanism for claimants to explain and provide
18 additional information about their claim. The Court concurred, and required the Settlement Parties to
19 revise the claim form to include an opportunity for claimants to explain information, as well as
20 required a more thorough notice procedure. (Dkt. No. 155.) The Settlement Parties took to heart
21 these concerns, and simplified the notice procedure and modified the notices themselves. (Dkt. No.
22 160, *generally*.)

23 *Second*, the *Chernavsky* Objection noted that the opt-out and objection requirements were not
24 only onerous, but also required strict compliance. (*Chernavsky* Objection at 6-7.) Thereafter, the
25 Court ordered the Settlement Parties to make clear that the Final Settlement allowed “substantial
26 compliance” for objecting and opting out. (Dkt. No. 155.) Consistent with these concerns, the Final
27 Settlement makes that change. (Final Settlement at ¶¶ 12.1, 12.6.)

28

1 *Third*, the *Chernavsky* Plaintiffs noted that inclusion of the Court ‘seal’ in the Second
 2 Settlement’s proposed Notice may confuse and intimidate absent class members. (*Chernavsky*
 3 Objection at p. 7.) After reviewing the *Chernavsky* Objection, the Settlement Parties removed the
 4 court seal. (Dkt. Nos. 162-4, 162-5.)

5 **4. The *Chernavsky* Plaintiffs Successfully Achieved Court Oversight of Claims Processing**

6 The *Chernavsky* Plaintiffs were able to provide absent class members with another level of
 7 scrutiny and review for the claims process. The value of this additional safeguard for the class
 8 cannot be overstated. The Second Settlement invested the settlement administrator with “final”
 9 approval of whether or not a class member had a valid claim, and that determination “shall not be
 10 subject to any review or appeal.” (Second Settlement at ¶ 9.5.) From there, the Court was directed to
 11 enter judgment on that potential claim based solely on the Settlement Administrator’s lone
 12 determination. (Second Settlement at ¶ 9.12.) While Class Counsel was directed to “supervis[e]” the
 13 settlement administrator in this process, the Second Settlement did not require Class Counsel to
 14 advocate for claimants in any way. After the *Chernavsky* Objection, the Court agreed to take on an
 15 active role supervising the distribution of the settlement proceeds. (Dkt. No. 155.) This scrutiny and
 16 approval ordered by the Court included the potential for appointment of a special master. (*Id.*) The
 17 Final Settlement makes the changes ordered by the Court regarding Court scrutiny over the
 18 settlement administrator. (Dkt. No. 160 at p. 2-3.)

19 **C. THE COURT SHOULD AWARD THE *CHERNAVSKY* COUNSEL**
 20 **ATTORNEYS’ FEES**

21 In light of the *Chernavsky* Plaintiffs’ substantial contributions to the Final Settlement and
 22 ultimate modifications consistent with the suggestions by *Chernavsky* Counsel, the Court should
 23 award the amount requested, using a percentage of the fund. *Vizcaino*, 290 F.3d at 1047 (court may
 24 award lodestar or percentage of the fund). “Reasonableness is the goal, and mechanical or formulaic
 25 application of either method, where it yields an unreasonable result, can be an abuse of discretion.”
 26 *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litig.*, 109 F.3d 602, 607
 27 (9th Cir. 1997). Courts in this Circuit have repeatedly recognized that the percentage of the fund
 28 method is generally more appropriate consideration for fees. *In re Omnivision Technologies, Inc.*,

1 559 F.Supp.2d 1036, 1046 (N.D. Cal. 2008) (noting dominance of the percentage of the fund method
 2 in this District); *Chu v. Wells Fargo Investments, LLC*, 211 U.S. Dist. LEXIS 15821 *12 (N.D. Cal.
 3 Feb. 15, 2011) (percentage of the fund is appropriate). The percentage of the fund method tends to
 4 “remov[e] the inducement to unnecessarily increase hours, prompt[] early settlement, reduc[e]
 5 burdensome paperwork for counsel and the court, and provid[e] a degree of predictability to fee
 6 awards.” *In re Activision Securities Litig.*, 723 F. Supp. 1373, 1376 (N.D. Cal. 1989).

7 Use of the percentage-of-the-fund method, in the amount suggested based on the two
 8 potential benchmarks, is particularly appropriate for calculating the *Chernavsky* Counsel’s fee
 9 award. As demonstrated *supra*, Audet & Partners, LLP, was able to achieve a substantial and
 10 considerable benefit for the settlement class.

11 Under the percentage-of-recovery method, having ascertained the value of a class settlement,
 12 the Court next must determine what percentage to apply to that value to arrive at a resulting fee
 13 award. The Ninth Circuit has instructed that 25% is “a proper benchmark figure”. *In re Coordinated*
 14 *Pretrial*, 109 F.3d at 607 (quoting *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 270 (9th
 15 Cir. 1989)); *see also, de Mira v. Heartland Employment Service, LLC*, 2014 U.S. Dist. LEXIS
 16 336685, at *2-3 (N.D. Cal. Mar. 13, 2014) (“The Ninth Circuit has endorsed a benchmark of 25%
 17 for attorneys’ fee awards” and “[p]ercentage awards of between 20% and 30% are common.”). The
 18 25% benchmark is the starting point for the analysis, and the percentage may be adjusted up or down
 19 based on the court’s consideration of “all of the circumstances of the case.” *Vizcaino*, 290 F.3d at
 20 1048. The relevant circumstances include (1) the results achieved for the class, (2) the risk counsel
 21 assumed, (3) the skill required and the quality of the work, (4) the contingent nature of the fee, (5)
 22 whether the fee is above or below the market rate, and (6) awards in similar cases. *Id.* at 1048-50;
 23 *see also, de Mira*, 2014 U.S. Dist. LEXIS 336685, at *4. Here, clearly, the 20% or more benchmark
 24 substantially exceeds *Chernavsky* Counsel’s requested fee of no more than 3% of the overall
 25 common fund or, in the alternative, no less than 10% of the \$32M increased in the final settlement.
 26

27 **1. The *Chernavsky* Counsel Assumed Incredible Risk of No Award For Its Efforts**

28

1 Here, clearly, there was absolutely no guarantee that Audet & Partners, LLP, would recover a
 2 single dime for its extraordinary efforts. Nevertheless, the *Chernavsky* Counsel doggedly pursued a
 3 better result for unnamed class members despite the fact that the vast majority of class counsel
 4 settlements are ultimately approved. Christopher R. Leslie, *The Significance of Silence: Collective*
 5 *Action Problems and Class Action Settlements*, 59 Fla. L. Rev. 71, 105 (2007) (“Courts have
 6 approved proposed settlements in over 90% of the cases in which class members filed objections.”).

7 Furthermore, the risk was especially acute for Audet & Partners, LLP, as the firm put its
 8 well-established reputation on the line. As a well-known class plaintiffs’ firm, Audet & Partners has
 9 collectively spent decades cultivating relationships with other plaintiffs’ firms, including Class
 10 Counsel in the instant matter. (Woods Decl. at ¶ 23, Exh. 15.) In the unusual but necessary role as a
 11 class objector, Audet & Partners, LLP, was forced into the unfamiliar and unwanted role of trying to
 12 highlight deficiencies in the existing settlement. Even though the *Chernavsky* Plaintiffs were often
 13 given the ‘cold shoulder’ by the Settlement Parties during this process, the *Chernavsky* Counsel
 14 nonetheless continued to advocate to improve the Final Settlement to the benefit of unnamed class
 15 members and the Settlement Parties alike.

16 **2. The *Chernavsky* Counsel’s Past Class Experience Was Used to Skillfully And**
 17 **Significantly Enhance the Settlement**

18 Representing Plaintiffs Chernavsky and Castro⁵ required great skill and effort in a short
 19 period of time. Here, *Chernavsky* Counsel was required not just to analyze the underlying case, but
 20 be on top of the proposed iterations of the settlement on a moment’s notice. Despite less-than-full
 21 cooperation from the Settlement Parties, the *Chernavsky* Plaintiffs were able to have almost all of
 22 their concerns addressed in the subsequent improvements in the Final Settlement before the Court.
 23 Without question, the significant past class action experience of Audet & Partners, LLP, greatly
 24 aided efforts to enhance the Final Settlement.

25
 26 _____
 27 ⁵ To the extent that the Court is inclined to award an incentive or service award to other named
 28 plaintiffs, class representatives, or objectors, Plaintiff Chernavsky and Plaintiff Castro also request
 such an award. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (holding that the degree to
 which a plaintiff has benefitted the class was relevant to whether they were eligible for a service
 award)

1 **3. The Work Done by Chernavsky Counsel was Entirely Contingent**

2 Plaintiffs Chernavsky and Castro were represented on an entirely contingent basis. (Woods
3 Decl. at ¶ 3.) Audet & Partners, LLP, advanced every penny of the fees and costs to date. (Woods
4 Decl. at ¶ 24.) In addition to assuming the risk that it might not be paid for the time it devoted to
5 representing Plaintiffs Chernavsky and Castro, Audet & Partners was also precluded from devoting
6 resources to other pending cases or investigating potential new cases. (Woods Decl. at ¶ 25.) The
7 Ninth Circuit has recognized that attorneys who take on the risk of a contingency case should be
8 compensated for having to forgo other work. *Vizcaino*, 290 F.3d at 1050.

9 **4. The Requested Fee is Reasonable**

10 A requested fee of 3% of the overall settlement fund (\$142 Million) or 10% of the increased
11 settlement amount (\$32 Million) is fair and justified in this case. The requested fee is in line with
12 similar awards given to objectors when their participation results in an improved settlement. *See In*
13 *re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 747-48 (7th Cir. 2011) (holding that an objector
14 should be awarded attorneys' fees of \$4.125 million, which equaled 5.9% of the \$70 million by
15 which the settlement fund was increased following her objection). In many cases, courts have
16 awarded the lawyers a percentage of the increased amount. *See Swedish Hosp. Corp. v. Shalala*, 303
17 U.S. App. D.C. 94, 1 F.3d 1261, 1272 (1993) (affirming a fee award of 20% of the \$10 million
18 increase in the fund created by counsel's efforts); *In re First Databank Antitrust Litig.*, 209 F. Supp.
19 2d 96, 101 (D.D.C. 2002) (awarding counsel 30% of the \$8 million increase in the settlement fund
20 attributable to their efforts); *Linney v. Cellular Alaska Partnership*, Nos. C-96-3008 DLJ, *et al.*,
21 1997 U.S. Dist. LEXIS 24300, at *18-21 (N.D. Cal. July 18, 1997) (awarding a fee of one third of
22 the settlement fund negotiated by counsel who were retained by the plaintiffs after the court denied
23 approval of a prior settlement proposal), *aff'd*, 151 F.3d 1234 (9th Cir. 1998). As the case law makes
24 clear, courts have awarded fees to situations where, as here, the objection resulted in an increased
25 timeframe for participation in the settlement and other similar benefits or enhancements. *See, e.g.*,
26 *Shaw v. Toshiba America Info. Systems, Inc.*, 91 F. Supp. 2d 942, 974 (E.D. Tex. 2000) (awarding \$6
27 million to objectors who improved the settlement by doubling the length of the coupon exemption
28 date). The fact that *Chernavsky* Counsel has improved material terms in the settlement, in addition to

1 the subsequent impact of the settlement figure, only further reinforces the reasonableness of fees in
2 the instant matter.

3 **V. CONCLUSION**

4 For the foregoing reasons, Plaintiffs’ Motion for Attorneys’ Fees should be Granted, and in
5 recognition of the substantial benefit they achieved, *Chernavsky Counsel, Audet & Partners, LLP.*,
6 should be awarded a payment of no more than 3% of the overall common fund (\$4,260,000.00), or
7 no less than 10% of the \$32 million increased amount in the settlement (\$3,200,000.00).

8
9 Dated January 19, 2018

Respectfully submitted,

10 By: /s/ William M. Audet

11 William M. Audet
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17 waudet@audetlaw.com

18 *Counsel for Alex Chernavsky and William Castro,*
19 *on behalf of themselves and all others similarly*
20 *situated*

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7 *Attorneys for Movants Alex Chernavsky and*
William Castro, on behalf of themselves
8 *and all others similarly situated*

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 SHAHRIAR JABBARI and KAYLEE
13 HEFFELFINGER, on behalf of themselves and
14 all others similarly situated,

15 Plaintiffs,

16 v.

17 WELLS FARGO & COMPANY and WELLS
18 FARGO, N.A.,

19 Defendants.

Case No. 3:15-cv-02159-VC

**DECLARATION OF S. CLINTON
WOODS IN SUPPORT OF ALEX
CHERNAVSKY AND WILLIAM
CASTRO’S MOTION FOR AN AWARD
OF ATTORNEYS’ FEES**

Date: March 20, 2018
Time: 10:00 AM
Place: Courtroom 4 – 17th Floor
Judge: Honorable Vince Chhabria

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1 I, S. Clinton Woods, hereby declare as follows:

2 1. I am an attorney at law admitted in the State of California and in the Northern District
3 of California. I am one of the attorneys of record for Alex Chernavsky and William Castro, Plaintiffs
4 in the related matter *Chernavsky v. Wells Fargo & Company*, No. 3:16-cv-06326-VC
5 (“*Chernavsky*”). I have personal knowledge of the matters stated below and if called as a witness I
6 could and would testify competently thereto under oath, except to those matters stated upon
7 information and belief.

8 2. I submit this declaration in support of the *Chernavsky* Plaintiffs’ Motion for
9 Attorneys’ Fees.

10 3. Audet & Partners, LLP, was retained by Plaintiffs Alex Chernavsky and William
11 Castro (hereinafter “*Chernavsky* Plaintiffs”) in October of 2016 to represent them regarding their
12 claims against Wells Fargo, who had illegally opened accounts for them without authorization from
13 the Plaintiffs themselves. The representation of the *Chernavsky* Plaintiffs was undertaken on an
14 entirely contingent basis.

15 4. Immediately upon retention, Audet & Partners worked diligently and skillfully to
16 draft, file, and serve a complaint, and attempt to establish a line of communication with the attorneys
17 for Plaintiffs Shariar Jabbari and Kaylee Heffelfinger, the named plaintiffs in the instant matter
18 (hereinafter “*Jabbari* Plaintiffs”).

19 5. At all relevant times since *Chernavsky* Plaintiffs filed their complaint, counsel for
20 *Chernavsky* Plaintiffs have sent repeated written inquiries to counsel for the *Jabbari* Plaintiffs
21 seeking information about the settlement negotiations, the documents upon which the settlement was
22 based, and whether or not the claims of the Privacy Class as defined in the *Chernavsky* Complaint
23 would be taken care of. The first such substantive inquiry occurred on November 28, 2016. The last
24 communication occurred on September 22, 2017, after the motion for preliminary approval was
25 granted.

26 6. During these communications, Audet & Partners have repeatedly attempted to share
27 concerns with the *Jabbari* Parties about several aspects of the various iterations of the proposed
28

1 settlements with the sole goal of ensuring that the settlement produces the most complete benefit to
2 the overall settlement class.

3 7. Counsel for *Jabbari* Parties have either ignored such requests or have refused them
4 unilaterally.

5 8. Attached hereto as Exhibit 1 is a true and correct copy of a letter sent by *Chernavsky*
6 Plaintiffs to counsel for *Jabbari* Plaintiffs via email on November 1, 2016. An identical letter was
7 sent to counsel for the Defendants on the same date.

8 9. Attached hereto as Exhibit 2 is a true and correct copy of a letter sent by *Chernavsky*
9 Plaintiffs to counsel for *Jabbari* Parties via email on November 8, 2016.

10 10. Attached hereto as Exhibit 3 is a true and correct copy of a letter sent by *Chernavsky*
11 Plaintiffs to counsel for *Jabbari* Plaintiffs via email on November 28, 2016. The letter details some
12 preliminary concerns relating to a possible settlement, namely that failure to include potential
13 objectors such as the *Chernavsky* Plaintiffs and/or safeguard the claims of potential subclasses could
14 be fatal to the success of any potential settlement. *Chernavsky* Plaintiffs never received a substantive
15 response to this letter.

16 11. Attached hereto as Exhibit 4 is a true and correct copy of a letter sent by *Chernavsky*
17 Plaintiffs to counsel for Defendants via email on December 12, 2016. The letter details some
18 preliminary similar concerns relating to a possible settlement, namely that failure to include potential
19 objectors such as the *Chernavsky* Plaintiffs and/or safeguard the claims of potential subclasses could
20 be fatal to the success of any potential settlement. *Chernavsky* Plaintiffs never received a substantive
21 response to this letter.

22 12. Attached hereto as Exhibit 5 is a true and correct copy of a letter sent by *Chernavsky*
23 Plaintiffs to counsel for *Jabbari* Parties via email on March 31, 2017. The letter once again requests
24 information regarding the current settlement and some opportunity to participate or contribute to the
25 negotiations.

26 13. Attached hereto as Exhibit 6 is a true and correct copy of email correspondences
27 between counsel for *Chernavsky* Plaintiffs and *Jabbari* Plaintiffs taking place between March 31,
28 2017 and April 7, 2017. The correspondences evidence further efforts on the part of *Chernavsky*

1 Plaintiffs to gain information about the settlement and meaningfully engage with the Settlement
2 Parties. They also evidence a repeated refusal on the part of the Settlement Parties to allow such
3 engagement.

4 14. Attached hereto as Exhibit 7 is a true and correct copy of email correspondence sent
5 by counsel for *Chernavsky* Plaintiffs to counsel for *Jabbari* Plaintiffs on April 11, 2017. The email
6 memorializes a telephone conversation between counsel for the *Chernavsky* Plaintiffs and *Jabbari*
7 Plaintiffs where, once again, *Jabbari* Plaintiffs refused to consent or provide discovery or
8 information relating to the settlement.

9 15. Attached hereto as Exhibit 8 is a true and correct copy of a letter sent by *Chernavsky*
10 Plaintiffs to *Jabbari* Plaintiffs on April 26, 2017, requesting a response by May 1, 2017. The letter,
11 sent after the Settlement Parties moved for preliminary approval, details several problems with the
12 Second Settlement and requests a response. Among those problems include multiple objections
13 eventually sustained by the Court and/or assented to by the Settlement Parties, including narrowing
14 of the release, reformation of the notice and claim procedure, and the short length of the notice and
15 objection period.

16 16. Attached hereto as Exhibit 9 is a true and correct copy of a letter sent by *Jabbari*
17 Plaintiffs to *Chernavsky* Plaintiffs on May 2, 2017, responding to *Chernavsky* Plaintiffs' letter of
18 April 26, 2017, and offering a perfunctory dismissal of *Chernavsky* Plaintiffs' stated concerns.

19 17. Attached hereto as Exhibit 10 is a true and correct copy of a letter sent by *Chernavsky*
20 Plaintiffs to *Jabbari* Plaintiffs on May 2, 2017.

21 18. Attached hereto as Exhibit 11 is a true and correct copy of a letter sent by *Chernavsky*
22 Plaintiffs to the Settlement Parties on September 14, 2017. The letter requests information
23 concerning whether additional settlement funds or changes to the settlement were warranted given
24 recent news reports which indicate the size and scope of the wrongdoing by Defendants was much
25 greater than originally estimated.

26 19. Attached hereto as Exhibit 12 is a true and correct copy of email correspondence sent
27 by counsel for Defendants on September 19, 2017, essentially asking upon what authority
28

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1 *Chernavsky* Plaintiffs requested information about the settlement, and refusing to provide
2 substantive answers to requests.

3 20. Attached hereto as Exhibit 13 is a true and correct copy of a letter sent by *Chernavsky*
4 Plaintiffs to the Settlement Parties on September 22, 2017, reiterating *Chernavsky* Plaintiffs’
5 reasonable requests. *Chernavsky* Plaintiffs never received a response to this letter.

6 21. Attached hereto as Exhibit 14 is a true and correct copy of an email exchange sent
7 between *Chernavsky* Plaintiffs and *Jabbari* Plaintiffs requesting inclusion in a September 28, 2017
8 teleconference requested by the Court. *Chernavsky* Plaintiffs were forced to request access to the
9 teleconference from the Court clerk, which was granted.

10 22. Attached hereto as Exhibit 15 is a current firm resume for Audet & Partners, LLP.

11 23. As a well-known class plaintiffs’ firm, Audet & Partners has collectively spent
12 decades cultivating relationships with other plaintiffs’ firms, including Class Counsel in the instant
13 matter.

14 24. Audet & Partners, LLP., has advanced every penny of the fees and costs to date in the
15 instant matter.

16 25. In addition to assuming the risk that it might not be paid for the time it devoted to
17 representing Plaintiffs *Chernavsky* and *Castro*, Audet & Partners was also precluded from devoting
18 resources to other pending cases or investigating potential new cases.

19 I declare under penalty of perjury under the laws of the United States that the foregoing is
20 true and correct, and with respect to those matters stated on information and belief, believe them to
21 be true and correct.

