

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

**Robin E. Figas, and all others similarly
situated,**

Civil File No. 08-cv-4546 (PAM/FLN)

Plaintiffs,

v.

**Wells Fargo & Company, Employee
Benefit Review Committee, Howard I.
Atkins, Patricia Callahan, Ellen Haude,
Mike Heid, Clyde Ostler, Tim Sloan, John
G. Stumpf, Peter J. Wissinger, and John
Does 1-20,**

Defendants.

**FINDINGS AND ORDER CONDITIONALLY MODIFYING CLASS CERTIFICATION
ORDER, PRELIMINARILY APPROVING PROPOSED SETTLEMENT, APPROVING
FORM AND DISSEMINATION OF CLASS NOTICE, AND SETTING DATE FOR
HEARING ON FINAL APPROVAL OF SETTLEMENT**

Plaintiffs and Defendants have reached a *Settlement* of this class action litigation, which involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* (“*ERISA*”), with respect to the Wells Fargo & Company 401(k) Plan (the “*Plan*”).¹ Plaintiffs have moved the Court pursuant to Fed. R. Civ. P. 23(e) to preliminarily approve the terms of the Class Action Settlement Agreement dated March 18, 2011 (“*Settlement Agreement*”), including the procedures for *Class Notice* and the *Plan of Allocation*. Pursuant to the terms of the *Settlement Agreement*, Plaintiffs have also moved the Court to modify its Order granting class certification and to certify conditionally, for purposes of the *Settlement*, a non-opt

¹ Capitalized and italicized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the *Settlement Agreement*.

out *Settlement Class* pursuant to Fed. R. Civ. P. 23(b)(1).

Upon consideration of the *Settlement Agreement* and motion papers relating to the request for preliminary approval of the *Settlement*, and the matter having come before the Court at the March 31, 2011 hearing, the Court hereby GRANTS Plaintiffs' motion and ORDERS as follows:

1. **Conditional Settlement Class.** Solely for the purposes of *Settlement*, the Court modifies the class certified in its May 6, 2010 and September 1, 2010 Orders (together, "Class Certification Order"), to allow for a non-opt out *Settlement Class* certified pursuant to Fed. R. Civ. P. 23(b)(1), to modify the class period, and to include participants who invested in the Wells Fargo Capital Growth Fund.

A. In its Class Certification Order, the Court found that *Named Plaintiff* Robin E. Figas met the numerosity, commonality, typicality, and adequacy requirements imposed by Fed. R. Civ. P. 23(a), and found further that (1) questions of law or fact common to the members of the class predominate over any questions affecting individual members; and (2) a class action is the superior method of adjudicating the controversy, pursuant to Fed. R. Civ. P. 23(b)(3).

B. The Court certified the class under Fed. R. Civ. P. 23(b)(3) as an opt-out class consisting of:

Participants in the Wells Fargo & Company 401(k) Plan (the "Plan") whose Plan accounts had a balance in any one of the following funds from November 2, 2001, to September 30, 2009: Wells Fargo Diversified Small Cap Fund; Wells Fargo Diversified Equity Fund; Wells Fargo Large Company Stock [sic] Fund; Wells Fargo Growth Balanced Fund; Wells Fargo Moderate Balanced Fund; Wells Fargo Aggressive Allocation

Fund (formerly Wells Fargo Strategic Growth Allocation Fund); Wells Fargo Conservative Allocation Fund (formerly Wells Fargo Strategic Income Fund); and Wells Fargo Asset Allocation Collective Trust.

C. Pursuant to the *Settlement Agreement*, and for the purposes of the *Settlement* only, the Court conditionally modifies its Class Certification Order to certify the *Settlement Class* as a non-opt out class pursuant to Fed. R. Civ. P. 23(b)(1) with the *Named Plaintiff* representing the Class. The Court also certifies the *Settlement Class* to include the Wells Fargo Capital Growth Fund and the period of time beginning on November 2, 2001 through (and including) October 8, 2009. The conditional *Settlement Class* will consist of:

Individuals who were participants in the Wells Fargo & Company 401(k) Plan (the “Plan”) whose Plan accounts had a balance in any one of the following funds from November 2, 2001, to October 8, 2009: Wells Fargo Diversified Small Cap Fund; Wells Fargo Diversified Equity Fund; Wells Fargo Large Company Growth Fund; Wells Fargo Growth Balanced Fund; Wells Fargo Moderate Balanced Fund; Wells Fargo Aggressive Allocation Fund (formerly Wells Fargo Strategic Growth Allocation Fund); Wells Fargo Conservative Allocation Fund (formerly Wells Fargo Strategic Income Fund); Wells Asset Allocation Collective Trust; and Wells Capital Growth Fund.

