

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.

CLASS ACTION SETTLEMENT AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT (“*Settlement Agreement*”) is entered into by and between *Named Plaintiff* (as defined below) in the above-captioned action for herself and on behalf of the *Settlement Class* (as defined below) and the Plan (as defined below), on the one hand, and the *Defendants* (as defined below) on the other, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate.

NOW, THEREFORE, without any admission or concession on the part of the *Named Plaintiff* of any lack of merit of the action whatsoever, and without any admission or concession on the part of *Defendants* as to the merits of the action, it is hereby STIPULATED AND AGREED, by and among the *Parties* (as defined below) to this *Settlement Agreement*, through their respective attorneys, subject to approval of the Court pursuant to the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the *Parties* hereto from the Settlement Agreement, that all *Released Claims* (as defined below) as against the *Released Parties* (as defined below) shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. Definitions.

As used in this *Settlement Agreement*, italicized and capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1. “*Action*” shall mean: Figas v. Wells Fargo & Company, et al., Civil Action No. 06-cv-02237 (JMR/FLN), United States District Court for the District of Minnesota (Hon. Paul A. Magnuson), and any and all cases now or hereafter consolidated therewith.

1.2. “*Agreement Execution Date*” shall mean: the date on which this Settlement Agreement is fully executed, as provided in Section 11.12 below.

1.3. “*Appointed Counsel*” shall mean: Lead Counsel and any other attorney or law firm which has been authorized by the Court to render, and has rendered, services for the *Settlement Class* in the *Action*.

1.4. “*Claims*” shall have the meaning set forth in Section 3.3.

1.5. “*Settlement Administrator*” shall have the meaning set forth in Section 1.37.

1.6. “*Class Notice*” shall mean: the form(s) of notice, appended as Exhibit 1 to the form of Preliminary Approval Order, attached hereto as Exhibit A.

1.7. “*Class Period*” shall mean: November 2, 2001 through and including October 8, 2009.

1.8. “*Class Settlement Amount*” shall have the meaning set forth in Section 7.2 below.

1.9. “*Company*” or “*Wells Fargo*” shall mean: Wells Fargo & Company and each Person that controls, is controlled by, or is under common control with Wells Fargo, including Wells Fargo Bank and its Institutional Trust Services Division, and any of their direct and indirect parents, subsidiaries, affiliates and Representatives, as well as each of their predecessors and Successors-In-Interest.

1.10. “*Complaint*” shall mean: the Third Amended Class Action Complaint, filed on June 7, 2010.

1.11. “*Court*” shall mean: the United States District Court for the District of Minnesota.

1.12. “*Defendants*” shall mean the following persons and/or entities: Wells Fargo & Company, Employee Benefit Review Committee, Howard I. Atkins, Patricia Callahan, Ellen Haude, Mike Heid, Clyde Ostler, Tim Sloan, John G. Stumpf, and Peter J. Wissinger.

1.13. “*ERISA*” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder, and court decisions interpreting ERISA, as amended or regulations promulgated thereunder.

1.14. “*Fairness Hearing*” shall have the meaning set forth in Section 2.2.3.

1.15. “*Final*” shall mean: with respect to any judicial ruling or order, that the period for any appeals, petitions, motions for reconsideration, rehearing, or *certiorari* or any other proceedings for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and final disposition of any such Review Proceeding without a reversal or any material modification, including the exhaustion of proceedings in any remand and/or subsequent appeal after remand.

1.16. “*Final List*” shall have the meaning set forth in Section 8.3.

1.17. “*Financial Institution*” shall have the meaning set forth in Section 7.1.1.

1.18. “*Independent Fiduciary*” shall mean the entity retained for the purposes set forth in Section 2.6, but shall not be Fiduciary Counselors or anyone employed or retained by it.

1.19. “*Judgment*” shall mean the entry of the Court’s order approving this Settlement pursuant to Federal Rule of Civil Procedure 23(e) in substantially the form attached hereto as Exhibit B.

1.20. “*Lead Counsel*” shall mean Bailey & Glasser LLP and McTigue and Veis LLP.

1.21. “*Named Plaintiff*” shall mean: Robin E. Figas.

1.22. “*Net Proceeds*” shall have the meaning set forth in Section 8.2.4.

1.23. “*Parties*” shall mean: the Plaintiffs and the Defendants.

1.24. “*Person*” shall mean: an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.25. “*Plaintiffs*” shall mean: Named Plaintiff and each member of the Settlement Class.

1.26. This number is reserved.

1.27. “*Plan*” shall mean: the Wells Fargo & Company 401(k) Plan, and all predecessor plans or successor plans, individually and collectively, and any trust created under such Plan.

