

1 BETSY C. MANIFOLD (182450)  
manifold@whafh.com

2 RACHELE R. RICKERT (190634)  
rickert@whafh.com

3 BRITTANY N. DEJONG (258766)  
dejong@whafh.com

4 **WOLF HALDENSTEIN ADLER**  
5 **FREEMAN & HERZ LLP**

6 750 B Street, Suite 2770  
San Diego, CA 92101  
Telephone: 619/239-4599  
7 Facsimile: 619/234-4599

8 *Counsel for Plaintiff Victoria Shaev*

9 [Additional counsel on signature page]

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 VICTORIA SHAEV, )  
13 derivatively on behalf of )  
14 WELLS FARGO & COMPANY, )  
15 Plaintiff, )

16 v. )

17 JOHN D. BAKER II, ELAINE L. CHAO, )  
18 JOHN S. CHEN, LLOYD H. DEAN, )  
19 ELIZABETH A. DUKE, ENRIQUE )  
20 HERNANDEZ JR., DONALD M. JAMES, )  
21 CYNTHIA M. MILLIGAN, FEDERICO F. )  
22 PEÑA, JAMES H. QUIGLY, STEPHEN W. )  
23 SANGER, JOHN G. STUMPF, SUSAN G. )  
24 SWENSON, CARRIE L. TOLSTEDT, and )  
25 SUZANNE M. VAUTRINOT, )

26 Defendants. )

27 -and- )

28 WELLS FARGO & COMPANY, )

Nominal Defendant. )

Case No.

**VERIFIED STOCKHOLDER  
DERIVATIVE COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Victoria Shaev, by and through her undersigned counsel, derivatively on behalf  
2 of Wells Fargo & Company, (“Wells Fargo” or the “Company”) alleges upon personal  
3 knowledge as to herself and her own acts, and upon information and belief as to all other matters,  
4 based upon, among other things, her counsel’s investigation, which included, among other  
5 things, a review of Securities and Exchange Commission (“SEC”) filings, news reports, press  
6 releases, congressional testimony, and other publicly available documents regarding Wells  
7 Fargo, as follows:

8 **NATURE OF THE ACTION**

9 1. This is a shareholder derivative action brought by the Funds on behalf of Nominal  
10 Defendant Wells Fargo against John D. Baker II, Elaine L. Chao, John S. Chen, Lloyd H. Dean,  
11 Elizabeth A. Duke, Enrique Hernandez Jr., Donald M. James, Cynthia M. Milligan, Federico F.  
12 Peña, James H. Quigley, Stephen W. Sanger, John G. Stumpf, Susan G. Swenson, Carrie L.  
13 Tolstedt, and Suzanne M. Vautrinot. The Funds are, and were at all times relevant hereto, Wells  
14 Fargo shareholders.

15 **INTRODUCTION**

16 2. This action alleges that the Individual Defendants (defined below) breached their  
17 fiduciary duties of loyalty, good faith, candor, and trust owed to the Company and all of its  
18 stockholders under Delaware law and violated Sections 14(a) and 29(b) of the Securities  
19 Exchange Act of 1934 (the “Exchange Act”).

20 3. At all relevant times, Wells Fargo, its board of directors (the “Board”), and senior  
21 executive officers, in an effort to inflate and manipulate the market price for Wells Fargo stock  
22 and, therefore, keep their lofty positions and increase their own compensation, sanctioned the  
23 corporate policy of promoting and maintaining an aggressive sales culture that resulted in  
24 employees creating unauthorized phony deposit and credit card accounts, victimizing customers  
25 by unwittingly enrolling them in online banking services and ordering debit cards for consumers,  
26 all without the consumers’ consent or knowledge.

27 4. To achieve the goal of selling a high number of accounts to each customer each  
28 year, and thus to artificially inflate the Company’s stock price and increase their own personal

1 wealth, Wells Fargo's senior executives imposed unrealistic sales quotas on its employees, and  
2 adopted policies that have, predictably and naturally, driven its employees to engage in  
3 fraudulent behavior to meet those unrealistic goals as the supine Board turned a blind eye to the  
4 massive wrongdoing.

5 5. In 2016, the unlawful misconduct became front-page headline news, as federal  
6 and state regulators imposed \$185 million in penalties and fines on Wells Fargo for the massive  
7 scandal.

8 6. Defendant John G. Stumpf ("Stumpf"), the Company's Chairman of the Board  
9 and Chief Executive Officer ("CEO"), admitted in his testimony before the Senate Banking  
10 Committee on September 19, 2016 that he had knowledge of the widespread fraud as far back as  
11 2011, when he discussed the problem of the fake accounts with Carrie L. Tolstedt  
12 ("Tolstedt"), the disgraced head of retail banking as part of an internal investigation. Despite  
13 that knowledge, the illegal activity was allowed to continue for another five years.

14 7. Beginning in 2012, various regulators, including the Office of the Comptroller of  
15 the Currency (the "OCC"), commenced investigations into the Company's unlawful practices.  
16 As early as 2013, those regulators issued repeated warnings to Wells Fargo's Board and senior  
17 executive officers about the unlawful practices, but the Board and the senior executive officers  
18 took no action to stop them from continuing.

19 8. Thus, Wells Fargo's Board and senior executive officers knew about and  
20 encouraged these nefarious practices for years. This culture was perpetuated throughout the  
21 entire Company until regulators forced Wells Fargo to own up to the problem. Indeed, the  
22 pervasive nature of the scheme is evidenced by the Company's terminating at least 5,300 people  
23 thus far, including branch managers and managers of managers. Shockingly, some of these  
24 people were terminated for refusing to participate in the fraudulent practice and others were  
25 terminated for reporting the wrongdoing.

26 9. Even with this corrective purge, the Board has ignored the systemic wrongdoing  
27 that Defendant Stumpf knew of as early as 2011 and the rest of the Board has known of at least  
28 as early as 2013 but failed to prevent, stop, or remedy until recently. Indeed, even after being

1 fined \$185 million by regulators for the massive wrongdoing, Wells Fargo's Board allowed  
2 Defendant Tolstedt, the executive who oversaw the bank's retail division where most of the  
3 malfeasance occurred until July 2016 to receive a stunning \$124.6 million cash severance  
4 payment despite the fiasco.

5 10. During a Senate hearing on the fiasco on September 21, 2016, Senator Elizabeth  
6 Warren delivered to Defendant Stumpf the following blunt and unvarnished assessment of the  
7 failure of senior management to prevent or remedy the harm to Wells Fargo: "***OK, so you***  
8 ***haven't resigned, you haven't returned a single nickel of your personal earnings, you haven't***  
9 ***fired a single senior executive.*** Instead evidently your definition of 'accountable' is to push the  
10 blame to your low-level employees who don't have the money for a fancy PR firm to defend  
11 themselves. ***It's gutless leadership.***"

12 11. In this derivative action, Plaintiff, a longtime shareholder of Wells Fargo, seeks to  
13 hold accountable – finally – the directors and senior officers whose "gutless leadership" for years  
14 caused or permitted the massive wrongdoing that now plagues the Company.

### 15 **JURISDICTION AND VENUE**

16 12. The jurisdiction of this Court is founded upon: (a) federal question jurisdiction,  
17 pursuant to section 27 of the Exchange Act, as amended, 15 U.S.C. § 78aa, and 28 U.S.C. §  
18 1331; (b) diversity of citizenship, 28 U.S.C. § 1332, and (c) supplemental jurisdiction, 28 U.S.C.  
19 § 1367(a). Plaintiff is a citizen of the State of New York. The Defendants are all citizens of  
20 jurisdictions other than New York. The matter in controversy exceeds the sum or value of  
21 \$75,000, exclusive of interest and costs.

22 13. Plaintiff brings this action as a derivative action to obtain specific equitable relief  
23 for the false and misleading Proxy Statement that failed to comply with the Exchange Act, the  
24 SEC Regulations, and Delaware law governing the contents of proxy statements and for the  
25 breaches of fiduciary duty under Delaware law. The claims herein arise under the laws of the  
26 State of Delaware and under Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), Section  
27 29(b) of the Exchange Act, 15 U.S.C. § 78cc(b), Rule 14a-9, 17 C.F.R. § 240.14a-9, of the  
28 promulgated thereunder, and SEC Schedule 14A, 17 C.F.R. § 240.14a-101.

1           14. This Court has supplemental jurisdiction over the state law claims pursuant to 28  
2 U.S.C. § 1367(a).

3           15. This Court has personal jurisdiction over the Defendants, and venue is proper in  
4 this judicial district because nominal defendant Wells Fargo is headquartered in San Francisco,  
5 California. All Defendants have substantial and sufficient business contacts within the State of  
6 California because of their current or former roles within the Company.

7           16. This action is not a collusive one to confer jurisdiction that the Court would  
8 otherwise lack.

### 9 PARTIES

#### 10 **A. Plaintiff**

11           17. Plaintiff is a stockholder of the Company and acquired the common stock of First  
12 Interstate Bancorp, a Wells Fargo predecessor, in January 1990, which was later converted to  
13 shares of Wells Fargo after the Company acquired First Interstate, and have held her shares  
14 continuously since.

#### 15 **B. Nominal Defendant**

16           18. Wells Fargo is a Delaware incorporated company and a financial holding  
17 company and a bank holding company registered under the Bank Holding Company Act of 1956  
18 with its principal executive offices located in San Francisco, California. The Company has  
19 approximately \$1.9 trillion in assets and serves one in three households in the United States. The  
20 Company describes itself as “community-based” as it “strive[s] for the highest ethical standards  
21 with [its] team members, [its] customers, [its] communities and [its] shareholders.”

