

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Robin E. Figas,
and all others similarly situated,
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 Doe
Defendants 1-20.

Defendants.

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

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Robin E. Figas and the Class respectfully move the Court for the entry of an order (1) granting final approval of the proposed Settlement in this class action case, (2) unconditionally certifying the Settlement Class, (3) finding the manner and form of giving notice of the Settlement and the Fairness Hearing to the Class satisfies the requirements of due process and the Court's Preliminary Approval Order (Docket No. 262), and (4) granting final approval of the Plan of Allocation.

The grounds for the requested relief are set forth in the accompanying memorandum of law and supporting exhibits and declaration.

Respectfully submitted,

By: /s/ Gregory Y. Porter

Dated: July 7, 2011

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS AND APPROVAL OF PLAN OF ALLOCATION**

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Plaintiff Robin E. Figas and the Class respectfully submit this memorandum in support of their motion for the entry of an order (1) granting final approval of the Class Action Settlement Agreement dated March 11, 2011 (Docket No. 257-1) (the “Settlement”),¹ (2) unconditionally certifying the Settlement Class, (3) finding the manner and form of giving notice of the Settlement and the Fairness Hearing to the Class satisfies the requirements of due process and the Court’s Preliminary Approval Order (Docket No. 262), and (4) granting final approval of the Plan of Allocation.² The proposed Settlement was preliminarily approved by the Court on March 31, 2011 (“Preliminary Approval Order”). (Docket No. 262.) The Court also conditionally certified the Settlement Class and approved the form and manner of notice and the Plan of Allocation. (*Id.*)

I. INTRODUCTION

This settlement represents a substantial benefit for the Class. The Settlement provides for a payment by Defendants of \$17,500,000.00 in cash, which will resolve all claims asserted by Plaintiffs in this Action. The settlement was mediated by the Hon. James H. Rosenbaum (Ret.), a former chief judge of the U.S.

¹ The capitalized terms not otherwise defined herein have the meaning ascribed to them in the Settlement.

² On July 5, 2011, Plaintiffs filed their Memorandum of Law in Support of Plaintiffs’ Motion for Award of Attorneys’ Fees, Reimbursement of Expenses and Case Contribution Award (“Fee Memorandum”). (Docket No. 265.) The Fee Memorandum contains information pertinent to the Settlement and is incorporated in full with the instant Memorandum of Law.

District Court for the District of Minnesota. Based on an evaluation of the facts, governing law, settlements in cases similar to this, and the recognition of the substantial risks of continued litigation of claims of this sort, Plaintiff and Co-Lead Counsel submit that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the proposed Class by providing a meaningful recovery now. Resolution of this case allows the Parties to avoid additional litigation and trial. Moreover, continued litigation of this Action could result in no recovery at all or a judgment or verdict less than the recovery under the Settlement Agreement.

Lawsuits of this type brought pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”) face significant risks. Co-Lead Counsel Bailey & Glasser LLP and McTigue & Veis LLP have litigated many ERISA class actions, including *Presley v. CHH*, 97-cv-04316 (SC) (N.D. Cal.), *Sherrill v. Federal Mogul Corp. Ret. Programs Committee*, 04-072949 (E.D. Mich.), *Koch v. Dwyer*, 98-cv-5519 (RPP) (S.D.N.Y.), *In re CMS Energy ERISA Litig.*, 02-cv-72834 (GCS) (E.D. Mich.), *Blyler v. Agee*, CV97-0332-(BLW) (D. Idaho). Class Counsel Sprenger & Lang have also litigated numerous class actions, including the first and second cases involving proprietary investment funds, *Franklin v. First Union Corp.*, Nos. 3:99cv344 and 610 (E.D. Va.) and *Mehling v. New York Life Ins. Co.*, No. 99-5417 (E.D. Pa.). Thus Plaintiffs’ Counsel are in a position to realistically evaluate the risks of proceeding to trial. Moreover, the Parties agreed to the

proposed Settlement only after vigorous, arm's length negotiations by experienced counsel and mediated by a former federal judge.

As discussed below, the \$17.5 million Settlement was achieved after rulings on dispositive motions, class certification, and extensive discovery, including expert discovery. The Court preliminarily approved the Settlement on March 31, 2011. (Docket No. 262.) In the Preliminary Approval Order, the Court also conditionally certified the Settlement Class and appointed the Named Plaintiff as Class Representative. (Preliminary Approval Order at 3.) Under the standards for evaluating class action settlements in this Circuit, the Settlement is fair, reasonable and adequate, and Plaintiffs respectfully ask the Court to approve it.³ The Settlement represents an outstanding recovery in light of the significant hurdles facing Plaintiffs and the proposed Class.

After mailing the Court-approved Notice to over 230,000 participants in the Wells Fargo & Co. 401(k) Plan ("Plan"), Class Counsel have received only two

³ Plaintiffs set forth in this Memorandum as well as in other Settlement documents various factors (factual, legal, and financial) that support the conclusion that the Settlement achieved in this matter is fair, reasonable, and adequate. Plaintiffs are not, by entering the Settlement, admitting to the ultimate truth or falsity of any of the factual, legal, or financial factors or conclusions discussed in this Memorandum that favor Defendants; rather, Plaintiffs are merely acknowledging, for settlement purposes only, that the Court could find such factors exist and provide a sound basis for approval of the Settlement. Accordingly, none of the statements in this Memorandum and other Settlement documents constitutes admissions by or evidence against any party to this Action or in any other action.

objections. As explained below, these objections do not provide any persuasive evidence or argument for not entering an order of final approval.

The Plan of Allocation established the best practicable method for distributing the Net Settlement Proceeds. The Plan of Allocation is based on available data and distributes the Net Settlement Proceeds to Class members in proportion to their investments in the Wells Funds during the Class Period.

Accordingly, Plaintiffs respectfully request that this Court enter the proposed Order and Final Judgment granting final approval of the Settlement Agreement and approving the Plan of Allocation.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Description of the Action

Class Representative Robin E. Figas is a current employee of Wells Fargo & Co. (“Wells Fargo”) and a participant in the Plan. (Third Amended Complaint (“TAC”) ¶15.) During the Class Period, she invested in three funds covered by the Settlement, the Wells Fargo Large Company Growth Fund (*id.*), the Wells Fargo Capital Growth Fund (Docket No. 123-1, pgs. 211-212), and the Wells Fargo Asset Allocation fund during the Class Period (TAC ¶15).

The Plan is a defined contribution plan under ERISA. (*Id.* ¶27.) Wells Fargo is the Plan sponsor and, by definition, a party in interest to the Plan. (*Id.* ¶¶16, 29.)

Wells Fargo was also a fiduciary for the Plan for much of the Class Period, through July 31, 2005. (*Id.* ¶ 6.)

The Wells Fargo Employee Benefit Review Committee (“Benefit Committee”) and its members (collectively the “Committee Defendants”) are Plan fiduciaries. (*Id.* ¶¶17-25, 36-37). All the members of the Benefit Committee are officers or employees of Wells Fargo. (*Id.* ¶38.) Among other things, the Committee Defendants selected the Plan investment funds which were offered to participants. (*Id.* ¶37.) Wells Fargo Bank, N.A. (“Wells Bank”) is the trustee of the Plan, and holds and invests the Plan’s assets. (*Id.* ¶39.)

Plaintiffs alleged that during the Class Period, the Committee Defendants caused the Plan to invest in certain investment funds (“Wells Funds”⁴) offered and advised by Wells Fargo Funds Management, LLC an affiliate or subsidiary of Wells Fargo (TAC ¶2). The Plaintiffs alleged the Committee Defendants did not conduct an objective review of the available investment options when selecting Wells Funds, but instead selected Wells Funds because those funds generated

⁴ The “Wells Funds” referenced in the Complaint are 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), and the Wells Fargo Asset Allocation Fund. (TAC ¶2.) The Settlement Agreement also covers the Wells Fargo Capital Growth Fund. (SA ¶1.41.) The Wells Fargo Capital Growth Fund was also offered by Wells Funds Management. (TAC ¶51.)

substantial revenues for Wells Fargo and because Plan assets provided “seed money” to those funds, allowing them to be financially viable and attract investment dollars from other investors. (*Id.* ¶¶3, 51.) Plaintiffs alleged that the Plan was by far the largest investor in many Wells Funds. (*Id.* ¶¶51-52). Plaintiffs further alleged that better performing, lower cost, comparable investment funds were available from unaffiliated companies, and that the Committee Defendants, by virtue of their positions at Wells Fargo, one of the largest financial services companies in the United States, knew or should have known this. (*Id.* ¶¶43-46).

Furthermore, Plaintiffs alleged that the Committee Defendants caused the Plan to invest in the Administrator rather than the Institutional share classes of many of the Wells Funds. (*Id.* ¶¶47-50).⁵ The Administrator share class for each Wells Fund charges higher expense ratios than the Institutional share class of each fund. (*Id.* ¶49). This preference for the more expensive share classes of the Wells Fargo investment funds occurred even though the Plan - because of the large amount of assets it was investing - was clearly eligible for lower cost Institutional class shares. (*Id.* ¶48.) Plaintiffs alleged this decision to invest in the Administrator share class enriched Wells Funds at the expense of the Plan, and caused the Plan to

⁵ Many mutual funds offer several share classes. The expense ratios, sales charges, and redemption charges vary by share class. Institutional shares generally have the lowest expense ratios, do not pay sales or redemption charges, and carry no 12b-1 distribution fees. *See* John Downes et al., *Barron’s Finance & Investment Handbook* 51 (7th ed. 2007).

pay millions of dollars in excess fees. (*Id.* ¶50). Plaintiffs alleged Defendant Wells Fargo knew or should have known that the Committee Defendants were breaching their ERISA fiduciary duties, but took no steps to protect the Plan. (*Id.* ¶62.)

Instead, she alleged, Wells Fargo was aware of and participated in the breaches. *Id.*

Plaintiffs alleged in Count I that the Committee Defendants engaged in prohibited transactions in violation of 29 U.S.C. §1106(a)(1)(A), (C), and (b) by causing the Plan to invest in Wells Fargo affiliated investment products provided by Wells Fargo subsidiaries and affiliates. (TAC, Count I.) In Count II, Plaintiffs alleged that the Committee Defendants breached the ERISA fiduciary duties of loyalty and prudence specified in 29 U.S.C. § 1104(a)(1)(A), (B) by causing the Plan to invest in Wells Fargo affiliated funds. (TAC, Count II.)

Count III alleges Wells Fargo breached its co-fiduciary duties under ERISA, 29 U.S.C. § 1105, by participating in the breaches of the Committee Defendants, and failing to take steps to remedy those breaches. (TAC, Count III.)

