UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LYNETTE FLETCHER, on behalf of the Wells Fargo & Company 401(k) Plan, herself, and a class consisting of similarly situated participants of the Plan, Plaintiff, v. WELLS FARGO & COMPANY, WELLS FARGO BANK, N.A., WELLS FARGO EMPLOYEE BENEFIT REVIEW COMMITTEE, JOHN G. STUMPF, HOPE A. HARDISON, JUSTIN C. THORNTON, GREATBANC TRUST COMPANY, JOHN DOES, and RICHARD ROES, Defendants.	Case No. **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

1. Plaintiff Lynette Fletcher ("Plaintiff"), individually and as a representative of the class described herein, and on behalf of the Wells Fargo & Company 401(k) Plan (the "Plan"), brings this action against the below-named defendants (collectively "Defendants") pursuant to §§ 404, 405, 409, and 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1104, 1105, 1109, and 1132.[1]

[1] All allegations contained herein are based upon personal information as to Plaintiff and the investigation of Plaintiff's counsel. In particular, Plaintiff through her counsel, has reviewed, among other things, documents filed with the U.S. Department of Labor (the "DOL") and the United States Securities and Exchange Commission (the "SEC"); other lawsuits against Wells Fargo & Company ("Wells Fargo" or the "Company"); and public statements and media reports; and had discussions with participants and beneficiaries (the "Participants") of the Plan.

NATURE OF THE ACTION

2. Plaintiff brings this case against Defendants to remedy Defendants' breaches of fiduciary duties imposed by ERISA. Under ERISA, Defendants were obligated to protect the interests of the Plan's Participants. Specifically, Defendants breached their duties by, among other things, retaining common stock of Wells Fargo & Company ("Wells Fargo Stock" or "Company Stock") as an investment option in the Plan when a reasonable fiduciary using the "care, skill, prudence, and diligence … that a prudent man acting in a like capacity and familiar with such matters" would have done otherwise. *See* ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

3. Indeed, as discussed in greater detail below, Defendants, who had access to nonpublic information relating to Wells Fargo's operations, permitted the Plan to continue to offer Wells Fargo Stock as an investment option to Participants even after Defendants knew or should have known that Wells Fargo Stock was artificially inflated during the Class Period (January 1, 2011 to September 8, 2016, inclusive). Due to the artificial inflation of the Company Stock price—which would be corrected upon the revelation of negative information—Wells Fargo Stock was an imprudent retirement investment for the Plan given its purpose of helping Plan Participants save for retirement. As fiduciaries of the Plan, Defendants were empowered to remove Wells Fargo Stock from the Plan's investment options, or to take other measures to help Participants, but failed to do so or to take any other action to protect the interests of the Plan or its Participants. As a result, Defendants breached their obligations under ERISA and are liable for the damages to Plaintiff and the Participants.

4. The Supreme Court has explained that an ERISA fiduciary's perpetuation of an imprudent investment violates his obligations under ERISA. In *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014), the Court considered a class action in which participants

in an ERISA plan challenged the plan fiduciaries' failure to remove company stock as a plan investment option. The Supreme Court held that retirement plan fiduciaries are required by ERISA to determine independently whether company stock remains a prudent investment option. Moreover, the Supreme Court rejected the defendant-fiduciaries' argument that they were entitled to a fiduciary-friendly "presumption of prudence," holding that "no such presumption applies," *Fifth Third*, 134 S. Ct. at 2463, and further held "that the duty of prudence ***trumps*** the instructions of a plan document, such as an instruction to invest exclusively in employer stock even if financial goals demand the contrary." *Id.* at 2468 (citation omitted) (emphasis added). Likewise, the Plan's "fiduciaries are subject to the same duty of prudence that applies to ERISA fiduciaries in general." *Id*. at 2463 (emphasis added). Thus, even if the Plan purportedly required that Wells Fargo Stock be offered, the Plan's fiduciaries were obligated to disregard that directive once Company Stock was no longer a prudent investment for the Plan.

5. Although Defendants knew that Wells Fargo Stock was artificially inflated during the Class Period, they nonetheless allowed and authorized the Plan to purchase billions of dollars' worth of Wells Fargo Stock. During the Class Period, the Company maintained policies that encouraged Wells Fargo employees to set up accounts without the Company's customers' knowledge or authorization. Ultimately, on September 8, 2016, the Consumer Financial Protection Bureau ("CFPB") and the Office of the Comptroller of the Currency ("OCC") – the principal federal banking regulator – disclosed the entrance of a consent order ("Consent Order") resulting in fines against the Company totaling $185 million for engaging in these illegal sales practices.

6. In the wake of the announcement of the fines, CEO and Chairman of the Company's Board of Directors (the "Board") John Stumpf ("Stumpf") was called to testify

before two Congressional committees. During the hearings, Senators and Representatives – without regard to party affiliation – severely criticized the extent of the fraud that took place within the Company and the lack of accountability at high levels of management. Within weeks, Stumpf would resign as CEO and Chairman of the Board.

7. Given the totality of circumstances prevailing during the Class Period, no prudent fiduciary could have made the same decision as Defendants to retain and/or continue purchasing the clearly imprudent Wells Fargo Stock as a Plan investment. To remedy the breaches of fiduciary duties described herein, Plaintiff seeks to recover the financial losses suffered by the Plan as a result of the diminution in value of Company Stock invested in the Plan during the Class Period, and to restore to the Plan funds that Participants would have received if the Plan's assets had been invested prudently.

8. As of the start of the Class Period on January 1, 2011, the Plan held more than $5 billion in Company Stock, and it acquired billions of dollars of Wells Fargo Stock while Wells Fargo Stock was artificially inflated. Had that money not been wasted on artificially inflated Company Stock, the Plan would have been significantly better off.

JURISDICTION AND VENUE

9. ***Subject Matter Jurisdiction.*** This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

10. ***Personal Jurisdiction.*** This Court has personal jurisdiction over all Defendants because they are all residents of the United States and ERISA provides for nation-wide service of process pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

11. ***Venue.*** Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2) because the Plan is administered in this District, some or all of the fiduciary

breaches for which relief is sought occurred in this District, and one or more Defendants reside or may be found in this District.

PARTIES

A. Plaintiff

12. Plaintiff Lynette Fletcher is a former Wells Fargo employee and a Participant in the Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7). Ms. Fletcher suffered losses in her individual Plan account as a result of investing in Wells Fargo Stock during the Class Period.