22           19. Wells Fargo provides retail, commercial, and corporate banking services to  
23 individuals, businesses, and institutions. Its Community Banking segment offers checking,  
24 savings, market rate, individual retirement, and health savings accounts, as well as time deposits  
25 and remittances; and lines of credit, auto floor plan lines, equity lines and loans, equipment and  
26 transportation loans, education and residential mortgage loans, and debit and credit cards. This  
27 segment also provides equipment leases, real estate and other commercial financing, small  
28 business administration financing, venture capital financing, cash management, payroll services,  
VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

1 retirement plans, and merchant payment processing and private label financing solutions, as well  
2 as purchases retail installment contracts.

3 **C. Director Defendants**

4 20. Defendant Stumpf is Chairman of the Board and CEO of Wells Fargo and has  
5 served as Chairman since January 2010 and CEO since June 2007. Stumpf has spent nearly  
6 35 years at the Company and also served as President from August 1, 2005 until November  
7 2015, and Chief Operating Officer from September 1, 2005 to June 2007.

8 21. Defendant John D. Baker II (“Baker”) is a Wells Fargo director and has been  
9 since January 2009. Baker is a member of the Company’s Audit and Examination (the “Audit  
10 Committee”), Corporate Responsibility, and Credit Committees.

11 22. Defendant Elaine L. Chao (“Chao”) is a Wells Fargo director and has been since  
12 July 2011. Chao is a member of the Company’s Credit and Finance Committees.

13 23. Defendant John S. Chen (“Chen”) is a Wells Fargo director and has been since  
14 June 2005. Chen is a member of the Company’s Human Resources Committee.

15 24. Defendant Lloyd H. Dean (“Dean”) is a Wells Fargo director and has been since  
16 June 2005. Dean is a member of the Company’s Corporate Responsibility, Governance and  
17 Nominating, and Risk Committees, and is the Chair of the Human Resources Committee.

18 25. Defendant Elizabeth A. Duke (“Duke”) is a Wells Fargo director and has been  
19 since January 2015. Duke is a member of the Company’s Credit, Finance, and Risk Committees.

20 26. Defendant Enrique Hernandez, Jr. (“Hernandez”) is a Wells Fargo director and  
21 has been since January 2003. Hernandez is a member of the Company’s Corporate  
22 Responsibility Committee and is the Chair of the Finance and Risk Committees.

23 27. Defendant Donald M. James (“James”) is a Wells Fargo director and has been  
24 since January 2009. James is a member of the Company’s Finance and Human Resources  
25 Committees.

26 28. Defendant Cynthia Milligan (“Milligan”) is a Wells Fargo director and has been  
27 since July 1992. Milligan is a member of the Company’s Corporate Responsibility, Governance  
28 and Nominating, and Risk Committees, and is the Chair of the Credit Committee.

1           29. Defendant Federico Peña (“Peña”) is a Wells Fargo director and has been since  
2 November 2011. Milligan is a member of the Company’s Audit and Examination, Governance  
3 and Nominating, and Risk Committees, and is the Chair of the Corporate Responsibility  
4 Committee.

5           30. Defendant James H. Quigley (“Quigley”) is a Wells Fargo director and has been  
6 since October 2013. Quigley is a member of the Company’s Credit and Risk Committees, and is  
7 the Chair of the Audit and Examination Committee.

8           31. Defendant Stephen M. Sanger (“Sanger”) is a Wells Fargo director and has been  
9 since July 2003. Sanger is a member of the Company’s Human Resources Committee and is the  
10 Chair of the Governance and Nominating Committee.

11           32. Defendant Susan G. Swenson (“Swenson”) is a Wells Fargo director and has been  
12 since November 1998. Swenson is a member of the Company’s Audit and Examination  
13 Committee as well as the Company’s Governance and Nominating Committee.

14           33. Defendant Suzanne M. Vautrinot (“Vautrinot”) is a Wells Fargo director and has  
15 been since February 2015. Vautrinot is a member of the Company’s Audit and Examination and  
16 Credit Committees.

17           34. Defendants Stumpf, Baker, Chao, Chen, Dean, Duke, Hernandez, James,  
18 Milligan, Peña, Quigley, Sanger, Swenson, and Vautrinot are referred to collectively herein as  
19 the “Director Defendants” and collectively as the “Board.”

20           **D. Officer Defendants**

21           35. In addition to being named as a Director Defendant above, Defendant Stumpf is  
22 also sued in his capacity as CEO of the Company.

23           36. Defendant Tolstedt is the Company’s former Senior Executive Vice President of  
24 Community Banking, and ran the unit at Wells Fargo that was responsible for fraudulently  
25 opening up the phony accounts. Tolstedt resigned from the Company in July 2016 with \$124.6  
26 million in stock and options, and received compensation which included a yearly incentive bonus  
27 of \$5.5 million in stock along with a base salary and other bonuses, even during the years of  
28 confirmed fraudulent practices under her watch. The Board allowed Tolstedt to resign with her

1 full compensation in order to try to conceal the massive wrongdoing she caused or permitted to  
2 take place under her watch.

3 37. Defendants Stumpf and Tolstedt are referred to as the “Officer Defendants,” and  
4 with the “Director Defendants,” collectively referred to as the “Individual Defendants.”

5 **INDIVIDUAL DEFENDANTS’ DUTIES**

6 38. By reason of their positions as directors and/or senior officers of the Company  
7 and because of their ability to control the business and corporate affairs of the Company, the  
8 Individual Defendants owed the Company and its stockholders the fiduciary obligations of  
9 loyalty, due care and good faith.

10 39. The Individual Defendants, because of their positions of control and authority as  
11 directors and/or officers of the Company, were able to and did, directly and/or indirectly,  
12 exercise control over the wrongful acts complained of herein.

13 40. The Individual Defendants were responsible for maintaining and establishing  
14 adequate internal controls for the Company, and to ensure that the Company’s public statements  
15 were based on accurate research, financial and operational information, and were not presented  
16 in a misleading manner.

17 **CORPORATE GOVERNANCE AND REPORTING SYSTEMS**

18 41. According to the Board’s Corporate Governance Guidelines, “[t]he business of  
19 the Company is managed under the direction of its Board.” The Board’s oversight  
20 responsibilities include:

- 21 a. Reviewing, monitoring and, where appropriate, approving the Company’s  
22 strategic plans and objectives, financial performance, risk management  
23 framework and risk appetite; and  
24 b. Ensuring processes are in place for maintaining the integrity and  
25 reputation of the Company and reinforcing a culture of ethics, compliance  
26 and risk management.

27 42. Under the heading “Code of Ethics,” the Corporate Governance Guidelines  
28 highlights that:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

One of the Board’s key responsibilities is to ensure that the Company, through its management, maintains high ethical standards and effective policies and practices designed to protect the Company’s reputation, assets 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.<sup>1</sup>

43. To discharge their duties, the Board of Wells Fargo was required to, *inter alia*, exercise reasonable and prudent supervision over the selection, oversight, performance, and performance monitoring of management and employees, as well as policies, standards, practices and controls of the Company as set forth in Wells Fargo’s governing corporate documents, including its Code Of Ethics and Corporate Governance Guidelines.

44. In addition, by reason of their positions as members of the Audit Committee, Defendants Baker, Peña, Quigley, Swenson, and Vautrinot are subject to additional responsibilities to the public stockholders of Wells Fargo. According to the Audit Committee Charter, the purpose of the Audit Committee is to assist the Board in fulfilling its responsibilities to oversee, *inter alia*:

- a. 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;
- b. operational risk, the Company’s compliance with legal and regulatory requirements, financial crimes risk, information security risk, and technology risk; and
- c. reputation risk related to the Committee’s responsibilities described in this Charter.<sup>2</sup>

---

<sup>1</sup> Wells Fargo & Company Corporate Governance Guidelines, *available at*: <https://www08.wellsfargomedia.com/assets/pdf/about/corporate/governance-guidelines.pdf>.

<sup>2</sup> Wells Fargo & Company Audit and Examination Committee Charter, *available at* <https://www08.wellsfargomedia.com/assets/pdf/about/corporate/audit-and-examination-committee-charter.pdf>.

1           45. In addition, by reason of their positions as members of the Corporate  
2 Responsibility Committee, Defendants Peña, Baker, Dean, Hernandez, and Milligan are subject  
3 to additional responsibilities to the public stockholders of Wells Fargo. According to the  
4 Corporate Responsibility Charter, one of the purposes of this Committee is to “monitor the  
5 Company’s reputation generally, including with customers.<sup>3</sup> To this end, the Committee is to  
6 “review and approve, and recommend to the Risk Committee for its approval, the Company’s  
7 reputation risk management framework, which outlines the Company’s governance framework  
8 and approach for managing and monitoring reputation risk,” and “shall monitor the Company’s  
9 reputation generally, including with customers, and review and receive updates and reports from  
10 management on . . . customer service and complaint matters and other metrics relating to the  
11 Company’s brand and reputation, including matters relating to the Company’s culture and the  
12 focus of its team members on serving our customers.” *Id.*

13           46. In addition, by reason of their positions as members of the Governance and  
14 Nominating Committee, Defendants Peña, Baker, Dean, Hernandez, and Milligan are subject to  
15 additional responsibilities to the public stockholders of Wells Fargo. According to the  
16 Governance and Nominating Committee Charter, the purpose of this Committee is to “assist the  
17 Board of Directors in fulfilling its responsibilities to oversee the composition of the Board and its  
18 committees and the Company’s corporate governance practices,” including by, *inter alia*:

- 19           a. recommending to the Board the corporate governance guidelines  
20           applicable to the Company; and  
21           b. overseeing reputation risk related to the Committee’s responsibilities  
22           described in this Charter.<sup>4</sup>

23           47. In addition, by reason of their positions as members of the Human Resources  
24

25 <sup>3</sup> Wells Fargo & Company Corporate Responsibility Committee Charter, *available at*  
26 [https://www08.wellsfargomedia.com/assets/pdf/about/corporate/corporate-responsibility-committee-](https://www08.wellsfargomedia.com/assets/pdf/about/corporate/corporate-responsibility-committee-charter.pdf)  
27 [charter.pdf](https://www08.wellsfargomedia.com/assets/pdf/about/corporate/corporate-responsibility-committee-charter.pdf)

28 <sup>4</sup> Wells Fargo & Company Governance and Nominating Committee Charter, *available at*  
[https://www08.wellsfargomedia.com/assets/pdf/about/corporate/governance-and-nominating-committee-](https://www08.wellsfargomedia.com/assets/pdf/about/corporate/governance-and-nominating-committee-charter.pdf)  
[charter.pdf](https://www08.wellsfargomedia.com/assets/pdf/about/corporate/governance-and-nominating-committee-charter.pdf).