Count IV alleges Wells Fargo violated ERISA by knowingly participating in the fiduciary breaches and prohibited transactions of the Committee Defendants. (TAC, Count IV.)

Count V alleges Wells Fargo itself breached its duties of loyalty and prudence by causing the Plan to invest in Wells Funds. (TAC, Count V.)

B. Investigation of Claims and Plaintiffs' Complaint

Before filing the initial complaint, Co-Lead Counsel reviewed Plan documents and filings with government agencies to evaluate the Plan's investments and assets under management. Co-Lead counsel compared the returns of the Plan's investments in the Wells Funds to appropriate benchmarks, examined the percentage of assets within the Wells Funds represented by the Plan, and engaged consultants to examine various aspects of the Wells Funds. Co-Lead counsel also reviewed pertinent cases, researched legal claims and reviewed voluminous public records regarding Wells Fargo. (Porter Decl. ¶3.)

C. Summary of the Litigation

Plaintiffs filed this suit on November 1, 2007 in the United States District Court for the District of Columbia. Defendants included Wells Fargo, one of the largest financial institutions in the country. Defendants had enormous financial resources to contest Plaintiff's claims, and they vigorously defended this case and were prepared to contest it through trial had the parties not settled the lawsuit.

After the suit was filed, Defendants moved to transfer the litigation to this Court. Their motion was granted on July 8, 2008 and the case was transferred. (Docket No. 19.)

Thereafter, Defendants moved to dismiss the Complaint, contending, among other things, the returns of the Wells Funds were competitive, the fees charged, net

of rebates, were reasonable and comparable to the fees charged for the Institutional share class, and that they acted appropriately and prudently in selecting and monitoring the Plan's investment offerings. Defendants also raised affirmative and procedural defenses which, if accepted by the Court, could have been dispositive of some or all of Plaintiffs' claims. After oral argument on Defendants' motion to dismiss, the judge assigned to the lawsuit, the Hon. David S. Doty, recused himself. (Docket No. 54.) This Court subsequently granted in part and denied in part Defendants' motion to dismiss. (Docket No. 57.) The Court also dismissed plaintiff Yvonne W. Gipson for lack of standing under ERISA, but denied Defendants' motion to dismiss the claims against Defendants. On September 17, 2009, Plaintiffs amended their complaint. (Docket No. 89.) Shortly thereafter, Plaintiffs moved to certify the lawsuit as a class action; Defendants opposed class certification and submitted an expert report in opposition. Defendants also moved for summary judgment on Count I, arguing that Plaintiffs' prohibited transaction claim was not timely. On April 6, 2010, the Court granted Plaintiffs' motion for class certification and Defendants' motion for summary judgment on Count I. (Docket No. 150.)

Thereafter, Plaintiffs moved to amend their complaint in light of evidence adduced in discovery. The Court granted that motion in part and denied it in part on June 4, 2010. (Docket No. 175.) The TAC was filed on June 7, 2010.

Subsequently, Plaintiffs moved to amend the class certification order to conform to the TAC. The Court granted that motion on September 1, 2010. (Docket No. 233.)

D. Discovery Undertaken

Plaintiffs entered into the Settlement with a full and comprehensive understanding of the strengths and weaknesses of their claims, which are based on Co-Lead Counsel's extensive investigation during the prosecution of this Action as well as their extensive experience with claims of this type. Before filing the Complaint, and afterward, Co-Lead Counsel consulted with merits and loss experts, reviewed pertinent cases, researched legal claims and reviewed voluminous public records regarding the Company. (Porter Decl. ¶3.) Defendants produced and Plaintiffs reviewed more than 211,000 pages of documents. (*Id.* ¶6.) The document review included detailed coding and analysis of all documents using an online document management database customized to fit the case as discovery and document review proceeded. (*Id.*)

The Parties submitted expert reports and took two expert depositions on class certification. (Porter Decl. ¶7.) Defendants took the deposition of Ms. Figas. (*Id.* ¶8.) Plaintiffs took the deposition of eight current and former Wells Fargo employees, including several of the individual defendants, and took discovery and depositions of two non-party witnesses. (*Id.*) Plaintiffs served two principal and two rebuttal reports from two expert witnesses on the merits and the amount of

losses. (*Id.* ¶9.) Defendants served four expert witness reports on the merits. (*Id.* ¶10.) Defendants took the depositions of Plaintiffs' experts on the merits. (*Id.* ¶11.) In all, the Parties took fourteen depositions. (*Id.* ¶13.)

E. Settlement Negotiations

On October 18, 2010, the Parties engaged in an all-day mediation supervised by the Hon. James Rosenbaum (Ret.), former Chief United States District Judge for the District of Minnesota. (Porter Decl. ¶14.) In preparation for the mediation, Plaintiffs engaged in detailed liability and loss analyses, consulted with their loss expert, and analyzed the case in comparison to settlements in similar cases. (*Id.*) In addition, the Parties prepared and submitted joint and separate mediation statements. (*Id.*) During the course of the mediation, the Parties exchanged detailed loss analyses. (*Id.*) The Parties reached a settlement in principle in the evening, after intense and extensive negotiation. (*Id.*) The settlement negotiations were arm's length, wide-ranging, and based on the complete discovery record, expert and consultant reports, as well as an analysis of settlements in similar cases. (*Id.* ¶15.)

F. The Proposed Settlement

The Settlement, Exhibit 1 hereto, provides for a \$17.5 million cash payment to the Class, which will be allocated to members of the Class pursuant to the Plan of Allocation, Exhibit B hereto. In exchange, the Plaintiffs and the Plan will

dismiss and release all claims made in the litigation. The cash value of the settlement compares favorably to other settlements involving similar claims, which have ranged from \$1.72 million to \$26 million. (Porter Decl. ¶16.) The Plan of Allocation, Exhibit 2 hereto, was developed after extensive dialogue about the available data with staff of an experienced class action settlement administrator and Defendants. (Porter Decl. ¶19.) Plaintiffs' counsel and the settlement administrator reviewed numerous documents detailing the data components and reviewed and analyzed large and complex data files. (*Id.*) The Plan of Allocation allocates settlement funds to participants based on the amount a given participant invested in Wells Funds during the Class Period on a quarterly basis. (*Id.*) This method fairly and reasonably allocates settlement funds to those participants who invested in the Wells Funds during the Class Period. (*Id.*)

Moreover, the Settlement Administrator has tested the Plan participant data supplied by Defendants and confirmed the data is sufficient to implement the Plan of Allocation. (*Id.*)

G. Reasons for the Settlement

Co-Lead Counsel evaluated the value of the Settlement in light of the risks of litigation, including statute of limitations and merits defenses, prevailing trends in the case law, and the culpability of each of the Defendants. Cases of this type, involving allegations of improper selection and/or retention of imprudent high-

cost, poor performing investment options, are especially risky cases for plaintiffs to undertake because they are a relatively novel type of litigation involving many unsettled issues of law. Only one case of this type has proceeded to judgment on the merits partly in the favor of plaintiffs, *Tibble v. Edison Int'l*, 2009 U.S. Dist. LEXIS 67845, at * 105 (C.D. Cal July 16, 2009), while many others have been resolved on the merits against plaintiffs.⁶ The uncertainty of the outcome, the statute of limitations risk at summary judgment, as well as the risk of establishing liability and damages at trial, and likely appeals, favors the Settlement, which provides a certain benefit now to the members of the Class.

III. PRELIMINARY APPROVAL, NOTICE TO THE CLASS, INDEPENDENT FIDUCIARY REPORT, AND OBJECTIONS

A. Preliminary Approval

On March 31, 2011, the Court entered 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. (Docket No. 262.) The Court found:

(i) the proposed *Settlement* resulted from extensive arm's-length negotiations among counsel, including with the assistance and

⁶ See, e.g., *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009); *Loomis v. Exelon Corp.*, No. 07-CV-4900, 2009 WL 4667092 (N.D. Ill. Dec. 9, 2009); *Taylor v. United Technology*, No. 2:06-CV-1494, 2009 WL 535779 (D. Conn. Mar. 3, 2009).

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*.

(Preliminary Approval Order at 5.) The Court also scheduled a final fairness hearing for July 21, 2011 and set forth a notice plan. (*Id.* at 5-6.)

B. Class Notice And Communications With The Class

Pursuant to the Preliminary Approval Order, Plaintiffs have issued the Court-approved Class Notice. As set forth in detail in the accompanying declaration of Michael Joaquin, Gilardi & Co. LLC (“Gilardi”), the Settlement Administrator, took the following the steps to mail the Court-approved Class Notice:

- After Gilardi received mailing and address information for the Class Members from Wells Fargo, Gilardi removed duplicates and processed the names and addresses through the National Change of Address Database to update any addresses on file with the U.S. Postal service. The final mailing list consisted of 230,292 names and addresses. (Joaquin Decl. ¶3.)
- On June 6, 2011, Gilardi sent via First Class mail, prepaid, a copy of the Court-approved Class Notice to 192,275 current participants in the Plan. (*Id.* ¶4.) A true and correct copy of the Class Notice as sent is attached as Exhibit A to the Joaquin Declaration.
- On June 6, 2011, Gilardi mailed via First Class mail, prepaid, a copy of the Court-approved Class Notice, Claim Documentation Form and accompanying instructions to 33,717 former participants in the Plan. (*Id.* ¶4.) True and correct copies of the Claim

Documentation Form Instructions and Claim Documentation Form as sent are attached as Exhibits B and C, respectively, to the Joaquin Declaration.

- 128 Class Notices were returned with updated addresses. Gilardi promptly mailed the Class Notices to the updated addresses. (*Id.* ¶5.)
- 21,538 Class Notices were returned with undeliverable addresses. Gilardi used a third-party locator service to attempt to identify valid addresses, and was able to find updated addresses for 19,342 undeliverable addresses. Gilardi promptly mailed Class Notices to the updated addresses. (*Id.* ¶6.)

Pursuant to the direction of Co-Lead counsel, Gilardi has taken additional steps to convey the information about the Settlement to the Settlement Class:

- On June 6, 2011, Gilardi activated a website, www.wf401ksettlement.com, to provide information about the Settlement. Information available from the website includes filings from the lawsuit and frequently asked questions with answers. Since June 6, 2011, Gilardi has documented a total of 2,703 unique visitors to the website. (*Id.* ¶7.)
- Since June 6, 2011, Gilardi has maintained a toll-free number for Class Member inquiries. The toll-free number allows Class Members to receive information about the lawsuit and the Settlement through an Interactive Voice Response System and to speak directly with trained staff at a Call Response Center. To date, the Interactive Voice Response System and Call Response Center have, respectively, handled 1,233 and 214 calls. (*Id.* ¶8.)