B. Defendants

Company Defendants

13. Defendant Wells Fargo is a Delaware corporation headquartered at 420 Montgomery Street, San Francisco, California. Wells Fargo is a diversified financial services company that provides retail, commercial, and corporate banking services.

14. At all times relevant to this Complaint, Wells Fargo managed and administered the Plan and the assets of the Plan and acted as a fiduciary with respect to the Plan, or appointed a committee to do so. At all relevant times, Wells Fargo was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that it exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets. In addition, Wells Fargo is the Plan's administrator, as stated in the Form 11-K filed by the Company for the year ended December 31, 2012 (the "2012 11-K").

15. Defendant Wells Fargo Bank, N.A. is a wholly owned subsidiary of the Company. Wells Fargo Bank, N.A. is the Trustee of the Plan, and a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

The Committee Defendants

16. Defendant Wells Fargo Employee Benefit Review Committee (the "Committee") had a fiduciary duty to select all of the Plan's investment options.

17. Defendant Hope A. Hardison ("Hardison") is the Company's Senior Executive Vice President, Chief Administrative Officer, and Human Resources Director. Hardison has been the Company's Human Resources director since September 2010 and directly reported to former CEO Defendant Stumpf starting in 2014. According to her bio on the Company's website, in her capacity as Chief Administrative Officer, Defendant Hardison oversees, among other things, the Company's reputation management and "management of compensation and benefits, [and] human resource service centers[.]"[2] Defendant Hardison also oversees the Company's human resources, and previously served as the head of Compensation & Benefits. Plaintiff thus believes Defendant Hardison functioned as a member of the Committee. Defendant Hardison administered the Plan on behalf of the Company during the Class Period.

18. Defendant Justin C. Thornton ("Thornton") executed the Company's Form 11-K filings for the years ended December 31, 2011 – 2015 filed with the SEC in his capacity as Executive Vice President and variably director or head of Compensation & Benefits. In addition, Defendant Thornton signed the Company's Form 5500 for the same period filed with the U.S. Department of Labor ("DOL") as the Plan Administrator. Plaintiff thus believes Defendant Thornton functioned as a member of the Committee. Defendant Thornton administered the Plan on behalf of the Company during the Class Period.

19. As explained in the Company's Form 11-K filings, the Committee's "members are appointed by the Company's Chief Administrative Officer and Director of Human Resources[.]"

[2] Available at: https://www.wellsfargo.com/about/corporate/governance/hardison/.

20. The Committee "has discretion under the Plan to offer additional investment alternatives to participants."

21. John Does 1-10, without limitation, comprised an investment committee and any other committee(s) which administered the Plan and all members thereof. The identity of the committee(s) and the members of the committee(s) which were responsible for carrying out the provisions of the Plan is not currently known to Plaintiff. John Does 1-10 are believed to be employees of the Company and fiduciaries of the Plan.

22. At all relevant times, the Committee and the John Doe defendants were fiduciaries of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

The Monitoring Defendants

23. Defendant Stumpf became CEO of the Company in June 2007 and Chairman of the Board in January 2010. Defendant Stumpf had control over the Company throughout most of the Class Period and was the direct supervisor of Defendant Hardison. Defendant Stumpf resigned on October 12, 2016 in the wake of the scandal over the Company's improper cross-selling tactics.

24. Defendants Stumpf and Richard Roes 1-20 (with Stumpf, the "Monitoring Defendants") were persons who had the duty and responsibility to properly appoint, monitor, and inform the Committee Defendants (as defined herein) and/or other persons who exercised day-to-day responsibility for the management and administration of the Plan and its assets. The Monitoring Defendants failed to properly appoint, monitor, and inform such persons by failing to inform the Committee Defendants regarding the Company's true financial and operating

condition or, alternatively, despite the Monitoring Defendants' adequate informing of such persons of the true financial and operating condition of the Company (including the sales practices illegally demanded by the Company during the Class Period identified herein), nonetheless continued to allow such persons to offer Wells Fargo Stock as an investment option under the Plan when the market price of Wells Fargo Stock was artificially inflated and Wells Fargo Stock was an imprudent investment for Participants' retirement accounts under the Plan. Liability is only asserted against each of the Monitoring Defendants for such periods of time as the Monitoring Defendants acted as fiduciaries of the Plan.

25. At all relevant times, the Monitoring Defendants were fiduciaries of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

Additional "John Doe Defendants"

26. To the extent that there are additional officers and employees of Wells Fargo who were fiduciaries of the Plan during the Class Period, or any other committees or members of such committees that were fiduciaries of the Plan in connection with the allegations herein, the identities of whom are currently unknown to Plaintiff, Plaintiff reserves the right, once their identities are ascertained, to seek leave to join them to the instant action. Thus, without limitation, unknown "John Doe" Defendants 1-10 include, in addition to the above, other individuals, including, but not limited to, Wells Fargo officers and employees, who were fiduciaries of the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) during the Class Period.

Independent Fiduciary Defendant

27. GreatBanc Trust Company ("GreatBanc") was appointed independent fiduciary to act as a named fiduciary for limited purposes in connection with the ESOP provisions of the Plan in 2012. GreatBanc is headquartered at 801 Warrenville Road, Suite 500, Lisle, Illinois, 60532. GreatBanc was a fiduciary of the Plan for a significant portion of the Class Period. GreatBanc was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because GreatBanc exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of the Plan's assets. As a fiduciary of the Plan, GreatBanc was obligated to make reasonable inquiries of Company insiders to determine whether Wells Fargo Stock was a reasonable investment choice. With the knowledge that the Company Stock price was artificially inflated, GreatBanc had or would have had a duty to disregard any instructions from the Committee to invest the Plan's assets in Wells Fargo Stock.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action derivatively on the Plan's behalf pursuant to ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132, and as a class action pursuant to Rules 23(a), (b)(1), and/or (b)(2) of the Federal Rules of Civil Procedure on behalf of the Plan, Plaintiff, and the following class of similarly situated persons (the "Class"):

> All persons, except Defendants and their immediate family members, who were participants in or beneficiaries of the Wells Fargo & Company 401(k) Plan at any time between January 1, 2011 and September 8, 2016, inclusive,[3] and whose Plan accounts included investments in Wells Fargo Stock.

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[3] Plaintiff reserves her right to modify the Class Period definition in the event that further investigation/discovery reveals a more appropriate and/or broader time period during which Wells Fargo Stock constituted an imprudent investment option for the Plan.