D. Robin E. Figas (the “*Named Plaintiff*”) has been appointed as the *Class* representative, and McTigue & Veis LLP and Bailey & Glasser LLP (“*Lead Counsel*”) have been appointed *Class* counsel, and Sprenger & Lang PLLC have been appointed liaison counsel pursuant to Fed. R. Civ. P. 23(g).

E. As provided in the *Settlement Agreement*, participants who were invested in one of the *Wells Funds* during the *Class Period* will receive notice of this

Settlement and payment according to the *Plan of Allocation*. In addition, participants for whom records are insufficient to determine whether they are members of the *Settlement Class* will receive a claim form and be given an opportunity to submit documents to support membership in the *Settlement Class*.

F. In the event that the *Settlement* does not become *Final*, or is terminated pursuant to the *Settlement Agreement*, the *Settlement Class* will be deemed not to have been modified, and the *Action* will for all purposes with respect to the *Parties* revert to its status as of October 18, 2010, prior to the *Settlement*. In such event the *Parties* will not be deemed to have consented to the modification of the Class Certification Order; the agreements and stipulations in this *Settlement Agreement* concerning class definition or class certification shall not be used as evidence or argument to support a modification of the Class Certification Order; and the *Parties* will retain all rights with respect to class certification.

2. **Preliminary Findings Regarding Proposed Settlement.** The Court preliminarily finds that (i) the proposed *Settlement* resulted from extensive arm's-length negotiations among counsel, including with the assistance and recommendation of an experienced, retired federal judge, (ii) the *Settlement Agreement* was executed only after *Lead Counsel* had conducted extensive pre-settlement motion practice and discovery, (iii) counsel for the *Named Plaintiff* has concluded that the *Settlement Agreement* is fair, reasonable and adequate, and (iv) the *Settlement* evidenced by the *Settlement Agreement* is sufficiently fair, reasonable, and adequate to warrant sending notice of the *Settlement* to the *Settlement Class*.

3. **Fairness Hearing.** A hearing is scheduled for Thursday, July 21, 2011, at 10:00 a.m. (the “*Fairness Hearing*”) to determine, among other things:

- Whether the *Settlement* should be finally approved as fair, reasonable and adequate;

- Whether the litigation should be dismissed with prejudice as to the *Defendants* pursuant to the terms of the *Settlement*;

- Whether the notice, summary notice and notice methodology implemented pursuant to the *Settlement Agreement* (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the *Settlement Class* of the pendency of the litigation, their right to object to the *Settlement*, and their right to appear at the *Fairness Hearing*, (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;

- Whether the *Plan of Allocation* should be approved;

- Whether the motion for attorneys' fees and expenses filed by *Lead Counsel* should be approved; and

- Whether the motion for a case contribution award for the *Named Plaintiff* should be approved.

4. **Class Notice.** The *Parties* have presented to the Court the proposed form of *Class Notice*, appended to Plaintiffs’ Memorandum (Docket No. 257) as Exhibit C-1.

With respect to such form of *Class Notice*, the Court finds that such form fairly and

adequately (a) describes the terms and effect of the *Settlement Agreement* and of the *Settlement*, (b) notifies the *Settlement Class* concerning the proposed *Plan of Allocation*, (c) notifies the *Settlement Class* that *Lead Counsel* will seek a case contribution award from the *Settlement Fund* for the *Named Plaintiff*, and for attorneys' fees not to exceed 30% of the *Settlement Amount* and for reimbursement of expenses, (d) gives notice to the *Settlement Class* of the time and place of the *Fairness Hearing*, and (e) describes how the recipients of the *Class Notice* may object to any of the relief requested. The parties have also presented to the Court a proposed *Claim Documentation Form*, appended to Plaintiffs' Memorandum (Docket No. 257) as Exhibit C-2. The Court finds that such form fairly and adequately (a) notifies certain individuals of their potential membership in the *Settlement Class*, and (b) describes how the recipients of the *Claim Documentation Form* may verify and document membership in the *Settlement Class* and receive payment under the *Settlement*.

The *Parties* have proposed the following manner of communicating the notice to members of the *Settlement Class*, and the Court finds that such proposed manner is the best notice practicable under the circumstances, and directs that *Lead Counsel* shall:

- By no later than 45 days before the *Fairness Hearing*, *Lead Counsel* shall cause the *Class Notice*, with such non-substantive modifications thereto as may be agreed upon by the *Parties*, to be mailed, by first-class mail, postage prepaid, to the last known address of each *Person* within the *Settlement Class* who can be identified by reasonable effort.