In sum, the Class Members were provided with adequate and timely notice pursuant to the Court's Preliminary Approval Order.

Further, the instant motion and Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Case Contribution Award (Docket No. 264)

were filed before objections to the Settlement are due on July 12, 2011. The Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Case Contribution Award, and supporting papers (Docket Nos. 265-276) were posted on the website www.wf401ksettlement.com on July 6, 2011. (Porter Decl. ¶21.) The instant motion and memorandum of law will be posted on the website no later than July 8, 2011. (*Id.*)

Thus, Class Members will have had an opportunity to review all filings pertinent to the Settlement before the deadline for objections.

C. Independent Fiduciary Report

Pursuant to the Settlement, Defendants retained an Independent Fiduciary to prepare a report on the Settlement. Evercore Trust Company ("Evercore"), the Independent Fiduciary, issued its report on July 1, 2011. (*See* Porter Decl. Ex. A, Statement of Independent Fiduciary ("Evercore Report").) "Evercore has extensive experience in serving in the capacity of an independent fiduciary to employee benefit plans, including in connection with class action lawsuits, and is closely familiar with the fiduciary obligations imposed by ERISA." (*Id.* at 1.) The purpose of the Evercore Report is to show, consistent with Department of Labor Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75,632 (Dec. 31, 2003), that an Independent Fiduciary has ensured the Settlement (1) is reasonable in light of the likelihood of full recovery, the risks and costs of litigation, and the value of the

claims foregone, (2) the terms and conditions of the Settlement are no less favorable than arms-length terms and conditions under similar circumstances, and (3) the Settlement is not part of an agreement to benefit a party related to the Plan. (Evercore Report at 2.)

In evaluating the Settlement, Evercore weighed the various factors described above, reviewed court documents and other litigation materials, interviewed counsel for the parties, evaluated the strengths and weaknesses of the legal and factual arguments presented in the lawsuit, reviewed and analyzed the Settlement, the release, the Plan of Allocation, and Plaintiffs' Motion for Award of Attorneys' Fees and Expenses. (Evercore Report at 2.)

Evercore concluded the terms of the Settlement, including the \$17.5 million cash Settlement Amount, the Settlement release, the Plan of Allocation, and Plaintiffs' Motion for Award of Attorneys' Fees and Expenses, were reasonable in light of the risks and costs of continued litigation. (*Id.*) Evercore also concluded the terms and conditions were no less favorable to the Plan than comparable arms-length agreements under similar circumstances. (*Id.*) And Evercore concluded the Settlement was not designed to benefit a party related to the Plan. (*Id.*)

In sum, an Independent Fiduciary with experience in ERISA matters and fiduciary obligations under ERISA has concluded the Settlement is fair and reasonable.

D. Objections

To date, only one objection has been filed. (Docket No. 263.) The objection does not complain about any of the terms of the Settlement as such. Rather, it simply expresses disbelief that Wells Fargo and its officers would place the company's interests ahead of employees.

Plaintiffs' counsel also received an objection on July 5, 2011. A copy of that objection (filed under seal) is attached as Exhibit E to the Declaration of Gregory Y. Porter in support of Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Case Contribution Award. (Docket No. 271-5.) Ms. Christina Johnson, the objector, complains about the requirement that former participants for whom Wells Fargo no longer has electronic plan transactional records must submit documents supporting their eligibility for a distribution, *i.e.*, documents showing the claimant invested in the subject Wells Funds. She writes that her records were destroyed in a fire. She asks for \$6,000 from the Settlement Fund, based on her representations. Unfortunately, neither the Plan nor Johnson has records to determine Ms. Johnson's eligibility for a recovery. (Porter Decl. ¶18.) The Claims Administrator has no way to determine whether Ms. Johnson invested in any Wells Funds at issue in the litigation, let alone whether she should receive \$6,000 per the Plan of Allocation.

Also on July 5, 2011, Co-Lead Counsel received a phone call from a class member who did not want to identify himself. He commended the named plaintiff Ms. Figas for her courage in representing the class. He commended Class Counsel for their efforts in obtaining a recovery on behalf of the Class. (Porter Decl. ¶23.)

Considering the claims administrator, Gilardi & Co. LLC, (1) mailed over 230,000 class notices by U.S. Mail, First Class, postage prepaid, (2) has documented 2,703 unique visitors to the website dedicated to this Settlement, (3) has handled 1,233 calls to an Interactive Voice Response system, and (4) trained staff at a Call Response Center have spoken directly with 214 callers about the Settlement, the dearth of objections shows the Settlement has been well-received by the Class. (Joaquin Decl. ¶¶4, 7-8.) If any objections are submitted after the motion for final approval is filed, Plaintiffs will submit a response thereto before the Fairness Hearing.

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

The Court has already set forth its reasons for certifying the claims in this lawsuit as class claims under Fed. R. Civ. P. 23. (*See* Docket Nos. 150, 233, 262.) Nothing has changed that would impact the Court's conditional certification of the Settlement Class. (Docket No. 262.) Therefore, Plaintiff respectfully requests that the Court unconditionally certify the Settlement Class for final approval for the

reasons stated in Plaintiffs' prior filings and the Court's prior orders on class certification.

A. Legal Standard

Plaintiffs respectfully request that the Court determine that the proposed settlement is "fair, adequate and reasonable." Fed. R. Civ. P. 23(e)(2). Settlement is a strongly favored method for resolving litigation. *Little Rock Sch. Dist. v. Pulaski Co. Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990). "This is especially true in . . . class action litigation. . . ." *Holden v. Burlington Northern, Inc.*, 665 F. Supp. 1398, 1405 (D. Minn. 1987) (citations omitted). Approval of a class action settlement is proper if the settlement is "fair, reasonable, and adequate." *Id.* (citations omitted); see *White v. NFL*, 822 F. Supp. 1389, 1416 (D. Minn. 1993) (citations omitted). Indeed, class action settlements are presumptively valid. See *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999) ("[a] strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor") (citation omitted).

"The court may approve [the settlement] only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Several factors inform this inquiry:

- (1) the merits of the plaintiff's case, weighed against the terms of the settlement;
- (2) the defendant's financial condition;
- (3) the complexity

and expense of further litigation; and (4) the amount of opposition to the settlement.

In re Wireless Tel. Fed. Cost Recovery Fees Litig., 396 F.3d 922, 932 (8th Cir. 2005) (citations omitted). “The district court need not make a detailed investigation consonant with trying the case” *Id.* “The most important consideration in deciding whether a settlement is fair, reasonable, and adequate is ‘the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.’” *Id.* (citing *Petrovic v. Amoco Oil. Co.*, 200 F.3d 1140, 1150 (8th Cir. 1999)). Other factors may be considered to ensure the settlement is “not the product of fraud or collusion.” *Id.* at 934. Such factors include the experience and opinion of counsel on both sides, *DeBoer v. Mellon Mortgage Co.*, 64 F. 3d 1171, 1178 (8th Cir. 1995), the settlement’s timing, including whether discovery proceeded to the point where all parties were fully aware of the merits, *City P’ship Co. v. Atl. Acquisition Ltd. P’ship*, 100 F.3d 1041, 1043 (1st Cir.1996), whether the settlement resulted from arms length negotiations, and whether a skilled mediator was involved, *DeBoer*, 64 F. 3d at 1178.

When examined under the applicable criteria, the Settlement is an excellent result for the Class, and warrants final judicial approval.

B. The Settlement Clearly Satisfies The Eighth Circuit’s Four-Pronged “Fairness” Test

As noted above, in determining whether the Settlement is “fair” under Rule 23, the Eighth Circuit Court of Appeals has stated that it considers four factors:

(1) The merits of the plaintiff’s case, weighed against the terms of the settlement; (2) the defendant’s financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement.

In re Wireless Tel. Fed. Cost Recovery Fees Litig., 396 F.3d 922, 932 (8th Cir. 2005). Each factor supports final judicial approval of the Settlement in this action.

1. The merits of the plaintiff’s case, weighed against the terms of the settlement

“[T]he most important consideration in deciding whether a settlement is fair, reasonable, and adequate is ‘the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.’” *In re Wireless*, 396 F.3d at 933 (citation omitted).

Only one case of this type has proceeded to judgment on the merits in the favor of plaintiffs, and then only partly in favor of plaintiffs, *Tibble v. Edison Int’l*, 2010 WL 2757153 (C.D. Cal. July 8, 2010), while many others have been resolved on the merits against plaintiffs with no recovery at all, *see, e.g., Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009); *Loomis v. Exelon Corp.*, No. 07-CV-4900, 2009 WL 4667092 (N.D. Ill. Dec. 9, 2009); *Taylor v. United Technology*, No. 2:06-CV-1494, 2009 WL 535779 (D. Conn. Mar. 3, 2009). The uncertainty of the outcome,

and in particular the statute of limitations risk at summary judgment, as well as the risk of establishing liability and losses at trial, and likely appeals, favors the Settlement, which provides a certain benefit to the members of the class.

The result in this case provides a valuable and immediate benefit to Class Members and falls well within a range of what should be deemed fair, reasonable and adequate. *See, e.g., Holden*, 665 F. Supp. at 1402. The members of the Class will receive \$17.5 million in cash, less the cost of notice, settlement administration, attorneys' fees and expenses, and the cost for an independent fiduciary. The cash received by the members of the Class is a concrete monetary benefit that will be paid to Class members within a few months of Final Approval and allow them to enhance their retirement savings and provide them with the opportunity to receive additional investment returns through retirement. This is no small feat given the obstacles facing the Class in this case. Such obstacles and risks included statutes of limitation and other affirmative defenses, uncertainty surrounding the measure of losses and relevant benchmarks and therefore questions about the amount of losses, whether losses would be measured fund-by-fund or across all funds, including those that outperformed benchmarks, as well as a defense on the merits at trial.

Injunctive relief is not warranted here because the Wells Funds at issue are no longer available as investment options in the Plan.

Further, Evercore, an Independent Fiduciary experienced in reviewing ERISA settlements to determine whether such settlements are reasonable and fair has concluded that this Settlement is reasonable and fair in light of the claims, defenses, facts, and risks of future litigation. (Evercore Report at 2.)

The Settlement also is reasonable and fair measured against objective criteria. The \$17.5 million recovery represents just over 19.5% of claimed losses where performance of the subject funds was measured against the performance of the Morningstar⁷ category for each subject fund.⁸ (Porter Decl. ¶17.) Settlements in similar ERISA cases have ranged from \$1.72 million to \$26 million. (*Id.* ¶16.) And the settlement amount exceeds the median gross recovery in ERISA cases as reported in a 2010 article by 25%. Theodore Eisenberg & Geoffrey P. Miller, *Attorneys Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Emp.