22 Executed at San Francisco, California, on Thursday, January 19, 2018.

23
24 /s/ S. Clinton Woods

25 S. Clinton Woods (SBN 246054)

26 *Attorney for Movants Alex Chernavsky and*
27 *William Castro, on behalf of themselves and all*
28 *others similarly situated*

Exhibit 1

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November 1, 2016

Via Electronic and First Class Mail

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Confidential Settlement Communication

Re: *Chernavsky v. Wells Fargo Bank, N.A. et al.* Case No. 3:16-cv-06326
Jabbari, et al v. Wells Fargo & Company et al. Case No. 3:15-cv-02159-VC

Dear Counsel:

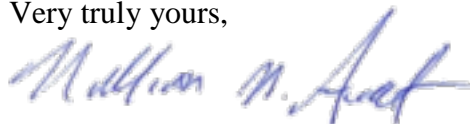
Enclosed please find an action entitled *Chernavsky v. Wells Fargo Bank, N.A. et al.*, Case No. 3:16-cv-06326 filed in the United States District Court Northern District of California. The case is related to the *Jabbari* action presently before Judge Chhabria. We understand that the *Jabbari* action is now in 'settlement' discussions regarding the resolution of the improper opening of accounts for Wells Fargo customers.

In the *Chernavsky* matter, we seek remedies for different but related claims associated with improper identification theft associated with the opening of the accounts. To the extent you seek to include any claims in any eventual release, in order to best protect the interest of all class and subclass members you should include in any such settlement discussions subclass counsel from our firm. Any effort without subclass counsel may render the settlement subject to challenge by objectors at the District Court and Ninth Circuit level.

Counsel
November 1, 2016
Page 2 of 2

I remain willing to immediately join in any ongoing settlement discussions and to appropriately represent the subclass as required by well-established law of the Supreme Court and the Ninth Circuit. I look forward to hearing from you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "William M. Audet". The signature is fluid and cursive, with a long horizontal stroke at the end.

William M. Audet
waudet@audetlaw.com

cc: S. Clinton Woods
cwoods@audetlaw.com
Ling (David) Kuang
lkuang@audetlaw.com

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7 *Attorneys for Plaintiff Alex Chernavsky, on*
behalf of himself and all others similarly situated
 8

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12 ALEX CHERNAVSKY, on behalf of himself
 and all others similarly situated,

13 Plaintiffs,

14 vs.

15 WELLS FARGO BANK, N.A.; and WELLS
 16 FARGO & COMPANY, a Delaware
 17 Corporation,

18 Defendants.
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

Case No:

CLASS ACTION COMPLAINT FOR:

1. **Violation of the Stored Communication Act;**
2. **Invasion of Privacy;**
3. **Negligence;**
4. **Breach of Contract and Bailment;**
5. **Conversion;**
6. **Intentional Violation of the Fair Credit Reporting Act;**
7. **Negligent Violation of the Fair Credit Reporting Act;**
8. **Declaratory Relief;**
9. **Unjust Enrichment;**
10. **Violations of California’s Consumer Legal Remedies Act;**
11. **Violations of California’s Unlawful Competition Law; and**
12. **Violations of California’s Consumer Records Act**

JURY TRIAL DEMANDED

A&P AUDET & PARTNERS LLP

INTRODUCTION

Plaintiff ALEX CHERNAVSKY, individually and on behalf of all unknown plaintiffs, 1-1,000,000 (“Plaintiffs”), bring this class action complaint against Defendants WELLS FARGO BANK, NATIONAL ASSOCIATION, and WELLS FARGO & COMPANY, a Delaware Corporation (collectively, “Wells Fargo” or “Defendants”), on behalf of themselves and all others similarly situated to obtain damages, restitution and injunctive relief for the Class, as defined, below, from Defendants. Plaintiffs make the following allegations upon information and belief, except as to their own actions, the investigation of their counsel, and the facts that are a matter of public record, and aver and allege as follows:

1. Plaintiff Alex Chernavsky is a resident of California.

2. Defendant Wells Fargo Bank, National Association, is, and at all times relevant hereto was, a national banking association chartered under the laws of the United States, with its primary place of business in Sioux Falls, South Dakota. Wells Fargo Bank, National Association provides Wells Fargo & Company’s personal and commercial banking services, and is Wells Fargo & Company’s principal subsidiary.

3. Defendant Wells Fargo & Company is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of Delaware. Wells Fargo & Company is a financial services company with over \$1.5 trillion in assets, and provides banking, insurance, investments, mortgage, and consumer and commercial finance through more than 9,000 locations, 12,000 ATMs, and via the Internet. It has approximately 265,000 full-time employees, and is ranked 29th on Fortune Magazine's 2014 rankings of America's 500 largest corporations.

4. Wells Fargo boasts about the average number of products held by its customers. Whereas the average bank has three products per customer, Wells Fargo currently has approximately six bank accounts or financial products per customer. This was not enough, as Wells Fargo seeks to increase this to an average of eight bank accounts or financial products per account holder, a company goal Wells Fargo calls the "gr-eight" initiative. To reach this goal, Wells Fargo placed knowingly unrealistic and impossible sales quotas on their bankers.

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1 \$5,000,000.00, exclusive of interest and costs, and there are numerous class members who are
2 citizens of states other than Wells Fargo's state of citizenship.

3 10. This Court has personal jurisdiction over Wells Fargo because Wells Fargo is
4 authorized to do business in the State of California, and operates stores within this Judicial District
5 and Wells Fargo has significant continuous and pervasive contacts with the State of California, and
6 maintains numerous banking establishments and employees in the State of California, including,
7 upon information and belief, some of the 5,300 employees who were terminated by Wells Fargo for
8 engaging in the gaming tactic established by Wells Fargo.

9 11. This Court has personal jurisdiction over Plaintiffs because they are residents of the
10 State of California.

11 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part
12 of the events and/or omissions giving rise to the Plaintiffs claims and Class Member claims arise in
13 this action or occurred in this District and because Defendants are subject to personal jurisdiction in
14 this District.

15 **GENERAL ALLEGATIONS**

16 13. Upon information and belief, Wells Fargo is within the top thirty (30) of America's
17 largest corporations, ranked 29th on the Fortune 500 list of top American companies.

18 14. In its 2014 Annual Report to the U.S. Securities and Exchange Commission, Wells
19 Fargo boasts about its "products" 'per customer and its "cross-sell strategy," "Our vision is to satisfy
20 all our customers' financial needs, help them succeed financially, be recognized as the premier
21 financial services company in our markets and be one of America's great companies. Important to
22 our strategy to achieve this vision is to increase the number of our products our customers use and
23 to offer them all of the financial products that fulfill their financial needs." That report further
24 states: "Our cross-sell strategy is to increase the number of products our customers use by offering
25 them all of the financial products that satisfy their financial needs".

26 15. Wells Fargo stated in its 2014 Annual Report to the U.S. Securities & Exchange
27 Commission: "We believe there is more opportunity for cross-sell as we continue to earn more
28 business from our customers. Our goal is eight products per household..."

1 16. Wells Fargo's central business plan is to attempt to get each customer to maintain
2 numerous accounts with Wells Fargo. In a brochure published by Wells Fargo called "The Vision &
3 Values: of Wells Fargo;" Wells Fargo states: "Going for gr-eight,' our average retail banking
4 household has about six products with us. We want to get to eight... and beyond. One of every four
5 already has eight or more. Four of every 10 have six or more."

6 17. In order to achieve this goal of eight accounts per household, Wells Fargo imposes
7 incredible pressure on its bankers to open numerous accounts per customer. Managers constantly
8 hound, berate, demean and threaten employees to meet these strict and unreachable quotas.
9 Employees who do not reach their quotas are often required to work hours beyond their typical
10 work schedule without being compensated for that extra work time, and/or are threatened with
11 termination.

12 18. The quotas imposed by Wells Fargo on its employees are often unrealistic because
13 there are not enough customers who enter or interact with a branch on a daily basis for employees
14 to meet their quotas through traditional means.

15 19. Wells Fargo's bankers are thus predictably forced to resort to alternative means to
16 meet quotas, including using high-pressure sales tactics to coerce customers into opening additional
17 accounts. Alternately, and more troublingly, bankers feel forced into using inaccurate or misleading
18 information about potential accounts to induce customers to open them.

19 20. Employees thus resort to gaming tactics to meet minimum quotas. Gaming is so
20 ingrained in the business of Wells Fargo that many of the tactics, employed to meet these sky-high
21 quotas have commonly used names. These gaming practices are so pervasive within Wells Fargo's
22 business model that some methods of gaming are given their own names.

23 a. "Sandbagging" refers to Wells Fargo's practice of failing to open accounts
24 when requested by customers, and instead accumulating a number of account applications to
25 be opened later. Specifically, Wells Fargo employees collect manual applications for various
26 products, stockpile them in an unsecured fashion, and belatedly open up the accounts (often
27 with additional, unauthorized accounts) in the next sales reporting period, frequently before
28 or after banking hours, or on bank holidays such as New Year's Day.

1 b. Pinning" refers to Wells Fargo's practice of assigning, without customer
2 authorization, Personal Identification Numbers ("PINs") to customer ATM card numbers
3 with the intention of, among other things, impersonating customers on Wells Fargo
4 computers, and enrolling those customers in online banking and online bill paying without
5 their consent.

6 c. "Bundling" refers to Wells Fargo's practice of incorrectly informing
7 customers that certain products are available only in packages with other products such as
8 additional accounts, insurance, annuities, and retirement plans.

9 21. Upon information and belief, Wells Fargo employees opened over 1,534,280 deposit
10 accounts that may not have been authorized and that may have been funded through simulated
11 funding, or transferring funds from consumers' existing accounts without their knowledge or
12 consent.

13 22. That analysis determined that roughly 85,000 of those accounts incurred about \$2
14 million in fees. The fees included overdraft fees on linked accounts the consumers already had,
15 monthly service fees imposed for failure to keep a minimum balance in the unauthorized account,
16 and other fees.

17 23. Section 1036(a)(1)(B) of the CFPA prohibits "unfair" acts or practices. 12 U.S.C. §
18 5536(a)(1)(B). An act or practice is unfair if it causes or is likely to cause consumers substantial
19 injury that is not reasonably avoidable and is not outweighed by countervailing benefits to
20 consumers or to competition. 12 U.S.C. § 5531(c)(1).

21 24. By opening unauthorized deposit accounts and engaging in acts of simulated
22 funding, Wells Fargo caused and was likely to cause substantial injury to consumers that was not
23 reasonably avoidable. This is because Wells Fargo's actions occurred without consumers'
24 knowledge, and was not outweighed by countervailing benefits to consumers or to competition.

25 25. Section 1036(a)(1)(B) of the CFPA prohibits "abusive" acts or practices. 12 U.S.C.
26 §5536(a)(1)(B). An act or practice is abusive if it materially interferes with the ability of a
27 consumer to understand a term or condition of a consumer financial product or service. 12 U.S.C. §
28 5531(d)(1). An act or practice is abusive if it takes unreasonable advantage of the inability of the

1 consumer to protect his or her interests in selecting or using a consumer financial product or
2 service. 12 U.S.C. § 5531(d)(2)(B).

3 26. Wells Fargo’s acts of opening unauthorized deposit accounts and engaging in
4 simulated funding materially interfered with the ability of consumers to understand a term or
5 condition of a consumer financial product or service, as they had no or limited knowledge of those
6 terms and conditions, including associated fees.

7 27. Furthermore, Wells Fargo’s acts of opening unauthorized deposit accounts and
8 engaging in simulated funding took unreasonable advantage of consumers’ inability to protect their
9 interests in selecting or using consumer financial products or services, including interests in having
10 an account opened only after affirmative agreement, protecting themselves from security and other
11 risks, and avoiding associated fees.

12 28. Therefore, Respondent engaged in “unfair” and “abusive” acts or practices that
13 violate §§ 1031(c)(1), (d)(1), (d)(2)(B), and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(c)(1),
14 (d)(1), (d)(2)(B), 5536(a)(1)(B).

15 29. Wells Fargo’s analysis concluded that its employees submitted applications for
16 565,443 credit-card accounts that may not have been authorized by using consumers’ information
17 without their knowledge or consent. That analysis determined that roughly 14,000 of those accounts
18 incurred \$403,145 in fees. Fees incurred by consumers on such accounts included annual fees and
19 overdraft-protection fees, as well as associated finance or interest charges and other late fees.

20 30. Section 1036(a)(1)(B) of the CFPA prohibits “unfair” acts or practices. 12 U.S.C. §
21 5536(a)(1)(B). An act or practice is unfair if it causes or is likely to cause consumers substantial
22 injury that is not reasonably avoidable and is not outweighed by countervailing benefits to
23 consumers or to competition. 12 U.S.C. § 5531(c)(1).

24 31. By applying for and opening credit-card accounts using consumers’ information
25 without their knowledge or consent, Wells Fargo caused and was likely to cause substantial injury
26 that was not reasonably avoidable, because it occurred without consumers’ knowledge, and was not
27 outweighed by countervailing benefits to consumers or competition.

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1 32. Section 1036(a)(1)(B) of the CFPA prohibits “abusive” acts or practices. 12 U.S.C. §
2 5536(a)(1)(B). An act or practice is abusive if it materially interferes with the ability of a consumer
3 to understand a term or condition of a consumer financial product or service. 12 U.S.C. §
4 5531(d)(1). Additionally, an act or practice is abusive if it takes unreasonable advantage of the
5 consumer’s inability to protect his or her interests in selecting or using a consumer financial product
6 or service. 12 U.S.C. § 5531(d)(2)(B).

7 33. Wells Fargo’s pattern and practice opening credit-card accounts using consumers’
8 information without their knowledge or consent materially interfered with the ability of consumers
9 to understand a term or condition of a consumer financial product or service, as they had no or
10 limited knowledge of those terms and conditions, including associated fees.

11 34. Furthermore, Wells Fargo’s pattern and practice of opening credit-card accounts
12 using consumers’ information without their knowledge or consent took unreasonable advantage of
13 the consumers’ inability to protect their interests in selecting or using a consumer financial product
14 or service.

15 35. Therefore, Wells Fargo engaged in “unfair” and “abusive” acts or practices that
16 violate §§ 1031(c)(1), (d)(1), (d)(2)(B), and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(c)(1),
17 (d)(1), (d)(2)(B), 5536(a)(1)(B).

18 36. During the Relevant Period, Wells Fargo’s employees used fake email addresses or
19 addresses not belonging to consumers to enroll consumers in online-banking services without their
20 knowledge or consent. Section 1036(a)(1)(B) of the CFPA prohibits “abusive” acts or practices. 12
21 U.S.C. § 5536(a)(1)(B). An act or practice is abusive if it takes unreasonable advantage of the
22 consumer’s inability to protect his or her interests in selecting or using a consumer financial product
23 or service. 12 U.S.C. § 5531(d)(2)(B).

24 37. Wells Fargo’s pattern and practice of enrolling consumers in online-banking services
25 without their knowledge or consent took unreasonable advantage of consumers’ inability to protect
26 their interests in selecting or using a consumer financial product or service, including interests in
27 having these products or services activated only after affirmative agreement and protecting
28 themselves from security and other risks.

1 38. Therefore, Wells Fargo engaged in “abusive” acts or practices that violate §§
2 1031(d)(2)(B) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(d)(2)(B), 5536(a)(1)(B).

3 39. During the Relevant Period, Wells Fargo’s employees requested debit cards and
4 created PINs to activate them without consumers’ knowledge or consent. 35. Section 1036(a)(1)(B)
5 of the CFPA prohibits “abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is
6 abusive if it takes unreasonable advantage of the consumer’s inability to protect his or her interests
7 in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B).

8 40. Wells Fargo’s acts of issuing debit cards to consumers without their knowledge or
9 consent took unreasonable advantage of consumers’ inability to protect their interests in selecting or
10 using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B).

11 41. Therefore, Wells Fargo engaged in “abusive” acts that violate §§ 1031(d)(2)(B) and
12 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(d)(2)(B), 5536(a)(1)(B).

13 42. Customers who complain about receiving credit cards they did not request are
14 advised by Wells Fargo to simply destroy the unrequested and unauthorized cards: However;
15 simply destroying these unauthorized cards does not close the account nor repair the impact to a
16 customer's credit profile.

17 43. Because of Wells Fargo's on-going setting of unrealistic sales goals, Wells Fargo
18 employees have engaged in, and continue to engage in, other gaming tactics, including, but not
19 limited to:

20 a. Making misrepresentations to customers to get them to open additional
21 accounts such as falsely stating: “you will incur a monthly fee on your checking account
22 until you add a savings account”;

23 b. Misrepresenting that additional accounts do not have monthly fees, when
24 they actually do incur such fees;

25 c. Referring unauthorized, and therefore unfunded, accounts to collections
26 because, Wells Fargo's practices, cause the accounts to have negative balances;

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1 d. Wells Fargo sold heavy to individuals holding Mexican Matriculada
2 Consular cards because the lack of a Social Security Number makes it easier to open
3 numerous fraudulent accounts;

4 e. Advising customers who do not want credit cards that they will be sent a
5 credit card anyway, and to just tear it up when they receive it.

6 44. Customers who have discovered unauthorized accounts often make the discovery
7 accidentally. For instance: (a) unexplained money being withdrawn from authorized accounts to
8 fund unauthorized accounts; (b) mailings from Wells Fargo congratulating a customer on opening a
9 new account the customer does not recognize, or asking a customer to update account information
10 for accounts that the customer does not recognize; (c) calls from collection agencies stating the
11 customer is overdrawn on an account that the customer does not recognize; and (d) discovering that
12 checks a customer intended to be deposited into an authorized account do not appear in monthly
13 statements because the checks had instead been deposited into an unauthorized account.

14 45. Customers have been prejudiced in numerous ways by Wells Fargo's gaming: (a)
15 customers lose money to monthly service fees charged for unauthorized accounts; (b) customer
16 accounts are placed into collection, forcing customers to fight with debt collection agencies for fees
17 charged by Wells Fargo on unauthorized accounts; (c) customers' credit reports are impacting job
18 applications, loans for automobiles, and mortgage applications; and (d) customers are forced to
19 purchase costly identity theft protection services to ensure against further activities. But for Wells
20 Fargo's quota-based business model, its customers would not have incurred wrongful fees, been put
21 into collections, suffered derogatory references on their credit reports, or forced to purchase identity
22 theft protection.

23 46. Customers' unauthorized accounts remain open, despite repeated customer requests
24 to Wells Fargo to close those accounts.

25 47. Customers have difficulty reporting unauthorized activity. Reaching the correct
26 representative is no guarantee the unauthorized account will be remedied, as complaining customers
27 often never receive return calls from Wells Fargo.

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1 48. Wells Fargo knew, or in the exercise of reasonable care should have known, that its
2 employees would not report the complaints, because upon information and belief, Wells Fargo
3 executives were more concerned with profit and the “gr-eight” program.

4 49. Wells Fargo requires that all new customer accounts be approved by a branch
5 manager or assistant manager, thereby providing Wells Fargo management with a clear record of
6 the number and types of accounts opened for each customer.

7 50. Despite Wells Fargo's knowledge of gaming by its employees, it has done little, if
8 anything, to terminate these practices, nor to reform the business model it created that has fostered
9 them. While Wells Fargo has made a few minor changes to its policies, and has terminated a
10 handful of employees, those efforts have been, at most, cosmetic, and ultimately benefit Wells
11 Fargo by providing them with plausible deniability. However, the policies that encourage these
12 tactics continue, and employees who engage in them continue to be rewarded monetarily, and even
13 promoted. Wells Fargo has not altered its quota system, nor has it reduced the illegal fraudulent
14 activities, identity theft, manipulation of processing customer debit card purchases to maximize
15 overdraft fees, et al.

16 51. Wells Fargo has a plethora of fines, refusal to follow regulatory Orders, DOJ
17 settlement agreements, because the United States Government decided it is “to big to fail” it can do
18 whatever it wants and uses interest free money from the United States and the customers to pay
19 judgments because they make so much money, it doesn’t really effect their role in the US.

20 52. To the extent arbitration provisions exist between customers and Defendants,
21 enforcement of such arbitration provisions have been effectively waived by Defendants’ actions
22 towards settling other similar cases and related claims as reported by numerous national news
23 agencies.

24 **CLASS ACTION ALLEGATIONS**

25 53. Plaintiffs bring this action on their own behalf, and on behalf of all other persons
26 similarly situated (“the Class”). The Class that Plaintiffs seek to represent is:

- 27 a. All persons who had checking, savings, brokerage accounts, financial
28 advisors, mortgages, or used any of Wells Fargo’s banking services beginning on a date

1 unknown to Plaintiffs, but within the four years preceding the filing of this Complaint.
2 Excluded from the Class are Defendants; officers, directors, and employees of Defendants;
3 any entity in which Defendants have a controlling interest; the affiliates, legal
4 representatives, attorneys, heirs, and assigns of the Defendants.

5 b. All persons who purchased services from Wells Fargo not during the affected
6 time period, but whose identifying information was stored on Wells Fargo's database.
7 Excluded from the Class are Defendants; officers, directors, and employees of Defendants;
8 any entity in which Defendants have a controlling interest; the affiliates, legal
9 representatives, attorneys, heirs, and assigns of the Defendants.

10 c. All persons who have been financially harmed or damaged because of Wells
11 Fargo's fraudulent conduct, had improper fees assessed against their accounts, improper
12 overcharges, had their accounts bundled, were sandbagged, or victims of pinning, subjected
13 to financial harm or damages, loss of time, bank charges, late fees, and/or other
14 miscellaneous costs and damages. Excluded from the Class are Defendants; officers,
15 directors, and employees of Defendants; any entity in which Defendants have a controlling
16 interest; the affiliates, legal representatives, attorneys, heirs, and assigns of these
17 Defendants.