1.28. “*Plan of Allocation*” shall mean: the method of allocating settlement funds to members of the *Class*. The *Plan of Allocation* shall be determined on the basis of participants’ investments in the respective *Wells Funds* during the *Class Period*. It shall also provide for members of the *Settlement Class* who, as of the *Agreement Execution Date*, no longer have an account with a positive balance and are not current employees of the *Company*, as well as the beneficiary of a *Plan* participant who, according to the records of the *Recordkeeper*, received a distribution of an account of a *Settlement Class* member that died while a participant in the *Plan* (“*Former Participants*”), to receive *Settlement* payments from the *Settlement Administrator*.

1.29. “*Preliminary Approval Order*” shall mean the order of the Court in substantially the form attached hereto as Exhibit A, whereby the Court preliminary approves this Settlement.

1.30. “*Preliminary Approval Motion*” shall have the meaning set forth in Section 2.3.1.

1.31. “*Recordkeeper*” shall mean the entity or entities, including the *Company*, its affiliates and divisions serving as the trustee for the *Plan* (“*Plan Trustee*”), and third-parties that maintain electronic records of *Plan* participants and their individual accounts.

1.32. “*Released Claims*” shall have the meaning set forth in Section 3.3.

1.33. “*Released Parties*” shall mean: the *Defendants* (including the *Company*) and any Person who served as a trustee or fiduciary of any kind of the *Plan* (including functional fiduciaries), together with, for each of the foregoing: any predecessors, *Successors-In-Interest*, present and former *Representatives*, direct or indirect parents, subsidiaries and affiliates, and any *Person* that controls, is controlled by, or is under common control with any of the foregoing.

1.34. “*Releases*” shall mean the releases set forth in Section 3.

1.35. “*Representatives*” shall mean: representatives, attorneys, agents, directors, officers, or employees.

1.36. “*Settlement*” shall mean: the settlement to be consummated under this *Settlement Agreement*.

1.37. “*Settlement Administrator*” shall be the entity selected by *Lead Counsel*, subject to approval by *Defense Counsel* as provided in Section 8.1.1.

1.38. “*Settlement Class*” shall mean all current and former participants in the *Plan* whose *Plan* accounts had a balance in any one of the *Wells Funds* at any time during the *Class Period*.

1.39. “*Settlement Fund*” shall have the meaning set forth in Section 7.1.

1.40. “*Successor-In-Interest*” shall mean: a *Person’s* estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

1.41. “*Wells Funds*” shall mean the 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 Fargo Capital Growth Fund.

2. Conditions to Finality of the Settlement.

This *Settlement* shall be contingent upon each of the following conditions in Sections 2.1 through 2.6 being satisfied. The *Parties* agree that if any of these conditions is not satisfied, then this *Settlement Agreement* is terminated and the class certified in this matter 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 *Defendants* will not be deemed to have consented to the modification of the class certification order in Section 2.2, 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 *Defendants* will retain all rights with respect to class certification.

2.1. The Court shall approve the *Settlement Class* as provided for in Section 1.38.

2.2. Modification of Class Certification Solely for Purposes of Settlement.

2.2.1. At the time of this *Settlement*, the *Court* has certified a class pursuant to Fed. R. Civ. P. 23(b)(3), with the Named Plaintiff representing the class and acting on behalf of the *Plan*. The *Plaintiffs* shall move the *Court*, for settlement purposes only, to modify the class certification order to maintain the *Settlement Class* as a non-opt out class under Fed. R. Civ. P. 23(b)(1), with the *Named Plaintiff* representing the *Settlement Class* and acting on behalf of the *Plan*. The *Defendants* shall stipulate to such modification. If the Court does not certify the *Settlement Class* as a non-opt out class

under Fed. R. Civ. P. 23(b)(1), the *Settlement* shall not terminate unless the provisions of Section 9.1 herein have been met.

2.3. Court Approval. The *Settlement* shall have been approved by the *Court*, as provided for in this Section 2.3, and the *Court* shall have entered the *Judgment* substantially in the form attached as **Exhibit B** hereto. The *Parties* shall cooperate in good faith to obtain *Court* approval, including with respect to the following:

2.3.1. Motion for Preliminary Approval of Settlement and of Notice. As soon as reasonably possible upon the full execution of this *Settlement Agreement* by the *Parties*, *Lead Counsel* will file a *Preliminary Approval Motion* with the *Court* seeking entry of the *Preliminary Approval Order* substantially in the form attached hereto as **Exhibit A**, including the exhibits thereto. *Defendants* will not object to such motion.

2.3.2. Issuance of Class Notice. The *Plaintiffs* shall cause notice to be provided on the date and in the manner set by the *Court* in its *Preliminary Approval Order*. *Defendants* shall have no responsibility for transmittal or distribution of the *Class Notice*, except with respect to the cooperation required by Section 4.2.