⁷ Morningstar is a leading provider of investment information for professionals and investors. “Morningstar provides data on approximately 380,000 investment offerings, including stocks, mutual funds, and similar vehicles, along with real-time global market data on more than 5 million equities, indexes, futures, options, commodities, and precious metals, in addition to foreign exchange and Treasury markets.” <http://corporate.morningstar.com/us/asp/subject.aspx?xmlfile=177.xml>.

⁸ The Morningstar benchmark consists of the performance of all mutual funds in the relevant Morningstar peer group, i.e. the Morningstar mutual fund category (e.g. domestic large company growth equity funds) in which Morningstar places each of the subject funds. Morningstar’s database includes virtually every mutual fund offered in the United States, so this benchmark is comprehensive. The performance of each of the subject funds is compared to the average of the performance of the funds in the Morningstar category, as Morningstar calculates this average. (Porter Decl. ¶17.)

Leg. Studies 248, 262 & Table 5 (2010) (hereinafter “*Fee Study*”) (Porter Decl. Ex. B.)

In sum, the Settlement is fair, reasonable, and adequate.

2. The defendant’s financial condition

The financial condition of Wells Fargo is strong, so its ability to pay the settlement amount is not at issue.

3. The complexity and expense of further litigation

Barring this Settlement, this case would require the expenditure of substantial additional judicial and other resources, “all the while class members would receive nothing.” *In re Wireless*, 396 F.3d at 933 (citation omitted).

Among other things, the parties would need to complete expert discovery (depositions of defendants’ four expert witnesses), brief summary judgment, prepare various evidentiary motions, and prepare for a complex trial with multiple fact and expert witnesses.

4. The amount of opposition to the Settlement

As discussed above, there has been little opposition to the Settlement despite mailing notice to approximately 230,000 Class Members. Only two objections have been lodged, representing an objection rate of .000866% in relation to the number of Class Notices mailed. Two objections represents only .04% of the Class

Members who have sought additional information about the Settlement from the website or the toll-free number maintained by Gilardi (4,150 such contacts in all).

Neither of the two objections really challenges the fairness of the key terms of the Settlement. The first expresses disbelief that her employer would put its interests ahead of its employees. (*See* Docket No. 263.) The second, Ms. Christina Johnson, complains that it is unfair to require her to submit claims documentation to establish eligibility for a Settlement distribution. She writes that her records were destroyed in a fire. She asks for \$6,000 from the Settlement Fund, based on her representations. Unfortunately, neither the Plan nor Johnson has records to determine Ms. Johnson's eligibility for a recovery. (Porter Decl. ¶18.) The Settlement Administrator has no way to determine whether Ms. Johnson invested in any Wells Funds at issue in the litigation, let alone whether she should receive \$6,000 per the Plan of Allocation.

C. The Proposed Settlement Is the Product of Arm's-Length Negotiations Between Experienced Counsel Supervised by a Skilled Mediator After Fact Discovery And Expert Reports

As discussed above, the proposed Settlement is the product of extensive, arm's-length negotiations conducted by experienced counsel and mediated by a former federal judge. The Settlement occurred after fact discovery was completed and Plaintiffs' and Defendants' expert reports were served. The Parties shared

detailed liability and loss analyses. Accordingly, the fairness, adequacy and reasonableness of the proposed Settlement may be presumed.

Where, as here, settlement is reached through arms-length negotiations between experienced counsel, and there is no evidence of collusion or bad faith, “the judgment of the litigants and their counsel” concerning the adequacy of the settlement is entitled to deference. *See, e.g., Petrovic v. Amoco Oil Co.*, 200 F. 3d 1140, 1149 (8th Cir. 1999); *DeBoer*, 64 F. 3d at 1178. “The Court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement.” *In re Employee Ben. Plans Sec. Litig.*, Civ. No. 3-92-708, 1993 WL 330595, at *5 (D .Minn. June 2, 1993); *DeBoer*, 64 F.3d at 1178. Here, counsel for Plaintiffs have extensive experience and success in complex ERISA class actions. Similarly, Defendants are represented by skilled counsel with considerable experience in class action and other types of complex litigation.

Further, the Settlement has been reviewed by an Independent Fiduciary whose sole responsibility is to ensure the Settlement is fair and reasonable. As noted above, Evercore, the Independent Fiduciary, concluded the Settlement was fair and reasonable and similar to other agreements reached through arms-length negotiations.

Because the proposed Settlement is the product of serious, informed and noncollusive negotiations among experienced counsel, it deserves final approval.

D. The Court Should Also Approve the Proposed Plan of Allocation

The proposed Plan of Allocation, Exhibit 2 hereto, provides for the most equitable, practical, and reasonable allocation under the circumstances. Limitations in the available data rendered certain allocation methods impractical. First, no data other than address information is available for approximately 30,000 participants in the Plan. (Porter Decl. ¶18.) These participants will be asked to submit proof of investment in the Wells Funds to be eligible for a distribution under the Plan of Allocation. Second, only end-of-year account balance data, that is, no transactional data, is available for the years ending 2001 and 2002. (*Id.*)

The Plan of Allocation was developed to take into account the available participant data. It is the product of extensive dialogue about the available data elements with an experienced claims administrator and Defendants. (Porter Decl. ¶19.) Plaintiffs' counsel and the experienced claims administrator reviewed numerous documents detailing the data elements and reviewed the data files. (*Id.*) The Plan of Allocation allocates settlement funds to participants based on the amount a given participant invested in the Wells Funds during the Class Period on a quarterly basis. This method fairly and reasonably allocates settlement funds to those participants who invested in the Wells Funds during the Class Period. (*Id.*) And the Settlement Administrator has tested the Plan participant data supplied by

Defendants and confirmed the data is sufficient to implement the Plan of Allocation. (*Id.*)

The Court should also consider the reaction of a class to a plan of allocation. *See In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280, 284 (D. Minn. 1997). As noted above, one person has objected to the Plan of Allocation. (Porter Decl. ¶22.) Ms. Christina Johnson does not complain about the Plan of Allocation as such, *i.e.*, she does not complain the method for allocating the Net Settlement Proceeds to Class Members is unfair or unreasonable. Rather, she says it is unfair to require her to submit claims documentation to establish eligibility for a Settlement distribution. She writes her records were destroyed in a fire. She asks for \$6,000 from the Settlement Fund, based on her representations. Unfortunately, neither the Plan nor Ms. Johnson has records to determine her eligibility for a recovery. (Porter Decl. ¶18.) The Settlement Administrator has no way to determine whether Ms. Johnson invested in any Wells Funds at issue in the litigation, let alone whether she should receive \$6,000 under the Plan of Allocation.

V. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs' motion for final approval of the proposed Settlement.

Respectfully submitted,

Dated: July 7, 2011

By: /s/ Gregory Y. Porter

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EXHIBIT A

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*.

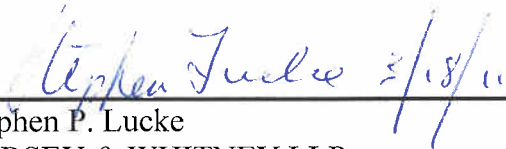
11.13. Confidentiality and Communications Regarding Settlement and this Action. The *Settlement* shall remain confidential until the *Preliminary Approval Motion* is filed. Any public communication that *Plaintiff* or *Lead* or *Appointed Counsel* wish to make about the *Settlement*, including the payments 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 3/18/11

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

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

Counsel for Defendants

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

Counsel for Plaintiffs

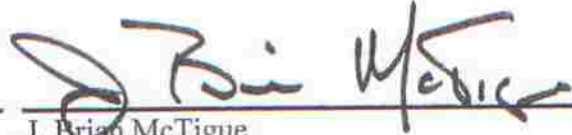
IN WITNESS WHEREOF, the Parties have executed this *Settlement Agreement* on the dates set forth below.

For Defendants:

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

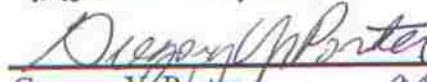
Counsel for Defendants

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 15, 2011

Counsel for Plaintiffs

EXHIBITS TO THE SETTLEMENT AGREEMENT

Exhibits

A. Preliminary Approval Order, with form of Class Notice attached as Exhibit 1 thereto.

B. Judgment.

EXHIBIT A

**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 _____, 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 Stock 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 _____, _____ (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*, which is appended hereto as **Exhibit 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*, which is appended hereto as **Exhibit 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 _____ day of _____, 2011.

HON. PAUL MAGNUSON
United States District Judge

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Robin E. Figas,
and all others similarly situated,

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.

Civ. No. 08-CV-4546
(PAM/FLN)

NOTICE OF CLASS ACTION SETTLEMENT

**Your legal rights might be affected
if you are a member of the following class:**

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 Stock 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.