18 54. The members of the Class are so numerous that the joinder of all members is
19 impractical. While the exact number of Class members is unknown to Plaintiffs at this time, based
20 on information and belief, it is in the hundreds of thousands.

21 55. There is a well-defined community of interest among the members of the Class
22 because common questions of law and fact predominate, Plaintiffs claims are typical of the
23 members of the Class, and Plaintiffs can fairly and adequately represent the interests of the Class.

24 56. This action satisfies the requirements of Federal Rules of Civil Procedure, Rule
25 23(b)(3) because it involves questions of law and fact common to the members of the Class that
26 predominate over any questions affecting only individual members, including, but not limited to:

27 a. Whether Defendants, jointly and severally, unlawfully used, maintained, lost
28 or disclosed Class members' personal and/or financial information;

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- b. Whether Wells Fargo created a hostile working environment which fostered and rewarded fraudulent actions by its employees.
- c. Whether all Defendants’ conduct was negligent, and/or grossly negligent;
- d. Whether all Defendants acted willfully and/or with oppression, fraud, malice, or indifference to the consequences to Plaintiffs;
- e. Whether all Defendants' conduct constituted intrusion;
- f. Whether Defendants' conduct constituted public disclosure of private facts;
- g. Whether all Defendants' conduct constituted misappropriation of likeness and identity;
- h. Whether all Defendants’ conduct violated Class members’ California Constitutional Right to Privacy;
- i. Whether all Defendants' conduct constituted bailment and breach of contract;
- j. Whether all Defendants' conduct constituted conversion;
- k. Whether Plaintiffs and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief;
- l. Whether Plaintiffs and Class Members are entitled to declaratory and injunctive relief;
- m. Whether Wells Fargo Management engaged in theft of customers funds.

57. Plaintiffs’ claims are typical of those other Class members who have likewise been subjected to financial harm or damages, loss of time, bank charges, and late fees and/or other miscellaneous costs and damages.

58. Plaintiffs will fairly and accurately represent the interests of the Class.

59. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact. Accordingly, class treatment is superior to any other method for adjudicating the controversy. Plaintiffs know of no difficulty that

1 will be encountered in the management of this litigation that would preclude its maintenance as a
2 class action under Rule 23(b)(3).

3 60. Damages for any individual class member are likely insufficient to justify the cost of
4 individual litigation, so that in the absence of class treatment, Defendants’ violations of law
5 inflicting substantial damages in the aggregate would go un-remedied without certification of the
6 Class.

7 61. Defendants have acted or refused to act on grounds that apply generally to the class,
8 as alleged above, and certification is proper under Rule 23(b)(2).

9 **FIRST CLAIM FOR RELIEF**

10 **VIOLATION OF THE STORED COMMUNICATIONS ACT**

11 62. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
12 this Complaint as if fully restated herein.

13 63. The Stored Communications Act (“SCA”) contains provisions that provide
14 consumers with redress if a company mishandles their electronically stored information. The SCA
15 was designed, in relevant part, “to protect individuals’ privacy interests in personal and proprietary
16 information.” S. Rep. No. 99-541, at 3 (1986), reprinted in 1986 U.S.C.C.A.N. 3555 at 3557.

17 64. Section 2702(a)(1) of the SCA provides that “a person or entity providing an
18 electronic communication service to the public shall not knowingly divulge to any person or entity
19 the contents of a communication while in electronic storage by that service.” 18 U.S.C. §
20 2702(a)(1).

21 65. The SCA defines “electronic communication service” as “any service which
22 provides to users thereof the ability to send or receive wire or electronic communications.” *Id.* at §
23 2510(15).

24 66. Through its payment processing equipment, Wells Fargo provides an “electronic
25 communication service to the public” within the meaning of the SCA because it provides
26 consumers at large with credit and debit card payment processing capability that enables them to
27 send or receive wire or electronic communications concerning their private financial information to
28 transaction managers, card companies, or banks.

1 67. By failing to take commercially reasonable steps to safeguard sensitive private
2 financial information, even after Wells Fargo was aware that customers’ private and confidential
3 information had been compromised by its own employees, Wells Fargo has knowingly divulged
4 customers’ private financial information that was communicated to financial institutions, while in
5 electronic storage in Wells Fargo’s data systems.

6 68. Section 2702(a)(2)(A) of the SCA provides that “a person or entity providing remote
7 computing service to the public shall not knowingly divulge to any person or entity the contents of
8 any communication which is carried or maintained on that service on behalf of, and received by
9 means of electronic transmission from (or created by means of computer processing of
10 communications received by means of electronic transmission from), a subscriber or customer of
11 such service.” 18 U.S.C. § 2702(a)(2)(A).

12 69. The SCA defines “remote computing service” as “the provision to the public of
13 computer storage or processing services by means of an electronic communication system.” 18
14 U.S.C. § 2711(2).

15 70. An “electronic communications systems” is defined by the SCA as “any wire, radio,
16 electromagnetic, photo-optical or photo-electronic facilities for the transmission of wire or
17 electronic communications, and any computer facilities or related electronic equipment for the
18 electronic storage of such communications.” 18 U.S.C. § 2510(4).

19 71. Wells Fargo provides onsite and remote computing services to its customers and the
20 public by virtue of its computer processing services, including, but not limited to, banking services,
21 consumer credit and debit card payments, etc. which are used by customers and carried out by
22 means of an electronic communications system, namely the use of wire, electromagnetic, photo-
23 optical or photo-electric facilities for the transmission of wire or electronic communications
24 received from, and on behalf of, the customer concerning customer private financial information.

25 72. By failing to take commercially reasonable steps to safeguard sensitive private
26 financial information, and requiring scrutiny of their own employees, Wells Fargo has knowingly
27 divulged customers’ private financial information that was carried and maintained on Wells Fargo’s
28 computing data bank services.

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1 73. As a result of Wells Fargo’s conduct described herein and its violations of Sections
2 2702(a)(1) and (2)(A) of the SCA, Plaintiffs and Class Members have suffered actual identity theft,
3 as well as damages in the form of (i) improper disclosure of their private confidential information;
4 (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity
5 fraud pressed upon them by the Data Breach; (iii) the value of their time spent mitigating identity
6 theft and/or identity fraud, and/or the increased risk of identity theft and/or identity fraud; (iv) and
7 deprivation of the value of their private information, for which there is a well-established national
8 and international market. Plaintiffs, on their own behalf and on behalf of the Class Members, seek
9 an order awarding themselves and the Class Members the maximum statutory damages available
10 under 18 U.S.C. § 2707, in addition to the cost for 3 years of credit monitoring services.

11 74. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
12 entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class
13 compensatory damages, statutory damages, treble damages, punitive damages, and reasonable
14 attorney’s fees and costs; and such other and further relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF

INVASION OF PRIVACY

17 75. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
18 this Complaint as if fully restated herein.

19 76. Plaintiffs, and the other Class Members, had a reasonable expectation of privacy in
20 the private information Defendants Wells Fargo obtained from them in opening accounts. Said
21 information was provided in a fiduciary capacity, and Wells Fargo and its employees mishandled
22 and/or failed to protect said information, and knowingly violated their fiduciary duties.

23 77. By failing to keep Plaintiffs private information safe, and by misusing and/or
24 disclosing said information to unauthorized parties for unauthorized use, Defendants invaded
25 Plaintiffs privacy by:

- 26 a. Intruding into Plaintiffs private affairs in a manner that would be highly
27 offensive to a reasonable person;

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1 b. Publicizing private facts about Plaintiffs, which is highly offensive to a
2 reasonable person;

3 c. Using and appropriating Plaintiffs identity without Plaintiffs' consent;

4 d. Violating Plaintiffs right to privacy under California Constitution, Article 1,
5 Section 1, through the improper use of Plaintiffs private information properly obtained for a
6 specific purpose for another purpose, or the disclosure of it to some third party.

7 78. On information and belief, Plaintiffs allege that Defendants knew, or acted with
8 reckless disregard of the fact that, a reasonable person in Plaintiffs position would consider
9 Defendants' actions highly offensive.

10 79. Plaintiffs assert that Defendants, jointly and severally invaded Plaintiffs and the
11 Class Members right to privacy and intruded into Plaintiffs private affairs by misusing and/or
12 disclosing Plaintiffs private information without their informed, voluntary, affirmative and clear
13 consent, and/or failed to properly secure confidential information by encouraging employees to
14 abuse the customers private information for purposes of promotions, personal gains, and monetary
15 remuneration.

16 80. Plaintiffs allege that Wells Fargo had been aware of the employee violations for over
17 a year before taking any action, but failed to take action in lieu of maximizing financial gains from
18 the employees' unethical behavior that Wells Fargo was fully aware of, and thereby exposed
19 Plaintiffs to added, unnecessary risk. From 2011 the bank opened more than 2 million deposit and
20 credit card accounts that may not have been authorized.¹

21 81. Plaintiffs contend that as a direct and proximate result of such misuse and
22 disclosures, Plaintiffs reasonable expectations of privacy in their private information was unduly
23 frustrated and thwarted, and that the Defendants' conduct amounted to a serious invasion of
24 Plaintiffs' and the Class Members' privacy interests.

25 82. Wells Fargo employees pushed checking account customers into savings, credit and
26 online accounts that could generate fees. Bank employees were told that the average customer
27 tapped six financial tools but that they should push households to use eight products, according to
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1 the complaint. The bank opened more than 2 million deposit and credit card accounts that may not
2 have been authorized, according to the CFPB.

3 83. Plaintiffs assert Defendants had a duty to protect Plaintiffs private information and
4 that in failing to protect Plaintiffs private information, and in misusing and/or disclosing Plaintiffs
5 private information, Defendants have acted with malice, oppression and in conscious disregard of
6 Plaintiffs and the Class members' rights to have such information kept confidential and private.
7 Plaintiffs, accordingly, seek an award of compensatory damages, nominal damages, punitive
8 damages, attorneys' fees, expert witness fees, and associated court costs on their behalf as well as
9 on behalf of the Class.

10 **THIRD CLAIM FOR RELIEF**

11 **NEGLIGENCE**

12 84. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
13 this Complaint as if fully restated herein.

14 85. Under the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, Wells Fargo had a duty to
15 protect and keep sensitive personal information that it obtained from customers that conducted
16 banking, financial, credit card and debit card transactions, or other services, secure, private, and
17 confidential.

18 86. Wells Fargo violated the Gramm-Leach-Bliley Act by: (a) not adequately
19 safeguarding Plaintiffs' and the Class Members' sensitive personal information, (b) encouraging
20 and rewarding its employees for violating privacy provisions of the Act in order to maximize
21 financial gain; and (c) failing to follow applicable state law designed to protect cardholder
22 information.

23 87. Wells Fargo's encouragement and reward to employees for violations of privacy
24 provisions, and those accompanying rules and regulations, and to follow applicable state law
25 constitutes conspiracy and negligence per se.

26 88. As a direct and proximate result of Wells Fargo's conduct alleged herein, Plaintiffs
27 and Class Members suffered actual identity theft, as well as damages in the form of (i) improper
28 disclosure of their private and confidential information; (ii) out-of-pocket expenses incurred to

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1 mitigate the increased risk of identity theft and/or identity fraud pressed upon them by the data
2 breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the
3 increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of their private
4 and confidential information, for which there is a well-established national and international
5 market.

6 89. As a direct and proximate result of Defendant’s negligence per se Plaintiffs and
7 Class Members were damaged and harmed to their detriment and seek the award of actual damages,
8 compensatory damages, attorneys’ fees, and such other and further damages as this Court deems
9 just and reasonable.

10 90. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
11 entry of judgment jointly and severally against Wells Fargo Defendants, and awarding Plaintiffs
12 and the Class compensatory damages, statutory damages, treble damages, punitive damages, and
13 reasonable attorney’s fees and costs; and such other and further relief as this Court deems just and
14 proper.

15 **FOURTH CLAIM FOR RELIEF**

16 **BREACH OF CONTRACT AND BAILMENT**

17 91. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
18 this Complaint as if fully restated herein.

19 92. Plaintiffs and the Class members delivered and entrusted their Private information to
20 Defendants for the sole purpose of receiving services from Defendants, including, but not limited
21 to, financial advisors, checking accounts, savings accounts, general banking services, including
22 brokerage services all with having the ability to engage in financial transactions in safety.

23 93. Wells Fargo made representations and entered into contractual and implied
24 contractual relations regarding Wells Fargo’s duty to safeguard Plaintiffs private information,
25 including, but not limited to Wells Fargo’s representations as set forth by Wells Fargo.

26 94. Nowhere in the Wells Fargo Privacy Policy, does it allow Defendants to access
27 Plaintiffs personal information for Wells Fargo to open accounts in Plaintiffs names without
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1 notifying customers, nor obtain emails, using customers’ names, or fraudulently conduct financial
2 transactions without ever notifying Plaintiffs.

3 95. Plaintiffs and Class Members entered into valid and enforceable agreements with
4 Defendants whereby Defendants promised to provide goods or services to Plaintiffs and Class
5 Members, and Plaintiffs and Class Members agreed to pay for those goods or services, including
6 payment made with debit or credit cards.

7 96. Plaintiffs were never notified that Wells Fargo and its employees received incentives
8 for “gr-eight” participation, or using Class Members private information to exploit Class Members
9 for the monetary advantage of Wells Fargo or their employees, which private information included,
10 inter alia, social security numbers which Wells Fargo classifies as “confidential” information.

11 97. A material part of Wells Fargo’s promise to provide services to Plaintiffs and Class
12 Members was to adequately protect their personal and confidential information, and that Defendants
13 intentionally, maliciously, and with intent to defraud, used Plaintiffs and Class Members social
14 security numbers to open factious accounts, bundle products, sandbag, PIN, or in other Gaming
15 operations engaged in by Defendants, including executives, who aided and abetted Defendants in
16 hiding from regulators the fraudulent activity engaged in by Defendants.

17 98. Plaintiffs contend that Wells Fargo operated in a fiduciary position of trust, which
18 position held them to a higher standard of performance than other corporations.

19 99. Social Security numbers are classified as “Confidential” information under the Wells
20 Fargo Information Security Policy. As such, Social Security numbers may only be accessed by and
21 disclosed to Wells Fargo team members and others with a legitimate business “need to know” in
22 accordance with applicable laws and regulations. Social Security numbers, whether in paper or
23 electronic form, are subject to physical, electronic, and procedural safeguards, and must be stored,
24 transmitted, and disposed of in accordance with the provisions of the Information Security Policy
25 applicable to Confidential information. These restrictions apply to all Social Security numbers
26 collected or retained by Wells Fargo in connection with customer, employee, or other relationships.

27 100. In its privacy policy, Wells Fargo expressly promised Plaintiffs and Class Members
28 that it would protect Plaintiffs’ and Class Members’ personal and confidential information.

1 101. Plaintiffs contend that the contracts required Wells Fargo to safeguard Plaintiffs’ and
2 Class Members’ private and confidential information to prevent its disclosure and/or unauthorized
3 access.

4 102. Plaintiffs and Class Members agreed, inter alia, to provide their private and
5 confidential information to Wells Fargo, in exchange for Wells Fargo’s agreement to, among other
6 things, protect their private and confidential information.

7 103. Wells Fargo failed to protect and safeguard Plaintiffs’ and the Class Members’
8 private and confidential information, as agreed to between the parties, and that this failure to protect
9 the confidential and private information of Plaintiffs and Class Members was known to the highest
10 ranking executive members of Wells Fargo, which may have included Carrie Tolstedt.

11 104. Wells Fargo’s failure to meet these promises and obligations constitutes an express
12 breach of contract.

13 105. Wells Fargo breached the contracts by failing to implement sufficient security
14 measures to protect Plaintiffs’ and the Class Members’ private and confidential information, as
15 described herein, as well as actively “mining” customers private information to use as Wells Fargo
16 saw fit in order to maximize its own profit.

17 106. Wells Fargo’s breach of its fiduciary duty to safeguard the confidential and private
18 information of Plaintiffs and Class Members, and allowing access to its data security by Wells
19 Fargo employees, constituted a breach of contract and Defendant’s promise to supply adequate
20 security and maintain customers’ privacy, when in fact Wells Fargo neither supplied adequate
21 security nor instituted adequate procedures to maintain customers’ privacy.

22 107. Plaintiffs further allege that as a direct and proximate result of Wells Fargo’s breach,
23 Plaintiffs and Class Members suffered actual identity theft, as well as damages in the form of (i)
24 improper disclosure of their private and confidential information; (ii) out-of-pocket expenses
25 incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by
26 the data breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud,
27 and/or the increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of
28 their private and confidential information, for which there is a well-established national and

1 international market. These damages were within the contemplation of Wells Fargo and the
2 Plaintiffs at the time that they contracted.

3 108. Plaintiffs contend that Wells Fargo breached its duty to safeguard their customers’
4 privacy, and thereafter intentionally failed to inform Plaintiffs and Class members of the data
5 breach/intentional theft and use of confidential information by Defendants.

6 109. The California Supreme Court and other courts have held that breach of contract,
7 standing alone, does not call for punitive damages even if intentional and unjustified, but such
8 damages are allowable if there is some independent tort indicating malice, fraud or wanton
9 disregard for the rights of others. Upon information and belief, Wells Fargo management
10 encouraged the theft by outrageous demands on employees, and executive officers being fully
11 aware of the fraudulent activity transpiring under various programs to boost profits such as the “gr-
12 eight” programs, calls for punitive damages. Plaintiffs contend that likewise Wells Fargo’s failure
13 to implement tighter security and oversight of corporate activities, coupled with its activation of
14 programs which not only encouraged the illegal activity, but also rewarded the activity, call for
15 punitive damages.

16 110. The wanton refusal to notify customers of the illegal, unethical activity of Wells
17 Fargo for over a year since Wells Fargo was sued by Los Angeles, warrants the imposition of
18 punitive damages against Defendants pursuant to the independent intentional torts committed by the
19 Defendants.

20 111. During the time of bailment, Defendants owed Plaintiffs and the Class members a
21 duty to safeguard their information properly and maintain reasonable security procedures and
22 practices to protect such information (as set forth in Wells Fargo’s privacy policies).

23 112. Plaintiffs allege Defendant Wells Fargo intentionally breached this duty by allowing
24 access to the confidential information and allowing its own employees to fraudulently use
25 customers’ private and confidential information.

26 113. Plaintiffs assert that as a result of these breaches of duty, breach of contract, and
27 breach of bailment, Plaintiffs and the Class members have suffered harm and damage in an amount
28 to be proven at the time of trial.

1 114. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
2 entry of judgment against Defendants Wells Fargo, and awarding Plaintiffs and the Class
3 compensatory damages, statutory damages, treble damages, punitive damages, and reasonable
4 attorney's fees and costs; and such other and further relief as this Court deems just and proper.

5 **FIFTH CLAIM FOR RELIEF**

6 **CONVERSION**

7 115. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
8 this Complaint as if fully restated herein.

9 116. In order to benefit from Wells Fargo's services, Plaintiffs and Class Members were
10 required to disclose their private and confidential information to Wells Fargo.

11 117. By providing Wells Fargo their private and confidential information, and upon Wells
12 Fargo's acceptance of such information, Plaintiffs and Class Members entered into implied
13 contracts with Wells Fargo whereby Wells Fargo was obligated to take reasonable steps to secure
14 and safeguard that information, including compliance with federal banking and security laws.

15 118. A portion of the services purchased from Wells Fargo by Plaintiffs and Class
16 Members necessarily included compliance with industry-standard measures with respect to the
17 collection and safeguarding of Plaintiffs private and confidential information. Because Plaintiffs
18 and Class Members were denied privacy protections that they paid for and were entitled to receive,
19 Plaintiffs and Class Members incurred actual monetary damages in that they overpaid for the
20 services purchased from Wells Fargo, including the overcharges on accounts, manipulation of
21 accounting to obtain income for Wells Fargo.

22 119. Plaintiffs and Class Members have suffered additional injury in fact and actual
23 damages, including monetary losses, arising from unauthorized bank account withdrawals and/or
24 related bank fees charged to their accounts.

25 120. Plaintiffs and Class Members suffered additional damages arising from the costs
26 associated with identity theft and the increased risk of identity theft caused by Wells Fargo's
27 wrongful conduct, particularly given the incidents of actual misappropriation from Class Members'
28 financial accounts, as detailed above.

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1 121. A meeting of the minds occurred, as Plaintiffs and Class Members agreed to provide
2 their private and confidential information and to pay Wells Fargo in exchange for Wells Fargo's
3 agreement to, inter alia, provide services and otherwise take reasonable steps to protect Plaintiffs'
4 and Class Members' private and confidential information.

5 122. Without such implied contracts, Plaintiffs and Class Members would not have
6 provided their private and confidential information to Wells Fargo.

7 123. Wells Fargo failed to take reasonable steps to safeguard Plaintiffs' and Class
8 Members' private and confidential information, and that as a result thereof, Wells Fargo allowed
9 authorized and potentially unauthorized access to Plaintiffs' and Class Members' private and
10 confidential information, and failed to take reasonable steps to safeguard that information, Wells
11 Fargo breached its implied contracts with Plaintiffs and Class Members.

12 124. As a result of Wells Fargo's breach, Plaintiffs and Class Members suffered damages
13 in the amount of the difference between the price they paid for Wells Fargo's services as promised
14 and the actual diminished value of its services.