2.3.3. The Fairness Hearing. On or after the date set by the *Court* for the final hearing *pursuant* to Federal Rule of Civil Procedure 23(e)(2) (the “*Fairness Hearing*”) the *Court* will determine: (i) whether to enter judgment finally approving the *Settlement*; and (ii) what, if any, legal fees, compensation, and expenses should be awarded to *Lead Counsel* and *Appointed Counsel*, and to the *Named Plaintiff* as contemplated by Section 10 of this *Settlement Agreement*.

2.4. Finality of Judgment. The *Judgment* shall have become *Final*.

2.5. Funding of Class Settlement Amount. The *Company* shall have caused the *Class Settlement Amount* to be deposited at the time prescribed by and otherwise as provided for in Section 7.2.

2.6. Settlement Authorized by Independent Fiduciary. At least twenty (20) days prior to the *Fairness Hearing*, the *Independent Fiduciary* shall have approved and authorized in writing the *Settlement*, and given a release in its capacity as fiduciary of the *Plan* for and on behalf of the *Plan*, on the terms set forth in Section 3, in accordance with Prohibited Transaction Class Exemption 2003-39. If the *Independent Fiduciary* disapproves or otherwise does not authorize the *Settlement* or refuses to execute the release on behalf of the *Plan*, then the *Company* shall have the option to waive this condition if so stipulated by the *Parties*. Such option is to be exercised in writing within the earlier of (i) ten (10) days after the *Parties’ receipt* of the *Independent Fiduciary’s* written determination or (ii) three (3) days prior to the date set for the *Fairness Hearing*, unless otherwise agreed by the *Parties*. The *Parties* shall comply with reasonable requests made by the *Independent Fiduciary*.

3. Releases.

3.1. Releases of the Released Parties. Subject to Section 9 herein, effective upon the date that *Judgment is Final, Named Plaintiff*, each member of the *Settlement Class* (on behalf of themselves and the *Plan*), and the *Plan* (by and through the *Independent Fiduciary* pursuant to section 2.6) absolutely and unconditionally release and forever discharge the *Released Parties* from *Released Claims* that the *Named Plaintiff*, the *Settlement Class* or the *Plan* directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have, except that the release under this Section 3.1 shall not include claims relating to the covenants or obligations set forth in this *Settlement Agreement*, nor do they include, and this *Settlement Agreement* does not in any way bar, limit, waive, or release, any individual claim by the *Named Plaintiff* or a member of the *Settlement Class* to vested benefits that are otherwise due under the terms of the *Plan*. Also, the form of the Judgment attached at Exhibit B to this agreement shall provide that, effective upon entry of the *Judgment* by the *Court, Named Plaintiff* and all other members of the *Settlement Class* and the *Plan* shall be permanently and finally enjoined, without the necessity of *Defendants* posting a bond, from commencing or prosecuting any actions or other proceedings asserting any of the *Released Claims* either directly, indirectly, derivatively, or in any other capacity, against any of the *Released Parties*.

3.2. Releases of the Named Plaintiff, the Plan, the Settlement Class, and Appointed Counsel. Upon the date that *Judgment is Final*, the *Company* shall be deemed to have, and by operation of the *Final Order*, shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of the *Named Plaintiff*, the *Plan*, the *Settlement Class*, and *Appointed Counsel* from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees and costs, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether brought in an individual, representative, or any other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, that arise out of or are related in any way to the acts, omissions, facts, matters, transactions, or occurrences alleged or referred to in the *Action*.

3.3. Released Claims. The *Released Claims* shall be: any and all claims of any nature whatsoever (including claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), whether accrued or not, whether known, unknown, or unsuspected, in law or equity, as well as any claim or right obtained by assignment, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim or otherwise (collectively, "*Claims*"), arising out of or in any way related to, directly or indirectly, any or all of the acts, omissions, facts, matters, transactions or occurrences (including derivative claims), (i) during the *Class Period* that

are alleged, or were alleged, asserted, or set forth in the *Complaint* or the complaints in the *Action* that preceded it, including claims regarding the selection, retention, and monitoring of investments, products, or services for the *Plan* managed by the Company; (ii) barred by principles of *res judicata*, or (iii) that relate to, arise out of, or in any way involve the selection, monitoring and retention of the *Wells Funds*. With respect to the *Released Claims*, it is the intention of the *Parties* and all other members of the *Settlement Class* and the *Plan* expressly to waive to the fullest extent of the law: (a) the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides that “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor”; and (b) the provisions, rights and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

3.4. Dismissal With Prejudice. The *Action* and all *Released Claims* shall be dismissed with prejudice.

4. Covenants.

The *Parties* covenant and agree as follows:

4.1. Taxation of Class Settlement Amount. *Plaintiffs* acknowledge that the *Released Parties* have no responsibility for any taxes due on funds deposited in or distributed from the *Settlement Fund* or that the *Plaintiffs* or *Appointed Counsel* receive from the *Class Settlement Amount*. *Plaintiffs* further acknowledge that any such tax payments, and any professional, administrative or other expenses associated with such tax payments, shall be paid out of the *Settlement Fund*, as set forth more fully in Section 7.1.2 below. Nothing herein shall constitute an admission or representation that any such taxes will or will not be due.