29. Given ERISA's distinctive representative capacity and remedial provisions, courts have observed that ERISA litigation of this nature presents a paradigmatic example of a FED. R. CIV. P. 23(b)(1) class action.

30. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are at least hundreds of thousands of employees of Wells Fargo who participated in, or were beneficiaries of, the Plan during the Class Period whose Plan accounts included Wells Fargo Stock. According to the Form 5500 filed by the Company with the DOL for the 2015 Plan year, as of January 1, 2015, the Plan had 367,827 participants.

31. Common questions of law and fact are applicable to Plaintiff and the Class, including, but not limited to:

(a) whether Defendants each owed a fiduciary duty to the Plan, Plaintiff, and members of the Class;

(b) whether Defendants breached their fiduciary duties to the Plan, Plaintiff, and members of the Class by failing to act prudently and solely in the interests of the Plan and the Plan's participants and beneficiaries;

(c) whether Defendants violated ERISA; and

(d) whether the Plan, Plaintiff, and members of the Class have sustained damages and, if so, what is the proper measure of damages.

32. Plaintiff's claims are typical of the claims of the members of the Class because the Plan, Plaintiff, and the other members of the Class each sustained damages arising out of Defendants' wrongful conduct in violation of ERISA as complained of herein.

33. Plaintiff will fairly and adequately protect the interests of the Plan and members of the Class because she has no interests antagonistic to or in conflict with those of the Plan or the Class. In addition, Plaintiff has retained counsel competent and experienced in class action litigation, complex litigation, and ERISA litigation.

34. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

35. Class action status is also warranted under the other subsections of Rule 23(b)(1)(A) and (b)(2) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; and (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

FURTHER SUBSTANTIVE ALLEGATIONS

A. Description of the Plan

36. The Plan is held out as a means for Participants to save for retirement. As stated in the Summary Plan Description dated October 1, 2013 disseminated by the Company, the Plan is "designed to encourage team members to plan, budget, and save for retirement on a regular, long-term basis." The Plan is sponsored by the Company.

37. As stated in the 2015 11-K, "[t]he Plan is a defined contribution plan with a 401(k) feature . . . [and] a portion of the Plan invested in Company stock is an Employee Stock

Ownership Plan (ESOP).” Further, Company stock is offered as an investment option in both the ESOP Fund and the Wells Fargo Non-ESOP Fund (together, the “Funds”).

38. Participants in the Plan may contribute from 1% to 50% of their compensation to the Plan, and the Company matches up to 6% of a Participant’s compensation contributed to the Plan. According to the Forms 11-K filed by the Company, “[e]mployer contributions are automatically invested in Company common stock.”

39. According to the Form 11-K filed by the Company for the year ended December 31, 2011 (the “2011 11-K”), “[a]s of December 31, 2011 and 2010, the Plan owned approximately 3.50% and 3.26%, respectively, of the outstanding common stock of the Company.” During 2011, the Plan released 33,454,667 shares of Company Stock, a charge of almost $948 million.[4] Accordingly, Participants purchased shares of Wells Fargo Stock at an average price of $28.33 per share in 2011.

40. According to the 2012 11-K, in 2012 the Plan increased its share of the Company’s outstanding common stock to 3.54%. In 2012, the Plan released 29,717,002 shares of Company Stock, a charge of more than $952 million. Accordingly, Participants purchased shares of Wells Fargo Stock at an average price of $32.04 per share in 2012.

41. According to the Form 11-K filed by the Company for the year ended December 31, 2013 (the “2013 11-K”), in 2013 the Plan released 27,727,500 shares of Company Stock, a charge of more than $882 million. Accordingly, Participants purchased shares of Wells Fargo Stock at an average price of $31.81 per share in 2013.

[4] Shares are released from an unallocated reserve in the ESOP when “ESOP loans are repaid and any preferred leverage shares are converted into Company common stock for allocation to participants’ accounts.” This essentially is the method by which the Plan acquires Wells Fargo Stock for Participants.

42. According to the 2014 11-K, in 2014, the Plan released 21,362,787 shares of Company Stock, a charge of more than $991 million. Accordingly, Participants purchased shares of Wells Fargo Stock at an average price of $46.40 per share in 2014.

43. By the end of 2015, as disclosed in the 2015 11-K, the Plan's share of the Company's outstanding common stock had increased to 3.58%. In 2015, the Plan released 14,546,650 shares of Company Stock, a charge of more than $657 million. Accordingly, Participants purchased shares of Wells Fargo Stock at an average price of $45.20 per share in 2015.

B. Wells Fargo Stock Was Artificially Inflated During the Class Period

(1) Cross-Selling Leads to Fraudulent Conduct

44. As recounted in the Consent Order, during the Class Period, Wells Fargo "sought to distinguish itself in the marketplace as a leader in 'cross-selling' banking products and services to its existing customers." To that end, Wells Fargo "set sales goals and implemented sales incentives, including an incentive-compensation program, in part to increase the number of banking products and services that its employees sold to its customers."

45. Wells Fargo's emphasis on cross-selling products was known to the market. The Wall Street Journal has traced the history of Wells Fargo's problematic sales activities back to the late 1980s.[5] At that time, the Company's "[f]ormer CEO Richard Kovacevich br[ought] the 'cross-selling' concept to legacy Wells Fargo bank Norwest Corp."[6] By 1999, the Company touted that "its retail customers on average hold three accounts . . . ." But Wells Fargo "hope[d] to increase that number to eight," resulting in a program "known internally as the 'Gr-eight'

[5] Emily Glazer, *From 'Gr-eight' to 'Gaming,' a Short History of Wells Fargo and Cross-Selling*, The Wall Street Journal, Sept. 16, 2016 (available at: http://blogs.wsj.com/moneybeat/2016/09/16/from-gr-eight-to-gaming-a-short-history-of-wells-fargo-and-cross-selling/).

[6] Defendant Stumpf began his career with Norwest Bank in 1982.

initiative. The goal follows the merger of Norwest and Wells Fargo a year earlier to take advantage of the bigger customer base."

46. In 2009, *Fortune* highlighted Wells Fargo's cross-selling in a feature story about the Company.[7] Specifically, the author wrote, "Wells relentlessly cross-sells everything, including credit cards and mortgages (to consumers) and treasury-management services and insurance (to businesses). Wells persuades each retail customer to buy an average of almost six products, roughly twice the level of a decade ago." The Company emphasized marketing to consumers and mid-size business customers because they are more profitable than large businesses.