15 125. Additionally, as a result of Wells Fargo's breach, Plaintiffs and Class Members
16 suffered actual identity theft, as well as damages in the form of (i) improper disclosure of their
17 private and confidential information; (ii) out-of-pocket expenses incurred to mitigate the increased
18 risk of identity theft and/or identity fraud pressed upon them by the data breach; (iii) the value of
19 their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity
20 theft and/or identity fraud; (iv) and deprivation of the value of their private and confidential
21 information, for which there is a well-established national and international market. These damages
22 were within the contemplation of Wells Fargo and the Plaintiffs at the time that they contracted.

23 126. Plaintiffs and Class members were the owners and possessors of their private
24 information. As the result of Defendants' wrongful conduct, Defendants have interfered with the

25 127. Plaintiffs and Class members' rights to possess and control such property, to which
26 they had a superior right of possession and control at the time of conversion.

27 128. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class
28 members suffered injury, damage, loss or harm and therefore seek compensatory damages.

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129. In converting Plaintiffs and Class Members private information, Defendants have acted with malice, oppression and in conscious disregard of the Plaintiffs and Class members' rights. Plaintiffs, accordingly, seek an award of punitive damages on behalf of the Class.

130. Defendants owed Plaintiffs a fiduciary duty and by allowing employees to steal their information, Defendants breached this fiduciary duty, as evidenced by numerous federal fines for improper banking activities.

131. Plaintiffs and Class members have suffered injury in fact and actual damages including lost money and property as a result of Wells Fargo's violations of the consumer fraud statutes.

132. Plaintiffs and the other Class members' injuries were proximately caused by Wells Fargo's fraudulent and deceptive behavior, which was conducted with reckless indifference toward the rights of others, such that an award of punitive damages is appropriate.

133. By this conduct, Wells Fargo violated the substantive consumer protection and unfair deceptive trade practices acts or statutes of the several States and the District of Columbia, as set forth above, whose laws do not materially differ from that of California, and do not conflict with each other for purposes of this action.

134. Additionally, despite the disclosure and dissemination of Plaintiffs and the Class members' private and confidential information occurring on a regular basis for over five (5) years, Wells Fargo, in violation of California's laws, failed to expeditiously and without unreasonable delay, notify Plaintiffs and the Class Members of the unlawful and unauthorized disclosure and dissemination of their private, personal and confidential information.

135. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

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SIXTH CLAIM FOR RELIEF

INTENTIONAL VIOLATIONS OF THE FCRA

136. Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated herein.

137. The Fair Credit Reporting Act (“FCRA”) requires consumer reporting agencies to adopt and maintain procedures for meeting the needs of commerce for consumer credit, personnel, insurance and other information in a manner fair and equitable to consumers while maintaining the confidentiality, accuracy, relevancy and proper utilization of such information. 15 U.S.C. § 1681(b).

138. The FCRA allows for a private right of action against any reporting agency for the negligent or willful violation of any duty imposed under the statute.

139. The FCRA defines a “consumer reporting agency” as: Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. 15 U.S.C. § 1681(a)(f).

140. FCRA defines a “consumer report” as: “[A]ny written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes, or any other purpose authorized under 15 U.S.C. § 1681(b). 15 U.S.C § 1681(a)(d).

141. Wells Fargo is a consumer reporting agency as defined under the FCRA because Wells Fargo through third parties, for monetary fees, regularly engages, in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and/or uses interstate commerce for the purpose of preparing and/or furnishing consumer reports.

1 142. As a consumer reporting agency, Wells Fargo was (and continues to be) required to
2 adopt and maintain procedures designed to protect and limit the dissemination of consumer credit,
3 personnel, insurance and other information (such as Plaintiffs' and other Class Members' private
4 and confidential information) in a manner fair and equitable to consumers, while maintaining the
5 confidentiality, accuracy, relevancy, and proper utilization of such information. Defendants,
6 violated FCRA by failing to adopt and maintain such protective procedures which, in turn, directly
7 and/or proximately resulted in the theft of Plaintiffs' and Class Members' private and confidential
8 information and its wrongful dissemination.

9 143. On information and belief, Wells Fargo knowingly failed to adequately implement
10 these proactive actions to secure and protect Plaintiffs' and Class Members' private and confidential
11 information, and/or put itself in a position to immediately notify Plaintiffs and Class Members
12 about the data breach.

13 144. As a direct and/or proximate result of Wells Fargo's willful and/or reckless
14 violations of the FCRA as described above, Plaintiffs' and Class Members' private and confidential
15 information was stolen and made accessible to unauthorized third parties.

16 145. As a direct and/or proximate result of Wells Fargo's willful and/or reckless
17 violations of the FCRA, as described above, Plaintiffs and Class Members were (and continue to
18 be) damaged in the form of, without limitation, expenses for credit monitoring and identity theft
19 insurance, out-of-pocket expenses, anxiety, emotional distress, loss of privacy and other economic
20 and non- economic harm.

21 146. Plaintiffs and Class Members, therefore, are entitled to compensation for their actual
22 damages including, (i) actual damages resulting from the identity theft; (ii) out-of-pocket expenses
23 incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by
24 the data breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud
25 and/or the increased risk of identity theft and/or identity fraud; (iv) deprivation of the value of their
26 private and confidential information, for which there is a well-established national and international
27 market; (v) anxiety and emotional distress; and (vi) statutory damages of not less than \$100, and not
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1 more than \$1,000, each, as well as attorneys' fees, litigation expenses and costs, pursuant to 15
2 U.S.C. §1681n(a).

3 147. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
4 entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class
5 compensatory damages, statutory damages, treble damages, punitive damages, and reasonable
6 attorney's fees and costs; and such other and further relief as this Court deems just and proper.

7 **SEVENTH CLAIM FOR RELIEF**

8 **NEGLIGENT VIOLATIONS OF THE FCRA**

9 148. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
10 this Complaint as if fully restated herein.

11 149. In the alternative to Count Seventh, above, Wells Fargo negligently violated the
12 FCRA by failing to adopt and maintain procedures designed to protect and limit the dissemination
13 of Plaintiffs' and Class Members' private and confidential information for the permissible purposes
14 outlined by the FCRA which, in turn, directly and/or proximately resulted in the wrongful
15 dissemination of Plaintiffs' and Class Members' private and confidential information.

16 150. Wells Fargo's action, by its pressure on employees, and refusing to enforce fiduciary
17 duties because a fine is cheaper to pay than the profits they obtained, was reasonably foreseeable
18 that Wells Fargo's failure to implement and maintain procedures to protect and secure Plaintiffs'
19 and Class Members' private and confidential information would result in the unauthorized use by
20 Wells Fargo of its customers' private and confidential information for no permissible purpose under
21 the FCRA.

22 151. As a direct and/or proximate result of Wells Fargo's negligent violations of the
23 FCRA, as described above, Plaintiffs' and Class Members' private and confidential information
24 was essentially stolen and made accessible for unauthorized purposes by Wells Fargo executives
25 and employees.

26 152. As a direct and/or proximate result of Wells Fargo's negligent violations of the
27 FCRA, as described above, Plaintiffs and Class Members were (and continue to be) damaged in the
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1 form of, without limitation, actual identity theft, expenses for credit monitoring and identity theft
2 insurance, anxiety, emotional distress, loss of privacy, and other economic and noneconomic harm.

3 153. Plaintiffs and Class Members, therefore, are entitled to compensation for their actual
4 damages, including, (i) actual damages resulting from the identity theft; (ii) out-of-pocket expenses
5 incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by
6 the data breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud
7 and/or the increased risk of identity theft and/or identity fraud; (iv) deprivation of the value of their
8 private and confidential information, for which there is a well-established national and international
9 market; (v) anxiety and emotional distress; and (viii) attorneys' fees, litigation expenses and costs,
10 pursuant to 15 U.S.C. § 1681o(a).

11 154. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
12 entry of judgment jointly and severally against Defendant Wells Fargo, and awarding Plaintiffs and
13 the Class compensatory damages, statutory damages, treble damages, punitive damages, and
14 reasonable attorney's fees and costs; and such other and further relief as this Court deems just and
15 proper.

16 **EIGHTH CLAIM FOR RELIEF**

17 **DECLARATORY JUDGMENT**

18 155. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
19 this Complaint as if fully restated herein.

20 156. The Declaratory Judgment Act ("DJA") states: "In a case of actual controversy
21 within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading,
22 may declare the rights and other legal relations of any interested party seeking such declaration,
23 whether or not further relief is or could be sought. Any such declaration shall have the force and
24 effect of a final judgment or decree and shall be reviewable as such." 28 U.S.C. § 2201(a).

25 157. In the case at hand, there is an actual controversy between the parties of sufficient
26 immediacy and reality to warrant the issuance of a declaratory judgment, due to the imminence of
27 harm facing Plaintiffs and Class Members. As set forth above, Class Members have already
28

1 suffered identity theft and damages as a result of the data breach, and the perpetrators are still at
2 large with Class Members' private and confidential information.

3 158. Plaintiffs seek a declaration that Wells Fargo has breached a contract between those
4 entities and Plaintiffs and Class Members by allowing unauthorized individuals were allowed
5 access to personal financial data, an/or authorized parties engaged in fraudulent activities in
6 accessing and misusing fiduciary, confidential information.

7 159. Plaintiffs further seek a declaration that due to the imminence and likelihood of harm
8 to Plaintiffs and Class Members, Wells Fargo be ordered to pay for mitigation in the form of
9 legitimate and adequate credit monitoring, identity theft protection, and identity theft insurance, and
10 also be ordered to indemnify Plaintiffs and Class Members for future harm.

11 **NINTH CLAIM FOR RELIEF**

12 **UNJUST ENRICHMENT**

13 160. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as
14 though fully set forth herein.

15 161. Plaintiffs and members of the Class paid Wells Fargo excessive fees, fines,
16 collection costs, had their personal information misused by Wells Fargo for the benefit of Wells
17 Faro and its employees.

18 162. Upon information and belief, executives and employees of Wells Fargo received
19 bonuses in the millions of dollars, including severance fees of over one hundred million dollars, for
20 their participation in the "gr-eight" program where Plaintiffs were the victims of fraudulent
21 activities.

22 163. Defendant and its employees have been unjustly enriched at the expense of Plaintiffs
23 and the Class and its retention of this benefit under the circumstances would be inequitable.

24 164. Plaintiffs seek an order requiring Defendant to make restitution to them and the other
25 members of the Class, including a claw-back provision for those who profited personally from the
26 illegal behavior.

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TENTH CLAIM FOR RELIEF

VIOLATIONS OF CALIFORNIA’S CONSUMERS LEGAL REMEDY ACT

165. Plaintiffs incorporates by reference each and every prior and subsequent allegation of this Complaint as if fully restated herein.

166. California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* makes it unlawful to engage in unfair methods of competition and unfair or deceptive acts or practices intended to result, or which results, in the sale or lease of goods or services to any consumer.

167. Plaintiffs and the Class were, and continue to be, at all times material to the Complaint, “consumers” and “persons” as defined by the Cal. Civ. Code § 1761. Plaintiffs, as well as the Class, purchased and/or used Wells Fargo products for personal and/or family and/or household use.

168. As alleged throughout this Complaint, Wells Fargo engaged in unfair, deceptive, and/or unlawful marketing in violation of Civ. Code § 1770(a) by providing customers with false, misleading, deceptive, and/or unlawful statements about the costs, benefits, and policies regarding Wells Fargo financial products.

169. The false, misleading, deceptive and/or unlawful statements about its products were material misstatements and/or omissions that caused consumers to believe, falsely, that, inter alia, they needed to purchase more Wells Fargo products in order to receive specific benefits of other products, when this was not true.

170. Plaintiffs and Class Members were exposed to and/or relied upon Wells Fargo’s unfair, deceptive, and/or unlawful marketing practices.

171. As described above, Wells Fargo also engaged in unfair or deceptive acts or practices by opening accounts and financial products in the names of customers without their knowledge or consent.

172. Plaintiffs and the Class have lost money and incurred significant, unreasonable stress as a result of Wells Fargo’s unfair, deceptive, and/or unlawful practices pursuant to Cal. Civ. Code § 1770(a).

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1 173. The conduct described herein by Wells Fargo is continuing. Plaintiffs will promptly
2 demand the conduct cease in a Consumer Legal Remedies Act letter. The conduct was done for
3 profit as a deliberate corporate policy rather than an isolated incident, and was morally wrong,
4 callous, and/or oppressive.

5 174. As a result of Wells Fargo’s violations of the California’s Consumer Legal Remedies
6 Act, Plaintiffs seek an order of this Court permanently enjoining Wells Fargo from perpetrating its
7 unfair, deceptive, and/or unlawful practices. If Wells Fargo does not take action to cease its unfair,
8 deceptive, and/or unlawful practices within thirty days of being served with the notice letter,
9 Plaintiffs will seek leave to amend this Complaint to request, in addition to an order enjoining Wells
10 Fargo from continuing its unfair, deceptive, and/or unlawful practices, an order awarding, inter alia,
11 Plaintiffs and the Class actual damages, restitution, attorneys’ fees and costs, and for such other
12 relief as set forth below.

13 175. Plaintiffs reserve the right to amend this Complaint to seek punitive damages.

14 **ELEVENTH CLAIM FOR RELIEF**

15 **VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW**

16 176. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
17 this Complaint as if fully restated herein.

18 177. California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*,
19 protects both consumers and competitors by promoting fair competition in commercial markets for
20 goods and services. California’s Unfair Competition Law is interpreted broadly and provides a
21 cause of action for any unlawful, unfair, or fraudulent business act or practice. Any unlawful,
22 unfair, or fraudulent business practice that causes injury to consumers falls within the ambit of
23 California’s Unfair Competition Law.

24 178. Wells Fargo engages in substantial sales and marketing of its financial products and
25 services within the State of California.

26 179. Because of Wells Fargo unlawful and unfair business practices, Plaintiffs and the
27 California Subclass were unfairly, unlawfully, and/or fraudulently misled into purchasing and/or
28 maintaining more Wells Fargo products than they would otherwise have purchased and/or

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1 maintained. Plaintiffs and Class Members relied, to their detriment, on Wells Fargo’s false
2 representations, detailed above, regarding the costs, benefits, and policies governing Wells Fargo’s
3 products and accounts. The Class was uniformly exposed to Wells Fargo’s unlawful and unfair
4 business practices.

5 180. Additionally, as detailed above, Wells Fargo also engaged in unfair, unlawful, and/or
6 fraudulent acts or practices by opening accounts and financial products in the names of customers
7 without their knowledge or consent.

8 181. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for
9 entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class
10 equitable relief, damages, and reasonable attorney’s fees and costs; and such other and further relief
11 as this Court deems just and proper.

TWELFTH CLAIM FOR RELIEF

VIOLATIONS OF CALIFORNIA’S CONSUMER RECORDS ACT

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14 182. Plaintiffs incorporate by reference each and every prior and subsequent allegation of
15 this Complaint as if fully restated herein.

16 183. Plaintiffs bring this cause of action on behalf of California members of the Class.

17 184. The California Legislature enacted Civil Code section 1798.81.5 “to ensure that
18 personal information about California residents is protected.” The statute requires that any business
19 that “owns, licenses, or maintains personal information about a California resident . . . implement
20 and maintain reasonable security procedures and practices appropriate to the nature of the
21 information, to protect the personal information from unauthorized access, destruction, use,
22 modification, or disclosure.”

23 185. Wells Fargo is a “business” as defined by Civil Code section 1798.80(a).

24 186. Each Plaintiff and member of the class is an “individual” as defined by Civil Code
25 section 1798.80(d) and a “customer” as defined by Civil Code section 1798.80(c).

26 187. The information that Wells Fargo used in the gaming described in this Complaint
27 was “personal information” as defined by Civil Code sections 1798.80(e) and 1798.81.5(d), which
28 includes “information that identifies, relates to, describes, or is capable of being associated with, a

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1 particular individual, including, but not limited to, his or her name, signature, Social Security
2 number, physical characteristics or description, address, telephone number, passport number,
3 driver’s license or state identification card number, insurance policy number, education,
4 employment, employment history, bank account number, credit card number, debit card number, or
5 any other financial information, medical information, or health insurance information.”

6 188. The misuse of that personal information by Wells Fargo and its employees to open
7 unauthorized accounts or other “sales” was a “breach of the security system” of as defined by Civil
8 Code section 1798.82(g).

9 189. By failing to ensure that its employees did not misuse customers’ personal
10 information, Wells Fargo violated Civil Code section 1798.81.5(b), which requires businesses to
11 implement and maintain reasonable security procedures for “personal information about California
12 residents.”

13 190. By failing to immediately notify all affected Wells Fargo customers that their
14 personal information had been misused by unauthorized persons to open unauthorized accounts,
15 Wells Fargo violated Civil Code section 1798.82. Wells Fargo’s failure to immediately notify
16 customers of that misuse caused class members to suffer damages by, for example, forcing them to
17 pay unauthorized fees or respond to collection agents.

18 191. Plaintiffs seek all remedies available under Civil Code § 1798.84, including actual
19 and statutory damages, equitable relief, and reasonable attorneys’ fees. Because Wells Fargo
20 encouraged violations of the Act, or was aware of the violations and did nothing, it acted willfully,
21 intentionally, or recklessly, and Plaintiffs and the Class may recover a civil penalty of \$3,000 per
22 violation.

23 192. Plaintiffs also seek reasonable attorneys’ fees and costs under applicable law
24 including Federal Rule of Civil Procedure 23 and California Code of Civil Procedure § 1021.5.

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues properly triable thereby.

Dated: October 31, 2016

AUDET & PARTNERS, LLP

By: /s/ William Audet

William M. Audet (SBN 117456)

S. Clinton Woods (SBN 246054)

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*Counsel for Plaintiff Alex Chernavsky, on behalf
of himself and all others similarly situated*

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Exhibit 2

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November 8, 2016

Via Email Transmission

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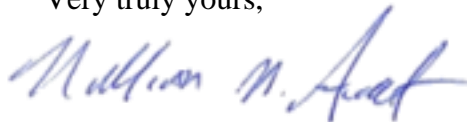
Erin Joan Cox
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Re: Case Management Conference Statement/Wells Fargo Cases

Dear Counsel:

In light of the Court's order relating the *Chernavsky* and *Jabbari* cases (see attachment), obviously, we need to submit a joint case management statement to the Court. Kindly send us the current draft for our input/comments before it is submitted to the Court. Thank you for your cooperation.

Very truly yours,



William M. Audet

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Exhibit 3



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TELEPHONE: 415.568.2555 • FACSIMILE: 415.568.2556 • TOLL FREE: 800.965.1461
www.audetlaw.com

November 28, 2016

Via Electronic Mail

Derek W. Loeser
dloeser@kellerrohrback.com
Daniel Mensher
dmensher@kellerrohrback.com
1201 Third Avenue, Suite 3200
Seattle, WA 98101

**Re: CONFIDENTIAL SETTLEMENT COMMUNICATION
Privacy Subclass**
Chernavsky et al v. Wells Fargo, and related cases

Dear Derek and Daniel:

As you know, I and others at the firm have the utmost respect for your great work in the plaintiffs' bar in general and in this case overall. I am raising issues in this letter that I hope are no longer issues because you ultimately are able to 'avoid' any future traps by allowing my firm to serve as subclass counsel for the credit card violation subclass.

I. There Exists Obvious Need for Privacy Class Counsel

As you know, our complaint, filed on behalf of Alex Chernavsky and William Castro, contains similar allegations regarding the account-opening fraud perpetuated against its customers for years. However, our amended complaint makes a key distinction that is only hinted at in your case's public filings: There exists a clear factual and legal difference between those class members who had unauthorized *internal* accounts opened by Wells Fargo (i.e. checking, savings, etc.), and those class members who had unauthorized *external* accounts opened by Wells Fargo (credit cards) ("Privacy Subclass"). In order to open those credit cards, Wells Fargo necessarily had to transmit customers' private data to those

November 28, 2016

Page 2 of 3

third party credit card processors, in violation of several statutory privacy laws. Those statutory privacy laws include, but are not necessarily limited to, the Stored Communications Act (“SCA”). The SCA provides for a floor of \$1000 per violation plus disgorgement of profits and any actual damages a plaintiff may have over that. *See* 18 U.S.C. § 2727(c).

Thus, there is a near certainty that the Privacy Subclass has significantly different damages than those members of the class at large, and the damages of the Privacy Subclass are based on a wholly different set of factual circumstances. This is not simply a matter of intra-class allocation, but a matter that requires a different law firm to ‘argue’ for this subclass in any settlement discussions.

When we spoke last week you were understandably unable to give me any details regarding the progress of any settlement you may be working out with Wells Fargo. Thus, I can only speculate as to whether or not the settlement’s proposed release includes or does not include a release for the Privacy Subclass claims. If it does not include a release for the Privacy Subclass claims, that is fine. I am happy to litigate those claims on my own. However, if the settlement does include a release for claims that could arguably release claims unique to the Privacy Subclass, I urge you to reconsider including my firm as subclass counsel immediately.