4.2. Cooperation. 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 *Lead Counsel*, information to identify members of the *Settlement Class* and to implement the *Plan of Allocation*. Within ten (10) days of the *Preliminary Approval Order*, the *Company* shall direct the *Recordkeeper* to provide to the *Settlement Administrator*:

4.2.1. The names and last known addresses of members of the *Settlement Class*, as compiled from reasonably accessible electronic records maintained by the *Recordkeeper*, and

4.2.2. The names and last known addresses of participants in the *Plan* during the *Class Period* as compiled from reasonably accessible electronic *1099R forms*

maintained by the Company pertaining to participants whose records are no longer maintained by the Recordkeeper.

4.2.3. Reasonably accessible electronic data of the Recordkeeper reflecting investments of the members of the Settlement Class in the Wells Fargo Funds during the Class Period.

4.3. Appointed Counsel shall use the information provided through this section to compile a "Preliminary List" of members of the Settlement Class with the assistance of the Settlement Administrator for purposes of sending the Class Notice and calculating payments pursuant to the Plan of Allocation.

4.4. Appointed Counsel and their agents will use any information provided by the Company pursuant to the Section 4.2 solely for the purpose of providing notice and administering this Settlement and for no other purpose, and will take all reasonable and necessary steps as required by law to maintain the security and confidentiality of this information.

4.5. The Parties shall reasonably cooperate with each other to effectuate this Settlement, including with respect to the Plan of Allocation, and shall not do anything or take any position inconsistent with obtaining a prompt Judgment approving the Settlement unless expressly permitted by this Settlement Agreement. The Parties shall suspend any and all efforts to prosecute and to defend the Action pending entry of the Judgment or, if earlier, termination of the Settlement Agreement.

4.6. Any costs, fees, and expenses incurred by third parties, including the reasonable costs, fees, and expenses incurred by any third-party Recordkeeper in providing the cooperation as set forth herein, including in Section 4.2, shall be paid out of the Settlement Fund.

4.7. Covenant Not to Sue. Subject to Section 9 herein, Plaintiff, the members of the Settlement Class and the Plan covenant and agree on their own behalf: (i) not to file against any Released Party any Claim based on, relating to, or arising from any Released Claim; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such Claims against any of the respective Released Parties. These Parties acknowledge that any Class Member who violates this Covenant will be liable for all costs and fees, including attorneys' fees, the Released Parties may incur in defending against any action subject to this Covenant.

5. Representations and Warranties.

5.1. Parties' Representations and Warranties. The Parties, and each of them, represent and warrant as follows, and each Party acknowledges that each other Party is

relying on these representations and warranties in entering into this *Settlement Agreement*:

5.1.1. That they have conducted voluminous discovery and have diligently prepared for trial pursuant to the *Court's* orders; that they are voluntarily entering into this *Settlement Agreement* as a result of arm's-length negotiations among their counsel, with the assistance and recommendation of an experienced former federal district court judge; that in executing this *Settlement Agreement* they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this *Settlement Agreement* by any representations, statements, or omissions pertaining to any of the foregoing matters by any *Party* or by any *Person* representing any *Party* to this *Settlement Agreement*. Each *Party* assumes the risk of mistake as to facts or law.

5.1.2. That they have carefully read the contents of this *Settlement Agreement*, and this *Settlement Agreement* is signed freely by each *Person* executing this *Settlement Agreement* on behalf of each of the *Parties*. The *Parties*, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to the *Settlement*, this *Settlement Agreement*, and all of the matters pertaining thereto, as he, she, or it deems necessary.

5.2. Signatories' Representations and Warranties. Each *Person* executing this *Settlement Agreement* on behalf of any other *Person* does hereby personally represent and warrant to the other *Parties* that he or she has the authority to execute this *Settlement Agreement* on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

6. No Admission of Liability.

The *Parties* understand and agree that this *Settlement Agreement* embodies a compromise settlement of disputed claims, and that nothing in this *Settlement Agreement*, including the furnishing of consideration for this *Settlement Agreement*, shall be deemed to constitute any finding that any party had a fiduciary status under *ERISA*, or any wrongdoing by any of the *Defendants*, or give rise to any inference of fiduciary status under *ERISA* or wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This *Settlement Agreement* and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. The *Defendants* specifically deny any such liability or wrongdoing and state that they are entering into this *Settlement Agreement* to eliminate the burden and expense of further litigation. Further, the *Named Plaintiff*, while

believing that all Claims brought in the *Action* have merit, has concluded that the terms of this *Settlement Agreement* are fair, reasonable and adequate to the *Plan*, herself and members of the *Settlement Class* given, among other things, the inherent risks, difficulties and delays in complex *ERISA* litigation such as this. Neither the fact nor the terms of this *Settlement Agreement* shall be used or offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this *Settlement Agreement* or arising out of or relating to the *Judgment*.

