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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**

20 **WILLIAM C. SARFIELD,**

21 Plaintiff,

22 v.

23 **JOHN G. STUMPF,**
24 **JOHN D. BAKER II,**
25 **ELAINE L. CHAO,**
26 **JOHN S. CHEN,**
27 **LLOYD H. DEAN,**
28 **ELIZABETH A. DUKE,**
SUSAN E. ENGEL,
ENRIQUE HERNANDEZ, JR.,
DONALD M. JAMES,
CYNTHIA H. MILLIGAN,
FEDERICO F. PEÑA,
JAMES H. QUIGLEY,
STEPHEN W. SANGER,
JOHN R. SHREWSBERRY,
SUSAN G. SWENSON,
CARRIE TOLSTEDT, and
SUZANNE M. VAUTRINOT,

Defendants,

-and-

WELLS FARGO & COMPANY,

Nominal Defendant.

Case No.:

CGC 16-554444

SHAREHOLDER DERIVATIVE

COMPLAINT FOR:

1. **BREACH OF FIDUCIARY DUTY;**
2. **UNJUST ENRICHMENT; AND**
3. **CORPORATE WASTE**

DEMAND FOR JURY TRIAL

ENDORSED
Superior Court of California
County of San Francisco
SEP 22 2016
CLERK OF THE COURT
BY: **ROSSALY DE LA VEGA**
Deputy Clerk

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1 Plaintiff William C. Sarsfield (“Plaintiff”), a shareholder of Wells Fargo & Company (the
2 “Company”), brings this derivative action against certain of the Company’s current and/or former
3 officers and directors based on the unlawful conducted through the Company’s principal
4 subsidiary, Wells Fargo Bank, N.A. (the “Bank” and, collectively with the Company, “Wells
5 Fargo”), from at least **January 1, 2011** through **September 8, 2016** (the “Relevant Period”).
6 Plaintiff makes these allegations upon personal knowledge and based on the investigation of his
7 undersigned counsel which included, but is not limited to an analysis of: (1) Wells Fargo’s public
8 filings with the SEC; (2) documents produced by Wells Fargo pursuant to the shareholder
9 inspection demand; (3) press releases, and other public statements issued by or regarding Wells
10 Fargo; and (4) court and regulatory records, including the Administrative Proceeding in *In re*
11 *Matter of Wells Fargo Bank, N.A.*, brought by the Consumer Financial Protection Bureau
12 (“CFPB”), No. 2016-CFPB-0015, and *In re Matter of Wells Fargo Bank, N.A.*, brought by the U.S.
13 Office of the Comptroller of the Currency (“OCC”), Nos. AA-EC-2016-66 and AA-EC-2016-67.

14 **I. INTRODUCTION**

15 1. This case represents the worst type of corporate abuse and lack of accountability,
16 perhaps best illustrated by comparing recent comments made by Wells Fargo’s CEO, John Stumpf,
17 and U.S. Senator Elizabeth Warren, relating to the Bank’s illegal sales practices:

18 **“I feel accountable and our leadership team feels accountable – and we want
19 all our stakeholders to know that.”**

20 Wells Fargo CEO John Stumpf, September 13, 2016, *Wall Street Journal*,

21 **“And when it all blew up, you kept your job, you kept your multimillion
22 dollar bonuses and you just went on television to blame thousands of \$12 an
23 hour employees who were just trying to meet cross-sell quotas that made you
24 rich. This is about accountability. You should resign. You should give back
the money that you took while this scam was going on and you should be
criminally investigated by both the Department of Justice and the Securities
and Exchange Commission.”**

25 Sen. Elizabeth Warren, Senate Committee Hearing on Wells Fargo, September 20, 2016.

26 2. On September 8, 2016, the CFPB and OCC shocked the public markets when it
27 announced Consent Orders reached with Wells Fargo Bank based on a massive and pervasive
28 scheme of illegal sales practices that duped thousands of the Bank’s own customers. The Consent

1 Orders exposed a far-reaching, systemic breakdown in corporate governance at Wells Fargo,
2 including the Board of Directors' utter failure to implement, monitor and enforce basic systems of
3 internal controls over its sales and risk management, and compensation programs approved by the
4 Company's senior management that incentivized illegal behavior impacting **2 million accounts**
5 and transactions entered into **without customers' knowledge or consent**.

6 3. Reaction to these revelations was swift. Government regulators are reportedly
7 opening new investigations into the Company's conduct and the United States Senate held a
8 hearing devoted entirely to the role of Wells Fargo's senior management. It is now clear that
9 senior Wells Fargo management required employees to meet unrealistic sales targets so that the
10 Company – and the Individual Defendants – could boast to the public markets that the Bank was
11 achieving continuous growth, and pay themselves lucrative compensation packages. This was not
12 an isolated incident confined to remote locations in the Bank; to the contrary, the conduct was
13 open, notorious and systemic, reportedly resulting in the termination of over **5,300 employees** over
14 many years, **dating back at least to 2011 and possibly earlier**.

15 4. In testimony to the Senate Banking Committee, CFPB Director Richard Cordray
16 characterized Wells Fargo's sales practices as "fraudulent conduct . . . on a massive scale," and
17 justified its record fine "by the outrageous and abusive nature of these fraudulent practices on such
18 an enormous scale." Cordray noted that Wells Fargo's fraud was not the "stray misconduct of just
19 a few bad apples" but rather "the consequences of a diseased orchard."

20 5. As detailed in the regulatory settlements and Senate hearing, the illegal conduct was
21 premised on Wells Fargo's system of "cross-selling" that included: (i) opening deposit accounts
22 and transferring funds without authorization, sometimes resulting in insufficient funds fees; (ii)
23 applying for credit-card accounts without consumers' knowledge or consent, leading to annual
24 fees, as well as associated finance or interest charges and other late fees for some consumers; (iii)
25 issuing and activating debit cards, going so far as to create PINs, without consent; and (iv) creating
26 phony email addresses to enroll consumers in online-banking services.

1 6. The scope of the Board’s governance breakdowns, as reflected in the regulatory
2 Consent Orders, is staggering. Wells Fargo is now mandated to completely revamp its corporate
3 governance structure and provide accountability of management. In addition, the Consent Orders
4 require that Wells Fargo pay full refunds to affected consumers, and ensure the Bank engages in
5 proper sales practices going forward.

6 7. Wells Fargo must also pay fines, including a **\$100 million fine to the CFPB, the**
7 **largest penalty ever imposed by the CFPB.** The Bank also agreed to pay an additional **\$85**
8 **million to the OCC and other entities.**

9 8. The news of Wells Fargo’s violation of customer trust has been devastating to the
10 Company, negatively impacting the value of the Company’s stock and investor confidence in the
11 Company, leading to calls for the ouster and criminal investigation of senior management, and
12 immediate clawback of lucrative compensation packages paid to officers and directors based on
13 the Bank’s ginned-up sales results while the massive fraud was ongoing. The following are just a
14 few of the global headlines:

15
16 **CFPB Levies Its Largest Fine Ever: \$100 Million Against**
17 **Wells Fargo: Agency’s Chief says it is sending a message to discourage**
18 **similar activities**

Wall Street Journal
Sept. 8, 2016

21 **Pervasive Sham Deals at Wells Fargo, and No One Noticed?**

New York Times
Sept. 12, 2016

Wells Fargo CEO Defends Bank Culture, Lays Blame With Bad Employees

Wall Street Journal
Sept. 13, 2016

Wells Fargo Board Comes Under Fire

Wall Street Journal
Sept. 21, 2016

9. This shareholder derivative action seeks redress against the Company's current and/or former officers and directors for breaches of their fiduciary duties, which resulted in massive regulatory fines, a decline in stock price, exposure to significant potential liabilities from numerous lawsuits, increased regulatory scrutiny, and severe damage to Wells Fargo's reputation, brand value, and operations. Defendants knew that they had a fiduciary duty to act in the Company's best interests, and to actively oversee the Company's operations and risk management, yet exposed Wells Fargo to substantial liability by knowingly or recklessly permitting the Company and its employees to disregard the law, and then conceal the misconduct, for years.

10. Demand is excused in this action because all 15 members of the Company's Board, 7 of whom also served on the Bank's Board, violated their fiduciary duties. As detailed herein, the Director Defendants knew of or recklessly permitted the illegal sales practices, approved the structure to incentivize employees to engage in the illegal sales practices, concealed the conduct from regulators and investors, and failed to implement any meaningful changes to end the illegal sales practices and/or eliminate employee incentives that encouraged such practices.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over this action, which is brought pursuant to Section 800 of the California Corporation's Code to remedy Defendants' breaches of fiduciary duties, including conduct that occurred in California.

12. Venue is proper in this Court because the Company is headquartered and maintains its principal place of business at 420 Montgomery Street in San Francisco, California. In addition,

1 a substantial portion of the wrongs complained of herein occurred in the City and County of San
2 Francisco. Defendant STUMPF is also a resident of San Francisco, California.

3 **III. DEMAND TO INSPECT AND COPY BOOKS AND RECORDS**

4 13. On September 13, 2016, pursuant to California statute, Plaintiff hand-delivered to
5 Wells Fargo & Company a letter, addressed to its General Counsel, demanding to inspect Wells
6 Fargo & Company's books and records. A copy of Plaintiff's letter is attached as **EXHIBIT A**.
7 Plaintiff demanded that Wells Fargo produce for inspection, copying, or extraction the following
8 records:

9 a. The Board minutes of the Wells Fargo Board of Directors, including any
10 and all committees of Wells Fargo's Board of Directors, from January 1, 2011 to the present,
11 regarding or discussing the Sales Practices, including any notice or investigation thereof;

12 b. The agendas for and minutes of all shareholders' meetings or other
13 shareholder proceedings, from January 1, 2011 to the present, regarding or discussing the Sales
14 Practices, including any notice or investigation thereof;

15 c. All documents regarding or reflecting any actions taken, fines paid, refunds
16 issued, and/or expenses incurred by Wells Fargo due to the Sales Practices, including any
17 settlement reached with the CFPB, OCC or LA City Attorney's office.

18 14. Wells Fargo produced only certain of the requested documents, and before
19 producing others, required that Plaintiff agree to a confidentiality agreement based on Delaware
20 law and an exclusive forum selection clause in Delaware Chancery Court. Plaintiff refused.

21 **III. PARTIES**

22 **A. PLAINTIFF**

23 15. Plaintiff **WILLIAM C. SARFIELD** is a resident of California. Plaintiff will
24 adequately and fairly represent the interests of Wells Fargo in enforcing and prosecuting its rights.
25 Plaintiff was a shareholder of Wells Fargo during the Relevant Period of wrongdoing complained
26 of, has continuously been a shareholder since that time, and is a current shareholder of Wells Fargo
27 stock.

1 16. Plaintiff brings this action derivatively in the right and for the benefit of Wells
2 Fargo to redress injuries suffered, and to be suffered, by Wells Fargo as a direct result of breach of
3 fiduciary duties, unjust enrichment, and corporate waste by the Defendants.

4 17. In compliance with Cal. Corp. Code § 800(b)(2), Plaintiff caused a correct copy of
5 this complaint to be delivered to Wells Fargo before filing it with this Court.

6 **B. DEFENDANTS**

7 **1. Nominal Defendant**

8 18. Nominal defendant **WELLS FARGO & COMPANY** (the “Company”) is a bank
9 holding company, formed as a Delaware corporation, with its headquarters and principal place of
10 business in San Francisco, California. The Company’s principle business is to act as a holding
11 company for its subsidiaries, including Wells Fargo Bank, N.A. (the “Bank”), the principal
12 subsidiary of the Company, with assets of \$1.6 trillion, or 90% of the Company’s total assets. The
13 Company’s stock trades on the New York Stock Exchange under the symbol “WFC.”

14 **2. Individual Defendants**

15 19. Defendant **JOHN G. STUMPF** (“STUMPF”) has been affiliated with Wells Fargo
16 and its predecessors for 34 years. STUMPF was appointed to the Company’s Board in June 2006,
17 appointed CEO in June 2007, and became Board Chairman in January 2010. STUMPF is a
18 resident of San Francisco, California and conducts business at the Company’s headquarters at 420
19 Montgomery Street in San Francisco. In 2015, STUMPF received compensation worth \$19.5
20 million.

21 20. Defendant **JOHN D. BAKER II** (“BAKER”) has been a Director of the Company
22 since 2009. Baker serves on the Board’s Audit and Examination Committee, Corporate
23 Responsibility Committee, and Credit Committee.

24 21. Defendant **ELAINE L. CHAO** (“CHAO”) has been a Director of the Company
25 since 2011. CHAO serves on the Board’s Credit Committee and Finance Committee.

26 22. Defendant **JOHN S. CHEN** (“CHEN”) has been a Director of the Company since
27 2006. CHEN serves on the Board’s Human Resources Committee.

1 23. Defendant **LLOYD H. DEAN** (“DEAN”) has been a Director of the Company
2 since 2005. DEAN serves on the Board’s Corporate Responsibility Committee, Governance and
3 Nominating Committee, Human Resources Committee and Risk Committee.

4 24. Defendant **ELIZABETH A. DUKE** (“DUKE”) has been a Director of the
5 Company since 2015. DUKE serves on the Board’s Credit Committee, Finance Committee, and
6 Risk Committee.

7 25. Defendant **SUSAN E. ENGEL** (“ENGEL”) has been a Director of the Company
8 since 1998. ENGEL serves on the Board’s Credit Committee, Finance Committee and Human
9 Resources Committee.

10 26. Defendant **ENRIQUE HERNANDEZ, JR.** (“HERNANDEZ”) has been a Director
11 of the Company since 2003. HERNANDEZ serves on the Board’s Corporate Responsibility
12 Committee, Finance Committee and Risk Committee.

13 27. Defendant **DONALD M. JAMES** (“JAMES”) has served as a Director of the
14 Company since 2009. JAMES serves on the Board’s Finance Committee and Human Resources
15 Committee.

16 28. Defendant **CYNTHIA H. MILLIGAN** (“MILLIGAN”) has been a Director of the
17 Company since 1992. MILLIGAN serves on the Board’s Corporate Responsibility Committee,
18 Credit Committee, Governance and Nominating Committee and Risk Committee.

19 29. Defendant **FEDERICO F. PEÑA** (“PEÑA”) has been a Director of the Company
20 since 2011. PEÑA serves on the Board’s Audit and Examination Committee, Corporate
21 Responsibility Committee, Governance and Nominating Committee, and Risk Committee.

22 30. Defendant **JAMES H. QUIGLEY** (“QUIGLEY”) has served as a Director of the
23 Company since 2013. QUIGLEY serves on the Board’s Audit and Examination Committee,
24 Credit Committee and Risk Committee.

25 31. Defendant **STEPHEN W. SANGER** (“SANGER”) has served as a Director of the
26 Company since 2003. SANGER serves on the Board’s Governance and Nominating Committee,
27 Human Resources Committee and Risk Committee.

28

1 32. Defendant **SUSAN G. SWENSON** (“SWENSON”) has been a Director of the
2 Company or its predecessor/acquired companies acquired since 1998. SWENSON serves on the
3 Board’s Audit and Examination Committee and Governance and Nominating Committee.

4 33. Defendant **SUZANNE M. VAUTRINOT** (“VAUTRINOT”) has been a Director of
5 the Company since 2015. VAUTRINOT serves on the Boards Audit and Examination Committee
6 and Credit Committee.

7 34. Defendant **JOHN R. SHREWSBERRY** (“SHREWSBERRY”) is the Chief
8 Financial Officer of both the Company and the Bank, and has been with the Company or its
9 subsidiaries since 2001. SHREWSBERRY conducts business at the Company’s headquarters at
10 420 Montgomery Street in San Francisco. In 2015, SHREWSBERRY received more than \$9
11 million in compensation.


12 35. Defendant **CARRIE TOLSTEDT** (“TOLSTEDT”) is the Senior Executive Vice
13 President, Community Banking at the Company. TOLSTEDT was head of Community Banking
14 since 2007, during which time employees in that division reportedly opened more than two million
15 unauthorized customer accounts. In July 2016, TOLSTEDT announced she would be retiring,
16 reportedly taking with her an estimated \$124.6 million in stock, options, and restricted shares.