1 Committee, Defendants Dean, Chen, Engle, James, and Sanger are subject to additional  
2 responsibilities to the public stockholders of Wells Fargo. According to the Human Resources  
3 Committee Charter, the purpose of this Committee is to “assist the Board of Directors in  
4 fulfilling its responsibilities relating to the overall compensation strategy for the Company and  
5 the compensation of the Company’s executive officers,” including by, *inter alia*:

- 6 a. conducting the annual Chief Executive Officer performance evaluation  
7 process;
- 8 b. evaluating and approving compensation plans, policies and programs of  
9 the Company applicable to executive officers;
- 10 c. overseeing the implementation of risk-balancing and risk management  
11 methodologies for incentive compensation plans and programs for senior  
12 executives and those identified employees in a position to expose the  
13 Company to material risk; and
- 14 d. overseeing reputation risk related to the Human Resources Committee’s  
15 responsibilities described in this Charter.<sup>5</sup>

16 48. For 2015, the Human Resources Committee approved \$19.3 million for  
17 Defendant Stumpf, and \$9,050,000 for Tolstedt, including \$850,000 worth of annual incentive  
18 compensation based on “performance” goals inflated by improper sales practices.

19 49. As directors of the Company, the Director Defendants are in a fiduciary  
20 relationship with Wells Fargo and owe the Company and its shareholders the highest obligations  
21 of loyalty, good faith, and fair dealing.

22 50. As senior executives, the Officer Defendants owe the Company and its  
23 shareholders fiduciary duties that are identical to those owed by the Director Defendants. The  
24 Officer Defendants are therefore in a fiduciary relationship with Wells Fargo and owe the  
25 Company and its shareholders the highest obligations of loyalty, good faith, and fair dealing.

26 51. The Officer Defendants further owe fiduciary duties as executives who ran and/or

---

27 <sup>5</sup> Wells Fargo & Company Human Resources Committee Charter, *available at*  
28 <https://www08.wellsfargomedia.com/assets/pdf/about/corporate/human-resources-committee-charter.pdf>.

1 oversaw the very division of the Company responsible for the fraudulent marketing scheme,  
2 supervised tiers of employees, participated in strategic planning and execution of Company  
3 objectives (including among others, the marketing of the Company's consumer banking services  
4 and related products), and/or participated in Company financial decisions. The Officer  
5 Defendants further owe duties pursuant to principles of agency law as agents of the Company  
6 privy to matters of interest and significance.

7 **RULE 23.1 ALLEGATIONS**

8 52. This action is a stockholders' derivative action brought pursuant to the Federal  
9 Rules of Civil Procedure, rule 23.1.

10 53. Plaintiff is a current stockholder of the company and has continuously owned  
11 such shares of stock of the company at all times during defendants' continuous wrongdoing as  
12 alleged herein.

13 54. As alleged in detail in the section entitled Derivative and Demand Requirement  
14 Allegations, *infra*, making a demand on the Board would be futile, and Plaintiff has standing to  
15 proceed in this stockholder derivative action.

16 **SUBSTANTIVE ALLEGATIONS**

17 **A. The Coercive Sales Culture and Underlying Wrongdoing**

18 55. Wells Fargo maintained a pressure-cooker culture on its employees to make  
19 excessive sales quotas and to "cross-sell" financial products, such as checking and savings  
20 accounts, credit cards, mortgages, and wealth management.<sup>6</sup> The quotas imposed by Wells Fargo  
21 on its employees were not attainable because there were not enough customers who enter  
22 branches on a daily basis for employees to meet their quotas through traditional means.

23 56. Cross-selling forced Company employees to create bogus accounts and register  
24 existing customers for financial products they did not request and or authorize, often using

25 \_\_\_\_\_  
26 <sup>6</sup> Wells Fargo, 2014 Annual Report to the SEC ("Important to our strategy to achieve [our] vision  
27 is to increase the number of our products our customers use and to offer them all of the financial products  
28 that fulfill their financial needs."). The Annual Report continues: "Our cross-sell strategy is to increase  
the number of products our customers use by offering them all of the financial products that satisfy their  
financial needs."

1 fictitious addresses so that the customer was unaware of the practice.

2 57. Under Defendant Tolstedt's direction and control, Wells Fargo imposed daily  
3 quotas on its employees to "cross-sell" products to existing customers, with a goal of eight  
4 products per household. This target was called the "Gr-eight initiative," a term coined by former  
5 CEO Dick Kovacevich. The initiative was designed to maintain industry leadership in cross-  
6 selling. Employees who missed the target would have to work weekends or stay late to catch up,  
7 and threatened with termination.

8 58. This pervasive culture of cross-selling and unethical marketing, under Defendant  
9 Tolstedt's direction and control, led many employees to engage in the illegal conduct and  
10 manifested itself through, among other things, quotas for financial products sold to customers  
11 passed to branch managers by regional bosses. Branch managers were expected to commit to  
12 obtaining 120% of the daily quotas each morning, and if they failed to achieve that goal the  
13 branch manager would be "severely chastised and embarrassed in front of 60-plus managers in  
14 [their] area by the community banking president" on a nightly conference call.<sup>7</sup> Managers  
15 therefore pressured their subordinates to meet these goals, who then fraudulently made the  
16 accounts and registered customers for non-requested services.

17 59. The widespread practices even earned internal nicknames by Company  
18 employees, including "sandbagging," which refers to the practice of delaying of opening  
19 accounts until the next sales reporting period, "pinning," which refers to the practice of  
20 assigning, without customer authorization, Personal Identification Numbers ("PINs") to  
21 customer ATM card numbers with the intention of impersonating customers on Wells Fargo  
22 computers, and "bundling," which refers to the practice of knowingly and intentionally  
23 misinforming customers that certain products are available only in packages with other products  
24 such as additional accounts, insurance, annuities, and retirement plans even though they may be  
25 purchased separately.

26 60. Other false or misleading sales tactics encouraged by the quota system and, thus  
27

28 <sup>7</sup> See <http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html>.

1 used by Wells Fargo employees include:

- 2 a. making misrepresentations to customers to get them to open additional  
3 accounts by falsely stating that they will incur monthly fees on your  
4 checking accounts until you add a savings account;
- 5 b. making misrepresentations that additional accounts do not have monthly  
6 fees, when they do incur such fees;
- 7 c. referring unauthorized, and therefore unfunded, accounts to collections  
8 because Wells Fargo's practices cause the accounts to have negative  
9 balances;
- 10 d. opening credit card accounts for those customers who stated that they do  
11 not wish to open such accounts, and telling them that they will be sent a  
12 credit card anyway, and to just discard when they receive them.

13 61. Customers often learn about these practices purely by accident, such as opening a  
14 welcome letter in the mail for new accounts, receiving correspondence from Wells Fargo for  
15 accounts they do not recognize, or receiving calls from collection agencies stating that the  
16 customer is overdrawn on an account that the customer did not know existed.

17 62. The harm to customers includes: (a) losing money to monthly service fees  
18 charged for unauthorized accounts; (b) having accounts being placed into collection, forcing  
19 them to defend them in enforcement actions; (c) having their credit reports affected, impacting  
20 job and credit applications; and (d) being compelled to open identity theft protection services to  
21 ensure that no further fraudulent activities would occur.

22 63. Further exerting sales pressure on employees was that internal whistle-blowing on  
23 improper sales practices led directly to termination. For example, as described on CNN Money,  
24 Bill Bado refused to open fake accounts that are not requested by customers.<sup>8</sup> On September 19,  
25 2013, Mr. Bado sent an email to a Wells Fargo Human Resources Representative and copied his  
26 regional manager detailing that a "branch manager on 'many occasions' asked him to send out a  
27

---

28 <sup>8</sup> <http://money.cnn.com/2016/09/21/investing/wells-fargo-fired-workers-retaliation-fake-accounts/>.

1 debit card, ‘pin it, and enroll customers in online banking – ‘all without the customers (sic)  
2 request of knowledge.’”<sup>9</sup> Wells Fargo fired Mr. Bado just eight days later.

3 64. In stark contrast to the way the Company treated Mr. Bado, Wells Fargo  
4 continually touted and praised the performance of Defendant Tolstedt. The Company  
5 continually cited her achievement of strategic objectives such as, “continued growth in primary  
6 checking customers and continued success in increasing online and mobile banking customers”<sup>10</sup>  
7 and “cross-selling products from other business lines to customers.”<sup>11</sup> These “achievements”  
8 facilitated Tolstedt’s accumulation of \$124.6 million in Company stock, options, and restricted  
9 shares<sup>12</sup> and are the result of a corrosive sales culture that forced employees to create fake  
10 accounts and register customers for unrequested products.