47. The Wall Street Journal article further explains that by the mid-2000s, "[a]ggressive sales practices, known internally as 'gaming,' beg[a]n to pick up with one-off instances in pockets across the country." By 2009-2010, the Company's "Jump into January" sales program—"which require[d] bankers to meet aggressive sales goals during an otherwise sleepy month"—aroused suspicion relating to improper sales practices.

48. As stated in the Consent Order, throughout the Class Period, Wells Fargo engaged in the following improper sales practices: "(1) opened unauthorized deposit accounts for existing customers and transferred funds to those accounts from their owners' other accounts, all without their customers' knowledge or consent; (2) submitted applications for credit cards in consumers' names using consumers' information without their knowledge or consent; (3) enrolled consumers in online-banking services that they did not request; and (4) ordered and activated debit cards using consumers' information without their knowledge or consent." Utilizing these tactics, Wells Fargo "employees opened hundreds of thousands of unauthorized

[7] Adam Lashinsky, *Riders on the storm*, Fortune, Apr. 20, 2009 (available at: http://archive.fortune.com/2009/04/19/news/companies/lashinsky_wells.fortune/index.htm).

deposit accounts and applied for tens of thousands of credit cards for consumers without consumers' knowledge or consent."

49. During the Class Period, "[t]housands of [Wells Fargo] employees engaged in Improper Sales Practices to satisfy sales goals and earn financial rewards under [the Company's] incentive compensation program." Under normal business circumstances, *i.e.*, without engaging in the misconduct described herein, Wells Fargo employees would have been unable to achieve their sales goals for incentive compensation and could have faced termination.

50. One form of fraudulent conduct that Wells Fargo employees engaged in was "simulated funding." To achieve incentive bonuses, employees were required to open new accounts that would be funded shortly thereafter. To meet the incentive requirements, Wells Fargo "employees opened deposit accounts without consumers' knowledge or consent and then transferred funds from consumers' authorized accounts to temporarily fund the unauthorized accounts in a manner sufficient for the employee to obtain credit under the incentive-compensation program." According to the Company's analysis, as discussed below, between May 2011 and July 2015, Wells Fargo employees opened 1,534,280 deposit accounts using this tactic. "[R]oughly 85,000 of those accounts incurred about $2 million in fees[.]"

51. In addition, Wells Fargo employees applied for and obtained credit cards in customers' names without their consent. Between May 2011 and July 2015, Wells Fargo "employees submitted applications for 565,443 credit-card accounts that may not have been authorized . . . . [R]oughly 14,000 of those accounts incurred $403,145 in fees[.]"

52. Wells Fargo "employees also used email addresses not belonging to consumers to enroll consumers in online-banking services without their knowledge or consent."

53. Further, Wells Fargo "employees requested debit cards and created PINs to activate them without consumers' knowledge or consent."

54. Wells Fargo now believes its improper practices may have extended back to 2009.

(2) Wells Fargo Management Was Aware of the Fraudulent Activity

55. Wells Fargo later took actions that brought to light, or should have brought to light, the improper practices that resulted from the Company's aggressive sales promotions. For example, according to The Wall Street Journal, in 2011-2012, a Wells Fargo employee-satisfaction survey produced "responses that employees were not comfortable with what managers asked them to do." Also in 2012, Wells Fargo initiated an internal investigation, creating "a task force within the community banking unit's risk division to monitor activities and tendencies of sales people."

56. Despite the Company's ostensibly proactive stance against fraudulent conduct, Wells Fargo retaliated against employees who spoke out against such behavior. According to a CNN Money article entitled "I called the Wells Fargo ethics line and was fired," published on September 21, 2016, employees from locations across the country were fired after they spoke out against misconduct.[8] For example, an employee in New Jersey wrote an email in 2011 directly to Defendant Stumpf in which "she described improper sales tactics she felt were 'wrong.'" Following her communication with Stumpf, this woman was fired. In September 2013, another employee emailed a human resources representative and copied his regional manager concerning improper sales tactics. In the email, this employee stated, "I have been asked on several occasions to do things that I know are not ethical and would be grounds for discharge," including

[8] Available at: http://money.cnn.com/2016/09/21/investing/wells-fargo-fired-workers-retaliation-fake-accounts/index.html.

being told by “a branch manager on ‘many occasions’ . . . to send out a debit card, ‘pin it,’ and enroll customers in online banking – ‘all without the customers (sic) request or knowledge.’” This employee was also subsequently fired.

57. As early as Spring 2013, Wells Fargo began terminating employees as a result of the improper sales tactics. Specifically, the Company terminated approximately 200 employees generally located in Southern California and began “revamping its compliance program and incentive compensation.” Between 2013 and 2014, at the behest of the OCC, Wells Fargo retained the law firm Skadden, Arps, Slate, Meagher & Flom LLP and Accenture PLC to conduct an internal investigation into the improper sales methods being employed by Wells Fargo bankers.

58. Beginning in 2014, in an effort to expose bankers’ misconduct, the Company restructured its sales goals and incentive compensation. Wells Fargo call centers lowered sales quotas and adjusted an application used by Company employees to pitch customers in early 2015.

59. In May 2015, however, the Los Angeles City Attorney’s office filed a suit against Wells Fargo alleging the Company employed policies that encouraged Wells Fargo employees to commit fraud, such as charging existing customers for products they have not agreed to and opening accounts for nonexistent customers. Following the filing of the lawsuit, Wells Fargo retained PricewaterhouseCoopers LLP to analyze the amount that would be necessary to repay defrauded customers and to identify patterns of fraudulent activity.

60. Ultimately, approximately 5,300 employees were fired over the course of several years for misconduct relating to selling practices.

(3) Wells Fargo Stock Was Inflated Due to the Company's Cross-Selling Misrepresentations

61. Nonetheless, the Company continually touted its cross-selling strategy as a pillar of Wells Fargo's business throughout the Class Period.