17 36. Defendants BAKER, CHAO, CHEN, DEAN, DUKE, ENGEL, HERNANDEZ,
18 JAMES, MILLIGAN, PEÑA, QUIGLEY, SANGER, STUMPF, SWENSON, and VAUTRINOT
19 are collectively referred to as the “Director Defendants.” STUMPF, SHREWSBERRY and
20 TOLSTEDT are collectively referred to as the “Officer Defendants.” The Director Defendants and
21 the Officer Defendants are collectively referred to as the “Defendants” or “Individual Defendants.”
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1 **IV. THE INDIVIDUAL DEFENDANTS’ FAILURE TO GOVERN WELLS FARGO**

2 **A. WELLS FARGO’S CROSS-SELLING STRATEGY**

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4 

5 

6 **Accounts**

| | | |
|-----------------|--------------|---|
| CHECKING x-4001 | \$1,020.50 | > |
| SAVINGS x-4002 | \$1,392.00 | > |
| VISA x-1762 | \$1,534.01 | > |
| MORTGAGE x-4765 | \$122,046.11 | > |

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12 37. Wells Fargo offers consumer financial products and services, including mortgages,

13 savings and checking accounts, credit cards, debit and ATM cards, and online-banking services.

14 During the Relevant Period, Wells Fargo sought to distinguish itself in the marketplace as a leader

15 in “cross-selling” banking products and services to its existing customers. To drive growth, Wells

16 Fargo also set sales goals and implemented sales compensation incentives to increase the number

17 of banking products and services that its employees sold to its customers. Unfortunately, as

18 described herein, Wells Fargo’s cross-selling strategy crossed the lines of legality and, under the

19 watch of the Individual Defendants, thousands of Wells Fargo’s employees engaged in improper

20 sales practices to satisfy sales goals and earn financial rewards under the Company’s incentive

21 compensation program.

22 **B. “EIGHT IS GREAT”**

23 38. Wells Fargo’s internal motto for cross-selling is “**Eight is Great.**” It was common

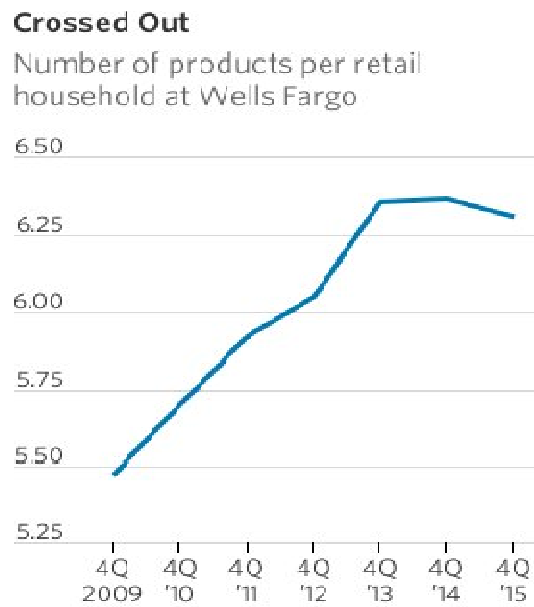
24 knowledge within Wells Fargo that management wanted existing household customers to use at

25 least eight Wells Fargo financial products, and that such aggressive cross-selling strategies were

26 key to driving revenue growth at the Company.

1 39. For purposes of the “Eight is Great” strategy, Wells Fargo defined a “retail banking
2 household” as one using at least one of the following products: a demand deposit account, savings
3 account, savings certificate, individual retirement account (IRA) certificate of deposit, IRA savings
4 account, personal line of credit, personal loan, home equity line of credit or home equity.

5 40. Wells Fargo’s aggressive cross-selling strategy did, indeed, give the appearance that
6 the number of products each retail customer utilized was increasing during the Relevant Period:



15 Source: *The Wall Street Journal*

16 41. Wells Fargo’s senior management, including the Individual Defendants, knew of,
17 encouraged, and closely monitored compliance with the “Eight is Great” program. They regularly
18 received updated cross-selling data and discussed the push for cross-selling to securities analysts.
19 Indeed, in the months leading up to the Relevant Period, it became clear that the “Eight is Great”
20 cross-selling strategy was absolutely critical to the Company’s bottom line and its ability to reach
21 financial and other metrics used with its market analysts. Bloomberg reported:

22 The reason cross-selling has developed such a sense of urgency is that
23 they are just getting hammered on all of their traditional sources of
24 income,” said Tony Plath, finance professor at the University of North
25 Carolina at Charlotte. **Cross-selling is so central to Wells Fargo that**

1 **managers mentioned it 108 times at last month’s two-day investor**
2 **conference**, said Barclays analyst Jason Goldberg. (Emphasis added.)

3 42. The purported legitimacy and success of Wells Fargo’s cross-selling strategy was
4 prominently discussed in the Company’s Annual Reports, annual Form 10-Ks, Quarterly Form 10-
5 Qs, and other SEC filings throughout the Relevant Period, reviewed and approved by the
6 Individual Defendants.

7 43. For example, in its 2011 Annual Report, the Company explained the importance it
8 was placing on increasing cross-selling results and the central role “Eight is Great” would play:

9 Our vision is to satisfy all our customers’ financial needs, help them
10 succeed financially, be recognized as the premier financial services
11 company in our markets and be one of America’s great companies. **Our**
12 **primary strategy to achieve this vision is to increase the number of**
13 **products our customers utilize** and to offer them all of the financial
14 products that fulfill their needs. Our cross-sell strategy, diversified
15 business model and the breadth of our geographic reach facilitate growth
16 in both strong and weak economic cycles, as we can grow by expanding
17 the number of products our current customers have with us, gain new
18 customers in our extended markets, and increase market share in many
19 businesses. **Our retail bank household cross-sell increased each**
20 **quarter during 2011 to 5.92 products per household in fourth quarter**
21 **2011, up from 5.70 in fourth quarter 2010. We believe there is more**
22 **opportunity for cross-sell** as we continue to earn more business from our
23 customers. **Our goal is eight products per customer**, which is
24 approximately half of our estimate of potential demand for an average
25 U.S. household. Currently, one of every four of our retail banking
26 households has eight or more products. (Emphasis added.)

27 44. Similar language appeared in the Company’s 2012, 2013, 2014, and 2015 Annual
28 Reports, and 2016 quarterly filings with the SEC, emphasizing the goal of “eight products per
customer” and reporting current cross-selling results:

- 2012 Annual Report:

“Our retail bank household cross-sell was **6.05 products per household**
in fourth quarter 2012, up from 5.93 a year ago.”

- 2013 Annual Report:

“Our retail bank household cross-sell was a record **6.16 products per**
household in November 2012 and 5.93 in November 2011.”

- 1
- 2
- 2014 Annual Report:

3 “Noteworthy items included . . . we continued to maintain solid customer
4 relationships across [Wells Fargo & Company], with retail banking
5 household **cross-sell of 6.17 products per household (November
6 2014)[.]”**

- 6
- 2015 Annual Report:

7 “Our retail banking household **cross-sell was 6.11 products per
8 household in November 2015, compared with 6.17 in November 2014
9 and 6.16 in November 2013.”**

- 9
- Form 10-Q for Q1 2016:

10 “Our retail bank household **cross-sell was 6.09 products per household
11 in February 2016, compared with 6.13 in February 2015.”**

- 12
- Form 10-Q for Q2 2016:

13 Referring to the newly-adopted, revised methodology for the cross-selling
14 statistics, “**Our Community Banking cross-sell metrics**, as revised for
15 prior periods to conform to the current period presentation, **were 6.28,
16 6.32, 6.31, 6.37 and 6.36 as of February 2016, May 2015 and
17 November 2015, 2014 and 2013, respectively**, reflecting a one month
18 reporting lag for each period.” (Emphasis added.)

17 **V. REVELATION OF DECEPTIVE SALES PRACTICES AND BREAKDOWN IN**
18 **CORPORATE GOVERNANCE**

19 **A. THE CFPB’S CONSENT ORDER AND FINDINGS**

20 45. Unbeknownst to Plaintiff and the Company’s other shareholders, Wells Fargo’s
21 reported financial results and success with its cross-selling strategy was the result of rampant,
22 illegal fleecing of the Bank’s own customers, *i.e.*, a massive fraud. Moreover, while the deceptive
23 sales practices dated back at least five years, to 2011, Wells Fargo’s Board did nothing to monitor
24 or stop such practices until regulators forced their hand in 2016.

25 46. Specifically, on September 8, 2016, the CFPB announced the results of its in-depth
26 investigation into Wells Fargo’s aggressive sales practices, revealing that the Bank engaged in
27 many different types of illegal conduct to drive revenues, including: (i) opening hundreds of
28

1 thousands of accounts without the consumer’s consent and then funding the new accounts through
2 unauthorized transfers of funds between the consumer’s accounts; (ii) submitting tens of thousands
3 of credit card applications without the consumer’s consent; (iii) issuing debit cards without the
4 consumer’s consent; and (iv) enrolling consumers in online-banking services without the
5 consumer’s consent. The CFPB concluded that this conduct violated the Consumer Financial
6 Protection Act of 2010 (“CFPA”) and provided the basis for a Consent Order entered on
7 September 8, 2016.

8 47. A copy of the CFPB’s September 8, 2016 press release titled “Consumer Financial
9 Protection Bureau Fines Wells Fargo \$100 Million for Worldwide Illegal Practice of Secretly
10 Opening Unauthorized Accounts” is attached as **EXHIBIT B**. A copy of the Consent Order in
11 CFPB Administrative Proceeding 2016-CFPB-0015 is attached as **EXHIBIT C**.

12 **1. Unauthorized Deposit Accounts & Simulated Funding**

13 48. As part of the cross-selling strategy, Wells Fargo engaged in “simulated funding,”
14 *i.e.*, opened deposit accounts without customers’ knowledge or consent and then transferred funds
15 from the customers’ authorized accounts to temporarily fund the unauthorized accounts, allowing
16 employees to obtain credit under the incentive-compensation program. Wells Fargo also used
17 email addresses not belonging to the customers to enroll them in online-banking services without
18 their knowledge or consent. In addition, Wells Fargo made phony requests for debit cards, and
19 created personal identification numbers (“PINs), to activate the debit cards without the consumer’s
20 knowledge or consent.

21 49. Wells Fargo opened more than **1.5 million** deposit accounts that may not have been
22 authorized, that were funded through simulated funding, and/or had funds transferred from
23 consumers’ existing accounts without their knowledge or consent. Approximately 85,000 of the
24 accounts incurred fees, totaling millions of dollars, including overdraft fees on customers’
25 legitimate accounts, monthly service fees, and other fees customers would not have incurred
26 otherwise.

1 50. The CFPB concluded that this conduct took unreasonable advantage of consumers’
2 inability to protect their interests in selecting or using consumer financial products or services.
3 Customers have the right to have accounts opened only after affirmative agreement, protecting
4 themselves from security and other risks, and avoiding associated fees. Therefore, the CFPB found
5 that Wells Fargo engaged in “unfair” and “abusive” acts or practices in violation of CFPA sections
6 1031(c)(1), (d)(1), (d)(2)(B), and 1036(a)(1)(B), codified at 12 U.S.C. §§ 5531(c)(1), (d)(1),
7 (d)(2)(B), 5536(a)(1)(B).

8 **2. Unauthorized Issuance of Credit Cards**

9 51. Wells Fargo employees submitted **565,443** applications for credit-card accounts that
10 may not have been authorized by using consumers’ information without their knowledge or
11 consent. Approximately 14,000 of those accounts incurred \$403,145 in annual fees, overdraft-
12 protection fees, finance or interest charges, and late fees.

13 52. The CFPB determined that this constituted “unfair” and “abusive” conduct in
14 violation of CFPA sections 1031(c)(1), (d)(1), (d)(2)(B), and 1036(a)(1)(B) of the CFPA, codified
15 at 12 U.S.C. §§ 5531(c)(1), (d)(1), (d)(2)(B), 5536(a)(1)(B).

16 **3. Issuance of Unauthorized Debit Cards**

17 53. Wells Fargo submitted phony requests for debit cards, and created PINs to activate
18 them, without consumers’ knowledge or consent.

19 54. Section 1036(a)(1)(B) of the CFPA prohibits “abusive” acts or practices. See 12
20 U.S.C. § 5536(a)(1)(B). An act or practice is abusive if it takes unreasonable advantage of the
21 consumer’s inability to protect his or her interests in selecting or using a consumer financial
22 product or service. See 12 U.S.C. § 5531(d)(2)(B). The CFPB determined that Wells Fargo’s acts
23 of issuing debit cards to consumers without their knowledge or consent took unreasonable
24 advantage of consumers’ inability to protect their interests in selecting or using a consumer
25 financial product or service. See 12 U.S.C. § 5531(d)(2)(B). Therefore, the CFPB found that Wells
26 Fargo engaged in “abusive” acts that violate §§ 1031(d)(2)(B) and 1036(a)(1)(B) of the CFPA. See
27 12 U.S.C. §§ 5531(d)(2)(B), 5536(a)(1)(B).

1 **4. Unauthorized Enrollment into Online-Banking Services**

2 55. Wells Fargo employees used email addresses not belonging to consumers to enroll
3 consumers in online-banking services without their knowledge or consent.

4 56. The CFPB concluded that Wells Fargo’s acts of enrolling consumers in online-
5 banking services without their knowledge or consent took unreasonable advantage of consumers’
6 right to protect their interests in selecting or using a consumer financial product or service,
7 including customers’ interest in having these products or services activated only after affirmative
8 agreement and protecting themselves from security and other risks. Therefore, the CFPB
9 concluded that Wells Fargo engaged in “abusive” acts or practices that violate §§ 1031(d)(2)(B)
10 and 1036(a)(1)(B) of the CFPA. See 12 U.S.C. §§ 5531(d)(2)(B), 5536(a)(1)(B).

11 **5. Corrective Actions Required by the CFPB**

12 57. The CFPB Consent Order requires Wells Fargo to refrain from directly or indirectly
13 engaging in the improper sales practices. In addition, Wells Fargo is required to have an
14 independent consultant with specialized experience in consumer-finance-compliance issues to
15 conduct an independent review of Wells Fargo’s sales practices related to deposit accounts, credit
16 card accounts, unsecured lines of credit, and related products and services. The independent
17 consultant must assess whether Wells Fargo’s current policies and procedures are reasonably
18 designed to ensure that Wells Fargo’s sales practices comply with all applicable federal consumer
19 financial laws and that Wells Fargo’s employees do not engage in improper sales practices. In
20 particular, the independent consultant must assess:

- 21 • Whether Wells Fargo’s employees are required to undergo training reasonably
22 designed to prevent improper sales practices and other sales-integrity violations;
23 whether such training is adequate, complete, and timely updated, provided when
24 employees join Wells Fargo, and repeated at sufficient recurring intervals during
25 their employment to reinforce such training; whether training records are complete,
26 accurate and adequate; and whether employees are informed of an obligation to

1 report all sales-integrity issues internally through an “ethics hotline” or similar
2 mechanism;

- 3 • Whether Wells Fargo’s monitoring policies and procedures ensure that Wells Fargo
4 monitors employees’ sales practices proactively, and that Wells Fargo devotes
5 sufficient personnel and resources to monitor those practices appropriately;
- 6 • Whether Wells Fargo has adequate policies and procedures for: (i) receiving,
7 retaining, and addressing consumer inquiries or complaints; (ii) receiving,
8 retaining, and addressing employee allegations of improper sales practices or any
9 other allegations of sales-integrity violations; (iii) tracking and addressing
10 indicators of potential Improper Sales Practices or any other sales-integrity
11 violations; and (iv) identifying and remediating consumers for Improper Sales
12 Practices or other sales integrity violations identified after entry of the CFPB
13 Consent Order, as well as for correcting any related systemic issues identified after
14 entry of the CFPB Consent Order;
- 15 • Whether Wells Fargo’s policies and procedures related to sales of deposit accounts,
16 credit cards, unsecured lines of credit, and related products and services are
17 reasonably designed to ensure consumer consent is obtained before any such
18 product is sold or issued to a consumer. The independent consultant’s review must
19 include, but not be limited to, whether Wells Fargo has adequate policies and
20 procedures for capturing and retaining consumer signatures and other evidence of
21 consent for such products and services, for providing a grace period before
22 assessing fees on any deposit account, and for closing accounts in which there is no
23 customer initiated activity during the grace period without assessing fees; and
- 24 • Whether Wells Fargo’s performance-management and sales goals for its employees
25 are consistent with the objective of preventing improper sales practices and other
26 sales-integrity violations.

1 58. The independent consultant is required to prepare a written report detailing the
2 findings of the review and provide that report to the Bank’s Board. The Board or a Board
3 committee must then develop a compliance plan to correct any deficiencies identified or explain
4 why a recommendation is not being implemented. The compliance plan must also be submitted to
5 the CFPB.