11 65. Indeed, in July 2016, when the OCC sent the Board a final Supervisory Letter  
12 concluding that “the Bank’s sales practices were unethical; the Bank’s actions caused harm to  
13 consumers; and Bank management had not responded promptly to address these issues,” and just  
14 before the burgeoning scandal erupted in front-page headlines across the country, the Company  
15 announced Defendant Tolstedt’s retirement, with Defendant Stumpf calling her “a standard-  
16 bearer of our culture, a champion for customers, and a role model for responsible, principled, and  
17 inclusive leadership.”<sup>13</sup> Unfortunately for the Company and its shareholders, its “standard-  
18 bearer” oversaw and stood for a culture of selling at any cost, even by breaking the law.

19 66. Indeed, Defendant Stumpf later admitted in his testimony before the Senate  
20 Banking Committee that Defendant Tolstedt’s “retirement” was in part precipitated by  
21 communications regarding the findings of an internal investigation of the unauthorized opening  
22 of accounts.

23  
24 <sup>9</sup> *Id.*

25 <sup>10</sup> Schedule 14A Proxy Statement filed with the Securities and Exchange Commission (“SEC”) on  
26 March 16, 2016 at 52. Hereafter referred to as the “2016 Proxy.”

27 <sup>11</sup> Schedule 14A Proxy Statement filed with the SEC on March 17, 2015 at 50. Hereafter referred to  
28 as the “2015 Proxy.”

<sup>12</sup> <http://fortune.com/2016/09/12/wells-fargo-cfpb-carrie-tolstedt/>.

<sup>13</sup> Exhibit 99.1 to Form 8-K filed with the SEC on July 12, 2016.

1           67. The high pressure sales practices were neither designed to meet customers'  
2 financial needs nor drive customer satisfaction. Instead, they were put in place so that the  
3 Company could report inflated fee income and to show apparent steady revenue growth to  
4 investors, which ultimately benefitted the Company executives, including the Individual  
5 Defendants, by artificially driving up the Company's stock price and allowing them to  
6 accumulate vast personal wealth.

7           68. As alleged herein, the conduct warranting the investigations is not the work of a  
8 rogue employee or business division outside the direct purview of the Board and senior  
9 management. Rather, the conduct was the result of a toxic policy instituted by the Company at a  
10 senior level that was affirmatively adopted or ratified by the Board as the Company's business  
11 and marketing strategy, and was deeply embedded in the Company's practices and corporate  
12 culture.

13           69. In large part because of the phony "cross-selling" program, the market price for  
14 Wells Fargo stock doubled from 2011 to mid-August 2015. Over that same time period,  
15 Defendant Stumpf received \$155 million in stock options as the stock price soared, in large part  
16 based on the illegal cross-selling practice.

17           70. As identified in the Company's 2013 Annual Report, the "cross-selling efforts to  
18 increase the number of products our customers buy from us . . . is a key part of our growth  
19 strategy." The 2013 Annual Report, however, did not disclose that the strategy was illegal.

20           71. At the Company's Analyst Day conference on May 20, 2014, Defendant Tolstedt  
21 admitted that the financial performance of Wells Fargo's Community Banking segment was tied  
22 to growth resulting from its cross-selling efforts: "the density and cross-sell model[s] drive  
23 revenue."

24           72. During a presentation at the Barclays Global Financial Services Conference on  
25 September 10, 2014, the Company said it had generated more fee income than its peers in large  
26 part due to the Company's focus on earning more customer business through its now-discredited  
27 culture of cross-selling.

28           73. Despite the overwhelming "red flags" signaling continuing wrongful conduct,  
VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT



1 certain Director Defendants knew but continued to ignore the failure of the Company executives  
2 to enforce their own governance policies, as instances of noncompliance were uncovered by  
3 internal investigations in 2011 and by outside government investigations and the Company's  
4 public actions in 2013. As alleged in detail below, between January 2012 and July 2016, the  
5 OCC conducted multiple supervisory activities related to the illegal sales practices through  
6 which examiners assessed the Bank's governance and risk management practices.<sup>14</sup>

7 74. Specifically, in February 2013, the OCC issued a Supervisory Letter<sup>15</sup> to Wells  
8 Fargo requiring it to develop an operational risk compliance program, and in early 2014, the  
9 OCC directed Wells Fargo to address weaknesses in compliance risk related to the unfair and  
10 deceptive practices, including reassessing the Company's cross-selling and sales practices. The  
11 OCC held meetings with Company management throughout 2014, as well as review of the  
12 Company's management information systems, and other internal audit findings. The OCC's  
13 ongoing review continued in 2015, with meetings with Company management, review of  
14 extensive documents, including internal reports, board packages, and internal audit findings, and  
15 identified the need for Wells Fargo to improve its risk management and corporate governance  
16 related to operational and compliance risk.

17 75. The OCC concluded that the Community Bank unit at Wells Fargo "lacked a  
18 formalized governance framework to oversee sales practices and thus" required Wells Fargo to  
19 "address the governance of sales practices within its Community Bank division."

20 76. An additional Supervisory Letter was issued in June 2015 to Stumpf, the  
21 Company's Chairman of the Board and CEO, identifying matters related to the widespread  
22 illegal sales practices, and instructed the Bank to take corrective actions to address the fraudulent  
23 practices. Notably, the June 2015 Supervisory Letter instructed the Company to re-evaluate  
24 compensation and incentive plans to "*ensure they did not provide an incentive for*

25 \_\_\_\_\_  
26 <sup>14</sup> Testimony of Thomas J. Curry, Comptroller of the Currency before Committee on Banking,  
27 Housing, and Urban Affairs of the United States Senate, Sept. 20, 2016, *available at*  
28 <https://occ.gov/news-issuances/news-releases/2016/nr-occ-2016-115a.pdf> ("Curry Testimony").

<sup>15</sup> A Supervisory Letter is an official OCC communication that formally conveys supervisory findings and conclusions, including any supervisory concerns.

1 *inappropriate behavior.*” Curry Testimony at 7.

2 77. The OCC examination continued into 2016 and the OCC sent a letter to the Board  
3 with its findings, namely, concluding that “the Bank’s sales practices were unethical; the Bank’s  
4 actions caused harm to consumers; and Bank management had not responded promptly to  
5 address these issues.” *Id.* at 8.

6 78. Thus, from at least 2013, 13 out of 15 current Board members<sup>16</sup> and the Company  
7 executives were on notice that the Company was involved in highly material and flagrant  
8 violation of the law and the Company’s own ethical and corporate governance guidelines.

9 79. In light of the multiple investigations concerning the Company’s improper  
10 practices, Wells Fargo’s Board and senior executives knew or should have known that the  
11 Company’s continued conduct could subject it and its stockholders to severe consequences,  
12 including fines and penalties, as well as untold legal fees that the Company would have to spend  
13 to defend itself from the allegations of wrongdoing.

14 80. Despite the lawsuit commenced by the City of Los Angeles and various  
15 regulatory actions all relating to the misconduct described herein, the Board and the Company’s  
16 senior executives allowed the behavior to continue and therefore breached their fiduciary duties  
17 causing significant harm to the Company and for which they must be held accountable.

18 81. The Board has a duty to claw back the excessive and unjustified compensation  
19 from the Officer Defendants. Defendant Tolstedt oversaw the Company’s retail banking while  
20 the widespread and illegal practices occurred. Tolstedt’s accumulated compensation therefore,  
21 over her 27 years tenure at the Company, amounts to approximately \$90 million. Between 2011  
22 and 2015, while the wrongdoing was taking place, Defendant Stumpf, who oversaw the  
23 Company’s entire operation as Wells Fargo’s CEO, received more than \$100 million in total  
24 compensation (including cash, stock awards, stock options, and performance shares).

25 82. As set forth in the 2016 Proxy (defined *infra*), “Wells Fargo has strong  
26 recoupment and clawback policies in place . . . The Company has multiple recoupment or  
27

---

28 <sup>16</sup> Dean and Vautrinot were appointed to the Board in 2015.

1 clawback policies and provisions in place that are applicable to our executive officers.” Pursuant  
 2 to the Company’s Long-Term Incentive Compensation Plan, the triggers for clawback or  
 3 recoupment are as follows:

- 4 • misconduct which has or might reasonably be expected to have  
 5 reputational or other harm to the Company or any conduct that constitutes  
 “cause;”
- 6 • Misconduct or commission of a material error that causes or might be  
 7 reasonably expected to cause significant financial or reputational harm to  
 the Company or the executive’s business group;
- 8 • Improper or grossly negligent failure, including in a supervisory capacity,  
 9 to identify, escalate, monitor or manage, in a timely manner and as  
 reasonably expected, risks material to the Company or the executive’s  
 business group; and/or
- 10 • The Company or the executive’s business group suffers a material  
 11 downturn in financial performance or suffers a material failure of risk  
 management.

12 83. The Board has failed to use its clawback authority and instead, has chosen to  
 13 unjustifiably compensate the Officer Defendants for the very misconduct that has harmed the  
 14 Company, all in violation of their fiduciary duties to the Company.

15 **B. Regulatory Actions and Findings**

16 84. Wells Fargo’s aggressive sales practices drew the notice of the Los Angeles  
 17 Times (“L.A. Times”), which conducted an extensive investigation of the Company in 2013  
 18 and published an article detailing the fraudulent sales tactics on December 21, 2013.<sup>17</sup> The  
 19 investigation uncovered widespread complaints about fake accounts and high-pressure sales  
 20 quotas mandated by Wells Fargo executives on Company employees.