7. The Settlement Fund, Deliveries into the Settlement Fund.

7.1. The Settlement Fund.

7.1.1. Within ten (10) business days after entry of the *Preliminary Approval Order*, *Lead Counsel* shall establish at a financial institution (the “*Financial Institution*”) identified to and agreed on by counsel for the *Defendants*, a settlement fund account (the “*Settlement Fund*”) which shall be considered a common fund created as a result of the *Action*. *Lead Counsel* shall designate at least one person with signature authority over this account (the “*Signer*”), and shall direct the *Financial Institution* to make distributions from the *Settlement Fund* only in accordance with this *Settlement Agreement* upon written direction from the *Signer*. For the avoidance of doubt, the *Financial Institution* shall be instructed that, absent a *Court* order, no funds are to be paid or withdrawn from the *Settlement Fund* except pursuant to Section 8 and Section 9 of this *Settlement Agreement* (and the Sections of this *Settlement Agreement* explicitly cross-referenced therein) or, upon termination of this *Settlement Agreement*, pursuant to Section 9 of this *Settlement Agreement*. *Lead Counsel* shall promptly notify the other *Parties* of the date of the establishment of the *Settlement Fund*, and shall confirm that withdrawals and distributions from the *Settlement Fund* are subject to the restrictions set forth in the preceding sentence. Counsel for *Plaintiffs* and *Defendants* shall agree on the form and terms of an escrow agreement consistent with this *Settlement Agreement*. *Lead Counsel* shall take appropriate steps to ensure that the *Settlement Fund* and all assets within the *Settlement Fund* are protected against loss due to the failure of the *Financial Institution* or other similar event.

7.1.2. The *Settlement Fund* shall bear interest and shall be invested only in United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury, repurchase agreements collateralized by such securities, and mutual funds or money market accounts that invest exclusively in the foregoing securities. The *Settlement Fund* shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder and shall make tax filings and provide reports to *Lead Counsel* for tax purposes. The *Parties* shall not take a position in any filing or before any tax authority inconsistent with such treatment. The *Settlement Fund* will pay any federal, state, and local taxes that may apply to the income

of the *Settlement Fund*. The *Financial Institution* or the *Settlement Administrator* shall arrange for the preparation and filing of all tax reports and tax returns required to be filed by the *Settlement Fund* and for the payment from the *Settlement Fund* of any taxes owed, and will send *Lead Counsel* copies of all such filings and receipts of payment in a timely manner. The *Financial Institution* or the *Settlement Administrator* shall be authorized to retain a certified public accounting firm for those purposes. All taxes on the income of the *Settlement Fund* and tax-related expenses incurred in connection with the taxation of the *Settlement Fund* shall be paid solely out of the *Settlement Fund*, shall be considered a cost of administration of the *Settlement*, and shall be timely paid without further order of the *Court*. The *Financial Institution* or the *Settlement Administrator* shall arrange for the preparation and issuance of any required Forms 1099 to *Persons* receiving payments from the *Settlement Fund* for administrative services, and costs incurred in connection therewith also shall be paid solely out of the *Settlement Fund*, shall be considered a cost of administration of the *Settlement*, and shall be timely paid by the *Settlement Fund* without further order of the *Court*. Costs or expenses of opening or closing the *Settlement Fund*, and all fees and expenses of the *Financial Institution*, and of the professional advisors specified above in this section who are engaged by the *Financial Institution* in connection with the *Settlement Fund*, shall be funded solely from the *Settlement Fund*, and *Plaintiffs* expressly acknowledge that *Defendants* have no responsibility for any such fees or expenses.

7.2. The Class Settlement Amount. In consideration of all of the promises and agreements set forth in this *Settlement Agreement*, the *Company* will cause to be deposited into the *Settlement Fund* \$17.5 million, which shall be the *Class Settlement Amount* as follows: (a) Within fourteen (14) days after the entry of the *Preliminary Approval Order*, One Million Dollars (\$1,000,000.00) in United States currency; within two (2) days after the entry of *Judgment* becomes *Final*, the *Company* will cause to be deposited into the *Settlement Fund* the remaining \$16.5 million (\$16,500,000.00) in United States currency. In no event shall the *Settlement Fund* be required to exceed the *Class Settlement Amount*, and in no event shall the *Company* or any of the *Defendants* be required to make payments or incur any expenses in excess of this amount. In no event shall any *Defendant* other than the *Company* be required to make payments or incur any expenses under this *Settlement Agreement*. The *Class Settlement Amount* shall be the only amount paid by *Defendants* under this agreement, and the *Defendants* shall not be obligated to make any other payments under this agreement or in connection with this settlement including, but not limited to any payments that any of the *Plaintiffs* may claim they are entitled to under the current, former, or future *Plan* as a result of this settlement or any *Plaintiffs'* recovery under this settlement.