6 59. Wells Fargo is also required to submit to the CFPB a comprehensive written plan
7 for providing redress. The redress plan must identify all affected consumers, as well as the types
8 and amounts of any fees or charges they incurred as a result of the improper sales practices. In
9 addition, the redress plan must describe the process for providing redress to the affected consumers
10 and identify the dollar amount of redress for each category of affected consumers.

11 60. The CFPB further requires that Wells Fargo deliver the Consent Order to each
12 Board member and executive officer, as well as all managers and employees responsible for
13 compliance.

14 61. The CFPB Consent Order remains in effect for five years, until September 2021.

15 **B. THE OCC’S CONSENT ORDER AND FINDINGS**

16 62. On September 8, 2016, the Office of the Comptroller of the Currency (“OCC”)
17 announced the results of its own investigation into Wells Fargo’s sales practices, as well as entry
18 of two separate Consent Orders against the Bank: (1) a “cease and desist” order designed to
19 immediately stop the “unsafe” sales practices by the Bank, and (2) an order requiring the Bank to
20 pay a civil monetary penalty of \$35 million. The OCC’s release stated that the large amount of the
21 fine “reflects a number of factors, including the bank’s failure to develop and implement an
22 effective enterprise risk management program to detect and prevent the unsafe or unsound sales
23 practices, and the scope and duration of the practices.” A copy of the OCC’s September 8, 2016
24 press release titled “OCC Assesses Penalty against Wells Fargo, Orders Restitution for Unsafe or
25 Unsound Sales Practices” is attached as EXHIBIT D. A copy of the Consent Order in *In re*
26 *Matter of: Wells Fargo Bank, N.A.* (matter AA-EC-2016-66) is attached as EXHIBIT E. A copy
27
28

1 of the Consent Order For A Civil Monetary Penalty in *In re Matter of: Wells Fargo Bank, N.A.*
2 (matter AA-EC-2016-67) is attached as **EXHIBIT F.**

3 63. Each of the OCC's Consent Orders were based upon, and specifically incorporated
4 by reference, a "Stipulation and Consent" signed by Defendants STUMPF, DEAN,
5 HERNANDEZ, MILLIGAN, PENA, QUIGLEY and SANGER, in their capacity as directors of
6 the Bank. A copy of the Stipulation And Consent To The Issuance Of A Consent Order in *In re*
7 *Matter of: Wells Fargo Bank, N.A.* (matter number AA-EC-2016-66) is attached as **EXHIBIT G.**
8 A copy of the Stipulation And Consent To The Issuance Of An Order For A Civil Money Penalty
9 in *In re Matter of: Wells Fargo Bank, N.A.* (matter number AA-EC-2016-67) is attached as
10 **EXHIBIT H.**

11 64. The OCC's Consent Orders, incorporating by reference the Stipulations and
12 Consents signed by the referenced Individual Defendants, made a number of findings about the
13 Bank's "deficiencies and unsafe or unsound practices in the Bank's risk management and oversight
14 of the Bank's sales practices" including the following:

- 15 • The Bank's "incentive compensation program and plans within the Community
16 Bank Group were not properly aligned with local branch traffic, staff turnover, or
17 customer demand, and they fostered the unsafe or unsound sales practices . . . and
18 pressured Bank employees to sell Bank products not authorized by the customer;
- 19 • "The Bank lacked an Enterprise-Wide Sales Practices Oversight Program and thus
20 failed to provide sufficient oversight to prevent and detect the unsafe or unsound
21 sales practices . . . and failed to mitigate the risks that resulted from such
22 practices";
- 23 • "The Bank lacked a comprehensive customer complaint monitoring process that
24 impeded the Bank's ability to" assess complaint activity across the Bank,
25 adequately monitor, manage and report on complaints, and analyze and understand
26 the potential sales practices at risk;

- 1 • “The Bank’s Community Bank Group failed to adequately oversee sales practices
- 2 and failed to adequately test and monitor branch employee sales practices”;
- 3 • “The Bank’s audit coverage was inadequate because it failed to include in its scope
- 4 an enterprise-wide view of the Bank’s sales practices.”

5 65. The OCC’s investigation specifically identified “unsafe and unsound sales practices
6 in the Bank’s Community Bank Group” including selling unwanted deposit or credit card
7 accounts, opening accounts without authorization, transferring funds to unauthorized accounts to
8 “simulate” funding, and unauthorized credit inquiries to enable this conduct.

9 66. The OCC also rejected any notion that Wells Fargo’s illegal behavior was somehow
10 isolated in scope or duration, concluding instead that “the Bank engaged in reckless unsafe or
11 unsound banking practices that were part of a pattern of misconduct.” The OCC required full
12 restitution to the Bank’s customers.

13 67. Most notably, there is stark evidence of the Individual Defendants’ utter failure to
14 monitor and oversee Wells Fargo’s bank and sales operations, causing the OCC to mandate that
15 the Bank make large-scale revisions to its internal corporate governance structure, including the
16 following:

- 17 • The Bank’s Board is required to appoint and maintain a Compliance Committee,
18 including at least three non-employee directors, responsible for overseeing
19 compliance with the OCC-mandated relief and preparing reports to the Board and
20 OCC.
- 21 • The Bank must submit a “Comprehensive Action Plan” to ensure the Bank
22 “achieves and maintains an enterprise-wide risk management program designed to
23 prevent and detect unsafe or unsound sales practices.”
- 24 • The Bank is required to retain an independent consultant to conduct an “Enterprise-
25 wide Risk Review of Sales Practices Risk,” including a review the Bank’s
26 enterprise-wide governance and risk management of sales practices related to
27
28

1 deposit accounts, credit card accounts, unsecured lines of credit, and related
2 services, and then to provide a report to the OCC, including a root cause analysis.

- 3 • The Bank must develop a comprehensive “Enterprise-wide Sales Practices Risk
4 Management and Oversight Program,” for review by the OCC, which must include
5 (a) a written corporate values statement regarding compliance, to be communicated
6 across the Bank; (b) implementation of policies and procedures for reporting and
7 escalating sales practices information to the Board and executive management in a
8 timely manner; (c) establishment of key risk indicator metrics at both the enterprise
9 and line of business levels, including customer surveys, complaints, employee
10 ethics allegations or complaints, and corporate investigation metrics; (d) a
11 comprehensive written assessment of any new or revised incentive structure for
12 personnel engaged in sales practices; (e) policies to review, evaluate and escalate
13 customer complaints; (f) policies to assess customer harm and remediation when
14 employees are terminated; (g) training Bank personnel regarding applicable laws
15 and rules and Bank policies; (h) policies to identify and report sales practice issues
16 to a specified executive risk manager at the Bank; and (i) policies to ensure that
17 risk management, legal, internal audit, and corporate compliance programs have
18 the requisite authority and status within the Bank so that deficiencies are identified
19 and remedied.
- 20 • The Bank must adopt an “Enterprise Complaints Management Policy” and related
21 procedures to track, manage and report customer complaints.
- 22 • The Bank must revise its existing monitoring and testing program, Wells Fargo
23 Audit Services, and require it to include written policies and procedures to ensure
24 that there is an “enterprise view of sales practices” and policies to ensure that
25 investigations, customer complaints, and ethics line process are included in the
26 monitoring and testing program, with a written audit opinion for each of these
27 areas.

1 **C. WELLS FARGO ACKNOWLEDGES WIDE SCOPE OF ILLEGAL SALES**
2 **PRACTICES, AND MASS FIRINGS OF LOW-LEVEL EMPLOYEES,**
3 **WHILE SENIOR EXECUTIVES GET PAID MILLIONS**

4 68. Following the CFPB and OCC settlements and fines, the financial press began to
5 reveal additional new details about the massive scope of the illegal sales practices at Wells Fargo,
6 and the lucrative compensation packages enjoyed by the Individual Defendants at the same time
7 the fraud was occurring.

8 69. The illegal sales practices had occurred at least as far back as 2011, and possibly
9 earlier, and continued into 2016.

10 70. Wells Fargo reportedly fired over 5,300 employees based on the illegal sales
11 practices. According to Wells Fargo, about 10% of the terminated employees were branch
12 managers or senior to such managers.

13 71. The illegal practices included the creation of almost two million spurious bank and
14 credit card accounts for customers without their knowledge.

15 72. Accordingly, the illegal sales practices were not just due to a handful of
16 disobedient, low level employees going rogue. Rather, under the Individual Defendants' watch,
17 Wells Fargo fostered a pervasive, widespread company culture in which employees were pressured
18 to engage in misconduct simply to keep their jobs, and as a result, the illegal practices permeated
19 the Company's operations and impacted millions of accounts over years and years.

20 73. Unfortunately, these terminated employees have now become the scapegoats of the
21 pressure-cooker environment created by the Individual Defendants, and their hyper-aggressive
22 sales strategies, including "Eight is Great." Ms. Mita Bhowmick, a former bank teller in
23 Pennsylvania, told *The Wall Street Journal*, "[i]t was all management: their boss, then their boss,
24 then their boss.... They are putting pressure on employees and it's sad... People need their jobs."

25 74. CFO SHREWSBERRY also acknowledged that the terminated employees were
26 victims of the environment within Wells Fargo, stating that the problem stemmed from "people
27 trying to meet their minimum goals to hang onto their job."
28

1 75. CEO and Chairman STUMPF has simultaneously tried to appear contrite while also
2 pointing fingers at others within Wells Fargo, though not at senior management. For example, on
3 September 14, 2016, STUMPF reportedly stated: “I feel accountable and our entire leadership
4 team feels accountable.” However, that same day, STUMPF said, “if [employees are] not going to
5 do the thing we ask them to do – put customers first, honor our vision and values – I don’t want
6 them here . . . I really don’t.”

7 76. Indeed, while Wells Fargo initially tried to tout the fact that it “fired” thousands of
8 lower-level employees purportedly responsible for the fraud, Defendants quietly allowed several
9 high-ranking executives – including employees with responsibility for the sales practices at issue –
10 to “resign” from the Company. Moreover, rather than acting to clawback compensation paid to
11 such employees, Defendants approved pay raises, performance-based bonuses, and lucrative
12 golden parachute packages.

13 77. For example, in July 2016, Wells Fargo announced that Defendant TOLSTEDT was
14 going to retire at the end of the year. In its Press Release, Wells Fargo touted TOLSTEDT’s role
15 in “deepening customer loyalty” over her career at the Company, conveniently failing to mention
16 then-pending investigation by regulators into fraud committed at the Bank. Similarly, while
17 Defendant STUMPF later admitted that he knew regulators were investigating TOLSTEDT’s
18 Community Banking division for **cheating** customers in July 2016, when TOLSTEDT announced
19 her retirement, the Wells Fargo Press Release announcing TOLSTEDT’s included a statement by
20 STUMPF falsely describing TOLSTEDT’s role at Wells Fargo as a “**champion**” for customers:

21 “A trusted colleague and dear friend, Carrie Tolstedt has been one of our most
22 valuable Wells Fargo leaders, a standard-bearer of our culture, a champion for our
23 customers, and a role model for responsible, principled and inclusive leadership,”
said John Stumpf, Wells Fargo’s chairman and chief executive officer.”

24 78. Neither Defendant STUMPF nor any of the other Individual Defendants informed
25 the market in the Press Release that TOLSTEDT would be paid a lucrative “golden parachute,”
26 publically reported to be worth over \$125 million, when she should have been fired and had her
27 compensation clawed back.
28

1 79. On information and belief, there are other senior employees who have been allowed
2 to “resign” or “retire” rather than be fired for their role in the illegal sales practices, and in certain
3 cases, received compensation packages on their departure. For example, on September 19, 2016,
4 Bloomberg reported that Claudia Russ Anderson, the Bank’s chief risk officer, and charged with
5 helping to police the division that created millions of fake accounts, was taking a six-month unpaid
6 “leave of absence” (announced to employees back in June 2016), and had been replaced in her
7 position. Wells Fargo refused to confirm whether the leave was tied to the pending investigation
8 into the bogus accounts.

9 80. In addition, each of the other Individual Defendants continued to receive exorbitant
10 compensation packages, including executive bonuses, performance-based bonuses, and director
11 fees during the same period in which – due to their failure of oversight – the Bank was cheating its
12 customers and exposing the Company to massive regulatory fines. To date, the Board has not
13 acted to try to claw back any of these payments, which amount to corporate waste of assets.

14 **D. SENATE HEARING ON WELLS FARGO PRACTICES**

15 81. On September 29, 2016, soon after the Defendants’ wrongdoing was publicly
16 revealed, the U.S. Senate Committee on Senate Banking, Housing, & Urban Affairs (“Senate
17 Banking Committee”) held a hearing on Wells Fargo’s sales practices.

18 82. In written remarks prepared for the Committee, evidence was presented confirming
19 that Wells Fargo’s officers and directors, the Individual Defendants herein, **knew** about the
20 improper behavior throughout much or all of the Relevant Period.

21 83. Thomas J. Curry of the OCC submitted prepared remarks detailing how the “Eight
22 is Great” strategy was implemented during the Relevant Period, with devastating results to Wells
23 Fargo’s banking customers. A copy of Curry’s prepared remarks, on behalf of the OCC, is
24 attached as **EXHIBIT I**.

25 84. Curry noted that, following OCC examination work relating to consumer practices
26 at the Bank that began in late 2011, the OCC took further supervisory actions between 2012 and
27 2016. In early 2012, the OCC received complaints from consumers and Bank employees alleging
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1 improper sales practices at Wells Fargo. In February 2013, the OCC issued a Supervisory Letter
2 requiring the Bank to develop an operational risk compliance program, and again in early 2014, the
3 OCC directed the Bank to “address weaknesses in compliance risk” by establishing a
4 comprehensive plan to prevent “unfair and deceptive practices.” At that time, the OCC also
5 determined that the cross-selling sales practices should be scrutinized in an examination of the
6 Bank’s governance processes. Curry stated that, “Examiner planning for that examination
7 **included meetings with Bank management throughout 2014**, as well as the review of the
8 Bank’s management information systems, internal audit findings, and documents describing the
9 Bank’s efforts to improve its capabilities to manage and monitor the quality of compliance
10 oversight.” (Emphasis added.)

11 85. The OCC continued its close scrutiny of the Bank’s sales practices in 2015, which
12 “included periodic **meetings with Bank management** and review of extensive documentation,
13 including internal reports, **board packages**, and **internal audit findings**.” (Emphasis added.)

14 86. In March 2015, the OCC finished its “multi-year assessment of the Bank’s
15 compliance management systems . . . and identified the need for the Bank to improve its risk
16 management and governance related to operational and compliance risk.”

17 87. The OCC also completed a concurrent examination of the Bank’s operational risk
18 management in February 2015, which “focused on governance of operational risk, use of risk
19 tools, implementation of strategic plans and new products, internal loss oversight, complaints
20 management processes, and sufficiency and quality of staff” as well as “the Community Bank
21 division’s sales practices oversight.” Despite prior warnings from the OCC, the OCC concluded
22 that “the Bank lacked a formalized governance framework to oversee sales practices.” As a result,
23 the OCC was forced to send a Supervisory Letter in April 2015 that identified specific “Matters
24 Requiring Attention” in the Community Bank division.

25 88. In June 2015, the OCC issued an additional Supervisory Letter **addressed to the**
26 **Chairman and CEO** “identifying matters related to the Bank’s enterprise-wide risk management
27 and oversight of its sales practices that required corrective action by the Bank.” That letter
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1 included five “Matters Requiring Attention” requiring the Bank “to take significant action to
2 **address the inappropriate tone at the top**, that included the **lack of an appropriate control or**
3 **oversight structure given corporate emphasis on product sales and cross-selling**; the lack of an
4 enterprise-wide sales practices oversight program; the lack of an effective enterprise-wide
5 customer complaint process; the lack of a formalized governance process to oversee sales practices
6 and effectively oversee and test branch sales practices; and **the failure of the Bank’s audit**
7 **services to identify the above issues** or to aggregate sales practice issues into an enterprise view.”
8 (Emphasis added.)

9 89. The June 2015 Supervisory Letter also required that the Bank to take corrective
10 actions to address the known deficiencies, including “re-evaluating compensation and incentive
11 plans to ensure they did not provide an incentive for inappropriate behavior[.]”