21 85. The L.A. Times article prompted an investigation by the Los Angeles City  
 22 Attorney, and in 2015, the City of Los Angeles sued the Company, alleging that the bank’s  
 23 sales goals had encouraged “unfair, unlawful, and fraudulent conduct.”

24 86. Following the revelations of the toxic sales culture at Wells Fargo, governmental  
 25 entities, including the OCC, the Los Angeles City Attorney, and the CFPB, launched  
 26 investigations into Wells Fargo’s sales practices.

27  
 28 <sup>17</sup> See <http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html>.

1           87. After launching a preliminary examination in 2012, the OCC initiated meetings  
2 with various levels of the Company's management in 2013, including the executive leadership,  
3 to evaluate among other things, the Company's sales practices.<sup>18</sup>

4           88. The OCC's meetings and examinations resulted in a formal Supervisory Letter  
5 requiring the Company to develop its operational risk compliance program for consumer  
6 practices, which later became a directive to address weakness related to unfair and deceptive  
7 practices in 2014. Among these practices, the OCC identified the need to assess cross-selling  
8 and sales practices as part of the OCC's upcoming examination of the Company's governance  
9 process. Throughout 2014, OCC examiners continued their dialogue with Company  
10 management regarding these issues.

11           89. At about the same time as the City of Los Angeles lawsuit, the Consumer  
12 Financial Protection Bureau ("CFPB") also commenced an investigation regarding the  
13 Company, and has since determined that Wells Fargo engaged in at least the following unlawful  
14 acts and practices: (1) opened unauthorized deposits accounts for existing customers and  
15 transferred funds to those accounts from their owners' other accounts, all without their  
16 customers' knowledge or consent; (2) submitted applications for credit cards in consumers'  
17 names using consumers' information without their knowledge or consent; (3) enrolled consumers  
18 in online-banking services that they did not request; and (4) ordered and activated debit cards  
19 using consumers' information without their knowledge or consent, in violation of sections 1031  
20 and 1036(a)(1)(B) of the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. §§  
21 5531 and 5536(a)(1)(B).

22           90. Prompted by complaints from consumers and Wells Fargo employees alleging  
23 improper sales practices at the Company, in March 2012, the OCC commenced an examination  
24 of the Company's sales practices, and concluded that the Company engaged in unsound and  
25 unsafe sales practices that included the unauthorized opening of deposit or credit card accounts  
26 and the transfer of funds from authorized, existing accounts to unauthorized accounts.

---

27 <sup>18</sup> Testimony of Thomas J. Curry, Comptroller of the Currency, before the United States Senate  
28 Committee on Banking, Housing, and Urban Affairs (Sept. 20, 2016).

1           91. In February 2015, the OCC conducted an examination of the Company's  
2 Community Bank Operational Risk Management and concluded that the Company lacked a  
3 formalized governance framework to oversee sale practices and issued a Supervisory Letter that  
4 included a Matter Requiring Attention ("MRA"),<sup>19</sup> requiring the bank to address the governance  
5 of sales practices within its Community Bank division.

6           92. The OCC issued another Supervisory Letter to the Chairman and Chief Executive  
7 Office in June 2015, which included five MRAs that required the Company "*to take significant*  
8 *action to address the inappropriate tone at the top.*"<sup>20</sup> The June 2015 letter also identified the  
9 lack of appropriate control or oversight structure given the corporate emphasis on product sales  
10 and cross-selling; the lack of an enterprise-wide sales practices program; the lack of an effective  
11 enterprise-wide customer complaint process; the lack of a formalized governance process to  
12 oversee sales practices and oversee and test branch sales practices; and the failure of the  
13 Company's audit services to identify the above issues. The OCC also required the Company to  
14 hire two consultants, one to review the sales practices and one to assess consumer harm. The  
15 consultants issued their findings to the OCC and the Company three times in October 2015,  
16 February 2016, and May 2016.

17           93. Throughout 2015 and 2016, the OCC continued its review of the Company and  
18 held monthly meetings with Company management and issued a Report of Examination and a  
19 letter to the Board in July 2016. The Report of Examination communicated the following  
20 findings and conclusions:

- 21           • the Company's sales practices were unethical;
- 22           • the Company's practices harmed consumers; and
- 23           • the Company's management had not responded promptly to these issues.

24 \_\_\_\_\_  
25 <sup>19</sup> MRAs describe practices that deviate from sound governance, internal control, and risk  
26 management principles, and have the potential to adversely affect a bank's condition, including its  
27 financial performance or risk profile, if not addressed; or result in substantive noncompliance with law  
28 and regulations, enforcement actions, supervisory guidance, or conditions imposed in writing in  
connection with the approval of any application by a bank.

<sup>20</sup> Testimony of Thomas J. Curry, Comptroller of the Currency, before the United States Senate  
Committee on Banking, Housing, and Urban Affairs (Sept. 20, 2016).

1           94. On July 18, 2016, a Supervisory Letter was sent to Stumpf, the Company's  
2 Chairman, which stated that the Company engaged in unsafe or unsound banking practices.  
3 Shortly thereafter, the OCC approved the issuance of the Consent Order and the assessment of  
4 civil money penalties due to the Company's "reckless unsafe or unsound sales practices and the  
5 Bank's risk management and oversight of those practices."

6           95. The OCC issued its Order on September 8, 2016.<sup>21</sup> The OCC Order identified,  
7 among other things, that "the incentive compensation program and plans within the Community  
8 Bank Group were not aligned properly with local branch traffic, staff turnover, or customer  
9 demand, and they fostered the unsafe or unsound sales practices . . . and pressured Bank  
10 employees to sell Bank products not authorized by the Customer." The unsafe or unsound sales  
11 practices identified by the OCC included:

- 12                   • the selling of unwanted deposit or credit card accounts;
- 13                   • the unauthorized opening of deposit or credit card accounts;
- 14                   • the transfer of funds from authorized, existing accounts to unauthorized  
15                   accounts ("simulated funding"); and
- 16                   • unauthorized credit inquires for the purposes of opening the unwanted and  
17                   unauthorized accounts.

18           96. As a result of these practices, on September 8, 2016, in coordination with the  
19 CFPB and the Los Angeles City Attorney, the OCC assessed a \$35 million civil penalty against  
20 the Company that reflects a number of factors, including Wells Fargo's failure to develop and  
21 implement an effective enterprise risk management program to detect and prevent the unsafe or  
22 unsound sales practices, and the scope and duration of the practices (the "OCC Order"). The  
23 OCC Order also requires the Company to take corrective action to stop and prevent the unsafe or  
24 unsound sales practices, and to provide for restitution to those customers who were financially  
25 harmed as a result of these practices.

26           97. On September 8, 2016, the CFPB also announced that it has fined Wells Fargo

27 \_\_\_\_\_  
28 <sup>21</sup> <https://occ.gov/news-issuances/news-releases/2016/nr-occ-2016-106a.pdf>. Hereafter, the "OCC  
Consent Order".

1 \$100 million for the widespread illegal practice of secretly opening unauthorized deposit and  
 2 credit card accounts and ordered the Company to pay full restitution to all victims of the illegal  
 3 practice. As noted by the CFPB in its press release announcing the investigation and Consent  
 4 Order, the wrongdoing was already known to the Company through an internal investigation that  
 5 had uncovered the fraudulent practices, and not from results of an independent government  
 6 investigation. The press release further explained that the illegal conduct was not caused by a  
 7 small set of rogue employees, but was driven by the Company in a concerted effort to be the  
 8 leader in the cross-selling market.

9 98. As stated in the CFPB's press release, not only did the Company know about the  
 10 wrongdoing, it incentivized the employees who participated in the fraudulent scheme:

11 WASHINGTON, D.C. — Today the Consumer Financial Protection  
 12 Bureau (CFPB) fined Wells Fargo Bank, N.A. \$100 million for the  
 13 widespread illegal practice of secretly opening unauthorized deposit and  
 14 credit card accounts. Spurred by sales targets and compensation  
 15 incentives, employees boosted sales figures by covertly opening accounts  
 16 and funding them by transferring funds from consumers' authorized  
 17 accounts without their knowledge or consent, often racking up fees or  
 18 other charges. *According to the bank's own analysis, employees opened  
 19 more than two million deposit and credit card accounts that may not  
 20 have been authorized by consumers.* Wells Fargo will pay full restitution  
 21 to all victims and a \$100 million fine to the CFPB's Civil Penalty Fund.  
 22 The bank will also pay an additional \$35 million penalty to the Office of  
 23 the Comptroller of the Currency, and another \$50 million to the City and  
 24 County of Los Angeles.

25 \* \* \*

26 *In recent years, the bank has sought to distinguish itself in the  
 27 marketplace as a leader in "cross selling" these products and services to  
 28 existing customers who did not already have them.* When cross selling is  
 based on efforts to generate more business from existing customers based  
 on strong customer satisfaction and excellent customer service, it is a  
 common and accepted business practice. *But here the bank had  
 compensation incentive programs for its employees that encouraged  
 them to sign up existing clients for deposit accounts, credit cards, debit  
 cards, and online banking, and the bank failed to monitor the  
 implementation of these programs with adequate care.*

99. Similarly, the CFBP issued a Consent Order on September 8, 2016.<sup>22</sup> The CFBP

<sup>22</sup> [http://files.consumerfinance.gov/f/documents/092016\\_cfpb\\_WFBconsentorder.pdf](http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf). Hereafter, the  
 VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

1 Consent Order highlights the magnitude of the Company’s malfeasance, concluding that *Wells*  
2 *Fargo employees opened 1,534,280 deposit accounts* that may not have been authorized and that  
3 may have been funded through simulated funding or transferring funds from existing customer  
4 accounts without customer knowledge or consent. Similarly, the CFBP Consent Order  
5 concluded that *Wells Fargo employees submitted applications for 565,445 credit-card accounts*  
6 that may not have been authorized by using customer information without their knowledge or  
7 consent. In addition to the unsafe or unsound sales practices identified by the OCC, the CFBP  
8 highlighted that employees enrolled customers in online-banking services without their consent.