7.3. All funds held in the *Settlement Fund* shall be deemed to be in the custody of the *Court* and shall remain subject to the jurisdiction of the *Court* until such time as the funds are distributed or are returned to the persons paying the same pursuant to the *Final Judgment* and *Settlement Agreement*.

8. Payments From The Settlement Fund.

8.1. Disbursements from Settlement Fund prior to Settlement becoming Final. *Lead Counsel*, subject to the approval of the *Company*, which approval shall not be unreasonably withheld, direct the *Financial Institution* to disburse money from the *Class Settlement Fund* as follows:

8.1.1. Expenses of Class Notice. After the entry of the *Preliminary Approval Order*, the *Financial Institution* shall be directed in writing to disburse from the *Settlement Fund* an amount sufficient for the payment of costs of the *Class Notice*. If the *Settlement Agreement* is terminated for any reason, *Lead Counsel* shall have no obligation to reimburse the *Settlement Fund* for the costs incurred for the *Class Notice*, or other costs or expenses of the *Settlement Fund* then incurred by the *Settlement Fund* under this *Settlement Agreement*. *Lead Counsel* may select a *Settlement Administrator* to assist with *Class Notice* and administration of the *Settlement*; the *Company* shall agree to the selection, which agreement shall not unreasonably be withheld. The *Settlement Administrator* shall enter into a confidentiality agreement and information security agreement, both of which shall be satisfactory to the *Company*, as well as the Protective Order entered in this case, to adequately protect information provided to the *Settlement Administrator* relating to the *Settlement*. *Lead Counsel* shall, with the assistance of the *Settlement Administrator*, make reasonable and customary efforts to locate and provide notice to all *Settlement Class* members. Any costs, expenses, or fees incurred in connection with the administration of this *Settlement* shall be paid out of the *Settlement Fund*.

8.1.2. For taxes and expenses of the *Settlement Fund*. As provided in Section 7.1.2 herein.

8.1.3. For fees and expenses of the *Independent Fiduciary*. The *Financial Institution* shall be directed to disburse money from the *Settlement Fund* to pay the reasonable fees and expenses of the *Independent Fiduciary* (which shall include any attorneys' fees of the *Independent Fiduciary*) retained pursuant to Section 2.5 in an amount not to exceed seventy-five thousand dollars in United States currency (\$75,000.00). To the extent the *Company* pays any costs, fees or expenses to the *Independent Fiduciary* before proceeds from the *Settlement Fund* are available for distribution, the *Financial Institution* shall be directed to reimburse the *Company* for such amounts, but in no case shall such reimbursement be more than \$75,000.00

8.1.4. For costs and expenses of the *Settlement Administrator* in implementing the *Plan of Allocation* and otherwise administering the *Settlement*. The *Financial Institution* shall be directed to disburse money from the *Settlement Fund* to pay these expenses..

8.2. Upon the *Settlement* becoming *Final*, *Lead Counsel* shall direct the *Financial Institution* to disburse money from the *Class Settlement Fund* as follows:

8.2.1. For Attorneys' Fees and Expenses. As provided in Section 10.2 herein.

8.2.2. For *Named Plaintiff* compensation. As provided in Section 10.2 herein.

8.2.3. Implementation of the *Plan of Allocation*. The *Plan of Allocation* shall provide for the allocation of the *Settlement Fund* net of the disbursements called for in Sections 8.1 and 8.2 ("*Net Proceeds*"). Upon the *Judgment* becoming *Final* as provided in Section 2.4, and after the amounts payable pursuant to Sections 8.1 and 8.2 have been disbursed, or, in the case of future expenses such as those set forth in 7.1.2, set aside and withheld, *Lead Counsel* shall direct the *Financial Institution* to disburse the *Net Proceeds* as provided by this *Settlement Agreement* and the *Plan of Allocation*. The *Recordkeeper* or any other entity with appropriate authority under the *Plan* (an "*Authorized Administrator*"), shall allocate to members of the *Settlement Class* who are not *Former Participants* any *Net Proceeds* received by the *Trust* as calculated by the *Settlement Administrator* according to the *Plan of Allocation*, documentation of which *Lead Counsel* shall direct the *Settlement Administrator* to provide to the *Authorized Administrator* pursuant to the *Plan of Allocation* no later than the distribution of the *Net Proceeds*. The *Authorized Administrator* shall promptly notify *Lead Counsel* as to the date(s) and amounts(s) of said allocation(s) made to members of the *Settlement Class* who are not *Former Participants*. The *Settlement Administrator* shall be responsible for distributing *Net Proceeds* allocated to the *Former Participants* as provided by the *Plan of Allocation*, as well as well as to comply with all tax laws, rules, and regulations and withholding obligations with respect to *Former Participants*. *Defendants* shall have no liability related to the structure or taxability of such payments. In the event that the *Company* or *Recordkeeper* incurs obligations for the implementation of the *Plan of Allocation* with respect to *Former Participants* in connection with distributions, calculations, tax withholdings, tax reporting or notifications, or reopening former participant accounts in order for the *Net Proceeds* to be distributed to *Former Participants*, because the *Settlement Administrator* is not able to distribute the settlement proceeds to *Former Participants* as provided herein, the *Company* or *Recordkeeper* shall be entitled to reimbursement from the *Settlement Fund* for the reasonable costs and expenses, including from the retention of a third-party vendor, of implementing the *Plan of Allocation* with respect to *Former Participants*.