12 90. In July 2015, the OCC’s Report of Examination found that “the Bank needed to act
13 more proactively to control compliance and operational risk.” This report was followed on July
14 28, 2015 by a Notice of Deficiency from the OCC, citing the Bank’s failure to comply with prior
15 admonitions. According to the prepared remarks recently submitted to the Senate Committee,
16 “The OCC issued this notice to help ensure that Bank management adhered on a timely basis to its
17 plan to implement an effective enterprise-wide compliance risk management program.”

18 91. The OCC’s scrutiny of the Bank’s activities continued into 2016, with the OCC
19 **holding monthly meetings with Bank management** to monitor Bank’s progress. The OCC
20 concluded its 2016 examination work in July, and issued its Report of Examination findings and a
21 letter to the Board. The Report of Examination concluded that “the Bank’s sales practices were
22 unethical; the Bank’s actions caused harm to consumers; and Bank management had not responded
23 promptly to address these issues.”

24 92. On July 18, 2016, the OCC sent a Supervisory Letter to the Bank’s Chairman,
25 Defendant STUMPF, notifying him that “the Bank engaged in unsafe or unsound banking
26 practices” and shortly thereafter, the OCC’s Major Matters Supervision Review Committee
27 approved recommendations to issue the Consent Order and assess CMPs against the Bank for
28

1 reckless unsafe or unsound sales practices and the Bank’s risk management and oversight of those
2 practices.

3 93. Similarly, Richard Cordray, Director of the CFPB, submitted written testimony to
4 the Senate Banking Committee describing its own investigation of Wells Fargo. A copy of
5 Cordray’s written testimony, on behalf of the CFPB, is attached hereto as **EXHIBIT J**. Like the
6 OCC, the CFPB found that “the fraudulent conduct occurred on a massive scale” and “represent a
7 staggering breach of trust and conduct that should never occur at *any* bank.” (Emphasis in
8 original).

9 94. Prior to the Senate Banking Committee Hearing on September 29, 2016, Defendant
10 STUMPF presented his own prepared written testimony which included many apologies, but little
11 accountability. STUMPF stated, “I want to apologize for violating the trust our customers have
12 invested in Wells Fargo. And I want to apologize for not doing more sooner to address the causes
13 of this unacceptable activity.” However, STUMPF’s testimony provided no explanation for “not
14 doing more sooner” even though he acknowledged that, as early as 2011, Wells Fargo had specific
15 knowledge of sales practice violations and, due to their prevalence, even created a “dedicated
16 team” (now called the “Sales and Service Conduct Oversight Team”) and special “report cards” to
17 review sales data analytics and “sales patterns that may correlate with unethical behavior.” A true
18 and correct copy of STUMPF’s written testimony to the Senate Committee are attached hereto as
19 **EXHIBIT K**.

20 95. The Senate Banking Committee conducted a hearing on Wells Fargo’s sales fraud
21 on September 29, 2016. However, in response to Senate examination, it soon became clear that
22 STUMPF had intentionally downplayed the massive scale of fraud at Wells Fargo in public filings
23 and, despite Wells Fargo’s public pronouncements otherwise, senior management had done little to
24 stop the practices, fire responsible senior management or claw back their compensation, and no
25 present intention to accept responsibility for fraud happening on their watch.

26 96. For example, citing Wells Fargo’s “Vision & Values” and the Company’s offer to
27 “watch what they do” rather than just what they “say,” Senator Elizabeth Warren (D-Mass.) asked
28

1 STUMPF whether he or the Board had considered firing the top executives responsible for the
2 improper sales practices in the Community Banking division:

3 WARREN: I just said, I'm not asking about regional managers, I'm not asking
4 about branch managers, I'm asking if you have fired senior management. The
5 people you actually led community banking division, who oversaw this fraud, or
the compliance division that was in charge of making sure that the bank complied
with the law?

6 STUMPF: Carrie Tolstedt...

7 WARREN: Did you fire any of those people?

8 STUMPF: No.

9 WARREN: No. OK. So you haven't resigned. You haven't returned a single
10 nickel of your personal earnings. You haven't fired a single senior executive.
11 Instead evidently your definition of accountable is to push the blame to your low-
level employees who don't have the money for a fancy PR firm to defend
themselves.

12 It's gutless leadership. In your time as Chairman and CEO, Wells has been
13 famous for cross-selling -- which is pushing existing customers to open more
14 accounts. Cross-selling is one of the main reasons that Wells has become the
most valuable bank in the world. Wells measures cross-selling by the number of
different accounts a customer has with Wells.

15 97. Later in the hearing, Senator Warren expressed utter disbelief that STUMPF and the
16 Board were allowing Defendant TOLSTEDT to “retire” instead of holding her responsible for her
17 involvement in the improper sales practices:

18 WARREN: So . . . you never considered firing her. So now Ms. Tolstedt has
19 apparently retired but is also staying with the firm through the end of the year.
20 And in the response to our letter, you state -- or the person writing it -- states,
21 quote, "Ms. Tolstedt is eligible to be considered for a 2016 annual incentive
22 award." An incentive award for doing a great job in 2016? Mr. Stumpf, that is
unbelievable. You are the chairman of the board and the CEO. In those roles, do
you think it would be appropriate for Ms. Tolstedt to get another bonus on top of
the millions that she has already gotten as a reward for her role in this massive
scam?

23 STUMPF: The board will consider that and I don't wanna prejudice the board . . .

24 98. Addressing Wells Fargo’s “Eight is Great” strategy, Senate examiners noted that
25 “[o]ther big banks average fewer than three accounts per customer,” while Wells Fargo had
26 apparently decided on eight merely because “8 rhymes with great.”

1 99. STUMPF was also confronted with transcripts of the Company's earnings calls with
2 investors, in which he touted the legitimacy and success of Wells Fargo's "Eight is Great"
3 strategy:

4 WARREN: Let me read you a few quotes that you had. April 2012, quote,
5 "We grew our retail banking cross-sell ratio to a record, 5.98 products per
6 household." A year later, April 2013, quote, "We achieved record retail banking
7 cross-sell of 6.1 products per household." April 2014, quote, "We achieved
8 record retail banking cross-sell of 6.17 products per household."

9 The ratio kept going up and up. And it didn't matter whether customers used
10 those accounts or not. And guess what? Wall Street loved it. Here, is just a
11 sample of the reports from top analysts in those years, all recommending that
12 people buy Wells Fargo stock in part because of the strong cross-sell numbers. . . .

13 100. STUMPF's feigned lack of knowledge or accountability outraged Senate
14 examiners, and Senator Warren called for STUMPF's resignation:

15 WARREN: You should resign. You should give back the money that you took
16 while this scam was going on and you should be criminally investigated by both
17 the Department of Justice and the Securities and Exchange Commission.
18 This just isn't right. A cashier who steals a handful of \$20s is held accountable,
19 but Wall Street executives who almost never hold themselves accountable, not
20 now and not in 2008 when they crushed the worldwide economy. The only way
21 that Wall Street will change, is if executives face jail time when they preside over
22 massive frauds. We need tough, new laws to hold corporate executives personally
23 accountable and we need tough prosecutors who have the courage to go after
24 people at the top. Until then, it will be business as usual. And at giant banks like
25 Wells Fargo, that seems to be cheating as many customers, investors and
26 employees as they possibly can.

27 101. This was not a partisan debate. "This isn't cross-selling, this is fraud," said
28 Republican Senator Pat Toomey (R, Pa.), referring to Wells Fargo employees setting up accounts
for customers in products they didn't ask for or know about. Addressing Wells Fargo's senior
executives, Senator Toomey said, "Wells Fargo executives [were] completely out of touch."

102. Senate Banking Committee members were particularly incensed by the Board's
refusal to act to claw back salaries, bonuses and retirement packages paid to senior executives who
oversaw the massive fraud. According to one report, the Senate Banking Committee expressed
clear frustration with the Board lack of accountability:

"Facing repeated questions about what would happen to Wells Fargo & Co.'s top
executives in the wake of its sales-practice scandal, Chief Executive John Stumpf
gave much the same answer: It is up to the bank's board.

1 But that wasn't enough for obviously irritated members of the Senate Banking
2 Committee who blasted Mr. Stumpf on Tuesday. They made clear they think the
3 board, which has known about the bank's 'cross-selling' problems since 2013,
should have acted more quickly to clean up the mess – especially on deciding
whether to claw back compensation from top executives

4 Like other corporate boards, they are tasked with acting as a check on the
5 company's management and with overseeing the company's risk management,
disclosures, compensation practices and compliance with laws and regulations.

6 In particular, the board's oversight of the bank's compensation is under fire
7 because of an incentive-pay structure that fueled the scandal by rewarding
employees for selling more products to existing customers.”

8 Wall Street Journal, “*Wells Fargo Board Comes Under Fire*” (Sep. 21, 2016).

9 **VI. DUTIES OWED BY THE DEFENDANTS**

10 103. Defendants, as officers and/or directors of Wells Fargo, owed the Company and its
11 shareholders the highest fiduciary duties. These duties are expressed in the law, in the Company's
12 bylaws and articles of incorporation, and in various publications issued by the Company
13 expressing its policies and procedures.

14 **A. FIDUCIARY DUTIES**

15 104. Defendants, because of their positions of control and authority as directors and/or
16 officers of Wells Fargo, were able to and did, directly and/or indirectly, exercise control over the
17 wrongful acts complained of herein. By reasons of their positions as officers and/or directors and
18 fiduciaries and because of their ability to control the business and corporate affairs of Wells Fargo,
19 the Defendants owe Wells Fargo and the Company's stockholders the fiduciary obligations of trust,
20 loyalty, good faith, candor and due care, and were required to do their utmost to control and
21 manage the affairs of Wells Fargo in a fair, just, honest and equitable manner. The Defendants
22 were required to act in furtherance of the best interests of Wells Fargo and the Company's
23 stockholders so as to benefit all stockholders equally, and not in furtherance of their own personal
24 interests or benefit.

25 105. Each officer and director owes Wells Fargo and the Company's stockholders the
26 fiduciary duty to exercise good faith and diligence in the administration of Wells Fargo's affairs
27 and in the use and preservation of its property and assets, and the highest obligations of fair
28

1 dealing. In addition, as officers and/or directors of a publicly held company, the Defendants had a
2 duty to promptly disseminate accurate and truthful information regarding the Company's
3 operations, finances, performance, products, management, projections, and forecasts so that the
4 market price of the Company's stock would be based on truthful and accurate information.

5 **B. CONTROL, ACCESS, AND AUTHORITY**

6 106. The Defendants, because of their positions of control and authority as officers
7 and/or directors of Wells Fargo were able to, and did, directly and/or indirectly, exercise control
8 over the wrongful acts complained of herein, as well as the contents of the various misleading
9 public statements disseminated by the Company.

10 107. Because of their advisory, executive, managerial and directorial positions, each of
11 the Defendants had access to adverse, non-public information about Wells Fargo's financial
12 products, its lack of compliance with regulatory guidelines, financial condition, operations and
13 misleading representations.

14 108. At all times relevant hereto, each of the Defendants was the agent of each of the
15 other Defendants and of Wells Fargo, and was at all times acting within the course and scope of
16 such agency.

17 **C. REASONABLE AND PRUDENT SUPERVISION**

18 109. To discharge their duties, the officers and directors of Wells Fargo were required to
19 exercise reasonable and prudent supervision over the management, policies, practices and controls
20 of the business and financial affairs of the Company. By virtue of such duties, the Defendants were
21 required to, among other things:

22 a. Ensure that the Company complied with applicable legal obligations,
23 requirements and regulations, including acting only within the scope of its legal authority and
24 disseminating truthful and accurate statements to the investing public;

25 b. Conduct the affairs of the Company in an efficient, business-like manner so
26 as to make it possible to provide the highest quality performance of its business, to avoid wasting
27 the Company's assets, and to maximize the value of the Company's stock;

1 c. Remain informed as to how Wells Fargo conducted its operations and, upon
2 receipt of notice or information of imprudent or unsound conditions or practices, make reasonable
3 inquiry in connection therewith and take steps to correct such conditions or practices and make
4 such disclosures as necessary to comply with securities laws;

5 d. Ensure that Wells Fargo was operated in a diligent, honest and prudent
6 manner in compliance with applicable laws, rules and regulations; and

7 e. Properly and accurately guide investors and analysts as to the true financial
8 condition of the Company, including making accurate statements about the Company's operations
9 and financial results.

10 **D. CODE OF ETHICS AND BUSINESS CONDUCT**

11 110. Wells Fargo Code has a Code of Ethics and Business Conduct ("Ethics Code").
12 Wells Fargo publicly represented that all officers, directors, and employees of Wells Fargo are also
13 required to abide by the Ethics Code. The Ethics Code begins by articulating the vision and values
14 that everyone at Wells Fargo & Company supposedly adhered:

15

16 **OUR VISION**
We want to satisfy our customers' financial
Needs and help them succeed financially.

17

18 **OUR VALUES**
-- People as a competitive advantage
-- Ethics
-- What's right for customers
-- Diversity and inclusion
-- Leadership

19

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23 111. The Ethics Code includes an opening message from Chairman and CEO STUMPF,
24 who stated:

25 At Wells Fargo, **holding ourselves to the highest standards of ethical**
26 **behavior is nothing new:** it's one of the five shared values that define
27 who we are (as described in The Vision & Values of Wells Fargo), and it's
28 been the cornerstone of our culture since 1852! In a nutshell, according to
our Vision & Values, **"Our ethics are the sum of all the decisions each
of us makes every day."** **We are all responsible for maintaining**

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- **Use confidential information only for legitimate Wells Fargo business purposes** and not for your personal gain or to compete with Wells Fargo.
- **Protect confidential information** you acquire through your employment or service with Wells Fargo accordance with Information Security Policy standards.
- Keep team members’ and customers’ personal information safe and secure and **only share it with those who have a legitimate Wells Fargo business need to know.**

* * *

115. The Ethics Code also purports to require that all officers, directors, and employees be “transparent and candid,” explaining:

Each of us has an important role to play in recording financial and non-financial information. We must always be accurate and timely when reporting personnel and business transactions. **We are committed to full, fair, accurate, timely, and understandable disclosure in the public reports and documents that Wells Fargo files with, submits, or provides to the U.S. Securities and Exchange Commission, other regulatory authorities, our stockholders, and the public.**
(Emphasis added.)

116. To that end, the Ethics Code represents that employees should “[n]ever alter or change legal documents or agreements without the proper authorization or consent” and “[n] ever sign a blank or incomplete document or agreement...” In addition, the Ethics Code states that Wells Fargo requires officers, directors, and employees to “act with honesty and integrity” and providing specific examples of conduct that is not condoned, including:

- A situation that interferes with your duties or responsibilities to Wells Fargo, or that affects your ability to act in the best interests of Wells Fargo
- A situation when you receive an improper benefit as a result of your position with Wells Fargo
- **Wells Fargo’s interests conflict with a customer’s interest**
- Where conflicts cannot be avoided, we should be transparent about their existence and take proactive steps to manage them.
(Emphasis added.)

1 117. The Ethics Code further represents that Wells Fargo requires that its customers be
2 treated fairly:

3 **Deal fairly with our customers and others**

4 Our standard: **We must be honest and fair in our dealings and**
5 **communications with our customers**, as well as with third party service
6 providers, competitors and each other. We provide our customers and
7 prospective customers with advice, service, and many products, and **we**
8 **are committed to making financial products and services available to**
9 **them on a fair, transparent, and consistent basis, and to conducting**
10 **business in a responsible manner.**

11 **Team member responsibilities**

- 12 • **Offer customers enough information to allow them to consent**
13 **to a product from an informed position.**
- 14 • Record sales results accurately and completely.
- 15 • **Compete fairly in the marketplace.**
- 16 • Report sales activities that may not be in accordance with company
17 policies.

18 Always remember --

19 If you are presented with a situation that might involve a conflict of
20 interest or the appearance of a conflict of interest, ask these questions:

- 21 • What would public disclosure of the matter embarrass Wells
22 Fargo?
- 23 • To an impartial observer, would it look like a conflict?
- 24 • Is there a specific policy or procedure that covers this type of
25 situation?
- 26 • Do I need to get preclearance or disclose the situation in writing?

27 118. As alleged herein, the Defendants breached their fiduciary duties by violating the
28 Code of Ethics & Business Conduct and related policies.

29 **E. “VISION AND VALUES”**

30 119. During the Relevant Period, Wells Fargo published a document entitled, “The
31 Vision & Values of Wells Fargo,” with a cover message from Defendant STUMPF, in order to

1 inform employees of the Company’s mission statement and core values. As stated in that
2 document:

3 Our vision has nothing to do with transactions, pushing products, or getting
4 bigger for the sake of bigness. It’s about building lifelong relationships one
customer at a time.