- By no later than 45 days before the *Fairness Hearing*, *Lead Counsel* shall

cause the *Claim Documentation Form*, with such non-substantive modifications thereto as may be agreed upon by the *Parties*, to be mailed, along with the *Class Notice*, to the *Participants* who are identified from the *Company's* records pursuant to the *Settlement Agreement*. The *Claim and Documentation Form* shall inform the recipients of the *Claims Deadline* by which they must file a signed, completed *Claim Documentation Form* with accompanying 401(k) Plan account statement(s) in order to be eligible for inclusion in the Settlement Class.

- The *Company* shall cooperate with *Lead Counsel* by using reasonable efforts to provide, to the extent reasonably accessible, in electronic format and form reasonably agreed upon by the *Company* and the *Class Counsel*, the following:

- The names and last known addresses of *Participants* during the *Class Period*, as compiled from reasonably accessible electronic records maintained by the *Recordkeeper* and 1099R forms maintained by the *Company*.

- Reasonably accessible electronic data reflecting the *Settlement Class Individual Account Information*.

- At or before the *Fairness Hearing*, *Lead Counsel* shall file with the *Court* a proof of timely compliance with the foregoing requirements.

5. Objections to Settlement. Any member of the *Settlement Class* who wishes to object to the fairness, reasonableness or adequacy of the *Settlement*, to the *Plan of Allocation*, to any term of the *Settlement Agreement*, to the proposed award of attorneys' fees and expenses, or to any request for a case contribution award for the *Named Plaintiff*, ("Objector"), may file an Objection. An Objector who chooses to file an

Objection must file with the *Court* a statement of objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such Objector wishes to bring to the *Court's* attention or introduce in support of such objection. The Objector must also mail copies of the objection and all supporting law and/or evidence to *Lead Counsel* and to counsel for the *Defendants*. The addresses for filing objections with the Court and service of a copy of the objection on counsel are as follows:

Clerk of the Court
United States District Court
for the District of Minnesota
316 North Robert Street
100 Federal Building
St. Paul, MN 55101
Re: Case No. 06-CV-2237

To *Lead Counsel*:

Gregory Y. Porter
BAILEY & GLASSER LLP
910 17th Street, NW, Suite 800
Washington, DC 20006

J. Brian McTigue
McTIGUE & VEIS LLP
4530 Wisconsin Avenue, NW, Suite 300
Washington, DC 20016

To *Defendants' Counsel*:

Stephen P. Lucke
Thomas J. Swigert
DORSEY & WHITNEY LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

An Objector, or Objector's counsel (if any), must file an objection with the Court and effect service of copies of the objection on counsel at their address listed above by no later than seven (10) business days before the date of the *Fairness Hearing*. Any member of the *Settlement Class* or other *Person* who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

6. **Appearance at *Fairness Hearing*.** Any Objector who files and serves a timely, written objection in accordance with paragraph 5 above may also appear at the *Fairness Hearing* either in person or through counsel retained at the Objector's expense. An Objector, or Objector's counsel (if any), intending to appear at the *Fairness Hearing* must effect service of a notice of intention to appear setting forth, among other things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on *Lead Counsel* and *Defendants'* counsel (at the addresses set out above) and file it with the Court by no later than seven (7) days before the date of the *Fairness Hearing*. Any Objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the *Fairness Hearing*, except for good cause shown.

7. **Service of Papers.** *Defendants'* counsel and *Lead Counsel* shall promptly furnish each other with copies of any and all objections that come into their possession.

8. **Notice Expenses.** The expenses of printing and mailing all notices required hereby shall be paid from the *Settlement Fund* as provided in Section 8.1 of the

Settlement Agreement.

9. **Termination of *Settlement*.** This Order shall become null and void, and shall be without prejudice to the rights of the *Parties*, all of whom shall be restored to their respective positions existing immediately before this *Court* entered this Order, if the *Settlement* is terminated in accordance with the *Settlement Agreement*. In such event, Section 9 of the *Settlement Agreement* shall govern the rights of the *Parties*.

10. **Use of Order.** This Order shall not be construed or used as an admission, concession, or declaration by or against *Defendants* of any fault, wrongdoing, breach, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or against *Named Plaintiff* or the *Settlement Class* that their claims lack merit or that the relief requested in the *Action* is inappropriate, improper or unavailable, or as a waiver by any party of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by *Defendants* to class certification in the event that the *Settlement Agreement* is terminated.

11. **Jurisdiction.** The Court hereby retains jurisdiction for purposes of implementing the *Settlement Agreement*, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the *Settlement Agreement* as may from time to time be appropriate and to resolve any and all disputes arising thereunder.

12. **Continuance of Hearing.** The *Court* reserves the right to continue the *Fairness Hearing* without further written notice.

SO ORDERED this 31st day of March, 2011.

s/ Paul A. Magnuson
HON. PAUL MAGNUSON
United States District Court Judge