62. For example, in Wells Fargo's quarterly report on Form 10-Q filed on November 5, 2010, just before the beginning of the Class Period, the Company stated, "***Our cross-sell strategy***, diversified business model and the breadth of our geographic reach facilitate growth in both strong and weak economic cycles, as ***we can grow by expanding the number of products our current customers have with us***, gain new customers in our extended markets, and increase market share in many businesses." (Emphasis added.) To that end, the Company explained that its "cross-sell at legacy Wells Fargo set a record in third quarter 2010 with 6.08 products for retail banking households. Our goal is eight products per customer, which is approximately half of our estimate of potential demand. One of every four of our legacy Wells Fargo retail banking households has eight or more products and our average middle-market commercial banking customer has almost eight products." Concerning Wells Fargo's recently acquired Wachovia customers, the Company stated, "Wachovia retail bank household cross-sell continued to grow to an average of 4.91 products. We believe there is potentially significant opportunity for growth from an increase in cross-sell to Wachovia retail bank households." Accordingly, Wells Fargo not only touted its success and opportunity in cross-selling to its traditional customers, but pointed to the growth opportunities in applying the same strategy to former Wachovia customers.

63. Wells Fargo made similar representations in its quarterly and annual reports throughout the Class Period. Wells Fargo failed to correct these misrepresentations or otherwise disclose the extent of the improper sales tactics during the Class Period.

64. Further, in discussing the incentive compensation granted to Carrie Tolstedt ("Tolstedt"), the head of the Company's community banking division, the Company's Schedule 14A Proxy Statement filed with the SEC on March 21, 2011 stated "[i]n making the 2010 annual incentive compensation award determinations for Messrs. Hoyt and Oman and Ms. Tolstedt, the HRC considered, among other things, . . . success in furthering the Company's objectives of cross-selling products from other business lines to customers . . . ." Tolstedt's incentive compensation throughout the Class Period was based, in large part, on the Company's cross-selling strategy. In turn, similar information was disseminated to the market throughout the Class Period. Ultimately, Tolstedt's incentive awards built on Wells Fargo's fraudulent conduct were rescinded.

65. In addition, in the Company's annual reports on Form 10-K filed with the SEC, Wells Fargo identified the privacy provisions of the Fair and Accurate Credit Transactions Act, which affect how customer information can be shared even by affiliated companies, among laws and regulations governing Wells Fargo's business—namely, its cross-selling strategy.

66. As a result of Wells Fargo's false and misleading statements and omissions during the Class Period, Wells Fargo's common stock traded at artificially inflated prices. On January 3, 2011, the first trading day of the Class Period, Wells Fargo stock closed at $31.58 per share on the New York Stock Exchange. The Company's stock would reach $58.52 per share on July 22, 2015, an 85.3% increase.

67. However, when the nature of Wells Fargo's business, including its fraudulent sales practices described above, were revealed to the market, the market price for Wells Fargo common stock fell from its Class Period-high closing price of $58.52 per share on July 22, 2015,

causing significant loss of Plan assets, including the wasting of assets by purchasing Wells Fargo Stock during the Class Period.

(4) The Consent Order is Announced

68. On September 8, 2016, the CFPB announced that the Consent Order had been entered. To make restitution to the Wells Fargo customers whose information had been used fraudulently, the Company was required to set aside at least $5 million to repay affected consumers. The Company was also required to pay a civil monetary penalty to the CFPB of $100 million. In addition, Wells Fargo was required to pay $85 million to the OCC.

69. In the week following the announcement of the Consent Order, Wells Fargo stock dropped almost 9% as the market absorbed the news and the extent of the reputational damage sustained by Wells Fargo.

70. Between September 8, 2016 and October 7, 2016, the closing price of Company stock on the New York Stock Exchange dropped from $49.90 per share to $45.33 per share, a loss of 9.2%.

71. Between December 31, 2015, and October 7, 2016, the closing price of Company stock declined from $54.36 to $45.33, a loss of 16.6%. According to the 2015 11-K, as of December 31, 2016, the Plan held $9,635,225,035 worth of Wells Fargo stock. That stock (without regard to purchases and sales), would have lost more than $1.5 billion in value during that time period.

C. Post–Class Period Developments

72. Following the announcement of the consent order, Defendant Stumpf, the Company's CEO, was called to testify before two Congressional panels.

73. On September 20, 2016, Defendant Stumpf testified before the Senate Banking Committee. During the hearing, Stumpf was criticized by Senator Elizabeth Warren because only

low-level employees had been terminated, while senior management remained in place and (at that time) had been allowed to retain incentive compensation received as a result of fraudulent practices. Stumpf also admitted that the improper practices discussed above may have started in 2009, two years before the beginning of the relevant period addressed in the Consent Order. Stumpf also asserted that one of the 5,300 employees who were terminated as a result of the fraudulent practices was an area president. Stumpf also admitted during the Senate hearing that he had discussed the fake accounts with Tolstedt in 2013.[9]

74. Then, on September 29, 2016, Stumpf appeared before the House Financial Services Committee. The hearing was a bipartisan takedown of Wells Fargo's fraudulent practices, and Stumpf in particular. During the hearing, Rep. Maxine Waters called Wells Fargo's practices "some of the most egregious fraud we've seen since the foreclosure crisis."[10]

75. Prosecutors in New York, North Carolina, and California are inquiring into the improper practices employed by Wells Fargo employees.

76. In the wake of the public outcry and Congressional hearings, the Board took certain actions relating to executive compensation that were announced in a press release. Specifically, the Board announced that Defendant Stumpf would "forfeit all of his outstanding unvested equity awards, valued at approximately $41 million based on [that day's] closing share price, and that he will forgo his salary during the pendency of the investigation" being conducted by an independent committee of the Board, and would not receive a bonus in 2016. In addition, Tolstedt would "forfeit all of her outstanding unvested equity awards, valued at approximately

[9] Michael Corkery, *Elizabeth Warren Accuses Wells Fargo Chief of 'Gutless Leadership,'* The New York Times, Sept. 20, 2016 (available at: http://www.nytimes.com/2016/09/21/business/dealbook/wells-fargo-ceo-john-stumpf-senate-testimony.html).

[10] Jim Puzzanghera, *Wells Fargo updates: A parade of lawmakers rip into CEO John Stumpf*, Los Angeles Times, Sept. 29, 2016 (available at: http://www.latimes.com/business/la-wells-fargo-live-updates-stumpf-ceo-today-s-hearing-is-just-the-beginning-1475159696-htmlstory.html).

$19 million based on [that day's] closing share price. Ms. Tolstedt will not receive a bonus for 2016 and will not be paid severance or receive any retirement enhancements in connection with her separation from the Company." In addition, Tolstedt agreed not to exercise any outstanding options during the pendency of the Board investigation.