5 ***

6 **Ethics**

7 We strive to be recognized by our stakeholders as setting the standard among the
world’s great companies for integrity and principled performance. This is more
8 than just doing the right thing. We also have to do it in the right way.

9 Honesty, trust, and integrity are essential for meeting the highest standards of
corporate governance. They’re not just the responsibility of our senior leaders
and our board of directors. We’re all responsible.

10 Our ethics are the sum of all the decisions each of us makes every day. If you
11 want to find out how strong a company’s ethics are, don’t listen to what its people
12 say. Watch what they do.

13 ***

14 Our customers trust us as their financial resource. . . . And they trust all of us to
act as risk managers – to ask the right questions, protect their assets, and help
15 them reach their goals. **We have to earn that trust every day by behaving
ethically; rewarding open, honest, two-way communication; and holding
16 ourselves accountable for the decisions we make and the actions we take.”**

17 Wells Fargo “Vision & Values,” at 4, 8-9 (emphasis in original).

18 **F. CORPORATE GOVERNANCE GUIDELINES**

19 120. The Company’s Board of Directors adopted written Corporate Governance
20 Guidelines to provide the framework for governance of the Board and the Company. The
21 guidelines are reviewed annual and made available to the public, including customers and other
22 stakeholders. The guidelines provide that “[t]he business of the Company is managed under the
23 direction of its Board.” Among other things, the Board’s oversight responsibilities include:

- 24 • “reviewing, monitoring and, where appropriate, approving the Company’s strategic
25 plans and objectives, financial performance, risk management framework and risk
appetite;” and
- 26 • “ensuring processes are in place for maintaining the integrity and reputation of the
27 Company and reinforcing a culture of ethics, compliance and risk management.”

1 121. The Corporate Governance Guidelines addresses the involvement of the Board and
2 each of its members in setting Company strategy:

3 **STRATEGIC REVIEWS**

4 The Board oversees management’s development of the Company’s strategic
5 plans, and works with management in setting the schedule, format, and
6 agenda for Board strategy sessions so that there are sufficient time and
7 materials to permit appropriate interaction between directors and
8 management in reviewing and considering the Company’s strategy.

9 122. To that end, the Board and each of its members are ensured unfettered access to the
10 Company’s executives and other advisors:

11 **DIRECTOR ACCESS TO MANAGEMENT AND INDEPENDENT**
12 **ADVISORS**

13 Board members have complete access to the Company’s management. In
14 addition, the Company’s management is expected to update the Board on
15 any significant Company or competitive developments or matters between
16 Board meetings. Non-Board members who are members of the Company’s
17 Operating Committee regularly attend Board and most committee meetings.
18 The Board and each committee have the authority to obtain advice and
19 assistance from internal and external legal, accounting or other advisors, at
20 the Company’s expense, without consulting with or obtaining the prior
21 approval of management of the Company.

22 123. In addition, the Corporate Governance Guidelines mandate that the Board and each
23 of its members adhere to the highest ethical standards:

24 **CODE OF ETHICS**

25 One of the Board’s key responsibilities is to ensure that the Company,
26 through its management, maintains high ethical standards and effective
27 policies and practices designed to protect the Company’s reputation, assets
28 and business. The Board has adopted and promotes the Wells Fargo Code of
Ethics and Business Conduct applicable to team members as well as
directors. Directors shall be familiar with, and are expected to conduct their
activities in accordance with, the Code of Ethics and Business Conduct.

124. As discussed herein, the Board and each of its members failed to discharge their
fiduciary duties and obligations under the Company’s Corporate Governance Guidelines.

1 **G. BOARD COMMITTEE CHARTERS**

2 125. The Company’s Corporate Governance Guidelines provide that “[t]he Board carries
3 out its oversight responsibilities directly and through the work of its committees.” During the
4 Relevant Period, the Board maintained several standing committees on which the directors sat,
5 including: (i) Audit and Examination Committee; (ii) Corporate Responsibility Committee; (iii)
6 Governance and Nominating Committee; (iv) Human Resources Committee; and (v) Risk
7 Committee. The Company’s Corporate Governance Guidelines further provide that:

8 **The Board’s standing committees also may act as committees of Wells**
9 **Fargo Bank, National Association, the Company’s principal banking**
10 **subsidiary (“WFBNA”),** pursuant to authorization granted to those
11 committees by the governing documents of WFBNA and resolutions
12 adopted by WFBNA’s board of directors and the Company’s Board. Each
13 standing committee shall exercise its oversight responsibilities with the
14 understanding that WFBNA’s interests are not to be subordinated to the
15 interests of the parent holding company in a way as to jeopardize the safety
16 and soundness of WFBNA. (Emphasis added.)

17 126. The chart below illustrates which Committees each Board members served on at the
18 time this action was filed:

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| Director / Defendant | Audit & Examination | Corporate Responsibility | Governance & Nominating | Human Resources | Risk |
|----------------------|---------------------|--------------------------|-------------------------|-----------------|------|
| Baker | X | X | | | |
| Chao | | | | | |
| Chen | | | | X | |
| Dean | | X | X | X | X |
| Duke | | | | | X |
| Engel | | | | X | |
| Hernandez | | X | | | X |
| James | | | | X | |
| Milligan | | X | X | | X |
| Pena | X | X | X | | X |

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| | | | | | |
|-----------|---|--|---|---|---|
| Quigley | X | | | | X |
| Sanger | | | X | X | X |
| Swenson | X | | X | | |
| Vautrinot | X | | | | |

127. Each of the Board’s Committees had a written charter stating the duties and responsibilities of the respective Committee.

Audit and Examination Committee

128. Defendants QUIGLEY, BAKER, PEÑA, SWENSON, and VAUTRINOT are members of the Board’s Audit and Examination Committee. Defendant QUIGLEY is the Committee Chair. The Charter for the Audit and Examination Committee states that its purpose is to assist the Board in fulfilling its oversight responsibilities for, among other things:

- “the integrity of [the Company’s] financial statements and the adequacy and reliability of disclosures to stockholders, including management activities related to accounting and financial reporting and internal controls;”
- “operational risk [the Company’s] compliance with legal and regulatory requirements;” and
- “reputation risk related to the Audit and Examination Committee’s responsibilities.”

129. As discussed herein, Defendants QUIGLEY, BAKER, PEÑA, SWENSON, and VAUTRINOT failed to discharge their fiduciary duties and obligations as members of the Audit and Examination Committee.

Corporate Responsibility Committee

130. Defendants PEÑA, BAKER, DEAN, HERNANDEZ, and MILLIGAN are members of the Board’s Corporate Responsibility Committee. Defendant PEÑA is the Committee Chair. The Charter for the Corporate Responsibility Committee states that its purpose is to, among other things:

- “advise the Board of Directors and management on strategies that affect [the Company’s] role and reputation as a socially responsible organization;” and

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- “monitor [the Company’s] reputation generally, including with customers,” which includes receiving and reviewing updates from management on: (i) “the state of the Company’s relationships with external stakeholders regarding significant social responsibility matters, how those stakeholders view the Company and the issues and concerns raised by them;” and (ii) customer service and complaint matters and other metrics relating to the Company’s brand and reputation, including matters relating to the Company’s culture and the focus of its team members on serving our customers.”

7 131. As discussed herein, Defendants PEÑA, BAKER, DEAN, HERNANDEZ, and
8 MILLIGAN failed to discharge their fiduciary duties and obligations as members of the Corporate
9 Responsibility Committee.

10 132. According to Wells Fargo’s Proxies, the Corporate Responsibility Committee met
11 the minimum number of times each year, just three times, despite the increasing scrutiny of Wells
12 Fargo’s consumer practices. Former director Judith Runstad, who headed the Corporate
13 Responsibility Committee during much of the Relevant Period, the Committee supposedly having
14 the job of monitoring customer service and complaint matters, reportedly was paid \$384,027 in
15 cash and stock in 2015. Runstad retired from Wells Fargo’s Board earlier in 2016 and, when she
16 did, she exited with more than \$7.2 million in stock and options. Fortune, “*The Wells Fargo
17 Board Committee in Charge of Stopping Phony Accounts Rarely Met, But that Hasn’t Curtailed
18 the Payday of Board Members Involved,*” (Sep. 20, 2016).

19 **Governance and Nominating Committee**

20 133. Defendants DEAN, MILLIGAN, PEÑA, and SWENSON are members of the
21 Board’s Governance and Nominating Committee. Defendant SANGER is the Committee Chair.
22 The Charter for the Governance and Nominating Committee states that its purpose is to assist the
23 Board in fulfilling its responsibilities to oversee the composition of the Board and its committees
24 and [the Company’s] corporate governance practices, including by:

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- “recommending to the Board a determination of each outside director’s ‘independence’ under applicable rules and guidelines;”
 - “recommending to the Board director nominees for each committee;”

- “recommending to the Board the corporate governance guidelines applicable to the Company;”
- “overseeing an annual review of the Board’s performance;”
- “reviewing from time to time director compensation and recommend any changes for approval of the Board;”
- “overseeing [the Company’s] engagement with stockholders and other interested parties concerning governance and other related matters;” and
- “overseeing reputation risk related to the [Governance and Nominating Committee’s] responsibilities described in this Charter.”

134. As discussed herein, Defendants SANGER, DEAN, MILLIGAN, PEÑA, and SWENSON failed to discharge their fiduciary duties and obligations as members of the Governance and Nominating Committee, and reviewed and recommended for the full Boards approval director fees that were unjustified during the Relevant Period when the illegal sales practices were occurring.

Human Resources Committee

135. Defendants DEAN, CHEN, ENGEL, JAMES, AND SANGER are members of the Board’s Human Resources Committee. Defendant DEAN is Committee Chair. The Charter for the Human Resources Committee states that its purpose is to assist the Board in fulfilling its responsibilities relating to the overall compensation strategy for the Company and the compensation of [the Company’s] executive officers, including to:

- “conduct the annual Chief Executive Officer performance evaluation process;”
- “evaluate and approve compensation plans, policies and programs of the Company applicable to executive officers;”
- “oversee the implementation of risk-balancing and risk management methodologies for incentive compensation plans and programs for senior executives and those identified employees in a position to expose the Company to material risk;” and
- “oversee reputation risk related to the [Human Resources Committee’s] responsibilities described in this Charter.”

1 136. As discussed herein, Defendants DEAN, CHEN, ENGEL, JAMES, AND SANGER
2 failed to discharge their fiduciary duties and obligations as members of the Human Resources
3 Committee. The Committee members approved the incentive-based compensation structure that
4 led to the illegal sales practices described in the Consent Orders, and further approved the
5 compensation paid to executive officers, including salaries and/or bonuses, at the same time the
6 illegal sales practices were occurring at the Company. A summary chart reflecting executive
7 compensation of the Individual Defendants during the Relevant Period, as reflected in the
8 Company’s Proxy Statements, is attached hereto as **EXHIBIT L**.

9 **Risk Committee**

10 137. Defendants HERNANDEZ, DEAN, DUKE, MILLIGAN, PEÑA, QUIGLEY, and
11 SANGER are members of the Board’s Risk Committee. Defendant HERNANDEZ is the
12 Committee Chair. The Charter for the Risk Committee states that its purpose is to, among other
13 things:

- 14 • “provide oversight of [the Company’s] enterprise-wide risk management
15 framework and corporate risk function, including the strategies, policies,
16 procedures, processes, and systems, established by management to identify,
17 assess, measure, monitor, and manage the major risks facing the Wells Fargo &
18 Company;” and
- 19 • “assist the Board of Directors and its other committees that oversee specific
20 risk-related issues and serve as a resource to management by overseeing risk
21 across the entire Company and across all risk types, and by enhancing
22 management’s and the Board’s understanding of [the Company’s] overall risk
23 appetite and enterprise-wide risk management activities and effectiveness.”

24 138. Defendants HERNANDEZ (Committee Chair), DEAN, DUKE, MILLIGAN,
25 PEÑA, QUIGLEY, and SANGER failed to discharge their fiduciary duties and obligations as
26 members of the Risk Committee.

27 **H. OVERLAPING GOVERNANCE OF BANK**

28 139. During the Relevant Period, many of the Company’s officers and directors served in
identical capacities for the Bank. For example, pursuant to Dodd-Frank, Wells Fargo was required
to submit Resolution Plans to its regulators. During the Relevant Period, including for 2013, 2014
and 2015, the Company and the Bank submitted a joint Resolution Plan “to ensure a coordinated

1 approach.” The Plans identified the “Principal Officers” of both the Company and the Bank,
 2 which consisted of the same executives for all three years, including Defendants STUMPF,
 3 SHREWSBERRY, and TOLSTEDT. Indeed, according to the Resolution Plan, Defendant
 4 TOLSTEDT served as the President of the Bank in 2013 and 2014, before she was replaced in
 5 2015 by Defendant STUMPF.

| Summary of Resolution Plan: Principal Officers (2013, 2014, and 2015) | | |
|--|--|--|
| Principal Officers | Wells Fargo & Company | Wells Fargo Bank, N.A. |
| <i>John G. Stumpf</i> | <i>President and Chief Executive Officer</i> | <i>President and Chief Executive Officer (2015) Chairman (2013, 2014)</i> |
| Patricia R. Callahan | Chief Administrative Officer | Chief Administrative Officer |
| David M. Carroll | Head of Wealth, Brokerage and Retirement | Head of Wealth, Brokerage and Retirement |
| Hope A. Hardison* | Head of Human Resources | Head of Human Resources |
| Michael J. Heid | Head of Home Lending | Head of Home Lending |
| Richard D. Levv | Controller | Controller |
| Michael J. Loughlin | Chief Risk Officer | Chief Risk Officer |
| Avid Moditabai | Head of Consumer Lending | Head of Consumer Lending |
| Kevin A. Rhein | Chief Information Officer | Chief Information Officer |
| <i>John R. Shrewsberrv</i> | <i>Chief Financial Officer</i> | <i>Chief Financial Officer</i> |
| Timothy J. Sloan | Head of Wholesale Banking | Head of Wholesale Banking |
| James M. Strother | General Counsel | General Counsel |
| <i>Carrie L. Tolstedt</i> | <i>Head of Community Banking</i> | <i>President and Chief Executive Officer (2013, 2014) Head of Community Banking (2015)</i> |

27 * No “Head of Human Resources” is identified in the 2013 Resolution Plan

1 **I. DEFENDANTS BREACHED THEIR DUTIES**

2 140. Each Defendant, by virtue of his or her position as a director and/or officer, owed to
3 Wells Fargo and its shareholders the fiduciary duty of loyalty and good faith and the exercise of
4 due care and diligence in the management and administration of the affairs of Wells Fargo, as well
5 as in the use and preservation of its property and assets. The conduct of the Defendants complained
6 of herein involves a knowing and culpable violation of their obligations as directors and officers of
7 Wells Fargo, the absence of good faith on their part, and a reckless disregard for their duties to
8 Wells Fargo and its shareholders that the Defendants were aware or should have been aware posed
9 a risk of serious injury to the Company.

10 141. The Defendants each breached his or her duty of loyalty and good faith by allowing
11 Defendants to cause, or by themselves causing, the Company to make false and/or misleading
12 statements that concealed the improper sales practices. The Defendants also breached their
13 fiduciary duties of reasonable and prudent supervision and oversight and by failing to insure that
14 policies and procedures were in place to insure that Wells Fargo’s officers and directors were not
15 unjustly enriched with compensation packages based on or approved while such illegal sales
16 practices were occurring, and by failing to implement policies, procedures and internal controls
17 sufficient to insure that the Company was in compliance with all applicable laws and regulations.

18 142. As a result of the Defendants’ illegal actions and course of conduct, the Company
19 has become the subject of numerous investigations and increased regulatory scrutiny, paid
20 substantial regulatory fines, and incurred related expenses. Wells Fargo is exposed to potentially
21 massive liability and has expended and will continue to expend, significant sums of money to
22 rectify Defendants’ wrongdoing.

23 **VII. DEMAND FUTILITY**

24 143. At the time of filing, the Company’s Board of Directors had 15 members:
25 Defendants BAKER, CHAO, CHEN, DEAN, DUKE, ENGEL, HERNANDEZ, JAMES,
26 MILLIGAN, PEÑA, QUIGLEY, SANGER, STUMPF, SWENSON, and VAUTRINOT. Demand
27 is excused as to each of the Board members.