8.2.4. The *Net Proceeds* distributed to the *Plan's* trust pursuant to the *Plan of Allocation* shall constitute "restorative payments" within the meaning of Revenue Ruling 2002-45 for all purposes.

8.3. *Final List of Settlement Class Members*. Prior to the disbursement of *Net Proceeds* to the *Plan*, *Lead Counsel* shall provide to the *Trustee* and *Company* a *Final List* of members of the *Settlement Class*, in electronic format, to whom the *Net Proceeds* will be distributed in accordance with the *Plan of Allocation*. The *Final List* shall be final, and only persons on the list, or beneficiaries as provided in Section 1.28, shall be eligible to receive any recovery from this *Settlement*.

8.4. After the distribution of *Net Proceeds* to the *Plan's* trust and allocation of the *Net Proceeds* pursuant to the *Plan of Allocation*, amounts allocable to members of the *Settlement Class* who cannot be located or otherwise receive their *Settlement* payment shall be forwarded to the *Plan's* Trust and then be subject to the *Plan's* forfeiture provisions, if any, at the time of receipt by the Trust.

8.5. *Payments in the Event of Termination*. If the *Settlement Agreement* is terminated for any reason, *Lead Counsel* shall have no obligation to reimburse the *Settlement Fund* for costs incurred for the *Class Notice*, or other costs or expenses of the *Settlement Fund* incurred by the *Settlement Fund* under this *Settlement Agreement* before termination.

9. *Termination of the Settlement Agreement*.

9.1. *Termination*. This *Settlement Agreement* shall terminate if (a) if and when any of the conditions specified in Section 2 of this *Settlement Agreement* is not satisfied, or (b) the *Judgment* does not become *Final*, or (c) at the option of the *Defendants*, if the *Court* does not modify the *Settlement Class* to be a non opt-out class as provided in section 2.2.1 above, and if more than 5% of the notified class members in the *Wells Funds* choose to opt-out of the *Settlement*. Notwithstanding the foregoing, this *Settlement Agreement* shall not terminate because a court of competent jurisdiction modifies, reverses, or refuses to enter any order relating to the award of attorneys fees and expenses or compensation for the *Named Plaintiff*. If within thirty-one (31) days after the date when any reversal or modification which would cause this *Settlement Agreement* to terminate becomes *Final* the *Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* in light of such ruling, then this *Settlement Agreement* shall automatically terminate and thereupon become null and void, except as otherwise provided herein. Nothing in this Section 9.1 shall be construed as setting forth the only situations pursuant to which this *Settlement Agreement* may terminate.

9.2. Consequences of Termination of the Settlement Agreement. If the *Settlement Agreement* is terminated, the following shall occur:

9.2.1. Lead Counsel and Defendants' Counsel shall within ten (10) days after the date of termination of the Settlement Agreement jointly notify the *Financial Institution* in writing to return to Wells Fargo & Company, or its designee, the full amount contained in the *Settlement Fund*, with all net income earned thereon, after deduction of any amounts earlier disbursed and/or incurred on the *Settlement* as of the termination, and direct the *Financial Institution* to effect such return within fourteen (14) days after such notification. Prior to the return of amounts contemplated by this Section 9.2.1, the *Financial Institution* shall fully and finally fulfill and set aside for any and all tax obligations of the *Settlement Fund* as set forth in Section 7.1.2 and the *Company* shall have no past, present, or future liability whatsoever for any such tax obligations.

9.2.2. The *Action* shall for all purposes with respect to the *Parties* revert to its status as of October 18, 2010, prior to the *Settlement*. Any and all statutes of limitations, statutes of repose and/or other defenses based upon the passage of time applicable to the *Claims* asserted in this *Action* shall be tolled from October 18, 2010 to the termination of this *Settlement Agreement*.