**A FEDERAL COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.
YOU HAVE NOT BEEN SUED.**

- Judge Paul A. Magnuson of the United States District Court for the District of Minnesota has approved a proposed settlement (the “*Settlement*”) of a class action lawsuit brought on behalf of participants in the Wells Fargo & Company 401(k) Plan (the “*Plan*”). The *Settlement* will provide for payments to the *Plan* and for allocation of those payments to the accounts of members of the *Settlement Class* who had portions of their *Plan* accounts invested in one or more of the nine Wells Fargo Funds listed above. It is summarized below.
- The *Court* has scheduled a hearing on final approval of the *Settlement* and on the *Named Plaintiff’s* motion for attorneys’ fees and expenses and for a case contribution award to the *Named Plaintiff*. That hearing before United States District Judge Paul A. Magnuson has been scheduled for _____, 2011, at ____m. in Courtroom _____ of the United States District Court for the District of Minnesota, 316 North Robert Street, 100 Federal Building, St. Paul, MN 55101.
- Any objections to the *Settlement* or the motion for attorneys’ fees and expenses and case contribution award to the *Named Plaintiff* must be filed with the Court and served in writing on the attorneys in this case, whose addresses are provided below. The procedure for objecting is described below.
- This Notice contains summary information with respect to the *Settlement*. The terms and conditions of the *Settlement* are set forth in a Class Action Settlement Agreement (the “*Settlement Agreement*”). Capitalized and italicized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the *Settlement Agreement*.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE *SETTLEMENT CLASS* TO WHOM THIS NOTICE IS ADDRESSED, THE *SETTLEMENT* WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU DO NOT OBJECT TO THE *SETTLEMENT*, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE *SETTLEMENT* PURSUANT TO THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
FOR MOST SETTLEMENT CLASS MEMBERS, NO ACTION IS NECESSARY TO RECEIVE PAYMENT.	<p><u>If you currently participate in the Plan:</u></p> <p>If the <i>Settlement</i> is approved by the <i>Court</i>, you have a <i>Plan</i> account, and you are a member of the <i>Settlement Class</i>, you will not need to do anything to receive a payment. The portion, if any, of the <i>Settlement Fund</i> to be allocated to your <i>Plan</i> account will be calculated as part of the implementation of the <i>Settlement</i>. This payment will be deposited into your <i>Plan</i> account.</p> <p><u>If you no longer participate in the Plan:</u></p> <p>If you no longer have a <i>Plan</i> account and YOU DID NOT receive a <i>Claim Documentation Form</i> with this Notice:</p> <p>If the <i>Settlement</i> is approved by the <i>Court</i> and you are a member of the <i>Settlement Class</i>, you do not need to do anything to receive a payment. The portion, if any, of the <i>Settlement Fund</i> to be allocated to you will be calculated as part of the implementation of the <i>Settlement</i>. You will receive any payment by check.</p>
IF YOU RECEIVED A “CLAIM DOCUMENTATION” FORM, ACTION IS NECESSARY TO RECEIVE A PAYMENT.	<p>I received a <i>Claim Documentation Form</i> with this Notice:</p> <p>You must complete, sign, and send the <i>Claim Documentation Form</i> with accompanying account statement(s) to the <i>Claims Administrator</i> by the <i>Claims Deadline</i> in order to be eligible to participate in the <i>Settlement</i>. The portion, if any, of the <i>Settlement Fund</i> to be allocated to you will be calculated as part of the implementation of the <i>Settlement</i>. You will receive any payment by check.</p>
OBJECT (BY _____, 2011)	<p>If you wish to object to any part of the <i>Settlement</i>, you must (as discussed below) write to the <i>Court</i>, with a copy to plaintiffs’ and defendants’ counsel, about why you object to the <i>Settlement</i>.</p>
GO TO A HEARING (TO BE HELD ON _____, 2011)	<p>If you submit a written objection to the <i>Settlement</i> to the <i>Court</i> and send a copy to Plaintiffs’ and Defendants’ counsel before the <i>Court</i>-approved deadline, you may (but do not have to) attend the <i>Court</i> hearing about the <i>Settlement</i> and present your objections to the <i>Court</i>. You may attend the Hearing even if you do not file a written objection, but you will only be allowed to speak at the Hearing if you file a timely written objection in advance of the Hearing.</p>

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The *Court* in charge of this case still has to decide whether to approve the *Settlement*. Payments will be made only if the *Court* approves the *Settlement* and that approval is upheld in the event of any appeals.

For more information visit: www.wf401ksettlement.com

Further information regarding the litigation and this *Notice* may be obtained by contacting Plaintiffs' *Lead Counsel*:

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

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

Plaintiffs' *Lead Counsel* has established a toll-free phone number to receive your comments and questions: _____ . Plaintiffs' *Lead Counsel* has established a website where additional information, including the *Settlement Agreement*, and filings in the lawsuit are available: **www.wf401ksettlement.com**.

For more information visit: www.wf401ksettlement.com

WHAT THIS NOTICE CONTAINS

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This litigation (the “*Action*”) is a class action in which *Plaintiffs* allege that the *Defendants* breached fiduciary duties owed to the participants and beneficiaries of the *Plan*. The lawsuit claims that *Defendants* violated federal pension law, the *Employee Retirement Income Security Act* (“*ERISA*”), by allowing the *Plan* to continue to invest in various investment funds offered and managed by Wells Fargo affiliates and subsidiaries. Copies of the most recent *Complaint* and other documents filed in the *Action* are available at www.wf401ksettlement.com.

SUMMARY OF SETTLEMENT

1. A *Settlement Fund* consisting of \$17.5 million in cash is being established in the *Action*.

2. The net amount in the *Settlement Fund*, including interest, and after payment of any taxes, expenses, approved attorneys’ fees and costs, and case contribution award to the *Named Plaintiff*, will be paid to the *Plan* and be allocated to *Settlement Class* members according to a *Plan of Allocation* described herein.

Potential Outcome of the Action

As with any litigated case, *Plaintiffs* would face an uncertain outcome if the *Action* were to continue against the *Defendants*. Continued litigation of the *Action* against these *Defendants* could result in a judgment or verdict in favor of the *Defendants*, a judgment or verdict greater or less than the recovery under the *Settlement Agreement*, or in no recovery at all.

Throughout this *Action*, the *Named Plaintiff* and the *Defendants* have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the *Plaintiffs* were to prevail at trial. The *Defendants* have denied and continue to deny the claims and contentions alleged by the *Named Plaintiff*, that they are liable at all to the *Settlement Class*, and that the *Settlement Class* or the *Plan* have suffered any damages for which the *Defendants* could be legally responsible. Nevertheless, the *Parties* have taken into account the cost, uncertainty, and risks inherent in any litigation, particularly in a complex case such as this, and have concluded that it is desirable that the *Action* be fully and finally settled as to them on the terms and conditions set forth in the *Settlement Agreement*.

Attorneys’ Fees and Costs Sought in the Action

Lead Counsel in the *Action*, who have litigated this case for over three years, will apply to the *Court* for an order awarding to counsel for the *Named Plaintiff* attorneys’ fees not in excess of thirty percent (30%) of the amount recovered in the *Settlement*, plus reimbursement of any expenses. Any amount awarded will be paid from the proceeds of the *Settlement Fund*.

What Will the Named Plaintiff Receive?

The *Named Plaintiff* will share in the allocation of the money paid to the *Plan* on the same basis and to the same extent as all other members of the *Settlement Class*, except that, in addition, the *Named Plaintiff* may apply to the *Court* for a case contribution award of up to \$20,000, relating to the time and effort involved in her representation of the *Settlement Class* over more than three years of litigation. Any award to the *Named Plaintiff* by the *Court* will be paid from the proceeds of the *Settlement Fund*.

Further Information

Further information regarding the *Action* and this *Notice* may be obtained by contacting:

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

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

For more information visit: www.wf401ksettlement.com

BASIC INFORMATION

1. Why did I get this Notice package?

You are likely getting this court-approved notice because the *Plan* records show that you had a balance in your *Plan* account in one or more of the nine *Wells Funds* listed above during the *Class Period* (November 2, 2001 – October 8, 2009). If, however, you receive a *Claim Documentation Form* with this Notice, you are receiving this Notice because you were a *Plan* participant during the *Class Period* and may have had a *Plan* account invested in one or more *Wells Funds*.

The *Court* caused this Notice to be sent to you because, should you be a member of the Settlement Class, you have a right to know about the *Settlement* and your options, before the *Court* decides whether to approve the *Settlement*. If the *Court* approves the *Settlement*, and after any objections and appeals are resolved, the net amount of the *Settlement Fund* will be allocated among *Settlement Class* members according to a *Plan of Allocation* described herein. This Notice package describes the litigation, the *Settlement*, your legal rights, what benefits are available, who is eligible for them, and how to obtain them.

The *Court* overseeing this litigation is the United States District Court for the District of Minnesota. The person who sued is called the “*Named Plaintiff*,” and the people she sued are called “*Defendants*.” The court-appointed *Named Plaintiff* in the *Action* is Robin E. Figas. The *Defendants* are: Wells Fargo & Company, the Employee Benefit Review Committee, Howard I. Atkins, Patricia Callahan, Ellen Haude, Mike Heid, Clyde Ostler, Tim Sloan, John G. Stumpf, and Peter J. Wissinger. The legal action that is the subject of this Notice and the *Settlement* is known as *Figas v. Wells Fargo & Company, et al*, Civil File No. 08-CV-4546.

2. What is the Action about?

The *Named Plaintiff* sued Wells Fargo & Company (“Wells Fargo”), the *Plan*’s Employee Benefit Review Committee, and individuals who served as members of the Committee during the *Class Period*, including Howard J. Atkins, Patricia Callahan, Ellen Haude, Mike Heid, Clyde Ostler, Tim Sloan, John G. Stumpf, and Peter J. Wissinger (collectively, “*Defendants*”). The lawsuit claims that *Defendants* violated federal pension law, the *Employee Retirement Income Security Act* (“*ERISA*”), by allowing the *Plan* to continue to invest in various investment funds listed above (the “*Wells Funds*”) offered and managed by *Wells Fargo* affiliates and subsidiaries. These funds were offered to participants in the *Plan* as investment options during some or all of the *Class Period*. At the end of the *Class Period* (October 8, 2009), the *Plan* merged with the Wachovia 401(k) Plan and the funds were eliminated as investment options. The *Named Plaintiff* alleges that *Defendants* violated certain fiduciary duties by not eliminating these *Wells Funds* as investment options for the *Plan* when better-performing, lower cost alternatives were available, and that *Defendants* were motivated to choose *Wells Funds* for the purpose of generating investment management and other fees for *Wells Fargo* and *Wells Fargo*’s investment management business, and the *Plan* and the members of the *Class* suffered millions of dollars in losses as a result of *Defendants*’ decisions.

The Defenses in the Action

Defendants contend that they acted at all times in compliance with their duties, that the *Wells Funds* were prudent and appropriate investment options, and that during substantial periods the *Wells Funds* outperformed benchmarks and other funds that the *Class* alleges are comparable. *Defendants* claim that they all acted in the best interests of participants and that *Wells Fargo* provided participants substantial subsidies that lowered investment management fees and costs of plan administration.

The Action Has Been Aggressively Litigated

Counsel for the *Named Plaintiff* have conducted an extensive investigation of the allegations in the *Action* and of the losses allegedly suffered by the *Plan*. In addition, through that investigation and through discovery of information in the *Action*, counsel for the *Named Plaintiff* has obtained and reviewed hundreds of thousands of pages of documents,

For more information visit: www.wf401ksettlement.com

including *Plan* governing documents and materials, communications with *Plan* participants, internal *Wells Fargo* documents regarding the *Plan*, and other documents.

Lead Counsel successfully opposed a motion by the *Defendants* to dismiss the *Class* claims. The *Court* granted *Lead Counsel's* motion for certification of the *Action* as a class action. *Lead Counsel* have drafted and served on *Defendants* numerous discovery requests, reviewed the documents produced by *Defendants*, and participated in depositions relating to the merits and class certification issues. *Lead Counsel* hired experts to investigate the facts, develop opinions, and prepare formal reports concerning the merits of the *Action* and the amount of recoverable damages. In addition, *Lead Counsel* reviewed expert reports submitted by *Defendants*.