1 **A. DEMAND IS EXCUSED AS TO THE ENTIRE BOARD BECAUSE THE**
2 **ENTIRE BOARD FACES SUBSTANTIAL LIABILITY FOR BREACHING**
3 **THEIR FIDUCIARY DUTIES**

4 144. Demand is excused in this action because all 15 members of the Company's Board,
5 seven of whom also serve on the Bank's Board, knowingly failed to fulfill their fiduciary duties,
6 including their duties of oversight, in good faith, and by issuing materially false and misleading
7 statements in the Company's SEC filings and public statements.

8 145. While acting in their capacities as members of the Company's Board and Board
9 Committees, and in certain cases as Bank Directors, the Director Defendants knew of or recklessly
10 permitted the illegal sales practices described in the Consent Orders, approved the compensation
11 structure which incentivize employees to engage in the illegal sales practices, approved lucrative
12 compensation packages to senior management and refused to act to clawback such compensation,
13 concealed the conduct from regulators and investors, and failed to implement any meaningful
14 changes to end the illegal sales practices and/or eliminate employee incentives that encouraged
15 such practices, even after specific warnings were brought to their attention. Indeed, it was not until
16 2016, as a result of regulatory Consent Orders, that the Board was forced to implement the
17 corporate governance measures necessary to protect the Company.

18 **B. DEMAND IS ALSO EXCUSED BECAUSE EACH INDIVIDUAL**
19 **DIRECTOR IS INCAPABLE OF EXERCISING INDEPENDENT AND**
20 **DISINTERESTED JUDGMENT**

21 **Defendant Stumpf**

22 146. Demand is excused as to Defendant STUMPF because he lacks independence by
23 virtue of his positions as both the CEO of the Company and the Bank, as well as a director of both
24 the Company and the Bank.

25 147. Demand is excused as to STUMPF because, during the Relevant Period, he was a
26 member of the Company's and the Bank's Boards, and among other things, breached his fiduciary
27 duties of care and loyalty, thereby exposing him to personal liability.

1 148. Demand is also futile as to STUMPF because of his failure to implement any
2 meaningful changes to stop Wells Fargo from deceiving its own customers and from failing to
3 report such material information to the SEC, the Company’s shareholders, or the public, which
4 exposes him to a substantial risk of non-exculpated liability because he knowingly and
5 intentionally failed to fulfill his fiduciary duties to Wells Fargo.

6 149. Demand is also futile as to STUMPF because he personally benefitted from his own
7 breaches, as well as the breaches by his fellow Board members. Specifically, STUMPF was paid
8 substantial compensation packages, approved by members of the Board, during the period in which
9 the illegal sales practices occurred. In 2015 alone, STUMPF received \$19.3 million in
10 compensation from the Company. This included a base salary of \$2.8 million, an “Annual
11 Incentive Award” of \$4 million, and stock options valued at \$12.5 million. The Company’s 2016
12 Proxy Statement indicates that the executive compensation program “emphasize[s] variable
13 compensation tied to performance.” However, STUMPF’s supposed “performance” was based
14 largely on improper sales practices, subjecting the Company to great financial and reputational
15 harm. To maintain this lucrative compensation, and to ensure the value of his shares, STUMPF
16 has an interest in defending the Board’s conduct as it related to the improper sales practices and to
17 downplay his own personal involvement in such conduct.

18 **Defendant Baker**

19 150. Demand is excused as to Defendant BAKER because he lacks independence by
20 virtue of his position as a member of the Company’s Board and his failure to fulfill his fiduciary
21 responsibilities as a Board member.

22 151. BAKER has been a Board member, and received substantial compensation as a
23 Director, since 2009. In 2015 alone, BAKER received more than \$361,000 from the Company,
24 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
25 of his shares, BAKER has an interest in defending the Board’s conduct as it related to the improper
26 sales practices.

1 152. In addition, BAKER is a member of the Board’s Audit and Examination
2 Committee. BAKER failed to fulfill his oversight duties as a Committee member, including his
3 responsibility to oversee: (i) “the integrity of [the Company’s] financial statements and the
4 adequacy and reliability of disclosures to stockholders, including management activities related to
5 accounting and financial reporting and internal controls;” (ii) “operational risk [and the
6 Company’s] compliance with legal and regulatory requirements;” and (iii) “reputation risk related
7 to the Audit and Examination Committee’s responsibilities.” The “Eight is Great” sales metrics
8 were highlighted along with the Company’s quarterly and annual financial results in SEC filings,
9 and the full impact of the improper sales practices on Wells Fargo’s financial reported results is yet
10 to be determined. The CFPB and OCC have already determined that Wells Fargo was not in
11 compliance with legal and regulatory requirements, which has resulted in Wells Fargo and the
12 Board to be under close regulatory scrutiny and remain under heightened scrutiny for the next
13 several years. Members of the Board’s Audit and Examination Committee cannot fairly and
14 independently adjudicate issues related to the improper sales practices underlying the Company’s
15 reported financial results.

16 153. BAKER is also a member of the Board’s Corporate Responsibility Committee.
17 BAKER failed to fulfill his oversight duties as a Committee member, including his responsibility
18 to: (i) “advise the Board of Directors and management on strategies that affect [the Company’s]
19 role and reputation as a socially responsible organization;” and (ii) “monitor [the Company’s]
20 reputation generally, including with customers.” The extent to which the improper sales practices
21 and ongoing investigations will harm Wells Fargo’s brand value and relationship with its
22 stakeholders is yet to be determined. Given these circumstances, it is impossible for members of
23 the Board’s Corporate Responsibility Committee to fairly and independently assess the
24 wrongdoing alleged herein.

1 **Defendant Chao**

2 154. Demand is excused as to Defendant CHAO because she lacks independence by
3 virtue of her position as a member of Wells Fargo’s Board and failure to fulfill her fiduciary
4 responsibilities as a Board member.

5 155. CHAO has been a Board member, and received substantial compensation as a
6 Director, since 2011. In 2015 alone, CHAO received more than \$291,000 from the Company,
7 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
8 of her shares, CHAO has an interest in defending the Board’s conduct as it related to the improper
9 sales practices.

10 **Defendant Chen**

11 156. Demand is excused as to Defendant CHEN because he lacks independence by
12 virtue of his position as a member of Wells Fargo’s Board and failure to fulfill his fiduciary
13 responsibilities as a Board member.

14 157. CHEN has been a Board member, and received substantial compensation as a
15 Director, since 2006. In 2015 alone, CHEN received more than 279,000 from the Company,
16 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
17 of his shares, CHEN has an interest in defending the Board’s conduct as it related to the improper
18 sales practices.

19 158. CHEN is a member of the Board’s Human Resources Committee. CHEN failed to
20 fulfill his oversight duties as a Committee member to properly: (i) “conduct the annual Chief
21 Executive Officer performance evaluation process;” (ii) “evaluate and approve compensation
22 plans, policies and programs of the Company applicable to executive officers;” (iii) “oversee the
23 implementation of risk-balancing and risk management methodologies for incentive compensation
24 plans and programs for senior executives and those identified employees in a position to expose
25 the Company to material risk;” and (iv) “oversee reputation risk related to the [Human Resources
26 Committee’s] responsibilities described in [the Committee].” The Company’s 2016 Proxy
27 Statement indicates that the executive compensation program “emphasize[s] variable
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1 compensation tied to performance.” CHEN was personally involved in authorizing the
2 compensation awarded to officers despite their supposed performance including improper sales
3 practices. For 2015, CHEN and the Human Resources Committee approved base pay of \$2.8
4 million for Defendant STUMPF, \$1.7 million for Defendant SHREWSBERRY (recently increased
5 to \$1,750,000), and \$1.7 million for Defendant TOLSTEDT (recently increased to \$1,750,000). In
6 addition, CHEN was personally involved in decisions regarding annual incentive awards, which in
7 2015 totaled \$4 million for Defendant STUMPF, \$850,000 for Defendant SHREWSBERRY, and
8 \$850,000 for Defendant TOLSTEDT. CHEN and the Human Resources Committee also oversaw
9 the award of equity incentives of \$12,500,000 to Defendant STUMPF, \$6.5 million to Defendant
10 SHREWSBERRY, and \$6.5 million to Defendant TOLSTEDT. In total, CHEN and the Human
11 Resources Committee approved 2015 compensation totaling \$19.3 million for Defendant
12 STUMPF, \$9,050,000 for Defendant SHREWSBERRY, and \$9,050,000 for TOLSTEDT.
13 Compensation was based on “performance” goals inflated by improper sales practices, subjecting
14 the Company to great financial and reputational harm. CHEN cannot fairly and independently
15 adjudicate any demand that the Board to take action against Defendants STUMPF,
16 SHREWSBERRY, TOLSTEDT, or the other Defendants.

17 **Defendant Dean**

18 159. Demand is excused as to Defendant DEAN because he lacks independence by
19 virtue of his position as a member of Wells Fargo’s Board and failure to fulfill his fiduciary
20 responsibilities as a Board member.

21 160. DEAN has been a Board member, and received substantial compensation as a
22 Director, since 2005. In 2015 alone, DEAN received more than \$346,000 from the Company,
23 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
24 of his shares, DEAN has an interest in defending the Board’s conduct as it related to the improper
25 sales practices.

26 161. DEAN is a member of the Board’s Human Resources Committee. DEAN failed to
27 fulfill his oversight duties as a Committee member to properly: (i) “conduct the annual Chief
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1 Executive Officer performance evaluation process;” (ii) “evaluate and approve compensation
2 plans, policies and programs of the Company applicable to executive officers;” (iii) “oversee the
3 implementation of risk-balancing and risk management methodologies for incentive compensation
4 plans and programs for senior executives and those identified employees in a position to expose
5 the Company to material risk;” and (iv) “oversee reputation risk related to the [Human Resources
6 Committee’s] responsibilities described in [the Committee].” The Company’s 2016 Proxy
7 Statement indicates that the executive compensation program “emphasize[s] variable
8 compensation tied to performance.” DEAN was personally involved in authorizing the
9 compensation awarded to officers despite their supposed performance including improper sales
10 practices. For 2015, DEAN and the Human Resources Committee approved base pay of \$2.8
11 million for Defendant STUMPF, \$1.7 million for Defendant SHREWSBERRY (recently increased
12 to \$1,750,000), and \$1.7 million for Defendant TOLSTEDT (recently increased to \$1,750,000). In
13 addition, DEAN was personally involved in decisions regarding annual incentive awards, which in
14 2015 totaled \$4 million for Defendant STUMPF, \$850,000 for Defendant SHRESBERRY, and
15 \$850,000 for Defendant TOLSTEDT. DEAN and the Human Resources Committee also oversaw
16 the award of equity incentives of \$12,500,000 to Defendant STUMPF, \$6.5 million to Defendant
17 SHREWSBERRY, and \$6.5 million to Defendant TOLSTEDT. In total, DEAN and the Human
18 Resources Committee approved 2015 compensation totaling \$19.3 million for Defendant
19 STUMPF, \$9,050,000 for Defendant SHRESBERRY, and \$9,050,000 for TOLSTEDT. Such
20 compensation was based on improper sales practices, subjecting the Company to great financial
21 and reputational harm. Thus, DEAN cannot fairly and independently adjudicate any demand that
22 the Board take action against Defendants STUMPF, SHREWSBERRY, TOLSTEDT, or the other
23 Defendants.

24 162. DEAN is also a member of the Board’s Corporate Responsibility Committee.
25 DEAN failed to fulfill his oversight duties as a Committee member, including his responsibility to:
26 (i) “advise the Board of Directors and management on strategies that affect [the Company’s] role
27 and reputation as a socially responsible organization;” and (ii) “monitor [the Company’s]

1 reputation generally, including with customers.” The extent to which the improper sales practices
2 and ongoing investigations will harm Wells Fargo’s brand value and relationship with its
3 stakeholders is yet to be determined. Given these circumstances, it is impossible for members of
4 the Board’s Corporate Responsibility Committee to fairly and independently assess the
5 wrongdoing alleged herein. DEAN is also the Chair of the Board’s Governance and Nominating
6 Committee. DEAN failed to fulfill his oversight duties as a Committee member, including: (i)
7 “recommending to the Board a determination of each outside director’s ‘independence’ under
8 applicable rules and guidelines;” (ii) “recommending to the Board director nominees for each
9 committee;” (iii) “recommending to the Board the corporate governance guidelines applicable to
10 the Company;” (iv) “overseeing an annual review of the Board’s performance;” (v) “reviewing
11 from time to time director compensation and recommend any changes for approval of the Board;”
12 (vi) “overseeing [the Company’s] engagement with stockholders and other interested parties
13 concerning governance and other related matters;” and (vi) “overseeing reputation risk related to
14 the [Governance and Nominating Committee’s] responsibilities described in [the Committee]
15 Charter.” Wells Fargo had a complete breakdown in corporate governance, as evidenced by the
16 CFPB and OCC Consent Decrees. Furthermore, the Defendants failed to adhere to Wells Fargo’s
17 own Corporate Governance Guidelines and Code of Ethics & Business Conduct. As a result,
18 members of the Board’s Governance and Nominating Committee cannot be expected to fairly and
19 independently assess the wrongdoing alleged herein. DEAN is also a member of the Board’s Risk
20 Committee. DEAN failed to fulfill his oversight duties as a Committee member by neglecting to
21 properly: (i) “provide oversight of [the Company’s] enterprise-wide risk management framework
22 and corporate risk function, including the strategies, policies, procedures, processes, and systems,
23 established by management to identify, assess, measure, monitor, and manage the major risks
24 facing the ... Company;” and (ii) “assist the Board of Directors and its other committees that
25 oversee specific risk-related issues and serve as a resource to management by overseeing risk
26 across the entire Company and across all risk types, and by enhancing management’s and the
27 Board’s understanding of [the Company’s] overall risk appetite and enterprise-wide risk
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1 management activities and effectiveness.” The gross failures in risk management oversight are at
2 the heart of the CFPB and OCC investigations and findings. As detailed above, the OCC has
3 raised these concerns with top management and the Board, and ordered reforms. Despite multiple
4 warnings received over multiple years, Wells Fargo did not satisfactorily address those known
5 issues, leading to the formal administrative proceedings and the Consent Decrees. Members of the
6 Board’s Risk Committee cannot fairly and independently adjudicate issues related to the wholly
7 inadequate risk management safeguards.

8 **Defendant Duke**

9 163. Demand is excused as to Defendant DUKE because she lacks independence by
10 virtue of her position as a member of Wells Fargo’s Board and failure to fulfill her fiduciary
11 responsibilities as a Board member.

12 164. DUKE has been a Board member since 2015. In 2015, Duke received more than
13 \$354,000 from the Company, including cash and stock awards. To maintain this lucrative
14 compensation, and to ensure the value of her shares, Duke has an interest in defending the Board’s
15 conduct as it related to the improper sales practices.

16 165. In addition, DUKE is a member of the Board’s Risk Committee. Duke failed to
17 fulfill her oversight duties as a Committee member by neglecting to properly: (i) “provide
18 oversight of [the Company’s] enterprise-wide risk management framework and corporate risk
19 function, including the strategies, policies, procedures, processes, and systems, established by
20 management to identify, assess, measure, monitor, and manage the major risks facing the ...
21 Company;” and (ii) “assist the Board of Directors and its other committees that oversee specific
22 risk-related issues and serve as a resource to management by overseeing risk across the entire
23 Company and across all risk types, and by enhancing management’s and the Board’s
24 understanding of [the Company’s] overall risk appetite and enterprise-wide risk management
25 activities and effectiveness.” The gross failures in risk management oversight are at the heart of
26 the CFPB and OCC investigations and findings. As detailed above, the OCC has raised these
27 concerns with top management and the Board, and ordered reforms. Despite multiple warnings
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1 received over multiple years, Wells Fargo did not satisfactorily address those known issues,
2 leading to the formal administrative proceedings and the Consent Decrees. Members of the
3 Board's Risk Committee cannot fairly and independently adjudicate issues related to the wholly
4 inadequate risk management safeguards.

5 **Defendant Engel**

6 166. Demand is excused as to Defendant ENGEL because she lacks independence by
7 virtue of her position as a member of Wells Fargo's Board and failure to fulfill her fiduciary
8 responsibilities as a Board member.

9 167. ENGEL has been a Board member, and received substantial compensation as a
10 Director, since 1998. In 2015 alone, ENGEL received more than \$331,000 from the Company,
11 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
12 of her shares, ENGEL has an interest in defending the Board's conduct as it related to the improper
13 sales practices.