77. Then, on October 12, 2016, the Company issued a press release disclosing that Defendant "Stumpf . . . informed the Company's Board of Directors that he is retiring from the Company and the Board, effective immediately." The press release quoted Stephen Sanger, the Board's Lead Director, who said that Defendant Stumpf resigned because "he believes new leadership at this time is appropriate to guide Wells Fargo through its current challenges and take the Company forward."

D. Defendants Breached Their Fiduciary Duties

78. By the beginning of the Class Period, Defendants, most of whom were insiders of the Company, knew or should have known that Wells Fargo's cross-selling programs engendered illicit sales tactics.

79. Wells Fargo's cross-selling programs were illegally producing growth within the Company's existing customer base. Nonetheless, Defendants continued to allow the Plan to hold and invest tens of millions of dollars in Wells Fargo's artificially inflated securities through the Plan.

80. Defendant Hardison is the Company's Senior Executive Vice President, Chief Administrative Officer, and Human Resources Director. Throughout the Class Period, approximately 5,300 Wells Fargo employees were terminated for engaging in improper sales tactics related to the Company's cross-selling strategy; at the same time, Defendant Hardison was the Company's Human Resources director, with responsibility for the Company's human

resource service centers. Defendant Hardison's team also oversees "the management of compensation and benefits[.]" Accordingly, one individual – Defendant Hardison – ultimately oversaw both the Plan and the termination of thousands of employees as a direct result of fraud surrounding the Company's primary business strategy.

81. Recognizing that the price of Wells Fargo Stock had become artificially inflated by the misleading information relating to the success of Wells Fargo's cross-selling programs and the Company's legal and regulatory compliance, Defendants should not have merely stayed the course, continuing to purchase Wells Fargo Stock on behalf of the Plan and the Class for more than its true value. Indeed, Defendants plausibly could have taken any of several alternative actions to comply with their duties as fiduciaries of the Plan. As set forth more fully below, none of these steps would have (a) violated securities laws or any other laws, or (b) been more likely to harm the Plan's Wells Fargo Stock holdings than to help.

82. Defendants could have (and should have) directed that all Company and Plan Participant contributions to the Company Stock Funds be held in cash or some other short-term investment rather than be used to purchase Wells Fargo Stock. A refusal to purchase Company Stock is not a "transaction" within the meaning of insider trading prohibitions and would not have required any independent disclosures that could have had a materially adverse effect on the price of Wells Fargo Stock. A prudent fiduciary in similar circumstances would not have viewed this decision as more likely to harm Participants than help them.

83. Defendants also should have provided that Participant contributions meant to purchase Company Stock be diverted into prudent investment options based upon the Participants' instructions or, if there were no such instructions, the Plan's default investment option.

84. Neither of these actions would have implicated, let alone been in violation of, federal securities laws or any other laws. Nor would the Plan's ceasing to purchase additional Company Stock likely have sent a negative signal to the market that would be more likely to harm the Participants than help them.

85. Alternatively, Defendants could have disclosed (or caused others to disclose) the issues plaguing Wells Fargo so that Wells Fargo Stock would trade at a fair value. This would have allowed the continued expansion of employee ownership of Company Stock—but at fair value—while also allowing Defendants to comply with their fiduciary duties.

86. Given the relatively small number of shares of Wells Fargo Stock purchased by the Plan when compared to the market float of Wells Fargo Stock, it is extremely unlikely that this decrease in the number of shares that would have been purchased, considered alone, would have had an appreciable impact on the price of Wells Fargo Stock.

87. Further, Defendants also could have:

- sought guidance from the DOL or SEC as to what they should have done;
- resigned as Plan fiduciaries to the extent they could not act loyally and prudently; and/or
- retained outside experts to serve as advisors specifically for the Funds.

CLAIMS FOR RELIEF UNDER ERISA

88. ERISA requires that every plan name one or more fiduciaries who have "authority to control and manage the operation and administration of the plan." ERISA § 1102(a)(1). Additionally, under ERISA, any person or entity, other than the named fiduciary that in fact performs fiduciary functions for the Plan is also considered a fiduciary of the Plan. A person or entity is considered a plan fiduciary to the extent:

> (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or

> control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

89. At all relevant times, Defendants are/were and acted as fiduciaries within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

90. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. § 1109.

91. ERISA § 409(a), 29 U.S.C. § 1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part, that:

> any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

92. ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B), provide, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

93. These fiduciary duties under ERISA § 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose, and prudence and are the highest known to the law and entail, among other things:

(a) the duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan;

(b) the duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor; and

(c) the duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

94. Accordingly, if the fiduciaries of a plan know, or if an adequate investigation would reveal, that an investment option is no longer a prudent investment for that plan, then the fiduciaries must disregard any plan direction to maintain investments in such stock and protect the plan by investing the plan assets in other, suitable, prudent investments.

95. ERISA § 405(a), 29 U.S.C. § 1105 (a), "Liability for breach by co-fiduciary," provides, in pertinent part, that:

> [I]n addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (A) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (B) if, by his failure to comply with section 404(a)(1), 29 U.S.C. § 1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (C) if he has knowledge of a breach by such other fiduciary, unless he

makes reasonable efforts under the circumstances to remedy the breach.

96. Plaintiff therefore brings this action under the authority of ERISA § 502(a) for Plan-wide relief under ERISA § 409(a) to recover losses sustained by the Plan arising out of the breaches of fiduciary duties by Defendants for violations under ERISA § 404(a)(1) and ERISA § 405(a).

COUNT I

Failure To Prudently Manage The Plan's Assets in Violation Of ERISA §§ 404(A)(1)(B) And 405

97. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

98. This Count alleges fiduciary breaches against the Company Defendants, the Committee Defendants, and GreatBanc (collectively, the "Prudence Defendants") for continuing to allow the investment of the Plan's assets in Wells Fargo Stock throughout the Class Period despite the fact that they knew or should have known that such investment was imprudent as a retirement vehicle because Wells Fargo Stock was artificially inflated during the Class Period.

99. At all relevant times, as alleged above, the Prudence Defendants were fiduciaries of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they exercised discretionary authority or control over the administration and/or management of the Plan and/or disposition of the Plan's assets.

100. Under ERISA, fiduciaries who exercise discretionary authority or control over management of a plan or disposition of a plan's assets are responsible for ensuring that all investment options made available to participants under a plan are prudent. Furthermore, such fiduciaries are responsible for ensuring that assets within the plan are prudently invested. The Prudence Defendants were responsible for ensuring that all investments in Company Stock in the

Plan were prudent. The Prudence Defendants are liable for losses incurred as a result of such investments being imprudent.