Settlement Discussions

This *Settlement* is the product of extensive negotiations between *Lead Counsel* and the *Defendants' counsel*. Throughout the settlement negotiations, the *Named Plaintiff* was advised by various consultants and experts. The mediation was conducted by a retired federal judge who was successful in enabling the *Parties* to reach the *Settlement* described herein.

3. Why Is This Case a Class Action?

In a class action, one or more plaintiffs, called the *Named Plaintiff*, sue on behalf of people who have similar claims. All of the individuals on whose behalf the *Named Plaintiff* is suing are "Class Members." In a class action a court resolves the issues for all Class Members. U.S. District Judge Paul A. Magnuson is presiding over this case. In its Order setting the *Fairness Hearing*, the *Court* conditionally certified the *Settlement Class* in the *Action*.

4. Why is there a Settlement?

The *Court* has not reached a final decisions in connection with *Plaintiffs' claims* against the *Defendants*. Instead, the *Plaintiffs* and the *Defendants* have agreed to a settlement. In reaching the *Settlement*, they have avoided the cost, risks, and time of a trial.

As with any litigated case, the *Plaintiffs* would face an uncertain outcome if this case went to trial. On the one hand, continuation of the case against the *Defendants* could result in a verdict greater than this *Settlement*. On the other hand, continuing the case against the *Defendants* could result in a judgment or verdict for less money than *Plaintiffs* have obtained in this *Settlement*, or no recovery at all. Based on these factors, the *Plaintiffs* and their attorneys in this case believe the *Settlement* is best for all *Settlement Class* members.

5. How do I know whether I am part of the Settlement?

The net proceeds of this *Settlement* will be allocated only to members of the *Settlement Class* and only according to a *Plan of Allocation* described herein.

You are a member of the *Settlement Class* if you fall within the definition of the *Settlement Class* approved by United States District Judge Paul A. Magnuson:

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 Stock 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.

For more information visit: www.wf401ksettlement.com

THE SETTLEMENT BENEFITS - WHAT YOU GET

6. What does the Settlement provide?

A *Settlement Fund* consisting of \$17.5 million is being established in the *Action*. The net amount in the *Settlement Fund*, including interest, and after payment of, and establishment of reserves for, any taxes and *Court*-approved costs, attorneys' fees, and expenses, including any *Court*-approved compensation to be paid to the *Named Plaintiff*, and expenses for *Class Notice*, and settlement administration, will be allocated to *Plan* accounts maintained for members of the *Settlement Class* or paid directly to members of the *Settlement Class* who do not have an account in the *Plan* according to the *Plan of Allocation* described herein.

All *Settlement Class* members are deemed to fully release the *Releasees* from *Released Claims*. The *Releasees* include the *Defendants* and their officers, directors, employees, attorneys, and agents. The *Released Claims* generally include all claims asserted in the *Action* and similar or related claims. This means that *Settlement Class* members will not have the right to sue the *Releasees* for anything related to *Defendants*' selection, retention and monitoring of the *Wells Funds* for the *Plan*.

The above description of the operation of the *Settlement* is only a summary. The governing provisions are set forth in the *Settlement Agreement* (including its exhibits), which may be obtained at www.wf401ksettlement.com, or by contacting *Lead Counsel* identified in this *Notice*.

7. How much will my payment be?

Your share of the *Net Proceeds* will depend on your investments in the various *Wells Funds* as compared to other *Settlement Class* members' investments during the *Class Period*. Each *Settlement Class* member's share of the *Net Proceeds* will be determined using the *Plan of Allocation* described herein.

You are not responsible for calculating the amount you may be entitled to receive under the *Settlement*. This calculation will be done for you as part of the implementation of the *Settlement*.

If you have received a *Claim Documentation Form* with this *Notice*, you must complete, sign and submit that form accompanied by account statement(s) to the *Settlement Administrator* by the *Claims Deadline* in order to be eligible to participate in the settlement. The portion, if any, of the *Settlement Fund* to be allocated to you will be calculated for you as part of the implementation of the *Settlement*.

Under the *Plan of Allocation* your proportionate share of the *Net Proceeds* will be calculated as follows:

Your payment will be the greater of \$5 or your share of the *Net Proceeds*. Your share of the *Net Proceeds* will be calculated as follows. First, the *Settlement Administrator* will calculate the allocation of *Net Proceeds* to each quarter of the *Class Period*. The *Net Proceeds* will be allocated to each quarter of the *Class Period* (32 quarters in all) based on all *Class Members*' quarterly account balances in the *Wells Funds* for a quarter as a percent of the total *Class Members*' quarterly account balances in the *Wells Funds* for all 32 quarters in the *Class Period*. For example, if the total *Class Members*' quarterly account balances in the *Wells Funds* for all 32 quarters in the *Class Period* is \$1 billion and the total *Class Members*' account balances in the *Wells Funds* for the third quarter of 2004 is \$50 million, 5% of the *Net Proceeds* would be allocated to those *Class Members* who had an account balance in the *Wells Funds* in the third quarter of 2004.

Second, your share of the *Net Proceeds* allocated to a given quarter of the *Class Period* will be determined by your quarterly account balances in the *Wells Funds* as a percentage of all *Class Members*' quarterly account balances in the *Wells Funds* in the given quarter. For example, if the dollar value of your account balance in the *Wells Funds* at the close of the third quarter of 2004 was .10% of all *Class Members*' account balances in the *Wells Funds* for the third quarter of 2004, you will receive .10% of the *Net Proceeds* allocated to that quarter. Your total share of the *Net Proceeds* will be the sum of your share of the *Net Proceeds* in every quarter in which you invested in *Wells Funds*.

For more information visit: www.wf401ksettlement.com

8. How do I obtain a payment?

If you are a *Plan* participant with a current account balance, you do not need to file a claim to receive a payment. If you are also a *Settlement Class* member entitled to a share of the *Net Proceeds*, your share will be deposited to your *Plan* account and reflected on your *Plan* account statement.

If you formerly had but do not now have an account under the *Plan*, you may need to file a claim in order to receive a payment. **If you received a *Claim Documentation Form* with this Notice**, you must complete, sign and submit that form with accompanying account statement(s) in order to be eligible to be a member of the *Settlement Class* and possible payment. **If you did not receive a *Claim Documentation Form* with this Notice**, you do not need to file a claim to receive payment. All *Plan* participants who no longer have a *Plan* account, but are *Settlement Class* members entitled to a share of the *Net Proceeds* will receive payment distributed by check.

9. When will I receive my payment?

Payment is conditioned on several matters, including the *Court's* approval of the *Settlement* and such approval becoming final and no longer subject to any appeals to any court. Upon satisfaction of various conditions, the *Net Proceeds* will be allocated pursuant to the *Plan of Allocation* (described in the Answer to Question No. 8, above) as soon as possible after final approval has been obtained for the *Settlement* (which includes exhaustion of any appeals). Any appeal of the final approval could take years. Any accrued interest on the *Settlement Fund* will be included in the amount paid to the *Plan* and allocated to the *Settlement Class* members.

There Will Be No Payments If The *Settlement Agreement* Is Terminated.

The *Settlement Agreement* may be terminated on several grounds, including if (1) the *Court* does not approve or materially modifies the *Settlement* or (2) either as modified by the *Court* or as a result of reversal or modification on appeal, the *Court's Final Order* in the case does not satisfy certain terms of the *Settlement*. Should the *Settlement Agreement* be terminated, the *Settlement* will be terminated, the modification of the certification of the *Class* for settlement purposes will be vacated, and the *Action* will proceed as if the *Settlement Agreement* had not been entered into.

10. Can I be excluded from the Settlement?

You do not have the right to exclude yourself from the *Settlement*. The *Class Certification* was certified, for the purposes of *Settlement* only, under Federal Rule of Civil Procedure 23(b)(1) as a non "opt-out" class action. *Class* members may not exclude themselves from the terms of the *Settlement*. If you are a *Settlement Class* member, you will be bound by any judgments or orders that are entered in the *Action* for all claims asserted in the *Action*, all related claims, and claims otherwise included in the release under the *Settlement*.

Although you cannot opt out of the *Settlement*, you can object to the *Settlement* and ask the *Court* not to approve it. See Answer to Question No. 14, below.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in the case?

The *Court* has appointed the law firms of McTigue & Veis LLP and Bailey & Glasser LLP as *Lead Counsel* for *Named Plaintiff* in the *Action*. These lawyers are called "*Class Counsel*." You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. How will the lawyers be paid?

Lead Counsel will file a motion for the award of attorneys' fees and expenses. *Lead Counsel* have spent more than three years litigating this case. This motion will be considered at the *Fairness Hearing*. As previously described, *Lead Counsel* has agreed to limit their motion for an award of attorneys' fees to not more than thirty percent (30%) of the recovery, plus reimbursement of expenses incurred in connection with the prosecution of the *Action*.

13. How will the Named Plaintiff be paid?

Lead Counsel may file a motion asking that the *Court* award the *Named Plaintiff*, Robin E. Figas, twenty thousand dollars (\$20,000) for her services in the *Action* during over three years of litigation. Her contributions to this lawsuit and *Settlement* include agreeing to be the *Named Plaintiff* in the action, reviewing court filings, traveling to the forum (Minneapolis) from California to have her deposition taken by *Defendants' Counsel*, and producing her personal records in discovery. The *Court* will decide the amount, if any, of the *Named Plaintiff's* compensation. Any *Named Plaintiff's* compensation as awarded by the *Court* will be paid out of the *Settlement Fund*.

14. Objecting to the Settlement or the Attorneys' fees or expenses or the Named Plaintiff's compensation?

You can tell the *Court* that you do not agree with the *Settlement* or some part of it, including the attorneys' fees and expenses the attorneys intend to seek and/or the *Named Plaintiffs'* case contribution award.

15. How do I tell the Court if I don't like the Settlement?

If you are a *Settlement Class* member, you can object to the *Settlement* if you do not like any part of it. You can give reasons why you think the *Court* should not approve it. The *Court* has directed that members of the *Settlement Class* may object by filing in connection with the *Court* and serving it on the attorneys in this lawsuit.

The addresses for filing objections with the *Court* and required service 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
Bryan T. Veis
McTIGUE & VEIS LLP
4530 Wisconsin Avenue, NW, Suite 200
Washington, DC 20016

For more information visit: www.wf401ksettlement.com

To *Defendants'* Counsel:

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

All objections must be both served upon the counsel identified above and filed with the *Court* **no later than** _____, 2011.