14 168. In addition, ENGEL is a member of the Board's Human Resources Committee.
15 ENGEL failed to fulfill her oversight duties as a Committee member to properly: (i) "conduct the
16 annual Chief Executive Officer performance evaluation process;" (ii) "evaluate and approve
17 compensation plans, policies and programs of the Company applicable to executive officers;" (iii)
18 "oversee the implementation of risk-balancing and risk management methodologies for incentive
19 compensation plans and programs for senior executives and those identified employees in a
20 position to expose the Company to material risk;" and (iv) "oversee reputation risk related to the
21 [Human Resources Committee's] responsibilities described in [the Committee]." The Company's
22 2016 Proxy Statement indicates that the executive compensation program "emphasize[s] variable
23 compensation tied to performance." ENGEL was personally involved in authorizing the
24 compensation awarded to officers despite the compensation arising performance that included
25 improper sales practices. For 2015, ENGEL and the Human Resources Committee approved base
26 pay of \$2.8 million for Defendant STUMPF, \$1.7 million for Defendant SHREWSBERRY
27 (recently increased to \$1,750,000), and \$1.7 million for Defendant TOLSTEDT (recently increased
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1 to \$1,750,000). In addition, ENGEL was personally involved in decisions regarding annual
2 incentive awards, which in 2015 totaled \$4 million for Defendant STUMPF, \$850,000 for
3 Defendant SHREWSBERRY, and \$850,000 for Defendant TOLSTEDT. ENGEL and the Human
4 Resources Committee also oversaw the award of equity incentives of \$12,500,000 to Defendant
5 STUMPF, \$6.5 million to Defendant SHREWSBERRY, and \$6.5 million to Defendant
6 TOLSTEDT. In total, ENGEL and the Board’s Human Resources Committee approved 2015
7 compensation totaling \$19.3 million for Defendant STUMPF, \$9,050,000 for Defendant
8 SHREWSBERRY, and \$9,050,000 for TOLSTEDT. Such compensation was largely based on
9 improper sales practices that have subjected the Company to great financial and reputational harm.
10 Thus, ENGEL cannot fairly and independently adjudicate any demand on the Board to take action
11 against Defendants STUMPF, SHREWSBERRY, TOLSTEDT, or the other Defendants.

12 **Defendant Hernandez**

13 169. Demand is excused as to Defendant HERNANDEZ because he lacks independence
14 by virtue of his position as a member of Wells Fargo’s Board and failure to fulfill his fiduciary
15 responsibilities as a Board member.

16 170. HERNANDEZ has been a Board member, and received substantial compensation as
17 a Director, since 2003. In 2015 alone, HERNANDEZ received more than \$402,000 from the
18 Company, including cash and stock awards. To maintain this lucrative compensation, and to
19 ensure the value of his shares, HERNANDEZ has an interest in defending the Board’s conduct as
20 it related to the improper sales practices.

21 171. In addition, HERNANDEZ is a member of the Board’s Corporate Responsibility
22 Committee. HERNANDEZ failed to fulfill his oversight duties as a Committee member, including
23 his responsibility to: (i) “advise the Board of Directors and management on strategies that affect
24 [the Company’s] role and reputation as a socially responsible organization;” and (ii) “monitor [the
25 Company’s] reputation generally, including with customers.” The extent to which the improper
26 sales practices and ongoing investigations will harm Wells Fargo’s brand value and relationship
27 with its stakeholders is yet to be determined. Given these circumstances, it is impossible for
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1 members of the Board’s Corporate Responsibility Committee to fairly and independently assess
2 the wrongdoing alleged herein. HERNANDEZ is also the Chair of the Board’s Risk Committee.
3 HERNANDEZ failed to fulfill his oversight duties as a Committee member by neglecting to
4 properly: (i) “provide oversight of [the Company’s] enterprise-wide risk management framework
5 and corporate risk function, including the strategies, policies, procedures, processes, and systems,
6 established by management to identify, assess, measure, monitor, and manage the major risks
7 facing ... [the] Company;” and (ii) “assist the Board of Directors and its other committees that
8 oversee specific risk-related issues and serve as a resource to management by overseeing risk
9 across the entire Company and across all risk types, and by enhancing management’s and the
10 Board’s understanding of [the Company’s] overall risk appetite and enterprise-wide risk
11 management activities and effectiveness.” The gross failures in risk management oversight are at
12 the heart of the CFPB and OCC investigations and findings. As detailed above, the OCC has
13 raised these concerns with top management and the Board, and ordered reforms. Despite multiple
14 warnings received over multiple years, Wells Fargo did not satisfactorily address those known
15 issues, leading to the formal administrative proceedings and the Consent Decrees. Members of the
16 Board’s Risk Committee cannot fairly and independently adjudicate issues related to the wholly
17 inadequate risk management safeguards.

18 **Defendant James**

19 172. Demand is excused as to Defendant JAMES because he lacks independence by
20 virtue of his position as a member of Wells Fargo’s Board and failure to fulfill his fiduciary
21 responsibilities as a Board member.

22 173. JAMES has been a Board member, and received substantial compensation as a
23 Director, since 2009. In 2015 alone, JAMES received more than \$293,000 from the Company,
24 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
25 of his shares, JAMES has an interest in defending the Board’s conduct as it related to the improper
26 sales practices.

1 174. In addition, JAMES is a member of the Board’s Human Resources Committee.
2 JAMES failed to fulfill his oversight duties as a Committee member to properly: (i) “conduct the
3 annual Chief Executive Officer performance evaluation process;” (ii) “evaluate and approve
4 compensation plans, policies and programs of the Company applicable to executive officers;” (iii)
5 “oversee the implementation of risk-balancing and risk management methodologies for incentive
6 compensation plans and programs for senior executives and those identified employees in a
7 position to expose the Company to material risk;” and (iv) “oversee reputation risk related to the
8 [Human Resources Committee’s] responsibilities described in [the Committee].” The Company’s
9 2016 Proxy Statement indicates that the executive compensation program “emphasize[s] variable
10 compensation tied to performance.” JAMES was personally involved in authorizing the
11 compensation awarded to officers despite the compensation arising performance that included
12 improper sales practices. For 2015, JAMES and the Human Resources Committee approved base
13 pay of \$2.8 million for Defendant STUMPF, \$1.7 million for Defendant SHREWSBERRY
14 (recently increased to \$1,750,000), and \$1.7 million for Defendant TOLSTEDT (recently increased
15 to \$1,750,000). In addition, JAMES was personally involved in decisions regarding annual
16 incentive awards, which in 2015 totaled \$4 million for Defendant STUMPF, \$850,000 for
17 Defendant SHREWSBERRY, and \$850,000 for Defendant TOLSTEDT. Chen and the Human
18 Resources Committee also oversaw the award of equity incentives of \$12,500,000 to Defendant
19 STUMPF, \$6.5 million to Defendant SHREWSBERRY, and \$6.5 million to Defendant
20 TOLSTEDT. In total, JAMES and the Human Resources Committee approved 2015
21 compensation totaling \$19.3 million for Defendant STUMPF, \$9,050,000 for Defendant
22 SHREWSBERRY, and \$9,050,000 for TOLSTEDT. Such compensation was largely based on
23 improper sales practices that have subjected the Company to great financial and reputational harm,
24 JAMES cannot fairly and independently adjudicate any demand on the Board to take action against
25 Defendants STUMPF, SHREWSBERRY, TOLSTEDT, or the other Defendants.
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1 **Defendant Milligan**

2 175. Demand is excused as to Defendant MILLIGAN because she lacks independence
3 by virtue of her position as a member of Wells Fargo’s Board and failure to fulfill her fiduciary
4 responsibilities as a Board member. MILLIGAN has been a Board member, and received
5 substantial compensation as a Director, since 1992. In 2015 alone, MILLIGAN received more
6 than \$352,000 from the Company, including cash and stock awards. To maintain this lucrative
7 compensation, and to ensure the value of her shares, MILLIGAN has an interest in defending the
8 Board’s conduct as it related to the improper sales practices.

9 176. In addition, MILLIGAN is a member of the Board’s Corporate Responsibility
10 Committee. MILLIGAN failed to fulfill her oversight duties as a Committee member, including
11 her responsibility to: (i) “advise the Board of Directors and management on strategies that affect
12 [the Company’s] role and reputation as a socially responsible organization;” and (ii) “monitor [the
13 Company’s] reputation generally, including with customers.” The extent to which the improper
14 sales practices and ongoing investigations will harm Wells Fargo’s brand value and relationship
15 with its stakeholders is yet to be determined. Given these circumstances, it is impossible for
16 members of the Board’s Corporate Responsibility Committee to fairly and independently assess
17 the wrongdoing alleged herein.

18 177. MILLIGAN is also a member of the Board’s Governance and Nominating
19 Committee. MILLIGAN failed to fulfill her oversight duties as a Committee member, including: (i)
20 “recommending to the Board a determination of each outside director’s ‘independence’ under
21 applicable rules and guidelines;” (ii) “recommending to the Board director nominees for each
22 committee;” (iii) “recommending to the Board the corporate governance guidelines applicable to
23 the Company;” (iv) “overseeing an annual review of the Board’s performance;” (v) “reviewing
24 from time to time director compensation and recommend any changes for approval of the Board;”
25 (vi) “overseeing [the Company’s] engagement with stockholders and other interested parties
26 concerning governance and other related matters;” and (vi) “overseeing reputation risk related to
27 the [Governance and Nominating Committee’s] responsibilities described in [the Committee]
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1 Charter.” Wells Fargo had a complete breakdown in corporate governance, as evidenced by the
2 CFPB and OCC Consent Decrees. Furthermore, the Defendants failed to adhere to Wells Fargo’s
3 own Corporate Governance Guidelines and Code of Ethics & Business Conduct. As a result,
4 members of the Board’s Governance and Nominating Committee cannot be expected to fairly and
5 independently assess the wrongdoing alleged herein.

6 178. Furthermore, MILLIGAN is a member of the Board’s Risk Committee.
7 MILLIGAN failed to fulfill her oversight duties as a Committee member by neglecting to
8 properly: (i) “provide oversight of [the Company’s] enterprise-wide risk management framework
9 and corporate risk function, including the strategies, policies, procedures, processes, and systems,
10 established by management to identify, assess, measure, monitor, and manage the major risks
11 facing . . . [the] Company;” and (ii) “assist the Board of Directors and its other committees that
12 oversee specific risk-related issues and serve as a resource to management by overseeing risk
13 across the entire Company and across all risk types, and by enhancing management’s and the
14 Board’s understanding of [the Company’s] overall risk appetite and enterprise-wide risk
15 management activities and effectiveness.” The gross failures in risk management oversight are at
16 the heart of the CFPB and OCC investigations and findings. As detailed above, the OCC has
17 raised these concerns with top management and the Board, and ordered reforms. Despite multiple
18 warnings received over multiple years, Wells Fargo did not satisfactorily address those known
19 issues, leading to the formal administrative proceedings and the Consent Decrees. Members of the
20 Board’s Risk Committee cannot fairly and independently adjudicate issues related to the wholly
21 inadequate risk management safeguards.

22 **Defendant Peña**

23 179. Demand is excused as to Defendant Peña because he lacks independence by virtue
24 of his position as a member of Wells Fargo’s Board and failure to fulfill his fiduciary
25 responsibilities as a Board member.

26 180. In 2015 alone, Peña received more than \$320,000 from the Company, including
27 cash and stock awards. To maintain this lucrative compensation, and to ensure the value of his
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1 shares, Peña has an interest in defending the Board’s conduct as it related to the improper sales
2 practices.

3 181. In addition, PENA is a member of the Board’s Audit and Examination Committee.
4 Peña failed to fulfill his oversight duties as a Committee member, including his responsibility to
5 oversee: (i) “the integrity of [the Company’s] financial statements and the adequacy and reliability
6 of disclosures to stockholders, including management activities related to accounting and financial
7 reporting and internal controls;” (ii) “operational risk [and the Company’s] compliance with legal
8 and regulatory requirements;” and (iii) “reputation risk related to the Audit and Examination
9 Committee’s responsibilities.” The “Eight is Great” sales metrics were highlighted along with the
10 Company’s quarterly and annual financial results in SEC filings, and the full impact of the
11 improper sales practices on Wells Fargo’s financial reported results is yet to be determined. The
12 CFPB and OCC have already determined that Wells Fargo was not in compliance with legal and
13 regulatory requirements, which has resulted in Wells Fargo and the Board to be under close
14 regulatory scrutiny and remain under heightened scrutiny for the next several years. Members of
15 the Board’s Audit and Examination Committee cannot fairly and independently adjudicate issues
16 related to the improper sales practices underlying the Company’s reported financial results.

17 182. PENA is also the Chair of the Board’s Corporate Responsibility Committee. Peña
18 failed to fulfill his oversight duties as a Committee member, including his responsibility to: (i)
19 “advise the Board of Directors and management on strategies that affect [the Company’s] role and
20 reputation as a socially responsible organization;” and (ii) “monitor [the Company’s] reputation
21 generally, including with customers.” The extent to which the improper sales practices and
22 ongoing investigations will harm Wells Fargo’s brand value and relationships with its stakeholders
23 is yet to be determined. Given these circumstances, it is impossible for members of the Board’s
24 Corporate Responsibility Committee to fairly and independently assess the wrongdoing alleged
25 herein.

26 183. Furthermore, Peña is a member of the Board’s Governance and Nominating
27 Committee. PENA failed to fulfill his oversight duties as a Committee member, including: (i)
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1 “recommending to the Board a determination of each outside director’s ‘independence’ under
2 applicable rules and guidelines;” (ii) “recommending to the Board director nominees for each
3 committee;” (iii) “recommending to the Board the corporate governance guidelines applicable to
4 the Company;” (iv) “overseeing an annual review of the Board’s performance;” (v) “reviewing
5 from time to time director compensation and recommend any changes for approval of the Board;”
6 (vi) “overseeing [the Company’s] engagement with stockholders and other interested parties
7 concerning governance and other related matters;” and (vi) “overseeing reputation risk related to
8 the [Governance and Nominating Committee’s] responsibilities described in [the Committee]
9 Charter.” Wells Fargo had a complete breakdown in corporate governance, as evidenced by the
10 CFPB and OCC Consent Decrees. Furthermore, the Defendants failed to adhere to Wells Fargo’s
11 own Corporate Governance Guidelines and Code of Ethics & Business Conduct. As a result,
12 members of the Board’s Governance and Nominating Committee cannot be expected to fairly and
13 independently assess the wrongdoing alleged herein.

14 184. PENA is also a member of the Board’s Risk Committee. PENA failed to fulfill his
15 oversight duties as a Committee member by neglecting to properly: (i) “provide oversight of [the
16 Company’s] enterprise-wide risk management framework and corporate risk function, including
17 the strategies, policies, procedures, processes, and systems, established by management to identify,
18 assess, measure, monitor, and manage the major risks facing ... [the] Company;” and (ii) “assist
19 the Board of Directors and its other committees that oversee specific risk-related issues and serve
20 as a resource to management by overseeing risk across the entire Company and across all risk
21 types, and by enhancing management’s and the Board’s understanding of [the Company’s] overall
22 risk appetite and enterprise-wide risk management activities and effectiveness.” The gross failures
23 in risk management oversight are at the heart of the CFPB and OCC investigations and findings.
24 As detailed above, the OCC has raised these concerns with top management and the Board, and
25 ordered reforms. Despite multiple warnings received over multiple years, Wells Fargo did not
26 satisfactorily address those known issues, leading to the formal administrative proceedings and the
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1 Consent Decrees. Members of the Board’s Risk Committee cannot fairly and independently
2 adjudicate issues related to the wholly inadequate risk management safeguards.

3 **Defendant Quigley**

4 185. Demand is excused as to Defendant QUIGLEY because he lacks independence by
5 virtue of his position as a member of Wells Fargo’s Board and failure to fulfill his fiduciary
6 responsibilities as a Board member.

7 186. QUIGLEY has been a Board member, and received substantial compensation as a
8 Director, since 2013. In 2015 alone, QUIGLEY received more than \$382,000 from the Company,
9 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
10 of his shares, QUIGLEY has an interest in defending the Board’s conduct as it related to the
11 improper sales practices.