9.2.3. All provisions of this *Settlement Agreement* shall be null and void except as otherwise provided herein.

10. Attorneys' Fees and Expenses.

10.1. Application for Attorneys' Fees and Expenses. As provided in Section 2.2, and pursuant to the common fund doctrine and/or any applicable statutory fee provision, *Lead Counsel* may apply to the *Court* for an award to *Lead Counsel* and *Appointed Counsel*, of attorneys' fees, and for reimbursement of expenses, to be paid solely from the *Settlement Fund*. *Lead Counsel* also may apply to the *Court* for compensation to *Named Plaintiff*, payable solely from the *Settlement Fund*, and *Named Plaintiff* shall be entitled to receive such compensation from the *Settlement Fund* to the extent awarded by the *Court*. *Defendants* agree to take no position with respect to any such application for attorneys fees amounting to 30% or less of the *Class Settlement Amount* and compensation for the *Named Plaintiff* of \$20,000 or less.

10.2. Disbursement of Attorneys' Fees and Expenses and Named Plaintiff Compensation. Following (a) the entry of an order allowing payment of attorneys' fees and expenses and *Named Plaintiff* Compensation, and (b) *Judgment* becoming *Final*, the *Signer* shall instruct the *Financial Institution* in writing to disburse the payments set forth in clause (a) from the *Settlement Fund*, which the *Financial Institution* shall do within five (5) business days of receiving such direction.

11. Miscellaneous Provisions.

11.1. Governing Law. This *Settlement Agreement* shall be governed by the laws of the State of Minnesota without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

11.2. Amendment. Before entry of the *Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of the *Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties* and approved by the *Court*.

11.3. Waiver. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this *Settlement Agreement*.

11.4. Construction. None of the *Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

11.5. Principles of Interpretation. The following principles of interpretation apply to this *Settlement Agreement*:

11.5.1. Headings. The headings of this *Settlement Agreement* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Settlement Agreement*.

11.5.2. Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

11.5.3. Gender. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

11.5.4. References to a Person. References to a *Person* are also to the *Person's* permitted successors and assigns.

11.5.5. Terms of Inclusion. Whenever the words “include,” “includes,” or “including” are used in this *Settlement Agreement*, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

11.6. Further Assurances. Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

11.7. Survival. All representations, warranties and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the termination or expiration of this *Settlement Agreement*.

11.8. Notices. Any notice, demand, or other communication under this *Settlement Agreement* (other than the *Class Notice*, or other notice given at the direction of the *Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

IF TO *NAMED PLAINTIFFS*:

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

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

IF TO *DEFENDANTS*:

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

Any *Party* may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described above.

11.9. Entire Agreement. This *Settlement Agreement* contains the entire agreement among the *Parties* relating to this *Settlement*. It specifically supersedes any settlement terms or settlement agreements relating to the *Defendants* that were previously agreed upon orally or in writing by any of the *Parties*.

11.10. Counterparts. This *Settlement Agreement* may be executed by exchange of faxed executed signature pages, and any signature transmitted by facsimile for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

11.11. Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors, and successors.

11.12. Agreement Execution Date. The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

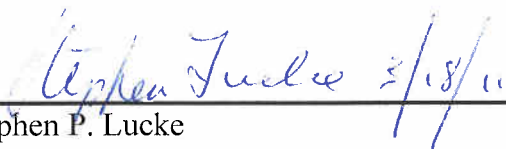
11.13. Confidentiality and Communications Regarding Settlement and this Action. The *Settlement* shall remain confidential until the *Preliminary Approval Motion* is filed. Any public communication that *Plaintiff* or *Lead* or *Appointed Counsel* wish to make about the *Settlement*, including the payments of *Net Proceeds* pursuant to Section 8.2.3, or the underlying *Claims*, shall require joint approval of the *Parties*. Any disputes shall be decided by the mediator, the Honorable James M. Rosenbaum (Ret.).

11.14. Return of Discovery Documents. Within sixty (60) days after the *Judgment* becomes *Final*, *Plaintiffs* shall fully comply with paragraph 12 of the Stipulated Protective Order entered in this case. Further, the *Parties* agree that documents and information provided in connection with the administration of settlement of this matter, including the *Preliminary List*, are deemed Confidential pursuant to the Protective Order and shall be subject to the terms thereof.

IN WITNESS WHEREOF, the Parties have executed this *Settlement Agreement* on the dates set forth below.

For Defendants:

For Plaintiffs:



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

Counsel for Defendants

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

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

Counsel for Plaintiffs

IN WITNESS WHEREOF, the Parties have executed this *Settlement Agreement* on the dates set forth below.

For Defendants:

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


Counsel for Defendants

For Plaintiffs:



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

March 15, 2011



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

March 18, 2011

Counsel for Plaintiffs