9 100. Richard Cordray (“Cordray”), the Director of the CFBP, noted: “The gravity of  
10 the fraud that occurred at Wells Fargo cannot be pushed aside as the stray misconduct of just a  
11 few bad apples. As one former federal prosecutor aptly noted, the stunning nature and scale of  
12 these practices reflects instead the consequences of a diseased orchard.”<sup>23</sup>

13 101. Cordray continued his blistering findings: “Wells Fargo built and refined an  
14 incentive-compensation program and implemented sales goals to boost the cross-selling of  
15 products, but did so in a way that made it possible for its employees to pursue unfair and abusive  
16 sales practices.” The cross-selling incentive program resulted in a culture that “[r]ather than put  
17 its customer first, Wells Fargo built and sustained a program where the bank and many of its  
18 employees served themselves instead, violating the basic ethics of a banking institution,  
19 including the key norm of trust.” *Id.*

20 102. The CFBP fined Wells Fargo \$100 million for its practices and required the  
21 installation of independent consultants to monitor for future misconduct. In conjunction with the  
22 CFBP’s and the OCC’s settlement, the Los Angeles City Attorney settled its investigation into  
23 Wells Fargo for \$50 million after having spent 16-months investigating the Company and  
24 speaking to over 1000 former employees and customers.<sup>24</sup>

25 \_\_\_\_\_  
“CFBP Consent Order.”

26 <sup>23</sup> Testimony of Richard Cordray, Director of the Consumer Financial Protection Bureau, before the  
27 United States Senate Committee on Banking, Housing, and Urban Affairs (Sept. 20, 2016).

28 <sup>24</sup> Testimony of Hon. Michael N. Feuer, Los Angeles City Attorney, before the United States Senate  
Committee on Banking, Housing, and Urban Affairs (Sept. 20, 2016).



1           103. Also on September 8, 2016, the City of Los Angeles announced that it had settled  
2 its lawsuit with Wells Fargo, whereby Wells Fargo will pay \$50 million in penalties to the City  
3 of Los Angeles and restitution to customers.

4           104. The aggregate amount of penalties and fines levied against Wells Fargo, to date is  
5 \$185 million, with no end in sight. For example, shortly after the announcement of the \$185  
6 million in penalties and fines, the United States Attorney's Offices for the Southern District of  
7 New York and the Northern District of California opened a civil and/or criminal investigation  
8 into the sales practices at Wells Fargo, and has subpoenaed documents and other materials from  
9 the Company. The scope of the investigation includes whether senior executives directed  
10 employees to falsify documents in conjunction with the opening of accounts and products  
11 without consumers' knowledge or authorization and whether there was willful blindness on the  
12 part of the senior executives concerning their practices.

13           105. As stated by CFBP Director Cordray, "All told, the bank will pay \$185 million in  
14 fines for the illegal actions of these employees. That is a dramatic amount as compared to the  
15 financial harm to consumers, but it is justified here by the outrageous and abusive nature of these  
16 fraudulent practices on such an enormous scale."

17           106. In an effort to scapegoat low-level employees and to avoid personal  
18 accountability and liability for the massive fraud, the Company disclosed that it had fired more  
19 than 5,300 employees. Some were fired for reporting the wrongdoing and others were fired for  
20 not participating in it. But not a single senior executive, however, has lost a job or (until recently)  
21 paid or promised to pay anything to compensate the Company for its massive losses. No member  
22 of the Board has accepted responsibility for the stunning oversight failure.

23           107. This revelation of widespread misconduct caused the Company stock to fall from  
24 a close of \$49.90 per share on September 8, 2016 to \$48.72 per share on September 9, 2016. As  
25 of September 16, 2016, the Company lost approximately \$19 billion in market capitalization, and  
26 may lose additional value as the scandal unfolds and as official investigations and public scrutiny  
27 continue.

28           108. On September 21, 2016, Defendant Stumpf testified before the Senate Committee

1 on Banking, Housing, and Urban Affairs. When he was interrogated by Senator Warren,  
2 Defendant Stumpf admitted that not a single senior executive was fired for the misconduct:

3 Warren: Have you fired a single senior executive? And by that, I don't mean  
4 regional manager or branch manager. I'm asking about the people who  
5 actually led your community banking division or your compliance  
6 division.

6 Stumpf: We've made a change in our regional – to lead our regional banks –

7 Warren: I just said I'm not asking regional managers. I'm not asking about branch  
8 managers. I'm asking if you had fired senior management, the people who  
9 actually led community banking division, who oversaw this fraud or the  
10 compliance division that was in charge of making sure that the bank  
11 complied with the law.

11 Stumpf: Carrie Tolstedt –

12 Warren: *Did you fire any of these people?*

13 Stumpf: *No.*

14 Warren: *No. OK, so you haven't resigned, you haven't returned a single nickel of*  
15 *your personal earnings, you haven't fired a single senior executive.*  
16 *Instead evidently your definition of "accountable" is to push the blame to*  
17 *your low-level employees who don't have the money for a fancy PR firm*  
18 *to defend themselves. It's gutless leadership.*

18 109. In his written testimony prepared for the hearing, Defendant Stumpf admitted that  
19 the Company was aware of the problem since as early as 2011, but at the Senate hearing he  
20 admitted he failed to stop it.

21 110. Shamed by Senator Warren's harsh criticism of his failure to account to the  
22 Company for any of his wrongdoing, on September 27, 2016, Defendant Stumpf agreed to return  
23 \$41 million in stock, plus some salary, for his role in the scandal. However, in a gross failure of  
24 oversight and in breach of their fiduciary duty to the Company, Stumpf's confederates on the  
25 Board took no action to recover anything from him until after the scandal erupted, and the Board  
26 has failed to hold any other director or senior officer accountable in any way.

27 111. The backlash against the Company continues to grow, as the California Treasurer  
28 John Chiang ("Chiang") announced on September 28, 2016 that he has severed the state's

1 business relationships with Wells Fargo. Chiang described the Company's behavior as "a culture  
2 which actively promotes wanton greed." The sanction will remain in place for at least a year, and  
3 the loss of the state's business is expected to be astronomical, as the California Treasurer  
4 oversees approximately \$2 trillion in banking transactions a year and manages \$75 billion in  
5 investments. Wells Fargo also served as the lead underwriter of five of the past thirteen bond  
6 offerings from the state in this year alone, and was the second-largest underwriter of municipal  
7 debt in the first half of the year

8 **C. The Board Made False and Misleading Statements in the Company's Proxy**  
9 **Statement**

10 112. On or about March 16, 2016, the Director Defendants authorized the distribution  
11 of the proxy statement in connection with the 2016 Annual Shareholder meeting that was held on  
12 April 16, 2016 (the "2016 Proxy"), with which Wells Fargo's shareholders were asked to vote on  
13 the re-election of all 15 nominees for the Board listed in the 2016 Proxy, including all Director  
14 Defendants.

15 113. In violation of Section 14(a) of Exchange Act, the 2016 Proxy contained false and  
16 misleading statements and omissions.

17 114. All the Director Defendants permitted the use of their names in the Proxy  
18 Statement, and the Notice of Annual Meeting of Stockholders and the accompanying 2016 Proxy  
19 were issued "[b]y Order of the Board of Directors," therefore the Board participated in the  
20 soliciting of proxies in contravention of Rule 14a-9. *See* § 14(a), 15 U.S.C. § 78n(a); Notice of  
21 Annual Meeting of Stockholders.

22 115. The 2016 Proxy misleadingly represented that the "[c]andidates for election to the  
23 Board] must be individuals of the highest character and integrity." 2016 Proxy at 12. This  
24 statement by the Company falsely implied that all 15 incumbent candidates who sought re-  
25 election to the Board met that standard; namely, that they were "individuals of the highest  
26 character and integrity." Plaintiff and all other shareholders whose votes or proxies were sought  
27 reasonably understood that endorsement to mean that all 15 candidates for re-election to the  
28 Board conducted themselves as directors in an ethical manner.

1           116. Those statements were false and misleading, especially in the absence of the  
2 disclosure that all of the nominees for the Board, *i.e.*, the Director Defendants, had exhibited a  
3 distinct lack of “highest character and integrity” by ignoring evidence of the Company’s  
4 systematic misconduct.

5           117. The 2016 Proxy misleadingly represented that Wells Fargo’s Board was actively  
6 working to ensure the Company’s compliance with applicable law, stating that the Audit  
7 Committee:

- 8           • assists the Board in fulfilling its responsibilities to oversee the  
9 integrity of our financial statements and the adequacy and  
10 reliability of disclosures to our stockholders, including our internal  
11 control over financial reporting;
- 12           • oversees operational risk, legal and regulatory compliance,  
13 financial crimes risk (Bank Secrecy Act and Anti-Money  
14 Laundering), information security risk (including cyber), and  
15 technology risk, approves significant supporting operational risk,  
16 compliance and financial crimes policies and programs, including  
17 our information security program, and reviews regulatory  
18 examination reports and communications; and
- 19           • reviews and discusses the implementation and effectiveness of our  
20 ethics, business conduct, and conflicts of interest program.