THE COURT'S FAIRNESS HEARING

The *Court* will hold a hearing to decide whether to approve the *Settlement* as fair, reasonable and adequate (the "*Fairness Hearing*"). You may attend the *Fairness Hearing*, and you may ask to speak, but you do not have to attend.

16. ***When and where will the Court decide whether to approve the Settlement?***

The *Court* will hold a *Fairness Hearing* at _____.m. on _____, 2011, at the United States District Court for the District of Minnesota, 316 North Robert Street, 100 Federal Building, St. Paul, MN 55101, in Courtroom _____ or in the Courtroom then occupied by United States District Judge Paul A. Magnuson. At that hearing, the *Court* will consider whether the *Settlement* is fair, reasonable, and adequate. If there are objections, the *Court* will consider them. After the *Fairness Hearing*, the *Court* will decide whether to approve the *Settlement*. The *Court* will also rule on the motions for attorneys' fees and expenses. It is not known how long these decisions will take.

17. ***Do I have to come to the hearing?***

No. *Lead Counsel* will be present to answer questions Judge Magnuson might have for them. But you are welcome to come at your own expense. If you send an objection, you do not have to come to *Court* to talk about it. As long as you filed your written objection with the *Court* and served a copy on *Lead Counsel* and *Defendants'* Counsel on time, it will be before the *Court* when the *Court* considers whether to approve the *Settlement*. You also may pay your own lawyer to attend the *Fairness Hearing*, but such attendance is not necessary.

18. ***May I speak at the hearing?***

If you are a *Settlement Class* member, you may ask the *Court* for permission to speak at the *Fairness Hearing*. To do so, you must send a letter or other paper entitled a "Notice of Intention to Appear at Fairness Hearing in *Figas v. Wells Fargo & Co.*, No. 08-CV-4546." Be sure to include your name, address, telephone number, and your signature. Your "Notice of Intention to Appear" must be served on the attorneys listed in the Answer to Question No. 16, above, postmarked no later than _____, 2011, and must be filed with the Clerk of the Court at the address listed in the Answer to Question No. 16, postmarked no later than _____, 2011.

IF YOU DO NOTHING

19. ***What happens if I do nothing at all?***

If you do nothing and you are a *Settlement Class* member, you will participate in the settlement of the *Action* as described above in this Notice if the *Settlement* is approved.

For more information visit: www.wf401ksettlement.com

GETTING MORE INFORMATION

20. Are more details about the Settlement available?

This Notice summarizes the proposed *Settlement*. The complete settlement is set forth in the *Settlement Agreement*. You may obtain a copy of the *Settlement Agreement* by making a written request to the *Lead Counsel* identified in this *Notice*. Copies may also be obtained at www.wf401ksettlement.com.

EXHIBIT 2

CLAIM DOCUMENTATION FORM

YOU ARE REQUIRED TO TAKE ACTION IN ORDER TO PARTICIPATE IN THIS SETTLEMENT.

You have received this form because Wells Fargo records indicate only that you are a former participant/received a total distribution of your account with the Wells Fargo 401(k) Plan ("Plan"). Even if you no longer have an account in the Plan, you may be entitled to receive money from the Settlement if you can provide evidence that you invested in any of the following Wells Fargo funds ("Wells Funds") at any time in the period **November 2, 2001 through October 8, 2009** (the "Class Period"):

- **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**
- **Wells Fargo Capital Growth Fund**

Please send any copies of your 401(k) Plan account statement(s) showing your investment(s) in the Wells Funds in the Class Period, along with a completed, signed copy of this form, to the Settlement Administrator at the address below. The form and accompanying statement(s) must be postmarked no later than _____, 2011 (the "Claims Deadline").

IF YOU DO NOT SEND COPIES OF YOUR ACCOUNT STATEMENT(S) SHOWING YOUR INVESTMENT IN THE WELLS FUNDS IN THE CLASS PERIOD, ALONG WITH A COMPLETED, SIGNED COPY OF THIS FORM, YOU WILL NOT BE ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT. You need to send a completed, signed copy of this form and the accompanying account statement(s) to be eligible. Please send all pages that you have of any account statement in the Class Period. Please carefully review the instructions below. If you have questions regarding this form, you may call the Settlement Administrator at _____.

INSTRUCTIONS FOR COMPLETING THIS FORM

1. **Complete and sign this form.**
2. **Mail the completed, signed form accompanied with a copy of all pages of any 401(k) Plan account statement(s) that you have showing your investment in the Wells Funds in the Class Period; it must be postmarked no later than _____, 2011 to:**

Settlement Administrator, _____.

It is your responsibility to ensure the Settlement Administrator has timely received your form and accompanying account statement(s). **Keep a copy for your records of all pages of the completed, signed form and account statement(s) which you send.**

3. **Other Reminders:**

- If you change your address after sending the form and accompanying account statement(s), please send your new address to the Settlement Administrator, along with you social security number.
- Settlement payments will not be made unless and until the Settlement Agreement has received final Court approval. Even if the Settlement Agreement has received final court approval, payment may be delayed if an appeal is filed.

4. Questions?

If you have any questions about this form, please call the Settlement Administrator at _____. The Settlement Administrator will only provide information about completing this form and will not provide financial, tax or other advice concerning the Settlement. You may want to consult with your financial or tax advisor. Information about the Settlement is available on the lawsuit website, _____.

SETTLEMENT
ADMINISTRATOR

CLAIM & DOCUMENTATION FORM
MUST BE POSTMARKED
NO LATER THAN _____, 2011

FOR OFFICIAL USE ONLY

PART I – CONTACT INFORMATION

If the pre-printed information to the left is incorrect or if there is no pre-printed information, please check the box and complete the information below:

Your Name: _____
Your Address: _____
City: _____
State: _____ Zip Code: _____

Your Email Address: _____

Your Daytime Tel: (_____) _____ - _____ Your Evening Tel: (_____) _____ - _____

PART II – FORMER PARTICIPANT INFORMATION

Provide the following information about the individual who invested under the Wells Fargo 401(k) Plan:

- ➔ Full name: _____
- ➔ Date of birth: ____/____/_____
- ➔ Social Security Number: _____ - _____ - _____

PART III – PROVIDE DOCUMENTATION IF AVAILABLE

Check the line below if you have account statements or other documentation showing your investment in any of the Wells Funds during the Class Period. You may be eligible for a payment in excess of the base settlement amount, which will be calculated according to the Plan of Allocation. You need to complete Part IV of this form.

___ **YES, I have documentation showing that I was invested in at least one of the Wells Funds at some point between (and including) November 2, 2001 and October 8, 2009.**

Please attach and submit account statements that show your investments in the Wells Funds during the Class Period. Make sure to include documents for each quarter you were invested in any Wells Fund. If you fail to submit account statement(s) you will not be eligible to participate in the settlement.

PART IV – SIGNATURE

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORMER PARTICIPANT CLAIM AND DOCUMENTATION FORM AND THE ATTACHED DOCUMENTATION IS TRUE, CORRECT AND COMPLETE AND THAT I SIGNED THIS FORMER PARTICIPANT DOCUMENTATION FORM:

A. Signature of Former Participant whose Social Security number is written above:

B. Date: ____ / ____ / ____

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

**Robin E. Figas, and all others similarly Civil File No. 08-cv-4546 (PAM/FLN)
situated,**

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.

ORDER AND FINAL JUDGMENT

Plaintiffs and Defendants have reached a *Settlement* of this class action litigation, which involves claims for 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 This Court issued an Order preliminarily approving the terms of the Class Action Settlement Agreement dated _____, 2011 (“*Settlement Agreement*”), including the procedures for class notice and the plan of allocation, and conditionally modifying the Order certifying the class to allow for a non-opt out class under Fed. R. Civ. P.

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

23(b)(1). This Court, having conducted a *Fairness Hearing* on the *Settlement*, the issues having been duly heard and a decision having been duly reached,

HEREBY ORDERS, ADJUDGES, AND DECREES:

1. The Court has jurisdiction over the subject matter of the *Action* and over all parties to the *Action*, including all members of the *Settlement Class*.

2. Pursuant to Fed. R. Civ. P. 23(e)(2), the Court hereby approves and confirms the *Settlement* embodied in the *Settlement Agreement* as being a fair, reasonable, and adequate settlement and compromise of the claims asserted in the *Action*.

3. The Court hereby approves the *Settlement Agreement* and orders that the *Settlement Agreement* shall be consummated and implemented in accordance with its terms and conditions.

4. Subject only to the provisions of paragraph 5 below and for *Settlement* purposes only, the Court hereby modifies the *Class* set forth in its Class Certification Orders of May 6, 2010 and September 1, 2010 to include:

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 Stock 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.

(The “*Settlement Class*”).

5. For *Settlement* purposes only, the Court hereby modifies its Class Certification Orders of May 6, 2010 and September 1, 2010, and finds that the *Settlement Class* is properly certified under Fed. R. Civ. P. 23(b)(1), and makes the following findings of fact, conclusions of law, and determinations of mixed fact/law questions:

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

B. The Court finds that the *Settlement Class* satisfies the numerosity, commonality, typicality, and adequacy requirements imposed by Fed. R. Civ. P. 26(a).

C. The Court finds that the *Settlement Class* satisfies the requirements of Fed. R. Civ. P. 23(b)(1). The *Settlement Class* has been given proper and adequate notice of the *Settlement Agreement*, the *Fairness Hearing*, *Lead Counsel’s* motion for attorney’s fees and expenses and for *Named Plaintiff* compensation, and *the Plan of Allocation*, such notice having been carried out in

accordance with the *Preliminary Approval Order*. Such notice included notice to all members of the *Settlement Class* who could be identified through reasonable efforts and provided valid, due and sufficient notice of these proceedings and of the matters set forth therein, and included information regarding the procedure for the making of objections, as well as the availability of the *Class Notice* and other information about the *Action* and *Settlement* at the website identified in the *Class Notice*. Further, *Former Participants* who were invested in the *Plan* during the *Class Period* for whom the *Plan* does not have records have received notice of this *Settlement* and *Claim Documentation Form* and the opportunity to receive a payment under the *Settlement*. Such notice fully satisfied the requirements of Fed. R. Civ. P. 23 and the requirements of due process.

6. 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.

7. The Court finds that the *Settlement* embodied in the *Settlement Agreement* is fair, reasonable, and adequate, based on the following findings of fact, conclusions of law, and determinations of mixed fact/law questions:

A. The *Settlement* was negotiated vigorously and at arm's-length by *Class Counsel* on behalf of the *Settlement Class* seeking relief for the *Plan*.