First, while at this time I do not consider it likely that I would be in any way shape or form involved in objecting to any settlement in your case, without question it is inevitable that objectors will appear and contest it vigorously. If the settlement includes a Privacy Subclass release and *doesn’t* compensate the Privacy Subclass differently than the rest of the class one can easily see that lack of additional consideration as a potent avenue for objection. Conversely, if the settlement includes a Privacy Subclass release and *does* compensate the Privacy Subclass differently than the rest of the class, objectors will argue that the rights of both the class and the Privacy Subclass cannot be adequately protected by a single firm regardless of what the actual difference in compensation ends up being. Best summary from a Circuit court summarized it simply: “How can the value of any subgroup of claims be properly assessed without independent counsel pressing its most compelling case?” **In re LITERARY WORKS IN ELECTRONIC DATABASES COPYRIGHT LITIGATION**, 656 F.3d. at 253

November 28, 2016

Page 3 of 3

There is also the possibility that a plaintiff with a Privacy Subclass claim will seek to intervene or object on behalf of the Privacy Subclass during the preliminary approval process, a possibility Judge Chhabria alluded to at the November 15 CMC. While it is true that Judge Chhabria denied a similar motion in the settlement in *Cotter v. Lyft*, C13-4065 VC, Dkt. No. 246 (N.D. Cal. June 23, 2016), the claims of the Privacy Subclass are quite simply much stronger than the intervenors in *Cotter*. In *Cotter*, Judge Chhabria denied the intervenors' motion because after comparing the intervenors' additional claims for relief to the considerable claims of the settlement class, he determined the intervenors' new claims "do not seem very strong" and "do not appear very valuable, at least relative to the" existing settlement class claims. The reverse is true here: There is at least a colorable argument that because Wells Fargo has already reimbursed their customers for any fees incurred due to these unauthorized accounts that the *only* claims with value are the statutory claims asserted by the Privacy Subclass. Thus, any settlement that seeks to release all claims without accounting for the Privacy Subclass stands a strong chance of being attacked at the preliminary approval stage.

The best way to short-circuit these objections and perils and is to allow our firm to participate in settlement discussions as counsel for the Privacy Subclass. It may be that the Privacy Subclass is not in fact due any additional compensation. Or it may be that it is due something more. Either way, I believe that pursuing the finalization of the settlement alone puts the potential recovery of the entire class in jeopardy.

Please contact me with any questions you may have. We are willing and able to assist immediately.

Sincerely,

A handwritten signature in blue ink that reads "William M. Audet". The signature is written in a cursive, flowing style.

William Audet

AUDET & PARTNERS, LLP

Exhibit 4



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December 12, 2016

Via Electronic Mail

Erin Cox

Erin.Cox@mto.com

Munger Tolles and Olson LLP

355 S. Grand Ave, 35th Floor

Los Angeles, CA 90071

David Fry

David.Fry@mto.com

Munger Tolles and Olson LLP

560 Mission Street, 27th Floor

San Francisco, CA 94105

Re: CONFIDENTIAL SETTLEMENT COMMUNICATION

Privacy Subclass

Chernavsky, et al. v. Wells Fargo Bank, N.A. et al., and related cases

Dear Erin and David:

As you know, I have reached out to you and Plaintiffs' counsel in the *Jabbari* action previously regarding the settlement that may or may not take place in that action. I write today to once again urge you to consider allowing my firm to serve as subclass counsel for the statutory federal violations subclass. As noted before and outlined in greater detail in the complaint and this communication, to the extent a settlement is reached in the Wells Fargo account litigation, the appointment of my firm as subclass counsel will only increase the likelihood of approval by the District Court and affirmance by the Ninth Circuit of any such settlement proposal.

I. There Exists Obvious Need for Privacy Class Counsel

Our amended complaint makes a key distinction that is only hinted at in the *Jabbari* case's public filings: There exists a clear factual and legal difference between those class members who had unauthorized *internal* accounts opened by Wells Fargo (i.e. checking, savings, etc.) ("Unauthorized Account Class"), and those class members who had unauthorized *external* accounts opened by

Confidential Settlement Communication

December 12, 2016

Page 2 of 4

Wells Fargo (credit cards) (“Privacy Subclass”). Unlike the Account Class, in order to open those credit cards, Wells Fargo necessarily had to transmit customers’ private data to those third party credit card processors, in violation of several statutory privacy laws. Those statutory privacy laws include, but are not necessarily limited to, the Stored Communications Act (“SCA”). The SCA provides for a floor of \$1000 per violation plus disgorgement of profits and any actual damages a plaintiff may have over that. *See* 18 U.S.C. § 2727(c).

Thus, there is a near certainty that the Privacy Subclass has significantly different damages than those members of the class at large, and the damages of the Privacy Subclass are based on a wholly different set of factual circumstances. This is not simply a matter of intra-class allocation, but a matter that requires a different law firm to ‘argue’ for this subclass in any settlement discussions.

Other than a general understanding that settlement discussions have occurred, I have been given no specific information regarding the contours of any potential settlement. Thus, I can only speculate as to whether or not the settlement’s proposed release includes or does not include a release for the Privacy Subclass claims. If it does not include a release for the Privacy Subclass claims, that is fine, as our firm will have no issue with prosecuting those claims to the extent not resolved in the current settlement discussions. However, if the settlement does include a release for claims that could arguably release claims unique to the Privacy Subclass, I urge you to reconsider including my firm in settlement negotiations as subclass counsel immediately.

First, it is inevitable that objectors will appear and contest any proposed settlement vigorously. If the settlement includes a Privacy Subclass release and *doesn’t* compensate the Privacy Subclass differently than the rest of the class, one can easily see that lack of additional consideration as a potent avenue for objection. Conversely, if the settlement includes a Privacy Subclass release and *does* compensate the Privacy Subclass differently than the rest of the class, objectors will argue that the rights of both the class and the Privacy Subclass

Confidential Settlement Communication

December 12, 2016

Page 3 of 4

cannot be adequately protected by a single firm regardless of what the actual difference in compensation ends up being. Best summary from a Circuit court put it simply: “How can the value of any subgroup of claims be properly assessed without independent counsel pressing its most compelling case?” *In re Literary Works In Electronic Databases Copyright Litigation*, 654 F.3d. 242, 253 (2d. Cir. 2011).

There is also the likelihood that a plaintiff with a Privacy Subclass claim will seek to intervene or object on behalf of the Privacy Subclass during the preliminary approval process, a possibility Judge Chhabria alluded to at the November 15 CMC. While it is true that Judge Chhabria denied a similar motion in the settlement in *Cotter v. Lyft*, C13-4065 VC, Dkt. No. 246 (N.D. Cal. June 23, 2016), the claims of the Privacy Subclass are quite simply much stronger than the intervenors in *Cotter*. In *Cotter*, Judge Chhabria denied the intervenors’ motion because after comparing the intervenors’ additional claims for relief to the considerable claims of the settlement class, he determined the intervenors’ new claims “do not seem very strong” and “do not appear very valuable, at least relative to the” existing settlement class claims. The reverse is true here: There is at least a colorable argument that because Wells Fargo has already reimbursed their customers for any fees incurred due to these unauthorized accounts that the *only* claims with value are the statutory claims asserted by the Privacy Subclass. Thus, any settlement that seeks to release all claims without accounting for the Privacy Subclass stands a strong chance of being attacked at the preliminary approval stage.

The best way to short-circuit these objections and perils and is to allow our firm to participate in settlement discussions as counsel for the Privacy Subclass. This benefits your client directly because if successful it will provide Wells Fargo with an additional release of claims for a broader subset of potential claimants. It may be that the Privacy Subclass is not in fact due any additional compensation. Or it may be that it is due something more. Either way, I believe that pursuing the finalization of the settlement alone puts the potential recovery of the entire class in jeopardy.

Confidential Settlement Communication

December 12, 2016

Page 4 of 4

Please contact me with any questions you may have. We are willing and able to assist immediately.

Sincerely,

/s/ William Audet

William M. Audet

waudet@audetlaw.com

AUDET & PARTNERS, LLP

Exhibit 5

A&P | **AUDET & PARTNERS**
LLP

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March 31, 2017

Via Electronic Mail

Daniel P Mensher
dmensher@kellerrohrback.com
Derek William Loeser
dloeser@kellerrohrback.com
Gretchen Freeman Cappio
gcappio@kellerrohrback.com
Matthew J Preusch
mpreusch@kellerrohrback.com
KELLER ROHRBACK LLP

Re: *Jabbari, et al v. Wells Fargo & Company et al.* Case No. 3:15-cv-02159-VC

Dear Counsel,

In light of the notice of settlement filed in the Northern District of California and the District Court's order of March 30th, we ask the following:

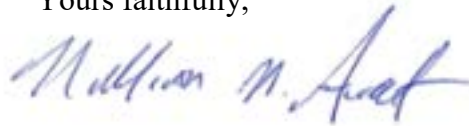
1. You stipulate to allow intervention into your action by our clients. While we are aware of the District Court's prior Order, we note that statements made during oral argument by the Jabbari plaintiffs in the MDL on March 30th indicated that you have no objection to intervention.
2. Please provide the following: (a) the 'term sheet' referenced at the MDL hearing; (b) all relevant discovery obtained from Wells Fargo in the litigation overall; and (c) All relevant information regarding your determination that the \$110,000,000.00 settlement fund has a nexus to the actual damages incurred by the class.
3. We ask again, on behalf of our clients, that you reconsider your decision to exclude my firm and other firms from participation in any further settlement negotiations. We would like the opportunity to review and consider any and all drafts of any settlement agreement, as well as any drafts of relevant settlement documents, including the claim form.
4. Please advise why automatic payment to class members based on the data already available to the parties would not provide for a "no claim form" type settlement, with distribution of the funds not tied to each and every claimant completing a claim form in order to obtain payment of any funds under the settlement.

Plaintiffs' Counsel for *Jabbari, et al*
March 31, 2017
Page 2 of 2

5. Whether the settlement provides for creation of a subclass and appointment of subclass counsel, in the manner and form outlined in our prior submissions to the Court.

We may have additional requests as well, and reserve all rights to obtain additional information and documents. Furthermore, in light of the shortened time frame for consideration of the matter, please let us know whether you will provide any or all of the above requests without delay. I remain

Yours faithfully,

A handwritten signature in blue ink that reads "William M. Audet". The signature is written in a cursive style with a large, sweeping initial 'W'.

William M. Audet
waudet@audetlaw.com
AUDET & PARTNERS, LLP

Plaintiffs' Counsel for *Chernavsky, et al.*

Exhibit 6

From: Lynn Sarko <lsarko@KellerRohrback.com>
Sent: Friday, April 07, 2017 1:09 PM
To: William Audet; Derek Loeser
Cc: Daniel Mensher; Gretchen Freeman Cappio; Matthew Preusch; Clint Woods
Subject: RE: Jabbari, et al. v. Wells Fargo & Company et al. Case No. 3:15-cv-02159-VC (N.D. Cal.)

Bill
I just tried to call you back on these issues (re: your email).
Your office said you were out and they would get you a message.
You can reach me at 206-224-7552.
Best
Lynn

Lynn Lincoln Sarko
Managing Partner

Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Phone: (206) 623-1900
Fax: (206) 623-3384
E-mail: lsarko@kellerrohrback.com

From: William Audet [mailto:waudet@audetlaw.com]
Sent: Friday, April 07, 2017 11:45 AM
To: Derek Loeser <dloeser@KellerRohrback.com>
Cc: Daniel Mensher <dmensher@KellerRohrback.com>; Gretchen Freeman Cappio <gcappio@KellerRohrback.com>; Matthew Preusch <mpreusch@KellerRohrback.com>; Clint Woods <cwoods@audetlaw.com>; Lynn Sarko <lsarko@KellerRohrback.com>; William Audet <waudet@audetlaw.com>
Subject: RE: Jabbari, et al. v. Wells Fargo & Company et al. Case No. 3:15-cv-02159-VC (N.D. Cal.)

Derek,

Thank you for responding. We have asked for meet and confer, as required under the local rules, before we file any request for discovery and to see your position on the intervention issue. In light of the schedule set by the Court (two weeks to oppose), and the time that may be necessary to seek discovery, we believe that the outstanding request for discovery and the request for your position on the motion to intervene is ripe and timely at this point.

On the issue of participating in any further post 'term sheet' meetings/discussions with defendants, it appears your answer is no.

On the issue of obtaining any information we requested, it appears your answer is no at this point.

On the issue of intervention, it appears your answer is no at this point. For the record, the MDL Court specifically asked about intervention, and you replied yes to the Panel.

Accordingly, based on your response, to the extent we file any motion, we shall advise the Court of your position with respect to providing the limited information I requested in the letter, as well as above

In addition, please advise if you will consent to having our motion for discovery and our renewed motion to intervene heard on shortened time.

Yours,

William Audet, esq.
waudet@audetlaw.com
t 415.568.2555
f 415.568.2556
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From: Derek Loeser [<mailto:dloeser@KellerRohrback.com>]
Sent: Friday, April 07, 2017 11:03 AM
To: William Audet
Cc: Daniel Mensher; Gretchen Freeman Cappio; Matthew Preusch; Clint Woods; Lynn Sarko
Subject: RE: Jabbari, et al. v. Wells Fargo & Company et al. Case No. 3:15-cv-02159-VC (N.D. Cal.)

Dear Bill:

I am in receipt of your letter and your email. As you know, as a result of the case that we filed in 2015, we have achieved what we believe is an outstanding \$110 million settlement. We hope that you and other plaintiffs' counsel who filed cases more recently will support the settlement as well. In response to your March 31 letter, it is not clear why you believe we have an obligation to meet and confer with you, since you are not a party to our action. In any event, the gist of your March 31 letter is that:

- (1) you want to intervene;
- (2) you want more information on the details of the settlement and the considerations that went into it;
and
- (3) you want to participate in ongoing negotiations.

It seems to us that filing our preliminary-approval papers in due course presents the preferable way forward. As an initial matter, my statement to the JPML (which is reflected in the JPML Order) is that other plaintiffs' counsel who sought centralization will have an opportunity to appear in the settlement proceedings to either support the settlement or object. Also, you and the other plaintiffs' counsel who filed later cases will learn all the details of the settlement and the considerations that went into it on April 20 when we file the preliminary-approval papers. We trust that all of your questions will be answered in our submission.

Respectfully, we think the class is best served if we are allowed to focus our energies on finalizing the preliminary-approval papers and supporting documents. We think that your proposed intervention and motions practice would be counterproductive and unhelpful to the class, and, therefore, we ask that instead of pursuing that route, you wait to see the preliminary-approval papers. At that time, you can decide whether you wish to support or object to the settlement.

Finally, we assure you that we have taken our responsibility to the class seriously and worked for many months to ensure the best result possible in the face of many challenges.

Best regards,

Derek W. Loeser
Keller Rohrback L.L.P.
Phone: (206) 224-7562
Fax: (206) 623-3384
E-mail: dloeser@kellerrohrback.com
Web site: <http://www.krcomplexlit.com>

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From: William Audet [<mailto:waudet@audetlaw.com>]
Sent: Friday, April 07, 2017 9:38 AM
To: Daniel Mensher <dmensher@KellerRohrback.com>; Derek Loeser <dloeser@KellerRohrback.com>; Gretchen Freeman Cappio <gcappio@KellerRohrback.com>; Matthew Preusch <mpreusch@KellerRohrback.com>
Cc: Clint Woods <cwoods@audetlaw.com>; William Audet <waudet@audetlaw.com>
Subject: RE: Jabbari, et al. v. Wells Fargo & Company et al. Case No. 3:15-cv-02159-VC (N.D. Cal.)

Dear Counsel,

My hope is that you will provide a response of some sort and a date/time for a meet and confer per the local rules. Please respond or I assume that for purposes of moving to compel, we will advise the court that you would not provide us a date/time for a meet and confer under the local rules.

Yours,

William Audet, esq.
waudet@audetlaw.com
t 415.568.2555
f 415.568.2556
Audet & Partners, LLP.
711 Van Ness Ave., Suite 500
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From: William Audet
Sent: Wednesday, April 05, 2017 10:42 AM
To: dmensher@kellerrohrback.com; dloeser@kellerrohrback.com; gcappio@kellerrohrback.com; mpreusch@kellerrohrback.com
Cc: Clint Woods; William Audet

Subject: RE: Jabbari, et al. v. Wells Fargo & Company et al. Case No. 3:15-cv-02159-VC (N.D. Cal.)

Importance: High

Counsel,

Please kindly provide a response (or indicate you will not respond if that is your position) to the intervention request and the discovery requests. Depending on your answer, we likely need a meet and confer per the Local Rules for purposes of any motion practice on both issues. As such, please provide a date and time that works either Thursday or Friday of this week.

Yours,

William Audet, esq.

waudet@audetlaw.com

t 415.568.2555

f 415.568.2556

Audet & Partners, LLP.

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From: Harold Darling

Sent: Friday, March 31, 2017 12:23 PM

To: dmensher@kellerrohrback.com; dloeser@kellerrohrback.com; gcappio@kellerrohrback.com; mpreusch@kellerrohrback.com

Cc: William Audet; Clint Woods

Subject: Jabbari, et al. v. Wells Fargo & Company et al. Case No. 3:15-cv-02159-VC (N.D. Cal.)

Good Afternoon,

Attached is correspondence concerning the above-referenced matter.

Regards,

Harold Darling

Paralegal

hdarling@audetlaw.com

T: 415.568.2555

F: 415.568.2556

Audet & Partners, LLP.

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San Francisco, California 94102

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Exhibit 7

From: William Audet
Sent: Tuesday, April 11, 2017 1:52 PM
To: Lynn Sarko
Cc: William Audet; Clint Woods
Subject: Wells Fargo

Lynn,

Thank you for the call today. This email simply confirms your position regarding the two outstanding issues:

First, you have indicated that with respect to the intervention issue, at this point, you will not agree to consent to intervention. However, you will revisit the issue after you file your preliminary motion approval papers.

Second, with respect to the limited discovery I have requested, you will not consent to providing this discovery at this time. However, you will revisit the issue after you file your preliminary approval papers.

As I have indicated, I have concerns with the timing of any further delays on the two requests, as we likely will have to see the Court on shortened time if we have any disagreements. Nonetheless, I will discuss with my two clients and others at my firm regarding the next step.

Yours,

William Audet, esq.

waudet@audetlaw.com

t 415.568.2555

f 415.568.2556

Audet & Partners, LLP.

711 Van Ness Ave., Suite 500

San Francisco, CA 94102

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Exhibit 8



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April 26, 2017

Via Electronic Mail

Derek Loeser
dloeser@kellerrohrback.com
Gretchen Cappio
gcappio@kellerrohrback.com
Daniel Mensher
dmensher@kellerrohrback.com
KELLER ROHRBACK LLP
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052

Re: Preliminary Approval

Jabbari v. Wells Fargo & Co., Case No. 3:15-cv-02159-VC (N.D. Cal.)

Dear Counsel:

We write to follow-up on our March 31, 2017 letter, in which we raised several issues with regard to the settlement process, and, most importantly, we write to also address the ‘revised’ settlement now before the Court. We remain disappointed that the parties in *Jabbari* have chosen not to remove the specter from the various conflicts of interest through the subclasses we previously outlined, and are further concerned about apparent ‘new’ subclasses created with the expansion of the settlement class period.

As you know, in our March 31st letter, we raised a number of issues about the prospect of any settlement class and settlement agreement. At the time, you requested that we ‘wait’ until the filing of your motion for preliminary approval. We have waited but now must again request additional documentation and specific answers in order for us to determine what is best for our clients.

Specifically, we note the following issues to which we seek specific answers:

1. Why was a claims-made process, or even a claim form, required in this settlement for each and every settlement class member when Wells Fargo & Co. and Wells Fargo, N.A. (collectively, “Defendant” or “Wells Fargo”) likely possessed all the

Derek Loeser, et al.
KELLER ROHRBACK LLP
April 26, 2017
Page 2 of 5

requisite information for many of the claimants? Indeed, it appears that you have not required Wells Fargo to provide information, which it undoubtedly possesses, in order to pre-populate/pre-fill claim forms and ease the burden for many of the class members.

2. Why is there a court seal on the claim form, and in conjunction with the request above, will you provide us with the claim form at this point?

3. The settlement appears to provide Wells Fargo with credit for already required obligations because of its fraudulent account-opening activity. Does any of the payments already due to the various federal, state or city entities reduce, by any amount, the overall settlement for the class in this case?

4. Why is the release of such breadth and scope that it will immunize, essentially, every potential individual claim, known and unknown, even including causes of action not pled in the original complaint?

5. Why is there no right of appeal for potential class members when the Settlement Administrator concludes that an individual is not an authorized claimant? Not only would this issue violate due process, but § 9.12 of the Stipulation and Agreement of Settlement (Dkt. 100) (“Settlement”) compounds the problem by having the Court enter judgment based upon the Settlement Administrator’s unilateral and sole determination. Does the Settlement place any obligation upon Class Counsel or any other party to act as an advocate for class members who have been determined by the Settlement Administrator to not have a claim? If not, why not?

6. Please define exactly what a “service” is, as described in the Settlement, and in terms of the claim or action by Wells Fargo. To the extent the Settlement seeks to release more than ‘privacy issues’ for the time period set forth in the initial complaint, who exactly is a class member under § 2.51 of the Settlement? Will direct notice go to these class members before the time period to object and/or opt-out of the Settlement?

7. Why are the falsely-created “products” in the Settlement not specifically defined? Specifically, the Settlement provides for the release of liability with regard to a number of unspecified fake account products that is not clearly articulated for Settlement class members. Please define exactly what the nature of the claim is and also why is this not clear in Settlement or related notice(s)?