101. Upon information and belief, Defendants failed to engage in a reasoned decision-making process regarding the prudence of Wells Fargo Stock. An adequate investigation by Defendants would have revealed to a reasonable fiduciary that investment by the Plan in Wells Fargo Stock was clearly imprudent while Wells Fargo Stock was artificially inflated. A prudent fiduciary acting under similar circumstances would have acted to protect Participants against unnecessary losses, and would have made different investment decisions.

102. The Prudence Defendants breached their duties to prudently manage the Plan's assets. During the Class Period, the Prudence Defendants knew or should have known that, as described herein, Company Stock was not a suitable and appropriate investment for the Plan. Yet, during the Class Period, despite their knowledge of the imprudence of the investment, the Prudence Defendants failed to take any meaningful steps to protect Plan's Participants.

103. The Prudence Defendants also breached their duty of prudence by failing to provide complete and accurate information regarding Wells Fargo's true financial condition and, generally, by conveying inaccurate information regarding the Company's cross-selling programs. During the Class Period, upon information and belief, Defendants fostered a positive attitude toward Company Stock, and/or allowed Participants to follow their natural bias towards investment in the equities of their employer by not disclosing negative material information concerning the imprudence of investment in Company Stock. As such, Participants could not appreciate the true risks presented by investments in Company Stock and therefore could not make informed decisions regarding their investments in the Funds.

104. As a result of Defendants' knowledge of and, at times, implication in, creating and maintaining public misconceptions concerning Wells Fargo's cross-selling programs, any generalized warnings of market and diversification risks that Defendants made to Participants regarding the Plan's investment in the Funds did not effectively inform the Participants of the past, immediate, and future dangers of investing in Company Stock.

105. The Prudence Defendants also breached their co-fiduciary obligations by, among their other failures, knowingly participating in each other's failure to protect the Plan from inevitable losses. The Prudence Defendants had or should have had knowledge of such breaches by other fiduciaries of the Plan, yet made no effort to remedy them.

106. As a direct and proximate result of the breaches of fiduciary duties during the Class Period alleged herein, the Plan and, indirectly, the Plan's Participants lost a significant portion of their retirement investments. Had the Prudence Defendants taken appropriate steps to comply with their fiduciary obligations during the Class Period, Participants could have liquidated some or all of their holdings in Company Stock, and refrained from spending hundreds of millions of dollars on artificially inflated Wells Fargo Stock, and thereby eliminated, or at least reduced, losses to the Plan and themselves.

107. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count.

COUNT II

Breach Of Duty of Loyalty in Violation Of ERISA §§ 404(A)(1)(A) And 405

108. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

109. This Count alleges fiduciary breaches against the Company Defendants, Monitoring Defendants, Committee Defendants, and GreatBanc (collectively, the "Loyalty Defendants") for continuing to allow the investment of the Plan's assets in Wells Fargo Stock throughout the Class Period despite the fact that they knew or should have known that such investment was imprudent as a retirement vehicle because Wells Fargo Stock was artificially inflated during the Class Period.

110. At all relevant times, as alleged above, the Loyalty Defendants were fiduciaries of the Plan within meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Consequently, they were bound by the duties of loyalty, exclusive purpose, and prudence.

111. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), imposes on plan fiduciaries a duty of loyalty; that is, a duty to discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries.

112. The duty of loyalty includes the duty to speak truthfully to the Plan and its participants when communicating with them. A fiduciary's duty of loyalty to plan participants under ERISA includes an obligation not to materially mislead, or knowingly allow others to materially mislead, plan participants and beneficiaries. As the Supreme Court "succinctly explained" in *Varity Corp. v. Howe*, 516 U.S. 489, 506 (1996), "[l]ying is inconsistent with the duty of loyalty owed by all fiduciaries." *Maez v. Mountain States Tel. and Tel. Inc.*, 54 F.3d 1488, 1499 (10th Cir. 1995) (citing *Varity Corp.*, 516 U.S. at 506).

113. During the Class Period, the Loyalty Defendants breached their duty to avoid conflicts of interest and to promptly resolve them by, *inter alia*, placing their own and/or the

Company's interests above the interests of the participants with respect to the Plan's investment in the Company's securities.

114. During the Class Period, upon information and belief, certain Defendants, including the Loyalty Defendants, made direct and indirect communications with the Plan's participants in which they omitted or misrepresented information regarding or materially related to investments in Company Stock. These communications included, but were not limited to, conference calls with analysts, SEC filings, annual reports, press releases, and Plan documents (including Summary Plan Descriptions). Defendants, including the Loyalty Defendants, also acted as fiduciaries to the extent of this communication activity.

115. Further, Defendants, as the Plan's fiduciaries, knew or should have known certain basic facts about the characteristics and behavior of the Plan's participants, well-recognized in the 401(k) literature and the trade press concerning employees' natural bias toward investing in company stock, including that:

(a) Out of loyalty, employees tend to invest in company stock;

(b) Employees tend to over-extrapolate from recent returns, expecting high returns to continue or increase going forward;

(c) Employees tend not to change their investment option allocations in the plan once made; and

(d) Lower-income employees tend to invest more heavily in company stock than more affluent workers, though they are at greater risk.

116. Knowing of these natural biases toward investment of Company Stock, Defendants should have been on high alert to protect the interests of the Plan participants.

Defendants, however, disregarded their duties of loyalty to the benefit of the Company as demonstrated by the Plan's massive holding and purchase of Company Stock with of Plan assets.

117. Further, to the extent that Wells Fargo satisfied its Plan matching obligations using artificially inflated employer securities which it already held, Defendants, who knew or should have known Wells Fargo Stock was artificially inflated, participated knowingly and significantly in deceiving a Participants in order to save the employer money at the Participants' expense, which violates ERISA's duty of loyalty.

118. The Loyalty Defendants also breached their co-fiduciary obligations by, among their other failures, knowingly participating in each other's failure to protect the Plan from inevitable losses. The Loyalty Defendants had or should have had knowledge of such breaches by other fiduciaries of the Plan, yet made no effort to remedy them.