B. This *Action* settled at the end of the discovery period, after the completion of significant document discovery, depositions of fact witnesses, exchange of expert reports, and the depositions of two expert witnesses. The *Action* settled after a mediation session conducted by a retired federal judge with extensive experience in the settlement of class actions and other complex litigations. Both *Plaintiffs* and *Defendants* were well-positioned to evaluate the settlement value of the *Action*.

C. If the *Settlement* had not been achieved, both *Named Plaintiffs* and *Defendants* faced the expense, risk and uncertainty of extended litigation.

D. The amount of the *Settlement* — \$17,500,000 — is fair, reasonable, and adequate. The *Settlement* amount is within the range of settlement values obtained in similar cases and is within the range of reasonable settlements appropriate in this case.

E. At all times, the *Plaintiffs* have acted independently of *Defendants*.

F. The Court has duly considered any objections to the *Settlement* submitted, and the Court finds them without merit.

8. The *Action* is hereby dismissed with prejudice, each party to bear his, her or its own costs, except as expressly provided herein.

9. By operation of this *Judgment*, and effective upon its entry by the Court, *Named Plaintiff*, each member of the *Settlement Class* (on behalf of themselves and the *Plan*), and the *Plan* (by and through the *Independent Fiduciary*) 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 this release shall not include claims relating to the covenants or obligations set forth in the *Settlement Agreement*. This *Judgment* 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*. *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*.

10. By operation of this *Judgment*, and effective upon its entry by the Court, the *Company* fully, finally, and forever releases, relinquishes, and discharges, 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, matter, transactions, or occurrences that have been alleged or referred to in the *Action*..

11. The *Court* retains exclusive jurisdiction over the *Settlement Agreement* and retains exclusive jurisdiction to resolve any disputes or challenges that may arise as to the performance of the *Settlement Agreement* or any challenges as to the performance, validity, interpretation, administration, enforcement, or enforceability of the *Class Notice*, this *Judgment*, or the *Settlement Agreement* or the termination of the *Settlement Agreement*. The *Court* shall also retain exclusive

jurisdiction over and rule by separate order with respect to all motions for awards of attorneys' fees and to *Named Plaintiffs* and reimbursements of expenses made pursuant to Section 10.1 of the *Settlement Agreement*.

12. In the event that the *Settlement Agreement* is terminated in accordance with its terms, (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*, and (ii) the *Action* shall proceed as provided in the *Settlement Agreement*.

13. This judgment shall not be construed or used as an admission, concession, or declaration against *Named Plaintiff*, *Settlement Class* members, or *Defendants* of any fault, wrongdoing, breach or liability or lack of merit of the claims being settled.

SO ORDERED this ___ day of _____, 2011

HON. PAUL A. MAGNUSON
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Robin E. Figas,
and all others similarly situated,
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 Doe
Defendants 1-20.

Defendants.

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

PLAN OF ALLOCATION

The parties settled the lawsuit for a cash payment by *Defendants* to the *Class* in the amount of \$17.5 million, the *Settlement Fund*. This Plan of Allocation describes how the *Net Settlement Proceeds*, that is, the *Settlement Fund* less (1) attorneys' fees, expenses, and costs, (2) the expense of *Class Notice*, and (3) the expenses of *Settlement Administration*, are allocated to *Class Members*.

1. Summary and Assumptions

The Plan of Allocation is based on quarterly balances in the *Wells Funds*. There are 32 quarters in the *Class Period*.

The *Class Period* starts in November of 2001. The first quarter of the *Class Period* is 4Q 2001. For purposes of the *Plan of Allocation*, the first two months of

the *Class Period* are treated as a full quarter because end-of-year *Class Member* balances are available for 2001, but no other data. In addition, treating the first two months of the *Class Period* as a full quarter greatly simplifies and streamlines administration and implementation of the *Plan of Allocation*. Because the year-end balance as of December 31, 2001 is necessarily the same as the quarter-end balance for the fourth quarter of 2001, the *Plan of Allocation* uses the 2001 year-end balance data for the fourth quarter of 2001.

For the year 2002, only year-end balance data is available. Accordingly, the *Plan of Allocation* assumes the same balances for each of the four 2002 quarters.

For the quarters after 2002 through the end of the *Class Period*, actual account balance data does not exist as such except as of September 30, 2009. Accordingly, the claims administrator will calculate quarterly *Class Member* balances using available data elements.

The last quarter will be 3Q 2009. For 3Q 2009 the Plan of Allocation assumes the last 8 days of the class period (October 1-8) are included in 3Q 2009 quarter and does not make separate calculations for the trailing 8 days.

2. *Allocation Method*

Each *Class Member* shall receive the greater of A or B, where A is \$5.00 and B is the *Class Member Distribution* determined under the method described below.

- (a) *Net Settlement Proceeds*: the \$17.5 million *Settlement Fund* less attorneys' fees, expenses, and costs, the expense of *Class Notice*, and the expenses of *Settlement Administration*.
- (b) *Quarterly Class Member Plan Balance*: a *Class Member's* balance, where the balance is the dollar value of the *Class Member's* investment in the Wells Funds at the close of the given quarter.
- (c) *Quarterly Plan Balance*: the sum of all *Quarterly Class Member Plan Balances* during a given quarter.
- (d) *Aggregate Plan Balance*: the sum of all *Quarterly Plan Balances* during the *Class Period*.
- (e) *Quarterly Plan Settlement Allocation*: (1) the *Quarterly Plan Balance* divided by the *Aggregate Plan Balance*, (2) multiplied by the *Net Settlement Proceeds*.
- (f) *Quarterly Class Member Distribution*: (1) the *Quarterly Class Member Balance* for the respective quarter divided by the *Quarterly Plan Balance* for the same quarter, (2) multiplied by the *Quarterly Plan Settlement Allocation*.
- (g) *Class Member Distribution*: the sum of a *Class Member's* *Quarterly Class Member Distributions*.

3. Allocation Administration

After the *Settlement* becomes *Final*, the *Settlement Administrator* will cause *Net Proceeds* to be disbursed to *Class Members* who are *Former Participants* as that term is defined in the *Settlement Agreement* and to the *Plan's* trust for allocation to the *Class Members* who are not *Former Participants* as of the date of the *Settlement Agreement* ("Current Participants") in accordance with this *Plan of Allocation*.

In order to be eligible for a distribution from the *Net Proceeds*, a person must be a *Settlement Class Member*. *Current Participants* will receive their settlement payments in their *Plan* accounts. *Former Participants* will receive their settlement payments in the form of a check.

After the *Settlement Administrator* has completed payment calculations for *Class Members*, the *Settlement Administrator* will provide to the *Company* and *Lead Counsel* a *Plan Distribution Allocation File* providing the name, identification number, *Current* or *Former Participant* status, and amount of the *Class Member Distribution* calculated pursuant to the *Allocation Method* for each of the *Class Members*.

After the *Settlement Administrator* has completed payment calculations for *Class Members*, *Lead Counsel* will direct the *Financial Institution* to transfer from the *Settlement Fund* to the *Plan's* trust the aggregate amount of all settlement payments to *Current Participants* (the "*Current Participant Plan Distribution Allocation File*"). The *Company* shall direct the *Recordkeeper* to credit the individual account(s) of each *Current Participant* in an amount equal to that stated on the *Current Participant Plan Distribution Allocation File*. The settlement payment will be invested in accordance with such *Current Participants'* investment elections then on file with the *Plan* recordkeeper. If there is no investment election on file for any *Current Participant*, then such *Current*

Participant shall be deemed to have directed such payment to be invested in the Plan's "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5.

If a *Current Participant* receives a full distribution of his or her account after the date of the *Settlement Agreement*, the *Company* will direct the *Recordkeeper* to re-open the account for any such participant for the limited purpose of receiving the *Settlement* payment.

For each *Former Participant*, the *Settlement Administrator* will issue a check from the *Settlement Fund* and mail it to the address of such *Former Participant* as determined by the *Settlement Administrator*. The *Plaintiffs* shall direct the *Settlement Administrator* to: (i) calculate and withhold applicable tax withholdings from settlement payments to *Former Participants*; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the *Former Participants*; the manner and procedure that the *Settlement Administrator* shall employ in making such distributions, calculations, withholdings, and reports shall be reported to the *Company* at least fourteen (14) days before the *Independent Fiduciary* files its report. The *Company* shall have no responsibility for distributions, calculations, tax withholdings or tax reporting or notifications with respect to *Former Participants*. To the extent that any portion of any settlement

payment is subject to income or other tax, the *Class Member*, including any beneficiary or successor in interest of any *Class Member*, shall be ultimately responsible for such tax.

After completing all aspects of this *Plan of Allocation*, the *Settlement Administrator* shall send to the *Lead Counsel* and *Defendants'* counsel one or more affidavits stating or identifying the name of each *Former Participant* to whom the *Settlement Administrator* made a distribution from the *Net Proceeds*, together with the amount of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

Any *Net Proceeds* remaining in the *Qualified Settlement Fund* after the *Plan of Allocation* has been fully and completely implemented shall be disbursed to the *Plan's* trust. In no event shall any portion of the *Net Proceeds* be paid to *Defendants* or be used to offset expenses otherwise paid by *Defendants*.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Robin E. Figas,
and all others similarly situated,
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 Doe
Defendants 1-20.

Defendants.

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

**PLAINTIFFS' NOTICE OF HEARING ON MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND FAIRNESS HEARING**

PLEASE TAKE NOTICE that on July 21, 2011, at 10:00 am, before the
Hon. Paul A. Magnuson, United States District Judge for the District of Minnesota,
United States District Court, 734 Federal Building, 316 N. Robert Street,
courtroom 7D, St. Paul, MN 55101, Plaintiff Robin Figas will call up for hearing a
Motion For Final Approval Of Class Action Settlement.

Respectfully submitted,

By: /s/ Gregory Y. Porter

Dated: July 7, 2011

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Robin E. Figas,
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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 Doe
Defendants 1-20.

Defendants.

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

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2011, I caused the following documents to be filed electronically with the Court in the above matter:

1. Plaintiffs' Motion for Final Approval of Class Action Settlement;
2. Plaintiffs' Notice of Hearing on Motion for Final Approval of Class Action Settlement and Fairness Hearing;
3. Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Certification of Settlement Class and Approval of Plan of Allocation;
4. Second Declaration of Michael Joaquin Regarding the Notice of Class Action Settlement Action;
5. Declaration of Gregory Y. Porter;

I further certify that on this same day I caused copies of the foregoing to be served via electronic mail via the Court's ECF system. Notice of the filings will be

sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Gregory Y. Porter
Gregory Y. Porter