12 187. In addition, QUIGLEY is the Chair of the Board’s Audit and Examination
13 Committee. QUIGLEY failed to fulfill his oversight duties as a Committee member, including his
14 responsibility to oversee: (i) “the integrity of [the Company’s] financial statements and the
15 adequacy and reliability of disclosures to stockholders, including management activities related to
16 accounting and financial reporting and internal controls;” (ii) “operational risk [and the
17 Company’s] compliance with legal and regulatory requirements;” and (iii) “reputation risk related
18 to the Audit and Examination Committee’s responsibilities.” The “Eight is Great” sales metrics
19 were highlighted along with the Company’s quarterly and annual financial results in SEC filings,
20 and the full impact of the improper sales practices on Wells Fargo’s financial reported results is yet
21 to be determined. The CFPB and OCC have already determined that Wells Fargo was not in
22 compliance with legal and regulatory requirements, which has resulted in Wells Fargo and the
23 Board to be under close regulatory scrutiny and remain under heightened scrutiny for the next
24 several years. Members of the Board’s Audit and Examination Committee cannot fairly and
25 independently adjudicate issues related to the improper sales practices underlying the Company’s
26 reported financial results.

1 188. QUIGLEY is also a member of the Board’s Risk Committee. QUIGLEY failed to
2 fulfill his oversight duties as a Committee member by neglecting to properly: (i) “provide
3 oversight of [the Company’s] enterprise-wide risk management framework and corporate risk
4 function, including the strategies, policies, procedures, processes, and systems, established by
5 management to identify, assess, measure, monitor, and manage the major risks facing ... [the]
6 Company;” and (ii) “assist the Board of Directors and its other committees that oversee specific
7 risk-related issues and serve as a resource to management by overseeing risk across the entire
8 Company and across all risk types, and by enhancing management’s and the Board’s
9 understanding of [the Company’s] overall risk appetite and enterprise-wide risk management
10 activities and effectiveness.” The gross failures in risk management oversight are at the heart of
11 the CFPB and OCC investigations and findings. As detailed above, the OCC has raised these
12 concerns with top management and the Board, and ordered reforms. Despite multiple warnings
13 received over multiple years, Wells Fargo did not satisfactorily address those known issues,
14 leading to the formal administrative proceedings and the Consent Decrees. Members of the
15 Board’s Risk Committee cannot fairly and independently adjudicate issues related to the wholly
16 inadequate risk management safeguards.

17 **Defendant Sanger**

18 189. Demand is excused as to Defendant SANGER because he lacks independence by
19 virtue of his position as a member of Wells Fargo’s Board, his position as “Lead Director,” and his
20 failure to fulfill his fiduciary responsibilities as a Board member.

21 190. In 2015 alone, SANGER received more than \$382,000 from the Company,
22 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
23 of his shares, SANGER has an interest in defending the Board’s conduct as it related to the
24 improper sales practices.

25 191. SANGER also is a member of the Board’s Governance and Nominating Committee.
26 PENA filed to fulfill his oversight duties as a Committee member, including: (i) “recommending to
27 the Board a determination of each outside director’s ‘independence’ under applicable rules and
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1 guidelines;” (ii) “recommending to the Board director nominees for each committee;” (iii)
2 “recommending to the Board the corporate governance guidelines applicable to the Company;”
3 (iv) “overseeing an annual review of the Board’s performance;” (v) “reviewing from time to time
4 director compensation and recommend any changes for approval of the Board;” (vi) “overseeing
5 [the Company’s] engagement with stockholders and other interested parties concerning
6 governance and other related matters;” and (vi) “overseeing reputation risk related to the
7 [Governance and Nominating Committee’s] responsibilities described in [the Committee]
8 Charter.” Wells Fargo had a complete breakdown in corporate governance, as evidenced by the
9 CFPB and OCC Consent Decrees. Furthermore, the Defendants failed to adhere to Wells Fargo’s
10 own Corporate Governance Guidelines and Code of Ethics & Business Conduct. As a result,
11 members of the Board’s Governance and Nominating Committee cannot be expected to fairly and
12 independently assess the wrongdoing alleged herein.

13 192. In addition, SANGER is a member of the Board’s Human Resources Committee.
14 SANGER failed to fulfill his oversight duties as a Committee member to properly: (i) “conduct the
15 annual Chief Executive Officer performance evaluation process;” (ii) “evaluate and approve
16 compensation plans, policies and programs of the Company applicable to executive officers;” (iii)
17 “oversee the implementation of risk-balancing and risk management methodologies for incentive
18 compensation plans and programs for senior executives and those identified employees in a
19 position to expose the Company to material risk;” and (iv) “oversee reputation risk related to the
20 [Human Resources Committee’s] responsibilities described in [the Committee].” The Company’s
21 2016 Proxy Statement indicates that the executive compensation program “emphasize[s] variable
22 compensation tied to performance.” SANGER was personally involved in authorizing the
23 compensation awarded to officers despite the compensation arising performance that included
24 improper sales practices. For 2015, SANGER and the Human Resources Committee approved
25 base pay of \$2.8 million for Defendant STUMPF, \$1.7 million for Defendant SHREWSBERRY
26 (recently increased to \$1,750,000), and \$1.7 million for Defendant TOLSTEDT (recently increased
27 to \$1,750,000). In addition, Chen was personally involved in decisions regarding annual incentive
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1 awards, which in 2015 totaled \$4 million for Defendant STUMPF, \$850,000 for Defendant
2 SHREWSBERRY, and \$850,000 for Defendant TOLSTEDT. SANGER and the Human
3 Resources Committee also oversaw the award of equity incentives of \$12,500,000 to Defendant
4 STUMPF, \$6.5 million to Defendant SHREWSBERRY, and \$6.5 million to Defendant
5 TOLSTEDT. In total, SANGER and the Board’s Human Resources Committee approved 2015
6 compensation totaling \$19.3 million for Defendant STUMPF, \$9,050,000 for Defendant
7 SHREWSBERRY, and \$9,050,000 for TOLSTEDT. Such compensation was largely based on
8 improper sales practices that have subjected the Company to great financial and reputational harm,
9 SANGER cannot fairly and independently adjudicate any demand on the Board to take action
10 against Defendants STUMPF, SHREWSBERRY, TOLSTEDT, or the other Defendants.

11 193. SANGER is also a member of the Board’s Risk Committee. SANGER failed to
12 fulfill his oversight duties as a Committee member by neglecting to properly: (i) “provide
13 oversight of [the Company’s] enterprise-wide risk management framework and corporate risk
14 function, including the strategies, policies, procedures, processes, and systems, established by
15 management to identify, assess, measure, monitor, and manage the major risks facing ... [the]
16 Company;” and (ii) “assist the Board of Directors and its other committees that oversee specific
17 risk-related issues and serve as a resource to management by overseeing risk across the entire
18 Company and across all risk types, and by enhancing management’s and the Board’s
19 understanding of [the Company’s] overall risk appetite and enterprise-wide risk management
20 activities and effectiveness.” The gross failures in risk management oversight are at the heart of
21 the CFPB and OCC investigations and findings. As detailed above, the OCC has raised these
22 concerns with top management and the Board, and ordered reforms. Despite multiple warnings
23 received over multiple years, Wells Fargo did not satisfactorily address those known issues,
24 leading to the formal administrative proceedings and the Consent Decrees. Members of the
25 Board’s Risk Committee cannot fairly and independently adjudicate issues related to the wholly
26 inadequate risk management safeguards.

1 **Defendant Swenson**

2 194. Demand is excused as to Defendant SWENSON because he lacks independence by
3 virtue of his position as a member of Wells Fargo’s Board and failure to fulfill his fiduciary
4 responsibilities as a Board member.

5 195. SWENSON has been a Board member, and received substantial compensation as a
6 Director, since 1998. In 2015 alone, SWENSON received more than \$309,000 from the Company,
7 including cash and stock awards. To maintain this lucrative compensation, and to ensure the value
8 of his shares, SWENSON has an interest in defending the Board’s conduct as it related to the
9 improper sales practices.

10 196. In addition, SWENSON is a member of the Board’s Audit and Examination
11 Committee. SWENSON failed to fulfill his oversight duties as a Committee member, including
12 his responsibility to oversee: (i) “the integrity of [the Company’s] financial statements and the
13 adequacy and reliability of disclosures to stockholders, including management activities related to
14 accounting and financial reporting and internal controls;” (ii) “operational risk [and the
15 Company’s] compliance with legal and regulatory requirements;” and (iii) “reputation risk related
16 to the Audit and Examination Committee’s responsibilities.” The “Eight is Great” sales metrics
17 were highlighted along with the Company’s quarterly and annual financial results in SEC filings,
18 and the full impact of the improper sales practices on Wells Fargo’s financial reported results is yet
19 to be determined. The CFPB and OCC have already determined that Wells Fargo was not in
20 compliance with legal and regulatory requirements, which has resulted in Wells Fargo and the
21 Board to be under close regulatory scrutiny and remain under heightened scrutiny for the next
22 several years. Members of the Board’s Audit and Examination Committee cannot fairly and
23 independently adjudicate issues related to the improper sales practices underlying the Company’s
24 reported financial results.

25 197. SWENSON is also a member of the Board’s Governance and Nominating
26 Committee. SWENSON failed to fulfill his oversight duties as a Committee member, including:
27 (i) “recommending to the Board a determination of each outside director’s ‘independence’ under
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1 applicable rules and guidelines;” (ii) “recommending to the Board director nominees for each
2 committee;” (iii) “recommending to the Board the corporate governance guidelines applicable to
3 the Company;” (iv) “overseeing an annual review of the Board’s performance;” (v) “reviewing
4 from time to time director compensation and recommend any changes for approval of the Board;”
5 (vi) “overseeing [the Company’s] engagement with stockholders and other interested parties
6 concerning governance and other related matters;” and (vi) “overseeing reputation risk related to
7 the [Governance and Nominating Committee’s] responsibilities described in [the Committee]
8 Charter.” Wells Fargo had a complete breakdown in corporate governance, as evidenced by the
9 CFPB and OCC Consent Decrees. Furthermore, the Defendants failed to adhere to Wells Fargo’s
10 own Corporate Governance Guidelines and Code of Ethics & Business Conduct. As a result,
11 members of the Board’s Governance and Nominating Committee cannot be expected to fairly and
12 independently assess the wrongdoing alleged herein.

13 **Defendant Vautrinot**

14 198. Demand is excused as to Defendant VAUTRINOT because she lacks independence
15 by virtue of her position as a member of Wells Fargo’s Board and failure to fulfill her fiduciary
16 responsibilities as a Board member.

17 199. VAUTRINOT has been a Board member since 2015. In 2015, VAUTRINOT
18 received more than \$324,000 from the Company, including cash and stock awards. To maintain
19 this lucrative compensation, and to ensure the value of her shares, VAUTRINOT has an interest in
20 defending the Board’s conduct as it related to the improper sales practices.

21 200. In addition, VAUTRINOT is a member of the Board’s Audit and Examination
22 Committee. VAUTRINOT failed to fulfill her oversight duties as a Committee member, including
23 his responsibility to oversee: (i) “the integrity of [the Company’s] financial statements and the
24 adequacy and reliability of disclosures to stockholders, including management activities related to
25 accounting and financial reporting and internal controls;” (ii) “operational risk [and the
26 Company’s] compliance with legal and regulatory requirements;” and (iii) “reputation risk related
27 to the Audit and Examination Committee’s responsibilities.” The “Eight is Great” sales metrics
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1 were highlighted along with the Company's quarterly and annual financial results in SEC filings,
2 and the full impact of the improper sales practices on Wells Fargo's financial reported results is yet
3 to be determined. The CFPB and OCC have already determined that Wells Fargo was not in
4 compliance with legal and regulatory requirements, which has resulted in Wells Fargo and the
5 Board to be under close regulatory scrutiny and remain under heightened scrutiny for the next
6 several years. Members of the Board's Audit and Examination Committee cannot fairly and
7 independently adjudicate issues related to the improper sales practices underlying the Company's
8 reported financial results.

9 **VIII. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **BREACH OF FIDUCIARY DUTY**

12 **(AGAINST THE INDIVIDUAL DEFENDANTS)**

13 201. Plaintiff incorporates by reference and realleges each and every allegation
14 contained above, as though fully set forth herein.

15 202. The Individual Defendants owed the Company a fiduciary duty and obligation of
16 good faith, fair dealing, loyalty, due care, reasonable inquiry, oversight and supervision. The
17 Individual Defendants breached these fiduciary duties.

18 203. The Individual Defendants each knowingly, recklessly or negligently approved the
19 issuance of false statements that misrepresented and failed to disclose material information
20 concerning the Company. These actions could not have been a good faith exercise of prudent
21 business judgment to protect and promote the Company's corporate interests.

22 204. As a direct and proximate result of the Individual Defendants' failure to perform
23 their fiduciary obligations, Wells Fargo has sustained significant damages which include, but are
24 not limited to, regulatory fines, costs to comply with Consent Orders, costs to comply with
25 heightened regulatory oversight, restitution to harmed Wells Fargo customers, harm to the
26 Company's reputation, goodwill and market capitalization, costs to defend and resolve any
27 additional civil, criminal, and/or regulatory actions, payment of unearned compensation, and loss
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1 in brand value. As a result of the misconduct alleged herein, the Defendants are liable to the
2 Company.

3 **SECOND CAUSE OF ACTION**

4 **UNJUST ENRICHMENT**

5 **(AGAINST THE INDIVIDUAL DEFENDANTS)**

6 205. Plaintiff incorporates by reference and realleges each and every allegation
7 contained above as though fully set forth herein.

8 206. By their wrongful acts and omissions, the Individual Defendants were unjustly
9 enriched at the expense of and to the detriment of Wells Fargo.

10 207. The Individual Defendants were unjustly enriched as a result of the compensation
11 they received while breaching their fiduciary duties owed to the Company, and based on
12 performance and financial metrics that purportedly were satisfied or used to justify their
13 compensation, while the underlying illegal sales described herein were occurring.

14 208. Plaintiff, as a shareholder and representative of Wells Fargo, seeks restitution from
15 the Individual Defendants and seeks an order from this Court disgorging all profits, benefits, and
16 other compensation obtained by the Individual Defendants from their wrongful conduct and
17 fiduciary breaches.

18 209. Plaintiff, on behalf of Wells Fargo, has no adequate remedy at law.

19 **THIRD CAUSE OF ACTION**

20 **CORPORATE WASTE**

21 **(AGAINST THE DIRECTOR DEFENDANTS)**

22 210. Plaintiff incorporates by reference and realleges each and every allegation
23 contained above as though fully set forth herein.

24 211. The Director Defendants had a fiduciary duty to protect Wells Fargo's assets from
25 loss or waste.

26 212. By approving the compensation packages and/or golden parachutes to senior
27 executives, including Defendants STUMPF and TOLSTEDT who had direct oversight and
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1 responsibility for the illegal sales practices described in the Consent Orders, and not seeking the
2 immediate clawback of such compensation, the Director Defendants breached this fiduciary duty
3 and have caused Wells Fargo to waste its corporate assets.

4 213. As a result of the Director Defendants' corporate waste, the Company has suffered
5 substantial damages.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff demands judgment as follows:

8 A. Against all of the Defendants for the amount of damages sustained by Wells Fargo
9 as a result of the Defendants' breaches of fiduciary duties, and unjust enrichment;

10 B. Directing Wells Fargo to take all necessary actions to reform and improve its
11 corporate governance and internal procedures to comply with applicable laws and to protect the
12 Company and its shareholders from a repeat of the damaging events described herein;

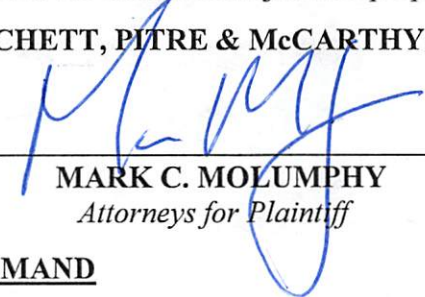
13 C. Awarding to Wells Fargo restitution from the Defendants, and each of them, and
14 ordering disgorgement of all improper profits, benefits and other compensation received by the
15 Defendants;

16 D. Awarding to Plaintiff the costs and disbursements of the action, including
17 reasonable attorneys' fees, accountants' fees, experts' fees, costs, and expenses; and

18 E. Granting such other and further relief as the Court deems just and proper.

19 Dated: September 22, 2016

COTCHETT, PITRE & McCARTHY, LLP

20
21 By: 
22 **MARK C. MOLUMPY**
Attorneys for Plaintiff

23 **JURY DEMAND**

24 Plaintiff demands a trial by jury.

25 Dated: September 22, 2016

COTCHETT, PITRE & McCARTHY, LLP

26
27 By: 
28 **MARK C. MOLUMPY**
Attorneys for Plaintiff