21           118. Those statements were false and misleading, especially in the absence of a  
22 disclosure that Wells Fargo’s Audit Committee and the Board consciously allowed the  
23 occurrence and continuation of widespread misconduct at the Company. Thus, an investor could  
24 not take comfort from the existence of the reporting structure described in the 2016 Proxy  
25 because Wells Fargo’s management and directors did not care if Company employees broke the  
26 law as long as they kept Wells Fargo profitable.

27           119. The 2016 Proxy misleadingly represented that Wells Fargo’s Board was actively  
28 working to ensure the Company’s compliance with applicable law, stating that the Corporate

1 Responsibility Committee:

- 2 • monitors the Company's reputation generally, including with its  
3 customers; and
- 4 • receives reports and updates on customer service and complaints,  
5 including related to the Company's culture and its team members'  
6 focus on serving customers, and other matters relating to the  
7 Company's brand and reputation.

8 120. Those statements were false and misleading, particularly in the absence of a  
9 disclosure that Wells Fargo's Corporate Responsibility Committee and the Board consciously  
10 ignored red flags concerning the existence of widespread misconduct at the Company and  
11 allowed the misconduct to continue. Thus, an investor could not take comfort from the existence  
12 of the reporting structure described in the 2016 Proxy because Wells Fargo's management and  
13 directors did not care if Company employees broke the law and damaging the Company's  
14 reputation as long as they kept Wells Fargo profitable.

15 121. The 2016 Proxy misleadingly represented that Wells Fargo's Board was actively  
16 working to ensure the Company's compliance with applicable law, stating that the Governance  
17 and Nominating Committee:

- 18 • annually reviews and assesses the adequacy of [the Company's]  
19 Corporate Governance Guidelines and oversees a review of the  
20 Board's performance; and
- 21 • oversees the Company's engagement with stockholders and other  
22 interested parties concerning governance matters and works with  
23 the Board's other committees in connection with stockholder  
24 engagement on matters subject to the oversight of such other  
25 committees.

26 122. Those statements were false and misleading, particularly in the absence of a  
27 disclosure that Wells Fargo's Governance and Nominating Committee and the Board  
28 consciously ignored red flags concerning the existence of widespread misconduct at the

1 Company allowed the misconduct to continue. Thus, an investor could not take comfort from the  
2 existence of the reporting structure described in the 2016 Proxy because Wells Fargo's  
3 management and directors did not care if Company employees broke the law as long as they kept  
4 Wells Fargo profitable.

5 123. The 2016 Proxy misleadingly represented that Wells Fargo's Board was actively  
6 working to ensure the Company's compliance with its compensation and risk oversight policies,  
7 stating that the Human Resources Committee:

- 8 • oversees the Company's incentive compensation practices so that  
9 they are consistent with the safety and soundness of the Company  
10 and do not encourage excessive risk-taking and reviews and  
11 approves benefit and compensation plans and arrangements  
12 applicable to executive officers of the Company; and
- 13 • evaluates the CEO's performance and approves and recommends  
14 the CEO's compensation to our Board for ratification and approval  
15 and approves compensation for our other executive officers and  
16 any other officers or employees as the Human Resources  
17 Committee determines appropriate.

18 124. Those statements were false and misleading, particularly in the absence of a  
19 disclosure that Wells Fargo's Human Resources Committee and the Board consciously unjustly  
20 compensated Stumpf and Tolstedt by consciously permitted payments and refused to seek  
21 clawback of those payments. Thus, an investor could not take comfort from the existence of the  
22 mechanisms as described in the 2016 Proxy.

23 125. The 2016 Proxy further misleadingly represented that Wells Fargo's Board  
24 operated pursuant to Wells Fargo's Code of Ethics, which "applies to [Wells Fargo's] team  
25 members and directors and continues to reflect [Wells Fargo's] core value of holding [the  
26 Company] to the highest standards of ethical behavior." 2016 Proxy at ii. The 2016 Proxy further  
27 states that each nominee for the Board "satisfies the applicable requirements of [the Company's]  
28 Corporate Governance Guidelines, Code of Ethics applicable to directors, and any other rules,

1 regulations, or policies applicable to members of the Board and its committees and for making  
2 any required disclosures in our proxy statement.” 2016 Proxy at 12. These representations were  
3 false and misleading because the Board were flagrantly violating Wells Fargo’s Code of Ethics  
4 and Corporate Governance Guidelines, both of which forbids unethical practices of any kind.

5 126. These false and misleading statements and omissions were an essential link in the  
6 election of the Director Defendants to the Board of Wells Fargo. The 2016 Proxy harmed the  
7 Company by interfering with the proper governance on its behalf that follows the free and  
8 informed exercise of the stockholders’ right to vote for directors. For example, as a result of their  
9 election to the Board, the Director Defendants continued to harm the Company by perpetuating  
10 the systematic and widespread misconduct alleged herein and failed to halt the illegal practices.

11 **DERIVATIVE AND DEMAND ALLEGATIONS**

12 127. Plaintiff brings this action derivatively in the right and for the benefit of nominal  
13 defendant Wells Fargo to redress injuries suffered, and to be suffered, by Wells Fargo as a direct  
14 result of the Individual Defendants’ breaches of fiduciary duties, abuse of control, gross  
15 mismanagement, unjust enrichment and violations of federal securities laws. Wells Fargo is  
16 named as a Nominal Defendant solely in a derivative capacity and no claims are asserted against  
17 it.

18 128. Plaintiff owns Wells Fargo common stock and has owned Wells Fargo common  
19 stock at all times relevant hereto.

20 129. Plaintiff will adequately and fairly represent the interests of Wells Fargo in  
21 enforcing and prosecuting its rights.

22 130. On September 14, 2016, Plaintiff’s counsel wrote to the Board pursuant to Section  
23 220 of the Delaware General Corporation Law demanding an inspection of books and records  
24 relating to the scandal.

25 131. On September 26, 2016, C. Vance Beck, Senior Vice President, Senior Company  
26 Counsel of the Company wrote to Plaintiff’s counsel offering to produce certain books and  
27 records pursuant to a proposed confidentiality agreement that would preclude Plaintiff from  
28 disclosing any of the books and records, or the information contained therein. That proposed

1 confidentiality agreement would preclude Plaintiff from including the books and records, or any  
2 information derived therefrom, in this Complaint without following the Court's procedures for  
3 filing documents under seal.

4 132. In light of the admissions that have been made since September 14, 2016,  
5 including in Defendant Stumpf's Senate testimony on September 20, 2016, the books and  
6 records inspection is unnecessary for Plaintiff to commence this action. Accordingly, Plaintiff's  
7 counsel wrote to Mr. Beck on September 28, 2016 withdrawing the 220 demand without  
8 prejudice.

9 133. Plaintiff did not make a pre-suit demand upon the Board to bring this action  
10 because a majority of the Board either: (a) engaged in conduct that is not a legitimate exercise of  
11 judgment and/or is *ultra vires* and, therefore, cannot enjoy the limited protection of the business  
12 judgment rule; and/or (b) would have been "interested" in (and therefore conflicted from and  
13 unable to fairly consider) a demand because they face a substantial likelihood of liability for their  
14 role in the unlawful and improper conduct alleged herein.

15 134. As alleged below, at least thirteen of the fifteen Board members knew about the  
16 widespread and continuous misconduct alleged and refused to take corrective measures. As such,  
17 a demand on the Board would be futile as the Director Defendants to this day have refused to  
18 take responsibility for their actions.

19 **A. Demand Is Excused Because The Director Defendants' Conduct**  
20 **Is Not a Valid Exercise Of Business Judgment**

21 135. The Director Defendants' challenged misconduct lies at the heart of this case and  
22 constitutes the direct facilitation of the wrongful activity alleged herein, including knowingly and  
23 consciously presiding over the Company's systematic and widespread illegal conduct.

24 136. The Board affirmatively adopted, implemented, and condoned a business strategy  
25 based on deliberate, widespread, blatant violations of law. Breaking the law is not a legally  
26 protected business decision, and such conduct can in no way be considered a valid exercise of  
27 business judgment even if it resulted in the Company increasing its earnings or increasing its  
28 market value. Accordingly, demand on the Board is excused.



1           137. A derivative claim to recoup equitable damages for harm caused to the Company  
2 by unlawful activity represents a challenge to conduct that is outside the scope of the Board's  
3 business judgment – conduct for which the Director Defendants face personal liability.

4           138. Allowing the Company to violate laws and regulations, or looking the other way  
5 while refusing to prevent others under the Board's control from committing these wrongful acts  
6 are all forms of misconduct that cannot under any circumstances be examples of legitimate  
7 business conduct. The protections of the "business judgment rule" do not extend to such  
8 malfeasance. Nor can such malfeasance ever constitute the "good faith" required of corporate  
9 fiduciaries.

10           139. Moreover, this action does not arise from an anomalous incident of misconduct  
11 within the Company or from the acts of a rogue employee or division within the Company.  
12 Rather, as alleged herein, serious violations of the marketing laws occurred systematically and at  
13 every level of the Company as a direct result of the Board's decision to embrace a policy of  
14 committing calculated legal violations as the Company's deliberate business strategy. There is no  
15 legitimate "business judgment" involved in devising or carrying out such an unlawful policy.  
16 Accordingly, demand on the Board is futile and excused.

17           **B. Demand Is Excused Because a Majority of The Board Members Are**  
18           **Conflicted Because There is a Substantial Likelihood Of Liability Arising**  
19           **From Their Misconduct**

20           140. Even if knowingly presiding over wrongful conduct could somehow fall within  
21 the realm of the business judgment rule, which it does not, demand is also futile and excused  
22 because a majority of the members of the Board are personally responsible for the massive  
23 wrongdoing. As they are neither disinterested nor independent, the Board cannot, therefore,  
24 properly consider a demand.