Derek Loeser, et al.
KELLER ROHRBACK LLP
April 26, 2017
Page 3 of 5

8. Why was statutory damages not accounted for with regard to the privacy class/claims, in terms of appropriately calculating compensation when compared to class members not subject to a statutory damage claim? Was any evaluation of the worth of such claims done prior to determining whether or not to compensate for them? If so, please describe the evaluation method.

9. What is the *pro-rata* distribution in this case, and why was this amount determined to be adequate, especially in light of the statutory defined damages?

10. How is Net Settlement Pool 1 and Pool 2 calculated and upon what basis are the amounts set forth in the Settlement calculated? We note again that these pools seem to be in competition over the same overall Settlement fund, but not separately represented by counsel.

11. Please provide the legal basis upon which you can render the Plan of Allocation “separate and apart from the proposed Settlement” as stated in § 9.9 of the Settlement.

12. Why has the objection period not been clearly defined and the notice time and objection period so short? It appears that many class members will not be identified as potential claimants until after the objection and/or opt-out period has closed. Are you willing to allow a second chance to opt-out for said claimants/class members?

13. Why are class members expected to recall information from as far back as 2002, as required by the claim process, when the class has no discovery information to assist and how are class members expected to participate when Wells Fargo has not identified specifically who is a Settlement class member?

14. In light of the extended time period of the release, why was the “Consultant” information gathering period limited to little more than 7 years (§ 1.18)?

15. Why is the information, gathered by the Consultant to determine potential victims of Wells Fargo’s illegal behavior (§§ 2.11-2.22), not disclosed to potential class members in order to assist them in determining if they have a viable claim *before* the class member has to decide whether to object or opt-out? Similarly, putting aside the questionable necessity of claim forms altogether, why is this information not used to help

Derek Loeser, et al.
KELLER ROHRBACK LLP
April 26, 2017
Page 4 of 5

potential claimants fill out claim forms or pre-populate/pre-fill with basic information in Wells Fargo's possession?

16. Why are class members not provided with notice of what evidence has been found with respect to that class member (*i.e.*, the fact that Wells Fargo opened an account in your name, or the fact that Wells Fargo reported to you regarding a false account), before the objection or opt-out period?

17. What is the estimate of the size of the class and how has this number been specifically determined? How did you determine the appropriate amount of the *additional* settlement fund for the extension of the class period?

18. Why, despite the size and scope of this Settlement, is the notice almost impossible to understand by anyone, let alone the typical class member? We urge the *Jabbari* parties to modify the notice(s) to be more readable for the average lay person.

19. Why must an Automatically-Enrolled Claimant submit a claim form in specific situations (§ 2.3), especially when multiple fraudulent accounts, products, or services likely have been created or opened for a single claimant?

This list is not exhaustive and only represents our preliminary assessment of the proposed Settlement. Additional issues may be discovered as we continue our evaluation of the Settlement and its supporting documents. However, in light of the truncated timeline currently before the Court, we believed this list should be promptly provided to you. We reserve all rights.

In addition to providing answers to the above, please provide (or agree to provide) the following documentation and/or information by next week on **May 1, 2017**: (1) the claim form; (2) the size of the class; (3) all Consultant-related information such as who the third-party consultants were, how did they identify potential claimants, and what measures were installed to increase accuracy; (4) the method applied to determine whether an account, product, or service was fraudulently opened by Wells Fargo or not; (5) the methodology employed to assess, determine, and accept the initial \$110 million figure as sufficient and appropriate; (6) the methodology employed to assess, determine, and accept the additional \$32 million figure as sufficient to cover the extended time period of the release; (7) the damages model that will be employed by experts retained by

Derek Loeser, et al.
KELLER ROHRBACK LLP
April 26, 2017
Page 5 of 5

Class Counsel in connection to determining “Credit Impact Damages” and what oversight, if any, will be employed when these experts “adjust or modify the evaluation criteria” pursuant to § 9.7.1.1; (8) the “separate process” that will be used to pay Consultant-Identified Persons for Fees Damages, per § 9.7.1.2; and (9) the specifics of the Customer Complaint Review Process (§ 2.15) and how and what type of customer information is typically acquired. If you will not provide this information, please advise us without delay.

Please let us know as soon as possible, but no later than May 1, 2017 next week, as to how the *Jabbari* parties plan on addressing the issues we have raised above and those in our March 31, 2017 letter. Thank you.

Yours,



William M. Audet
AUDET & PARTNERS, LLP

Enclosure: March 31, 2017 Letter to *Jabbari* Plaintiffs’ Counsel (**Attachment # 1**)

cc: Ling (David) Kuang;
Jeffrey Lewis;
Matthew Preusch;
Mark Burton; and
Clint Woods
(via electronic mail)

ATTACHMENT # 1

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March 31, 2017

Via Electronic Mail

Daniel P Mensher
dmensher@kellerrohrback.com
Derek William Loeser
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Gretchen Freeman Cappio
gcappio@kellerrohrback.com
Matthew J Preusch
mpreusch@kellerrohrback.com
KELLER ROHRBACK LLP

Re: *Jabbari, et al v. Wells Fargo & Company et al.* Case No. 3:15-cv-02159-VC

Dear Counsel,

In light of the notice of settlement filed in the Northern District of California and the District Court's order of March 30th, we ask the following:

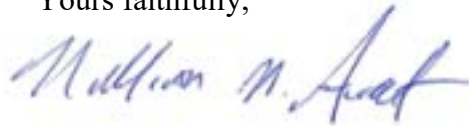
1. You stipulate to allow intervention into your action by our clients. While we are aware of the District Court's prior Order, we note that statements made during oral argument by the Jabbari plaintiffs in the MDL on March 30th indicated that you have no objection to intervention.
2. Please provide the following: (a) the 'term sheet' referenced at the MDL hearing; (b) all relevant discovery obtained from Wells Fargo in the litigation overall; and (c) All relevant information regarding your determination that the \$110,000,000.00 settlement fund has a nexus to the actual damages incurred by the class.
3. We ask again, on behalf of our clients, that you reconsider your decision to exclude my firm and other firms from participation in any further settlement negotiations. We would like the opportunity to review and consider any and all drafts of any settlement agreement, as well as any drafts of relevant settlement documents, including the claim form.
4. Please advise why automatic payment to class members based on the data already available to the parties would not provide for a "no claim form" type settlement, with distribution of the funds not tied to each and every claimant completing a claim form in order to obtain payment of any funds under the settlement.

Plaintiffs' Counsel for *Jabbari, et al*
March 31, 2017
Page 2 of 2

5. Whether the settlement provides for creation of a subclass and appointment of subclass counsel, in the manner and form outlined in our prior submissions to the Court.

We may have additional requests as well, and reserve all rights to obtain additional information and documents. Furthermore, in light of the shortened time frame for consideration of the matter, please let us know whether you will provide any or all of the above requests without delay. I remain

Yours faithfully,

A handwritten signature in blue ink that reads "William M. Audet". The signature is written in a cursive, flowing style.

William M. Audet
waudet@audetlaw.com
AUDET & PARTNERS, LLP

Plaintiffs' Counsel for *Chernavsky, et al.*

Exhibit 9

KELLER ROHRBACK L.L.P.

LAURIE B. ASHTON ①③
 IAN S. BIRK ③
 KENNETH A. BLOCH ③
 KAREN E. BOXX ③
 GRETCHEN FREEMAN CAPPIO ③
 ALISON CHASE ①②
 T. DAVID COPLEY ①③④
 ROB J. CRICHTON ③④
 MAUREEN M. FALECKI ②③
 JULI FARRIS ②③④
 RAYMOND J. FARROW ③
 ERIC J. FIERRO ①
 WILLIAM L. FLEMING ③
 ALISON S. GAFFNEY ③
 GLEN P. GARRISON ③④
 LAURA R. GERBER ③
 MATTHEW M. GEREND ③
 GARY A. GOTTO ①
 BENJAMIN GOULD ②③
 CHRISTOPHER GRAVER ①

MARK A. GRIFFIN ①③
 AMY N.L. HANSON ③
 IRENE M. HECHT ③
 SCOTT C. HENDERSON ③
 MICHAEL G. HOWARD ③
 KHESRAW KARMAND ②③④
 DEAN N. KAWAMOTO ②③④
 RON KILGARD ①④
 KATHRYN M. KNUDSEN ③
 DAVID J. KO ③
 TANYA KORKHOV ③
 ERIC R. LALIBERTE ③
 BENJAMIN J. LANTZ ③
 LUKE M. LARIVIERE ③
 CARI CAMPEN LAUFENBERG ③
 ELIZABETH A. LELAND ③
 JEFFREY LEWIS ②
 TANA LIN ③④⑤⑥
 DEREK W. LOESER ③
 HOLLY E. LYNCH ③

RYAN MCDEVITT ③
 DANIEL MENSHER ②③
 IAN J. MENSHER ③
 MICHAEL W. MEREDITH ③
 LISA A. NOWLIN ③
 GRETCHEN S. OBRIST ③
 ROBERT S. OVER ③
 DUDLEY B. PANCHOT ③
 LISA FAYE PETAK ②
 DAVID S. PREMINGER ③
 MATTHEW J. PREUSCH ②②
 ERIN M. RILEY ③⑤
 STEVEN N. ROSS ③
 ISAAC RUIZ ③
 DAVID J. RUSSELL ③
 MARK D. SAMSON ①④
 LYNN LINCOLN SARKO ③④⑤⑥
 WILLIAM C. SMART ③
 CHRISTOPHER L. SPRINGER ②
 THOMAS A. STERKEN ③

PAUL A. TONELLA ③
 BETH M. STROSKY ③
 KARIN B. SWOPE ③
 HAVILA C. UNREIN ②③④
 GABE E. VERDUGO ③
 AMY WILLIAMS-DERRY ③④
 MICHAEL WOERNER ③
 BENSON D. WONG ③
 EDWIN G. WOODWARD ③

① ADMITTED IN ARIZONA
 ② ADMITTED IN CALIFORNIA
 ③ ADMITTED IN COLORADO
 ④ ADMITTED IN IDAHO
 ⑤ ADMITTED IN ILLINOIS
 ⑥ ADMITTED IN MASSACHUSETTS
 ⑦ ADMITTED IN MICHIGAN
 ⑧ ADMITTED IN MINNESOTA
 ⑨ ADMITTED IN MONTANA
 ⑩ ADMITTED IN NEW YORK
 ⑪ ADMITTED IN OHIO
 ⑫ ADMITTED IN OREGON
 ⑬ ADMITTED IN WASHINGTON
 ⑭ ADMITTED IN WASHINGTON, D.C.
 ⑮ ADMITTED IN WISCONSIN

May 2, 2017

VIA E-MAIL

Mr. William M. Audet
 Audet & Partners, LLP
 221 Main Street
 Suite 1460
 San Francisco, CA 94105-1938

Re: *Jabbari v. Wells Fargo & Co.*, Case No.3:15-cv-02159-VC (N.D. Cal.)

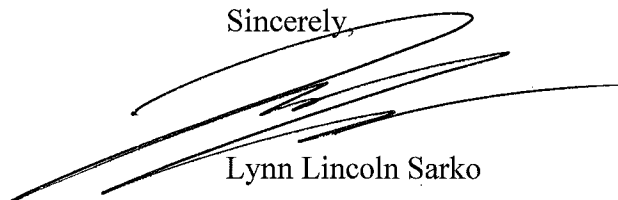
Dear Bill:

I'm writing in response to your April 26th letter requesting documents and other information related to the Motion for Preliminary Approval of the settlement in the *Jabbari* case.

In previous conversations, we had asked that you wait to review that motion and the supporting papers before pre-judging the settlement. Our papers answer the questions in your most recent letter dated April 26th.

We trust that a careful review of the preliminary approval papers will resolve your questions. To the extent they do not, we are happy to discuss.

Sincerely,



Lynn Lincoln Sarko

LLS:sh

Exhibit 10

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May 2, 2017

Via Electronic Mail

L. Lynn Sarko
lsarko@KellerRohrback.com
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Re: *Jabbari v. Wells Fargo & Co.*, Case No. 3:15-cv-02159-VC

Dear Lynn:

We have received your letter of today's date wherein you inform us of your apparent unwillingness to provide us any information or documents at this time, absent a court order. If we are mistaken, please advise. As you know, our letter of April 26, 2017 was sent after your preliminary settlement papers were filed with the Court, and as such we clearly had questions and issues that required substantive responses.

I believe we have exhausted all efforts to resolve our requests informally.

Sincerely,



S. Clinton Woods
AUDET & PARTNERS, LLP

CC: William M. Audet
David Kuang

Exhibit 11

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Via Electronic & First Class Mail

September 14, 2017

David H. Fry
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Erin J. Cox
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355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071
213-683-9100

Re: *Chernavsky v. Wells Fargo Bank, N.A.*, No. 3:16-cv-06326
Jabbari v. Wells Fargo & Company, No. 3:15-cv-02159

Dear Counsel:

Pursuant to the Court's Order Granting Preliminary Approval (the "Order"), I seek information with regard to the current known, or estimated, class size for the settlement class. As you know, the Amended Stipulation and Agreement of Class Action Settlement ("Revised Settlement") contemplated the creation of two settlement pools for two distinct time periods: May 1, 2002 to December 31, 2008 and January 1, 2009 to April 20, 2017. *See generally*, Revised Settlement ¶¶ 2.38-2.39. The estimated number of class members within both settlement pools was calculated based upon a key assumption as to the number of unauthorized accounts created by Wells Fargo. *See generally*, *Jabbari* Dkt. 145 at 1-3 (relying on an initial estimate of 2.1 million fake accounts and further estimating that 3.5 million fake accounts was therefore an "aggressive," "high" and "over-inclusive" figure). Since these May 17, 2017 representations to the Court, information has come to public light that calls them into question.

On August 4, 2017, Wells Fargo generated news headlines when it warned that there may be a "significant increase" in unauthorized/fake accounts. *See generally*, Stacy Cowley, *Wells Fargo May Have Found More Fake Accounts Created by Employees*, THE NEW YORK TIMES (August 4, 2017), available at: <https://www.nytimes.com/2017/08/04/business/dealbook/wells-fargo-fraud->

David H. Fry, et al.
September 14, 2017
Page 2 of 3

[accounts.html](#). In Wells Fargo's recent regulatory filing, it noted that this "significant increase" is due in part to "[Wells Fargo's] review and validation efforts for the initial review period [for fake accounts created in 2011-2015]." See SEC Filing, available at <https://www.sec.gov/Archives/edgar/data/72971/000007297117000397/wfc-06302017x10q.htm>. Critically important, and further supporting our belief that the class size may have changed, the 3.5 million allegedly high-end estimate for unauthorized accounts, as discussed *supra*, was "extrapolated from PwC's analysis, which looked at the 2011-2015 period." See *Jabbari* Dkt. 145 at 2 n.1. This is the same time period referenced in the SEC filing and further adds to the need to clarify the potential class size.

On August 22, 2017, in part validating the likelihood of considerable changes to come, Wells Fargo's CEO Tim Sloan issued a companywide message/press release (the "Release," available at: <https://newsroom.wf.com/press-release/wells-fargo-ceo-shares-progress-team-members-making-things-right-customers>) stating that the "final stage of that analysis [on unauthorized accounts] is nearly complete." It is believed that the number of customers with potentially unauthorized accounts may "increase significantly" and "will generate news headlines." *Id.* On August 31, 2017, the unauthorized accounts analysis ("Analysis") was released and confirmed our need to reexamine the figures previously provided.

These news headlines affect some of the foundational assumptions in the current settlement, as filed with the court on June 14, 2017. To help us assess the settlement in light of the new information outlined in the Release and the subsequent Analysis, we request that you send us the following items by September 20, 2017:

- Provide Wells Fargo's estimate of the number of accounts that Wells Fargo regards as potentially unauthorized (beyond the 2009-2016 period), based on the results of the expanded retail account analysis referenced in the Release as well as any other relevant sources;
- Based on the foregoing number of accounts that are potentially unauthorized, what is Wells Fargo's estimate of the number of such accounts that incurred fees and other costs? What is Wells Fargo's estimate of the total amount of such fees and other costs?;
- Does Wells Fargo believe any additional changes to the Revised Settlement, or the other terms and conditions of settlement, are warranted in light of the numbers referenced in the two points above? If so, describe such changes.

David H. Fry, et al.
September 14, 2017
Page 3 of 3

We trust you understand how eager our clients, and those similarly situated, are to receive such information. Thank you for your prompt attention to this important matter.

Yours,



William M. Audet
AUDET & PARTNERS, LLP

cc: Ling (David) Kuang (lkuang@audetlaw.com)
S. Clinton Woods (cwoods@audetlaw.com)
Steven Christensen (steven@christensenyounqlaw.com)
Scott W. Wert (swert@hurtcallwert.com)
Lynn Sarko (lsarko@kellerrohrback.com)
Derek Loeser (dloeser@kellerrohrback.com)
Matthew Preusch (mpreusch@kellerrohrback.com)

Exhibit 12

Clint Woods

Subject: RE: Chernavsky v. Wells Fargo Bank, N.A., No. 3:16-cv-06326 Jabbari v. Wells Fargo & Company, No. 3:15-cv-02159

From: Fry, David [<mailto:David.Fry@mto.com>]
Sent: Tuesday, September 19, 2017 3:29 PM
To: William Audet
Cc: Derek Loeser (dloeser@KellerRohrback.com); gcappio@kellerrohrback.com; Cox, Erin
Subject: FW: Chernavsky v. Wells Fargo Bank, N.A., No. 3:16-cv-06326 Jabbari v. Wells Fargo & Company, No. 3:15-cv-02159

Dear Mr. Audet,

Your letter states that you are writing “[p]ursuant to the Court’s Order Granting Preliminary Approval” and are seeking certain information. Please direct me to the portion of the preliminary approval order that you contend authorizes you to demand information from Wells Fargo. It is my understanding of the order that it appoints Keller Rohrback, rather than your firm, as counsel for the class, and it is further my understanding that your action remains stayed by the Court.

Thank you and best regards,

David Fry

David H. Fry | Munger, Tolles & Olson LLP
560 Mission Street | San Francisco, CA 94105
Tel: 415.512.4082 | Fax: 415.512.4077
David.Fry@mto.com | www.mto.com

From: Harold Darling [<mailto:hdarling@audetlaw.com>]
Sent: Thursday, September 14, 2017 7:12 PM
To: Fry, David; Everitt, Jeslyn; bwilliams@proskauer.com; mcachan@proskauer.com; Cox, Erin
Cc: Ling (David) Kuang; Clint Woods; steven@christensenyounqlaw.com; steven@christensenyounqlaw.com; swert@hurtcallwert.com; lsarko@kellerrohrback.com; dloeser@kellerrohrback.com; mpreusch@kellerrohrback.com
Subject: Chernavsky v. Wells Fargo Bank, N.A., No. 3:16-cv-06326 Jabbari v. Wells Fargo & Company, No. 3:15-cv-02159

Greetings,

Attached is correspondence concerning the above-referenced matters.

Best,

Harold Darling
hdarling@audetlaw.com
T: 415.568.2555
F: 415.568.2556
Audet & Partners, LLP.
711 Van Ness Ave., Suite 500
San Francisco, California 94102
www.audetlaw.com

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Exhibit 13

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Via Electronic & First Class Mail

September 22, 2017

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213-683-9100

Re: *Chernavsky v. Wells Fargo Bank, N.A.*, No. 3:16-cv-06326
Jabbari v. Wells Fargo & Company, No. 3:15-cv-02159

Dear Counsel:

I write today to follow up on Mr. Audet's September 14, 2017 letter to you regarding the above matter. In view of the upcoming deadlines, we requested the limited information due to the potential significant impact the recently disclosed information regarding the class size would likely have on the individual class member recoveries under the settlement agreement. Unfortunately, instead of being provided the basic information regarding the class size, Mr. Fry as counsel for Wells Fargo, essentially provided no useful information at all. As you know, in the letter we made the following requests on behalf of our clients as well as on behalf of the proposed settlement class members in the instant litigation:

- Provide Wells Fargo's estimate of the number of accounts that Wells Fargo regards as potentially unauthorized, based on the results of the expanded retail account analysis referenced in the Release as well as any other relevant sources;
- Based on the foregoing number of accounts that are potentially unauthorized, what is Wells Fargo's estimate of the number of such accounts that incurred fees and other costs? What is Wells Fargo's estimate of the total amount of such fees and other costs?;
- Does Wells Fargo believe any changes to the Settlement, or the other terms and conditions of Settlement, are warranted in light of the numbers referenced in the two points above? If so, describe such changes.

David H. Fry, et al.
September 22, 2017
Page 2 of 2

These requests are inherently reasonable and clearly relevant to the final approval process considering recent public news reports indicating the size of the class is likely in excess of 3.5 million account holders. Furthermore, these requests are also warranted given the Court's clear guidance at the preliminary approval hearing that as the parties "develop further information... before the final approval stage that would change the calculus." (Transcript, 7:24-8:5.) Here, significant further information has come to light which undoubtedly changes the calculus for a huge number of affected consumers.