119. As a consequence of the Loyalty Defendants' breaches of fiduciary duty during the Class Period by putting the interests of themselves and the Company ahead of the Plan and its participants, the Plan suffered tens of millions of dollars in losses, as its holdings of Company Stock were devastated. If the Loyalty Defendants had discharged their fiduciary duties to loyally manage and invest the Plan's assets, the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan and, indirectly, Plaintiff and the other Participants, lost a significant portion of their retirement investments.

120. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count.

COUNT III

Failure To Adequately Monitor Other Fiduciaries And Provide Them With Accurate Information In Violation Of ERISA § 404

121. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

122. This Count alleges fiduciary breaches against the Company Defendants and Monitoring Defendants (collectively, the "Monitoring Defendants").

123. At all relevant times, as alleged above, the Monitoring Defendants were fiduciaries of the Plan, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

124. As alleged above, the scope of the fiduciary responsibilities of the Monitoring Defendants included the responsibility to appoint, remove, and, thus, monitor the performance of other Plan fiduciaries, namely the Prudence Defendants.

125. Under ERISA, a monitoring fiduciary must ensure that monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of a plan's assets, and must take prompt and effective action to protect the plan and participants when they are not.

126. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their

appointees were faithfully and effectively performing their obligations to the plan's participants or for deciding whether to retain or remove them.

127. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan's assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

128. During the Class Period, the Monitoring Defendants breached their fiduciary monitoring duties by, among other things:

(a) failing, at least with respect to the Plan's investment in Company Stock, to properly monitor their appointee(s), to properly evaluate their performance, or to have any proper system in place for doing so, and standing idly by as the Plan suffered enormous losses as a result of the appointees' imprudent actions and inaction with respect to Company Stock;

(b) failing to ensure that the monitored fiduciaries appreciated the true extent of the Company's precarious financial situation and the likely impact that financial failure would have on the value of the Plan's investment in Company Stock;

(c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make sufficiently informed fiduciary decisions with respect to the Plan's assets and, in particular, the Plan's investment in Company Stock; and

(d) failing to remove appointees whose performance was inadequate in that they continued to permit the Plan to make and maintain investments in the Company

Stock despite the practices that rendered it an imprudent investment during the Class Period.

129. As a consequence of the Monitoring Defendants' breaches of fiduciary duty, the Plan suffered tremendous losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties as described above, the losses suffered by the Plan would have been minimized or avoided.

130. The Monitoring Defendants are liable as co-fiduciaries because they knowingly participated in each other's fiduciary breaches as well as those by the monitored fiduciaries, they enabled the breaches by those Defendants, and they failed to make any effort to remedy these breaches despite having knowledge of them.

131. Therefore, as a direct and proximate result of the breaches of fiduciary duty by the Monitoring Defendants during the Class Period alleged herein, the Plan and, indirectly, the Plan's Participants and beneficiaries, lost tens of millions of dollars of retirement savings.

132. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

CAUSATION

133. The negative impact on the Plan's assets invested in artificially inflated Wells Fargo Stock during the Class Period could have and would have been avoided, in whole or in part, by Defendants complying with their ERISA-mandated fiduciary duties.

134. Defendants – who knew or should have known that Wells Fargo Stock was an imprudent retirement investment – chose, as fiduciaries, to continue allowing the Plan to acquire further Wells Fargo Stock, while taking no action to protect their wards as Wells Fargo's

condition worsened and the Participants' retirement savings lost tens of millions of dollars. Prudent fiduciaries would have acted otherwise and taken appropriate actions to protect the Plan and the Participants.

135. To the extent Defendants were required to take action based on non-publicly disclosed information that they were privy to, at least the following alternative options – which are pled as alternative statements under FED. R. CIV. P. 8(d)(2) to the extent they are inconsistent – were available to Defendants and (a) could have been done without violating securities laws or any other laws, (b) should have been done to fulfill Defendants' fiduciary obligations under ERISA, and (c) would not have been more likely to harm the Plan than to help it.

136. As discussed above, Defendants had numerous options to protect the Plan and its Participants but failed repeatedly to do so.

137. As a result of Defendants' breaches of duty, the Plan suffered heavy losses during the Class Period because substantial assets of the Plan were imprudently invested, or allowed to be invested, by Defendants in Company Stock, as reflected in the diminished account balances of the Plan Participants.

REMEDIES FOR BREACHES OF FIDUCIARY DUTY

138. As noted above, as a consequence of Defendants' breaches, the Plan suffered significant losses.

139. ERISA § 502(a), 29 U.S.C. § 1132(a) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan…." Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate…."

140. Plaintiff, the Plan, and the Class are therefore entitled to relief from Defendants in the form of: (1) a monetary payment to the Plan to make good to the Plan the losses to the Plan resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (2) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a), 29 U.S.C. §§ 1109(a) and 1132(a); (3) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (4) taxable costs; (5) interest on these amounts, as provided by law; and (6) such other legal or equitable relief as may be just and proper.

141. Each Defendant is jointly and severally liable for the acts of the other Defendants as a co-fiduciary.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as Class representative;

B. Determining that Defendants breached ERISA fiduciary duties to Plan Participants during the Class Period;

C. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

D. Imposing a Constructive Trust on any amount by which any Defendant was unjustly enriched at the expense of the Plan as a result of breaches of fiduciary duties;

E. Awarding actual damages in the amount of losses the Plan suffered, to be allocated to the Plan Participants' individual accounts in proportion to the accounts' losses;

F. Awarding Plaintiff and the other members of the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert fees and other costs pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine;

G. Awarding equitable restitution and other appropriate equitable monetary relief against Defendants; and

H. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY DEMAND

Plaintiff hereby respectfully demands a trial by jury for all claims so triable.

Dated: October 14, 2016

ZIMMERMAN REED LLP

By: *s/Carolyn G. Anderson*
Carolyn G. Anderson, No. 275712
June P. Hoidal, No. 033330X
Devon Holstad, No. 0398107
1100 IDS Center, 80 South 8th Street
Minneapolis, Minnesota 55402
Tel: (612) 341-0400
Fax: (612) 341-0844
carolyn.anderson@zimmreed.com
june.hoidal@zimmreed.com
devon.holstad@zimmreed.com

LEVI KORSINSKY LLP
Lori G. Feldman (*Pro Hac Vice to be requested*)
Michael B. Ershowsky (*Pro Hac Vice to be requested*)
30 Broad Street, 24th Floor
New York, New York 10004
Tel: (212) 363-7500
Fax: (212) 363-7171
Email: lfeldman@zlk.com