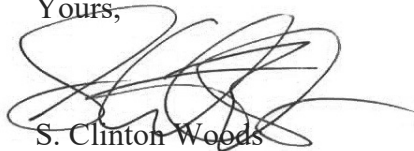
As class members with a stake in whether or not the settlement is ultimately approved, we are obligated to seek information comprising the fullest picture possible so that we may advise our clients as to what benefits the final settlement will provide. In order for us to weigh those benefits and adequately advise our clients as to whether to opt out, object, or support final approval of the settlement, it is vital to receive a full picture of the size and scope of the class, as well as understand how these new revelations will be handled, if they will be handled at all. Thus, it is disappointing that we received no substantive response to our letter of September 14.

Chernavsky Plaintiffs simply seek to be told what is going on with the settlement. Given the "unusual situation" and the "complicated settlement"¹ at issue, we believe the Court would appreciate greater disclosure among the parties, especially since the settlement already required extensive revisions prior to preliminary approval.

If you have any questions whatsoever, please don't hesitate to ask. We would prefer to avoid going to the Court to seek formal discovery, though given these recent revelations we believe the Court would not hesitate to grant leave to conduct it.

Thank you for your prompt attention to this important matter.

Yours,



S. Clinton Woods

AUDET & PARTNERS, LLP

cc: William M. Audet (waudet@audetlaw.com)
Ling (David) Kuang (lkuang@audetlaw.com)
Steven Christensen (steven@christensenyounqlaw.com)
Scott W. Wert (swert@hurtcallwert.com)

¹ See Preliminary Hearing Transcript, 7:24-8:5.

Exhibit 14

Clint Woods

From: VCCRD@cand.uscourts.gov
Sent: Thursday, September 28, 2017 2:33 PM
To: Clint Woods
Cc: frydh@mto.com; bwilliams@proskauer.com; jsoldridge@proskauer.com; kwagner@proskauer.com; chood@hgdllawfirm.com; dmensher@kellerrohrback.com; Derek Loeser; Cox, Erin; cappio@kellerrohrback.com; jmcdonough@hgdllawfirm.com; jlewis@kellerrohrback.com; jeslyn.everitt@mto.com; 'ktsmith@thesmithfirm.com'; mcachan@proskauer.com; rheller@lchb.com; srosenthal@podhurst.com; lewis@hgdllawfirm.com; William Audet
Subject: Re: Jabbari et al v. Wells Fargo & Co., 3:15-cv-02159-VC teleconference

Good afternoon,

The hearing is being rescheduled to Monday at 10:00 a.m. and notice will be sent out shortly. Judge Chhabria agrees that you should be allowed to listen in, but participation by anyone other than counsel for Jabbari and Wells Fargo will not be permitted.

In the new notice I will include the phone number for CourtCall to make arrangements through them for listening in on the hearing.

Thank you,
Kristen Melen, Courtroom Deputy to the Honorable Vince Chhabria

-----Clint Woods <cwoods@audetlaw.com> wrote: -----

To: "vccrd@cand.uscourts.gov" <vccrd@cand.uscourts.gov>
From: Clint Woods <cwoods@audetlaw.com>
Date: 09/28/2017 01:53PM
Cc: "bwilliams@proskauer.com" <bwilliams@proskauer.com>, "jsoldridge@proskauer.com" <jsoldridge@proskauer.com>, "kwagner@proskauer.com" <kwagner@proskauer.com>, "chood@hgdllawfirm.com" <chood@hgdllawfirm.com>, "dmensher@kellerrohrback.com" <dmensher@kellerrohrback.com>, Derek Loeser <dloeser@KellerRohrback.com>, "Cox, Erin" <erin.cox@mto.com>, "cappio@kellerrohrback.com" <cappio@kellerrohrback.com>, "jmcdonough@hgdllawfirm.com" <jmcdonough@hgdllawfirm.com>, "jlewis@kellerrohrback.com" <jlewis@kellerrohrback.com>, "jeslyn.everitt@mto.com" <jeslyn.everitt@mto.com>, "ktsmith@thesmithfirm.com" <ktsmith@thesmithfirm.com>, "mcachan@proskauer.com" <mcachan@proskauer.com>, "rheller@lchb.com" <rheller@lchb.com>, "srosenthal@podhurst.com" <srosenthal@podhurst.com>, "lewis@hgdllawfirm.com" <lewis@hgdllawfirm.com>, William Audet <waudet@audetlaw.com>
Subject: Jabbari et al v. Wells Fargo & Co., 3:15-cv-02159-VC teleconference

Dear Court Clerk,

I represent plaintiffs in the related *Chernavsky* matter, 3:16-cv-06326. We received ECF notice that there would be a teleconference this afternoon concerning the *Jabbari* matter, and that a teleconference line was to be circulated to "all other parties" by 12:00pm today. We have not yet received any teleconference dial-in from *Jabbari* Plaintiffs or any other parties. We also have not yet received word as to whether we will be included in the teleconference one way or another.

Regardless, we believe that it would be in the interests of all parties, including the related *Chernavsky* Plaintiffs, to be included in the teleconference this afternoon. We ask that the dial-in be circulated to all interested parties so that they might benefit from the Court's guidance on the progress of the settlement to date. Please let me know if you have any questions or concerns.

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Exhibit 15

Firm Resume



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Audet & Partners, LLP is a nationally recognized trial law firm based in San Francisco, California, with affiliated offices and associated counsel located throughout the United States. The attorneys at Audet & Partners, LLP, have focused their practice on the prosecution of complex individual, mass tort and class action cases. The firm represents consumers, individuals, small businesses, employees and institutional shareholders in product liability, tort, pharmaceutical defect, consumer, construction defect, investment fraud, securities, insider trading, antitrust, environmental, whistle blower, privacy rights, and employment cases.

In recognition of their commitment to the legal profession and outstanding results for their clients, the firm and its attorneys have been appointed to leadership positions in dozens of class action cases and serve as court-appointed plaintiffs' counsel in federal and state litigation nationwide. The firm utilizes cutting edge technology to better serve its clients and the courts in each and every case it files.

Product Defect Litigation

Galanti v. Goodyear Tire & Rubber Company, No. 03-209, United States District Court, District of New Jersey. Audet & Partners, LLP partners William M. Audet and Michael McShane served as Court-appointed Class Counsel with pending \$300 million settlement involving a defective radiant heating system.

In re Certaineed Corp. Roofing Shingles Products Liability Litigation, MDL No. 1817, pending in the United States District Court, Eastern District of Pennsylvania. Audet & Partners, LLP partner Michael McShane serves as Court appointed co-lead counsel on behalf of plaintiffs in a nationwide class action involving claims of a defective roofing product.

In re Zurn Pex Plumbing Litigation, MDL 08-MDL-1958, United States District Court, District of Minnesota. Audet & Partners, LLP partner Michael McShane serves as class counsel on behalf of plaintiffs in a nationwide class action involving claims of a defective plumbing product installed in thousands of residences throughout the United States.

In re Menu/Pet Food Recall Litigation, MDL No. 1850. Audet & Partners, LLP partner William M. Audet was appointed on of the Co-Lead Class counsel in a case involving recalled pet food. The ground breaking case resulted in a significant monetary settlement, along with court supervised remedial action to prevent similar recalls of potentially poisoned pet products in the future. Over 100 class action cases were filed and consolidated in New Jersey federal court.

In re Thomas Train Parts Recall, Case No. MSC99 00499. William M. Audet was appointed lead counsel in a case involving recall of a well known toy product. The firm's partner William M. Audet was directly involved in the negotiations and class wide resolution that provided for full refunds for class members, as well as other relief.

In re Planet Toys Recall, case no. 08-CV-0592(HB) (SDNY). William M. Audet was appointed lead counsel in a case involving recall of certain of defendants' toy products. Despite the fact that the company declared bankruptcy, lead counsel William M. Audet and his co counsel were able to obtain relief and compensation for class members.

In re Kitec Plumbing Litigation, pending in numerous District Courts throughout the United States. Audet & Partners, LLP partner Michael McShane serves as Court-appointed lead counsel in a nationwide class action prosecuting claims relating to defective plumbing products.

In re Uponor Plumbing Litigation, pending in numerous District Courts. Audet & Partners, LLP partner Michael McShane acts as class counsel in a nationwide class action alleging claims relating to a defective plumbing product.

In re Chinese Drywall Litigation, MDL 2047. Nationwide class action pending in the Eastern District of Louisiana involving claims relating to allegedly defective drywall manufactured in China. Audet & Partners, LLP partner Michael McShane represents putative class of plaintiffs seeking to recover damages as a result of the installation of the drywall in their homes.

Ross, et al., v. Trex Company, Inc. Case No. 09-670, United States District Court, Northern District of California. Audet & Partners, LLP partner Michael McShane serves as class counsel in a nationwide class action involving claims of defective composite decking sold by the defendant.

Williams v. Weyerhaeuser, San Francisco County Superior Court, California, No. 995787, and *Chambers, et al., v. Weyerhaeuser*, King County Superior Court, Washington, No. 98-2-21084-2 KNT. Audet & Partners, LLP's attorneys served as one of three counsel in a class action involving allegations of defective siding manufactured by Weyerhaeuser.

Roy v. Cemwood Corporation, Contra Costa County Superior Court, California, No.: MSC99-00499. William M. Audet and Audet & Partners, LLP firm attorneys served as one of four co-lead counsel in a national class action involving allegations of defective roofing products.

In re Stucco Litigation (Ruff v. Parex) County of New Hanover, North Carolina, No. 96-CVS-0059. The firm's principal partner, William M. Audet, serves on the Court-appointed Plaintiffs Steering Committee. The case was filed on behalf of homeowners who had defective synthetic stucco installed in their homes.

Stuart Hanlon, et al., v. Chrysler Corporation, United States District Court, Northern District of California, No. C-95-2010 CAL. The Firm's attorneys worked on a case seeking correction of defective rear hatch door lock failures in nominal impacts for 3,300,000 owners of Chrysler minivans.

Constitutional Regulation/Employment/Privacy Litigation

In re Google, Inc., Android Consumer Privacy Litigation – MDL No. 2264, pending in the United States District Court, Northern District of California. William M. Audet was appointed as one of two co-lead counsel in a case involving claims of privacy violation relating to Google’s Android Operating System and its method of collecting data from users.

In re iPhone Application Litigation – MDL No. 2250, pending in the United States District Court, Northern District of California. The firm serves as court appointed class liaison counsel for the class of consumers involved with Apple’s use of information from its Apple OS line of iPhones and iPads.

In re Zynga Litigation (*Sigala v. Zynga Game Network, Inc.*, San Francisco County Superior Court, Case No. CGC-10-505324) – The firm served as class counsel for the California class action against a video game company that allegedly distributed private and confidential information to third parties.

California IOU Litigation – (*Baird v. Chiang*, Sacramento County Superior Court, Case No. 34-2010-00081797) – The firm has filed a class action for monetary and other damages arising from the State of California’s illegal issuance of “IOU’s” to small businesses.

Russell, et al. v. Wells Fargo and Company, et al. – No. C 07 3993 CW, United States District Court, Northern District of California. Audet & Partners, LLP serves as co-class counsel in a class action case representing thousands of former and current employees of Wells Fargo for overtime. The case settled after 3 years of litigation with millions of dollars paid to the class.

Johns v. Sony Computer Entertainment America LLC - MDL No. 2558, pending in the United States District Court, Southern District of California. The firm filed one of a number of class actions cases that lead to an MDL proceeding involving invasion of privacy by Sony for its users of Sony PlayStation product line. Case still ongoing.

Confidential Plaintiffs v. Finish Line Case No. CV113874, United States District Court, Northern District of California. The firm represents individual plaintiffs with claims for invasion of privacy against Finish Line.

Whistle Blower Case The firm represented an executive who was fired after reporting financial irregularities. Confidential settlement reached after trial set.

Confidential Misclassification Case The firm filed claims for misclassification of employees as “managers”. Confidential settlement reached after one year of litigation.

Mass Tort, Personal Injury and Complex Litigation

Allen Loretz v. Regal Stone, Ltd. C 07-5800 SC and *John Tarantino v. Hanjin Shipping Co., Ltd.*, CGC 07 469379 (*In re Cosco Busan Oil Spill Litigation*). The firm filed Class and individual claims and represented various individuals, corporations and small business groups, including seafood processors, crab and herring fisheries, marinas, and captains/crews of commercial and recreational vessels. Mr. Audet was appointed Co-Lead Counsel in the State and Federal litigation. The firm was responsible for seizure of Cosco Busan, voiding waivers obtained by the Defendants and obtaining other significant orders that benefitted plaintiffs. Co-counsel in state case brought under the Lampert-Keene Act.

In Zyprexa Litigation, MDL 1596, United States District Court, Eastern District of New York. The firm represented over 300 clients who allegedly developed diabetes after ingesting Zyprexa. Audet & Partners, LLP partner William M. Audet was appointed a member of the Plaintiffs Executive Committee and continues to assist in completing the MDL.

In Baycol Litigation, MDL 1431, United States District Court, Minnesota. William M. Audet serves as Court appointed member of the Plaintiffs Executive Committee relating to the defective drug Baycol.

In re Metabolife Litigation, JCCP 4360 (San Diego County, California). William M. Audet served as a member of the California State Steering Committee in personal injury cases arising out of injuries suffered due to Metabolife products.

In re Vioxx Litigation, New Jersey State Court and California State Court. The firm filed in excess of 100 cases against Defendants Merck & Company arising out of injuries associated with the defective drug Vioxx. The firm's cases were scheduled for trial. The cases have been settled for in excess of \$4 billion.

In re Bextra Litigation, MDL No. 1699, United States District Court, Northern District of California. Audet & Partners, LLP partner William M. Audet serves as a Court appointed member of the Plaintiffs Steering Committee. The firm represented in excess of 100 injured clients.

In re Intergel Litigation, Florida State Court. The firm filed dozen of cases on behalf of women injured using a Johnson & Johnson product called Intergel. The firm has recovered millions of dollars for their clients in confidential settlements with the company.

In re Defective Ancure Products Liability Litigation, United States District Court, Northern District of California and Santa Clara County Superior Court. The firm represents dozens of individuals who were implanted with a defective device. Joseph Russell serves as the lead attorney in the cases.

Table Bluff Reservation (Wiyot Tribe), et al., v. Philip Morris, et al., United States District Court for the Northern District of California, San Francisco Division, No. C 99-02621 MHP. The firm represented Native American Tribes challenging the \$200 billion plus state tobacco agreement on the grounds that it violated their civil rights. The case was argued in the Ninth Circuit Court of Appeals.

Fen-Phen Product Liability Litigation, MDL 1203, California State Court. The firm filed a medical monitoring and punitive damage claim on behalf of California residents.

In re Baxter Heparin Litigation, Wisconsin and Illinois State Courts (consolidated with MDL 1953). The firm represents a number of injured victims and their families arising out of contaminated heparin blood transfusion products imported from other countries. The firm has filed cases in Illinois and Wisconsin State Court. Audet & Partners, LLP partner/founder William M. Audet serves as court appointed liaison counsel in the Wisconsin cases. The firm continues to evaluate and file cases for seriously injured clients.

In re Pfizer Chantix Litigation, MDL No. 2092. Audet & Partners, LLP partner William M. Audet serves as a Court appointed member of the Plaintiffs Steering Committee. The firm represents dozens of families who were not properly and fully warned about the safety issues associated with use of Chantix. The firm has filed, with co-counsel, cases in state and federal court and continues to meet with potential clients who have claims against the defendants for failure to warn.

In re Glaxo Avandia Litigation. The firm represents dozens of families whose loved ones suffered heart attacks and other injuries relating to use of Avandia. The firm was one of the first plaintiffs' law firms in the United States to uncover the case and file cases against the manufacturer of Avandia. The firm continues to meet with potential clients about their claims. William Audet heads up the firm team in reviewing potential cases and assisting in the prosecution of cases against the defendants.

PG&E "San Bruno Fire" Cases. JCCP No. 4648, (San Mateo County, California) Audet & Partners filed the first class action case seeking damages arising from the San Bruno/PG&E explosion.

In re Tainted Similac Baby Formula (Kury v. Abbott Laboratories), United States District Court, New Jersey) The firm filed a number of class action cases against Abbott and also represents a number of individuals with personal injury claims arising from tainted baby formula.

In re Raptiva Litigation (Hedrick v. Genentech), California State Court (Alameda County) Case No. RG 09-446158) The firm represents dozens of individuals who have alleged been injured after using Genentech's now-recalled psoriasis medication.

DaVinci Robotic Surgery The firm has been retained to assist dozens of clients with potential injuries arising out of alleged defects associated with the DaVinci robotic surgery. The firm has filed complaints and continues to meet with potential claimants to seek judicial recourse for the various injuries associated with the surgery.

GranuFlo The firm has been retained to assist dozens of clients with potential injuries arising out of inappropriate prescription of the now-recalled Fresenius Medical Care North America Naturalyte Liquid Acid Concentrate and Naturalyte GranuFlo (powder) Acid Concentrate. The firm has filed complaints and continues to meet with potential claimants to seek judicial recourse for the various injuries associated with the drug.

TVM The firm represents hundreds of individuals who have been injured as a result of implantation of “mesh” products. The firm is pursuing claims against AMS, Bard and other manufacturers and are directly involved in the prosecution of the cases in state and federal courts, including the MDL.

Consumer Litigation

Apple iPhone 4 Cases JCCP 4639 (Santa Clara County, California) William M. Audet was appointed Liaison Counsel in a case involving claims that the “iPhone 4” is allegedly defective.

iTunes Litigation (*Johnson v. Apple, Inc.* California State Court; Santa Clara County Case No. 1-09-CV-146501) The firm served as lead class counsel in a nationwide class action against Apple, Inc. for allegedly overcharging consumers who purchased “99¢” iTunes gift cards.

AAA Battery Overcharge (*Davis-Miller v. Automobile Club of Southern California*; California State Court, Los Angeles County Case No. BC 398608) The firm filed a class action on behalf of consumers who purchased automobile batteries allegedly sold to replace batteries that did not require replacement.

Google Adwords Litigation (*CLRB Hanson Industries , LLC, et al v. Google, Inc.*, Northern District of California, San Jose Division, Case No. 105CV046409). Serving as Court-appointed Liaison Counsel, the firm represents advertisers on Google’s web pages who claim to have been overcharged for advertising through a complicated monthly charge program.

Smith v. Hewlett-Packard, Santa Clara County Superior Court, CV 776794. The firm serves as Plaintiffs’ Liaison Counsel. Contrary to HP’s representations, the Recorders could only consistently and reliably record less user data than the industry standard. When attempting to record more, error messages appeared, previously recorded data was lost and the CD became useless.

In Re Whirlpool Litigation, class action litigated in nine states including California, Minnesota, Pennsylvania, Ohio and Tennessee. Audet & Partners, LLP partner Michael McShane served as Court appointed co-lead counsel in a multi-state class action involving claims of breach of warranty and product defect against both Whirlpool Corporation and Sears & Roebuck, Inc.

Palm Treo Litigation, Santa Clara County Superior Court. Audet & Partners, LLP partner Michael McShane served as class counsel in a nationwide class action involving claims of product defect against Palm, Inc.

Roberts v. Bausch & Lomb, United States District Court, Northern District of Alabama, No. CV-94-C-1144-W. William M. Audet, the firm’s principal partner, served on the Plaintiffs’ Committee in this nationwide consumer class action. A settlement against Bausch & Lomb was approved by the Court on August 1, 1996. Under the settlement, Bausch & Lomb agreed to \$68 million in cash and products to 1.5 million buyers of the Company’s disposable contact lenses.

Hilla v. TCI Cablevision, Santa Clara County Superior Court, No. CV-769105. The firm represented California residents involving illegal overcharges by the cable company for late fees.

Plotkin v. General Electric, United States District Court, Northern District of California, Action No. C-92-4447. The firm filed a class action against General Electric for defrauding the American public in the sale of Energy Choice Light Bulbs, which were claimed to be energy efficient, required less electricity and would preserve the environment. General Electric subsequently settled this national class action.

Afanador v. H&R Block Tax Services, Inc., Santa Clara County Superior Court, California, No. CV-767677. The Firm's attorneys, along with other Plaintiffs' counsel, successfully represent consumers in claims against H&R Block arising out of its ARapid Refund program.

Sears Automotive Center Consumer Litigation, United States District Court, Northern District of California, No. C-92-2227. The firm filed a class action on behalf of consumers defrauded by Sears' Auto Centers. The case was successfully concluded in August 1992. William M. Audet was appointed to the Plaintiffs' Steering Committee.

Chamberlain v. Flashcom, Orange County Superior Court, Case No. 00 CC 04212. In this class action, William M. Audet, principal partner, along with other counsel successfully a remedy against Defendant's unlawful, unfair, and fraudulent business conduct.

Providian Credit Card Cases, San Francisco County Superior Court, JCCP No. 4085. The Providian Defendants purported to facilitate the issuance of credit cards to people with damaged credit histories. The case settled for in excess of \$10 million. William M. Audet served as Class Counsel.

In re Kia Litigation, Orange County Superior Court. William M. Audet served as class counsel in a number of jurisdictions in a case involving claims by Kia regarding its automotive products. The case was settled with a significant monetary and non-monetary recovery for the class.

Insurance/Healthcare Litigation

In re Unum Provident Litigation, United States District Court, Eastern District of Tennessee, MDL No. 1552. Audet & Partners, LLP firm partners William M. Audet and Michael McShane serve as Court-appointed Lead Counsel in a pending class action on behalf of Plaintiffs alleging the wrongful denial of benefits under long term disability policies.

In re Industrial Life Insurance Litigation, United States District Court, Eastern District of Louisiana., MDL Nos. 1371, 1382, 1390, 1391, and 1395. William M. Audet served on the Court-appointed Plaintiffs= Steering Committee. The class cases involve claims that insurance companies overcharge African-Americans for life and health insurance.

In re Life of Georgia Insurance Litigation, Thirteenth Judicial District, Shelby County, Memphis, Tennessee. Reached nationwide class settlement in 2002 on behalf of class of insureds discriminated against in the issuance of life insurance. William M. Audet served as Court-appointed Co-Lead Counsel.

Thorn v. Jefferson Pilot Insurance Co., United States District Court, South Carolina. Nationwide class on behalf of purchasers of life insurance. Michael McShane of the firm represents the proposed Plaintiffs class alleging racial discrimination in the issuance of life insurance policies

In re Average Wholesale Price Litigation, MDL Docket No. 1456. Audet & Partners, LLP partner William M. Audet and Michael McShane of the firm serve as Court appointed members of the Executive Committee representing Plaintiffs in a nation-wide class action allegedly the manipulation of pricing for prescription drugs.

In re Tenet Healthcare Litigation, Los Angeles County, Superior Court, California. Numerous actions coordinated in 2002 by the Judicial Council. Partners William M. Audet and Michael McShane served among three Court appointed Lead Counsel on behalf of nationwide class of individuals who were allegedly overcharged directly, or through their health insurance for medical services, products and medication.

Lawson, et al., v. Liberty Life, Birmingham, Alabama, No. 96-1119. William M. Audet of the firm, along with four other Plaintiffs' Counsel, represents a proposed class of life insurance policy holders of Liberty Life Corporation who were subjected to unlawful life insurance policy "churning" by Liberty Life.

Antitrust

In re PRK/Lasik, Laser Surgery Overcharges Litigation, Santa Clara County Superior Court, California, Master File No. CV772894. Audet & Partners LLP attorneys William M. Audet and Joseph Russell served as Court-appointed Liaison Counsel in a nationwide class action case alleging antitrust violations against Visx, Inc. and Summit, Inc.

Flat Glass Antitrust Litigation, United States District Court, Western District of Pennsylvania, MDL No. 1200 (and related cases). Mr. Audet of the firm serves as one of five Court-appointed Discovery Committee members and as Plaintiffs' Counsel in a national class action antitrust case pending against the manufacturers of flat glass.

Toys "R" Us Antitrust Litigation, United States District, Northern District of California, No. C-97-3931-TEM. The firm filed a national class action antitrust complaint on behalf of toy consumers.

Los Angeles Milk Antitrust Litigation, Los Angeles County Superior Court, California, No. BC 070661. William M Audet and other members of the firm, along with other Plaintiffs' Counsel, represents consumers arising out of claims of antitrust violations against Los Angeles supermarkets due to alleged price fixing of milk.

California Indirect Purchaser Auction House Cases, San Francisco County Superior Court, No. 310313. In this case against Christie's, Sotheby's and others, Defendants are charged with conspiring to fix commissions for the sale at auction of art and other items in California.

Pharmaceutical Antitrust Cases, San Francisco County Superior Court, California, Judicial Council Coordination Proceeding, No. 2969. The firm members worked on a case for independent pharmacies pursuing claims against major drug manufacturers for violation of California's price fixing statutes.

In re Vitamin Antitrust Litigation, California, North Carolina, Tennessee and Maine. William M. Audet serves as lead counsel in three states and on the Plaintiffs' Executive Committee in one state (California) in class claims involving alleged price fixing by the manufacturers of vitamin products.

In re Methionine Antitrust Litigation, MDL Docket No. 1311. William M. Audet serves as class counsel in a case involving allegations of price fixing in the Methionine industry.

In re Bromine Antitrust Litigation, Docket No. 1310. The firm serves as class counsel in a case involving allegations of antitrust violations in the Bromine industry.

In re Carbon Fiber Antitrust Litigation, C.D. Cal., C 99-11475 RJK. Manufacturers, sellers, and distributors of carbon fibers were sued by makers of airplanes, spacecraft parts, industrial and sporting equipment for conspiring to maintain an artificially inflated price for their product. The firm members served as one of Plaintiffs' counsel.

In re: Terazosin Hydrochloride Antitrust Litigation, S.D.Fla. MDL 1317. In this lawsuit Plaintiffs allege a conspiracy to create a monopoly and fix prices of this widely used prescription drug as well as preventing the sale of any generic bioequivalent to Hytrin. The firm members served as one of Plaintiffs= counsel.

In re Dram Antitrust, MDL 1486, Northern District of California. William M. Audet of the firm serves as class counsel in a class action case to recover money for class members due to antitrust activity in the DRAM industry.

In re Copper Tubings Litigation, United States District Court, District of Tennessee. William M. Audet of the firm was appointed as Co-lead Class Counsel in a case involving an alleged worldwide conspiracy to overcharge customers in the copper tubing industry.

Securities & Insider-Trading

In re CNET Derivative Litigation, William M. Audet and Michael McShane of the firm filed a case against the corporate Defendants for insider trading and back dating of options. The case was filed in San Francisco Superior Court, California.

Adaptec Derivative Litigation, Santa Clara County Superior Court, California, Master File No. CV 772590. The firm serves as Liaison Counsel in a derivative action filed on behalf of shareholders of Adaptec, Inc.

In re Genesis Securities Litigation, Northern District Court of California. William M. Audet serves as class counsel on a case filed against Genesis. After the case was dismissed by the District Court, the firm filed an appeal and ultimately settled the case for \$1.5 million.

Informix Derivative Securities Litigation, San Mateo Superior Court, California, Case No. 402254. The firm served as one of the Plaintiffs' Derivative Counsel in a shareholder lawsuit alleging derivative claims on behalf of Informix.

Solv-Ex Securities Litigation, Second Judicial District Court, County of Bernalillo, New Mexico, No. CV-96-09869. The firm serves as Plaintiffs' Class Counsel in a suit alleging securities fraud against Solv-Ex Corporation and other insider defendants.

Imp, Inc., Securities Litigation, Santa Clara County Superior Court, California, No. CV762109. The firm represents shareholders of Imp, Inc. in an action against certain insiders of Imp, Inc., for alleged insider trading of the Company's stock.

CBT Group Derivative Litigation, San Mateo County Superior Court, California, No. 406767. The Firm's founder, William M. Audet served as one of two plaintiffs' counsel representing shareholders of CBT Group, PLC, in a derivative action against officers and directors of the Company.

Oakley Technology Derivative Litigation, Santa Clara County Superior Court, California, No. CV75829. The Firm's members served as one of three Co-lead Counsel in a derivative securities case brought on behalf of shareholders of Oakley Technology, Inc., brought against certain Officers and Directors of the Company.

Horizon Securities Litigation, United States District Court for New Mexico, No. 96-0442 BB/LCS. William M. Audet of the firm serves as one of the Plaintiffs' Class Counsel in a securities case filed against New Mexico-based Horizon Corporation for alleged violation of federal securities laws.

Bay Networks Securities Litigation (*Garnier v. Bay Networks*, CV764357; *Greenway v. Bay Networks*, CV765564), Santa Clara County Superior Court, California. The firm members served as one of four-plaintiffs' counsel representing shareholders of Bay Networks for alleged securities violations.

Unison Healthcare Corporation Litigation, United States District Court of Arizona, Case No. Civ. 97-0583-PHX. The firm members served as one of the Plaintiffs= Class Counsel representing investors in Unison Healthcare.

S3 Derivative Litigation, Santa Clara County Superior Court, California, No. CV770254. The firm members served as one of the Plaintiffs' Lead Counsel in a derivative action filed on behalf of shareholders of S-3, Inc.

In re Networks Associates Derivative Litigation, Santa Clara County Superior Court, Consolidated Case No. CV-781854. In this case, shareholders sued officers and directors of this leading manufacturer of anti-virus and protocol analyzer software who sold over 800,000 shares of their personal stock for more than \$33 million by misleading the public regarding its value. William M. Audet of the firm served as Liaison Counsel.

In re Oak Technology Derivative Action, Santa Clara County Superior Court, No. CV758629. Shareholders sued directors and officers to recover more than \$100 million Defendants made by artificially inflating the company=s stock, representing that exceptional demand for the company=s products existed. In fact, the company=s shipments of CD-ROM controllers far exceeded what the market could absorb. Three related derivative cases were filed and subsequently consolidated. William M. Audet of the firm serves as Lead Counsel in this lawsuit.

In re Sybase Derivative Litigation, N.D. Cal., No. C-98-0252-CAL. The Firm=s attorneys served as Plaintiffs= Counsel in this stockholder's derivative action brought on behalf of Sybase against certain of the Company's present and former officers and/or directors for insider trading.

About the Attorneys

William M. Audet, J.D., LL.M, LL.D (hc), earned a B.A. from the University of California at Davis in 1981, a Juris Doctor (J.D.) from Golden Gate University School of Law in 1984, where he was the Editor of the *Golden Gate University Law Review*, and completed his formal legal education with a Masters of Law (LL.M.) from the University of Wisconsin School of Law in 1987. In 2013, Mr. Audet was formally awarded a Doctor of Law (honorary degree) from the Golden Gate University School of Law for his significant contributions to the legal community and the law school. While obtaining his Masters Degree in Law at the University of Wisconsin, Mr. Audet also served as a clinical instructor at the University of Wisconsin School of Law. After clerking for the Ninth Circuit Court of Appeals, Mr. Audet clerked for The Honorable Alfonso J. Zirpoli, United States District Judge for the Northern District of California and The Honorable Fern M. Smith, United States District Judge for the Northern District of California. Mr. Audet's practice focuses on complex litigation, including class and non-class action claims involving mass torts, product liability, antitrust, employment, and consumer litigation. Mr. Audet is a frequent guest speaker on a variety of topics at professional seminars. Mr. Audet is a co-author of *Handling Federal Discovery* (12th Ed.)(James Publishing Company). In 2005, Mr. Audet was awarded the Justice Award from the San Francisco Bar Foundations for his long standing contributions to the San Francisco Bay Area legal community and for his pro bono work over the past twenty-five years. Over the past thirty years, Mr. Audet has been appointed by federal and state court judges to leadership positions in a number of important and groundbreaking cases.

Michael A. McShane earned his B.A. in Philosophy from the University of California at Santa Barbara, before earning his law degree from the University of Oregon in 1986, where he was the Articles Editor for the *Journal of Environmental Law and Litigation*. Since his admission to the California Bar, Mr. McShane's practice has been devoted exclusively to prosecuting complex class action litigation throughout the United States. His areas of practice include products liability, consumer claims, antitrust, insurance fraud and medical/pharmaceutical overcharge cases.

S. Clinton Woods graduated from San Francisco State University with Honors, majoring in Political Science, and received his Juris Doctor from the University of California at Hastings College of Law in 2006. Mr. Woods' practice focus is consumer protection, employment, and antitrust, primarily in the class action context. Mr. Woods is an experienced trial lawyer who has personally handled hundreds of cases to successful resolution, and has provided effective counsel to plaintiffs in a broad range of practice areas. Highlights of his past work include recovering millions of dollars for class plaintiffs in a residential case in San Francisco, assisting with class certification in a nationwide class of gym customers, and successfully trying several cases to favorable verdicts.

Thom E. Smith received his B.A. degree in English from Louisiana State University in 1990. In 1993, Mr. Smith was awarded a J.D. from Boston College School of Law and was thereafter admitted to the bar in Massachusetts, Louisiana, and California. Since 1995, Mr. Smith's practice has primarily been in product liability and mass tort litigation. At Audet & Partners, LLP, as mass tort case coordinator, Ms. Smith focuses his work at the firm on the organization and administration of the litigation, settlement management, and claim processing of defective pharmaceutical and medical device cases, with current focus on Transvaginal Mesh cases, Plavix, and Granuflo, among others.

"David" Ling Y. Kuang graduated with a B.A. in Political Science, Minor in Economics, from University of California, Davis. He then earned a J.D. from Golden Gate University, School of Law in 2013. Prior to starting at Audet & Partners, LLP, David gained a wide breadth of experience working as the summer judicial extern for Associate Justice Nathan D. Mihara in the Court of Appeal, Sixth Appellate District; as the judicial clerk for the Honorable Sharon D. Melloy in the Hong Kong District Courts; as the judicial extern for Presiding Judge Thang N. Barrett in the Superior Court of California, Santa Clara County; and as Pacific Gas & Electric, Co.'s in-house law department intern.

While in law school, David also participated as the external editor for Boalt Hall's Asian American Law Journal; as an associate editor for Golden Gate's Environmental Law Journal; as a board member for the Moot Court Board; as a teaching assistant for Professor Helen Chang; and as chapter President for the Asian Pacific American Law Student Association (APALSA). Balancing scholastic achievement with extracurricular activity, David achieved the Witkin Award for Excellence in legal writing and research, received the Faculty Merit Scholarship every eligible year, and placed onto the Dean's List.

David also remained steadfast in his commitment to justice and contribution to communities in need. He was inducted into the Pro Bono Honor Society, nominated for the Paul S. Jordan Award for service and contribution, participated on the Planning Committee for the 39th and 40th Asian Law Caucus Annual Event, volunteered his time to legal aid clinics organized by Asian Pacific Islander Legal Outreach, California Rural Legal Assistance and Legal Aid of Marin; and worked with indigent incarcerated clients through San Francisco Sheriff's Department's Prisoner Legal Services.

David is admitted to practice in the state of California. He is also fluent in Cantonese and conversational Mandarin.

Steven Weinmann, Of Counsel to Audet & Partners, LLP earned his B.A. from Rutgers University, and his Juris Doctor (JD) with distinction from the Maurice A. Deane School of Law at Hofstra University. Mr. Weinmann has a distinguished career spanning more than twenty-five years that has included class action and complex litigation work with several prominent United States law firms including Milberg Weiss, Drinker, Biddle & Reath, and Sedgwick, Detert, Moran and Arnold. Mr. Weinmann has handled sophisticated matters involving

consumer class actions, securities litigation, antitrust, construction defect, and environmental toxic tort claims against defendants including Facebook, Wells Fargo and Home Depot.

Mark Burton, of counsel to the firm, earned a B.A. from the University of California, Santa Barbara, in 1991, a Juris Doctorate from Golden Gate University School of Law in 1995, where he was an associate editor of the Golden Gate University Law Review. During law school he clerked for the San Francisco Superior Court and practiced as a certified law clerk at the Contra Costa Public Defenders Office. Mr. Burton's practice focuses on complex litigation, including class and non-class action claims involving mass torts, product liability, personal injury, employment claims and consumer class actions. He has tried cases successfully in state and federal courts in a variety of matters and has been recognized as a Rising Star Super Lawyer as a Super Lawyer over the past years. The Legal website AVVO give him its highest rating at "Superb 10.0". Previously, Mr. Burton represented the State of New Mexico as a Special Assistant Attorney General prosecuting pharmaceutical fraud and represented one of the whistleblowers in the \$1.4 Billion settlement on behalf of the United States (one of the largest recovery on behalf of the United States at the time). Mr. Burton is a frequent speaker on a variety of topics involving complex litigation and has written several articles as well, and serves as a trustee for Golden Gate University and as an advisor to the Dean of GGU Law School. Mr. Burton has been appointed as a mediator, a discovery facilitator, an expert witness in legal malpractice cases and as a state bar fee arbitrator.

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and William Castro, on behalf of
8 *themselves and all others similarly situated*

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 SHAHRIAR JABBARI and KAYLEE
14 HEFFELFINGER, on behalf of themselves and
all others similarly situated,

15 Plaintiffs,

16 v.

17
18 WELLS FARGO & COMPANY and WELLS
FARGO, N.A.,

19 Defendants.
20
21
22

Case No: 3:15-cv-02159-VC

**[PROPOSED] ORDER GRANTING ALEX
CHERNAVSKY AND WILLIAM
CASTRO’S MOTION FOR AN AWARD OF
ATTORNEYS’ FEES**

Date: March 20, 2018
Time: 10:00 AM
Place: Courtroom 4 – 17th Floor
Judge: Honorable Vince Chhabria

23
24 Alex Chernavsky and William Castro (hereinafter the “*Chernavsky* Plaintiffs”) Motion for
25 and Award of Attorneys’ Fees (the “*Chernavsky* Fee Motion”) came before the Court for hearing on
26 March 20, 2018, pursuant to this Court’s previous scheduling orders. The Court has read and
27 considered the *Chernavsky* Fee Motion, the supporting declarations and all other materials
28 relating thereto.

1 **I. THE REQUESTED AWARD OF ATTORNEYS' FEES IS APPROPRIATE UNDER**
2 **THE PERCENTAGE OF THE FUND METHOD**

3 Under Ninth Circuit precedent, where, as here, an objector provides 'substantially enhanced'
4 benefits to a proposed class settlement, the objector's counsel is entitled to seek and be awarded
5 attorneys' fees. *See Rodriguez v. Disner (Rodriguez II)*, 688 F.3d 645, 658 (9th Cir. 2012). In order to
6 receive an award of attorneys' fees, objectors need only show that they either increased the settlement
7 fund *or* "substantially enhanced benefits to the class" in the settlement. *Vizcaino v. Microsoft Corp.*,
8 290 F.3d 1043, 1052 (9th Cir. 2002); *Stetson v. Grissom*, 821 F.3d 1157, 1164 (9th Cir. 2016); *Etter*
9 *v. Thetford Corp.*, 2017 U.S. Dist. LEXIS 59814 at *9-12 (C.D. Cal. Apr. 14, 2017) (awarding fees to
10 objector counsel when objections directly and indirectly led to an improved settlement); *In re*
11 *Transpacific Passenger Air Transp. Antitrust Litig.*, 2015 U.S. Dist. LEXIS 106943 at *12-14 (N.D.
12 Cal. Aug. 13, 2015) (same). Courts in this District have held that objections that result in the
13 narrowing of the scope of releases constitutes a "substantially enhanced benefits to the class"
14 sufficient to justify a fee award. *See Hendricks v. Starkist Co.*, 2016 U.S. Dist. LEXIS 134872 at *48
15 (N.D. Cal. Sept. 29, 2016).

16 As has been noted, objectors can play a valuable role in class action settlements by creating a
17 necessary adversarial process at a time when both the plaintiffs and defendants may be united in
18 advocating for approval of terms and conditions that the subject of a proposed agreement. *Zucker v.*
19 *Occidental Petroleum Corp.*, 192 F.3d 1323, 1329 (9th Cir. 1999) (The contribution [an objector's]
20 attorney made, by providing an adversarial context in which the district court could evaluate the
21 fairness of attorneys' fees, was substantial.) When meritorious objections reveal weaknesses in a
22 settlement and result in a tangible benefits to the class (financially or otherwise), courts are
23 encouraged to award fees to objectors. *Eubank v. Pella Corp.*, 753 F.3d 718, 720 (7th Cir. 2014) ("If
24 their objections persuade the judge to disapprove [a settlement], and as a consequence a settlement
25 more favorable to the class is negotiated and approved, the objectors will receive a cash award that
26 can be substantial...") *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 288 (7th Cir. 2002)
27 (participation by objectors and others is "encouraged by permitting lawyers who contribute materially
28 to the proceeding to obtain a fee."). Indeed, the Ninth Circuit has held that it is *clear error* for a

1 district court to deny objectors’ counsel a fee in certain circumstances. *Rodriguez v. West Publishing*
2 *Corp.*, 563 F.3d 948, 963 (9th Cir. 2009).

3 Here, *Chernavsky* Plaintiffs and their counsel, Audet & Partners, LLP, (hereinafter the
4 “*Chernavsky* Counsel”) have provided substantial enhancement to the Final Settlement as
5 demonstrated in the *Chernavsky* Fee Application. The Court finds that the *Chernavsky* Plaintiffs and
6 the *Chernavsky* Counsel’s efforts led to the following concrete and significant improvements to the
7 Final Settlement: (1) the *Chernavsky* Plaintiffs significantly expanded the claims period by over
8 300%; (2) narrowed the scope of the proposed release; (3) drastically simplified the notice and claims
9 process; (4) achieved material improvements to the objection and opt-out procedures; (5) and
10 obtained additional Court oversight of the settlement claims process. The *Chernavsky* Plaintiffs
11 skillfully achieved actual tangible monetary and non-monetary improvements to the Final Settlement.

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

13 This Court hereby finds and concludes that due and adequate notice was directed to all
14 persons and entities who are Class Members, advising them of *Chernavsky* Plaintiffs’ intent to seek
15 attorneys’ fees and expenses, and of their right to object thereto. A full and fair opportunity was
16 accorded to all such persons and entities to be heard with respect to the *Chernavsky* Fee Motion.

17 The Court hereby grants Class Counsels’ request for an award of attorneys’ fees in the amount
18 of \$4,260,000.00 of the settlement fund, based on a request of 3% of the overall \$142 Million
19 settlement fund.

20 Without affecting the finality of this Order, the Court reserves continuing and exclusive
21 jurisdiction over parties to the Settlement Agreement to settle any disputes related to the allocation of
22 the costs and fees awarded by this Order.

23 **IT IS SO ORDERED.**

24
25 DATED:

The Hon. Vince Chhabria
UNITED STATES DISTRICT COURT JUDGE