25           141. Specially, as alleged herein, pursuant to the Company's Corporate Governance  
26 Guidelines, Code of Business Conduct and Ethics, and Delaware law, the Director Defendants  
27 knew of or recklessly permitted the illegal sales practices described herein, approved the  
28 compensation which incentivized employees, including Stumpf and Tolstedt to engage in the  
illegal sales practices and refused to clawback the unjust compensation, and failed to implement

1 any meaningful reforms as instructed by the CFPB and OCC to halt the wrongdoing, even after  
2 receiving notice of the rampant illegal conduct as uncovered internally by the Company's own  
3 investigation and by the governmental investigations.

4 142. As alleged herein, an overwhelming majority of the Board (including Defendants  
5 Stumpf, Baker, Chao, Chen, Dean, Hernandez, James, Milligan, Peña, Quigley, Sanger, and  
6 Swenson) were on notice since at least 2011 that Wells Fargo employees were committing highly  
7 material and flagrant violation of the law as well as violating the Company's own ethical and  
8 corporate governance guidelines, as determined by the CFPB and the OCC.

9 143. Given their fiduciary duties as directors of the Company, to the extent any of the  
10 Director Defendants did not have actual knowledge of the extensive fraudulent practices taking  
11 place within Wells Fargo, such lack of knowledge could only be the product of willful blindness  
12 that constitutes a bad faith breach of their fiduciary duty to the Company and its shareholders.

13 144. Moreover, the Director Defendants were required to act upon this information to  
14 protect the Company from continued legal violations being committed. Rather than doing so, the  
15 Director Defendants, in violation of their legal obligations, consciously ignored the information  
16 presented to them and about which they were otherwise made aware concerning the Company's  
17 extensive legal violations. As a result, nearly all of the Director Defendants face a substantial  
18 likelihood of personal liability for their conduct and demand is, therefore, excused.

19 145. The Director Defendants are likewise conflicted from pursuing, and unable to  
20 pursue, the Company's claims against the Officer Defendants. Any effort to directly prosecute  
21 such claims against the Officer Defendants for their direct roles in the deceptive sales and  
22 marketing practices carried out in Wells Fargo's name would necessarily expose the Director  
23 Defendants' own culpability for the very same conduct. Given that the Board was required to be  
24 regularly informed concerning the Company's compliance or non-compliance with the law, any  
25 effort by the Director Defendants to hold Company employees liable would lead the Director  
26 Defendants to defend on the ground that their own conduct was consistent with corporate policy  
27 and practice, as established and by and known to the Board.

28 146. In addition, thirteen of the Director Defendants (*i.e.*, all of the Director  
VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

1 Defendants other than Chao), constituting an overwhelming majority of the Board, served on  
2 various Board committees directly implicated in the wrongdoing and thus face a heightened  
3 likelihood of liability arising from their conduct on the specific committees of the Board.

4 147. Defendants Quigley, Baker, Peña, Swenson, and Vautrinot are conflicted from  
5 considering a demand because they each face a substantial likelihood of liability as a result of  
6 their conduct on the Audit Committee. As set forth herein, the Audit Committee's charter  
7 imposes specific duties on members of this committee to ensure compliance with laws,  
8 regulations, and internal procedures.

9 148. Defendants Peña, Baker, Dean, Hernandez, and Milligan are conflicted from  
10 considering a demand because they each face a substantial likelihood of liability as a result of  
11 their conduct on the Corporate Responsibility Committee. As set forth herein, the Corporate  
12 Responsibility Committee's charter imposes specific duties on members of this committee to  
13 monitor the Company's reputational harm.

14 149. Defendants Sanger, Dean, Milligan, Peña, and Swenson are conflicted from  
15 considering a demand because they each face a substantial likelihood of liability as a result of  
16 their conduct on the Governance and Nominating Committee. These defendants are specifically  
17 charged with reviewing matters of corporate governance and maintaining an informed status on  
18 Company issues related to corporate social responsibility. Defendants Sanger, Dean, Milligan,  
19 Peña, and Swenson therefore breached their fiduciary duty of due care, loyalty, and good faith,  
20 as they permitted a Company-wide scheme to repeatedly violate the laws and regulations, as  
21 discussed above, despite the fact that they were on notice of Company's wrongdoing and the  
22 consequences thereof to the Company. The repeated Company-wide conduct described above,  
23 which included the fraudulent sales practices that placed profits ahead of its customers' sensitive  
24 information and trust, ultimately resulting in millions of fines and untold legal fees and damage  
25 to the Company's reputation. Accordingly, Defendants Sanger, Dean, Milligan, Peña, and  
26 Swenson face a substantial likelihood of liability and cannot appropriately consider a demand,  
27 and therefore demand is excused with respect to these Defendants.

28 150. Similarly, Defendants Dean, Chen, James, and Sanger are conflicted from  
VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

1 considering a demand because they each face a substantial likelihood of liability as a result of  
2 their conduct on the Human Resources Committee. These defendants are specifically charged  
3 with reviewing matters of executive compensation. Defendants Dean, Chen, James, and Sanger  
4 therefore breached their fiduciary duty of due care, loyalty, and good faith, as they approved  
5 unjust compensation for Stumpf and Tolstedt and failed to clawback said compensation, despite  
6 the fact that they were on notice of Stumpf's and Tolstedt's wrongdoing and the consequences  
7 thereof to the Company. Accordingly, Defendants Dean, Chen, James, and Sanger face a  
8 substantial likelihood of liability and cannot appropriately consider a demand, and therefore  
9 demand is excused with respect to these Defendants.

10         151. The Board has also conceded, in the Company's SEC filings, that Defendant  
11 Stumpf is not an independent director of the Company. Defendant Stumpf is Wells Fargo's CEO,  
12 and, as such, lacks independence from the numerous interested directors referenced herein,  
13 rendering him incapable of impartially considering a demand to commence and vigorously  
14 prosecute this action.

15         152. Demand is also futile as to Defendant Stumpf because he personally benefitted  
16 and will benefit from his breach of fiduciary duties and breaches by his fellow Board members.  
17 Specifically, Stumpf was given over \$100 million in cash and equity between 2011 and 2015,  
18 compensation that was approved by members of the Board. In 2015, Defendant Stumpf received  
19 \$19.3 million in compensation from the Company, which included a base salary of \$2.8 million,  
20 an "Annual Incentive Award" of \$4 million, and stock optioned valued at \$12.5 million. The  
21 2016 Proxy stated that the executive compensation is "tied to performance." However, Stumpf's  
22 performance was based on improper sales practices which have caused the Company financial  
23 and reputational harm. Stumpf is therefore conflicted and unable to consider a stockholder  
24 demand to investigate the wrongdoing that is the basis for the retention of his lucrative position  
25 and compensation.

26 ///

27 ///

28 ///

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Derivative Claim for Breach of Fiduciary Duty for Causing the Company to**  
4 **Engage in Unlawful Conduct or Consciously Disregarding Widespread Violations of Law**  
5 **(Against The Director Defendants)**

6 153. Plaintiff incorporates by reference each and every paragraph above as if fully set  
7 forth herein.

8 154. As directors, officers and high level employees of the Company, all of the  
9 Defendants owed Plaintiff, the stockholders – and each other – fiduciary duties of good faith,  
10 loyalty and care.

11 155. The Director Defendants all owed and owe fiduciary duties to Wells Fargo and its  
12 stockholders. By reason of their fiduciary relationships, Defendants specifically owed and owe  
13 Wells Fargo the highest obligation of good faith and loyalty in the administration of the affairs of  
14 Wells Fargo, including the oversight of Wells Fargo’s compliance with laws governing the sales  
15 and marketing of Wells Fargo’s products. Moreover, the Board had specific fiduciary duties as  
16 defined by the Company’s key corporate governance documents and principles that, had they  
17 been discharged in accordance with the Board’s obligations, would have necessarily prevented  
18 the misconduct and consequent harm to the Company alleged herein.

19 156. Defendants expressly agreed to abide by the Corporate Governance Guidelines  
20 and Code of Ethics and other state laws against improper sales and marketing practices.

21 157. The Director Defendants consciously violated their corporate responsibilities in at  
22 least the following ways:

- 23 • Affirmatively and repeatedly declining to stop and prevent Wells Fargo’s  
24 wrongful sales and marketing practices after receiving reports of such  
25 illegal activity and numerous red flags in the form of class action lawsuits  
26 and investigation notices from the various governmental agencies  
27 indicating widespread wrongdoing, and/or consciously disregarding such  
28 reports and activity.
- Approving and/or consciously disregarding Wells Fargo’s business plan or

1 marketing its products through the widespread illegal promotion in order  
2 to maximize Wells Fargo's short-term profit but at the expense of  
3 stockholder's long-term interests and Wells Fargo's reputation and  
4 goodwill.

5 158. As a direct and proximate result of the Director Defendants' conscious failure to  
6 perform their fiduciary obligations, Wells Fargo has sustained significant damages, not only  
7 monetarily, but also to its corporate image and goodwill. Such damage included, among other  
8 things, the substantial penalties, fines, liabilities and expenses described herein.

9 159. As a result of the misconduct alleged herein, the Director Defendants are liable to  
10 the Company.

11 **SECOND CAUSE OF ACTION**  
12 **Derivative Claims**  
13 **(Against The Officer Defendants)**

14 160. Plaintiff incorporates by reference paragraphs 1 through 152 above as if fully set  
15 forth herein.

16 161. By reason of their positions as fiduciaries of the Company, the Officer/Employee  
17 Defendants owed duties of good faith, loyalty, and truthful disclosure. The Officer Defendants  
18 were all aware of and educated concerning the relevant laws and regulations concerning  
19 marketing of Wells Fargo's products, and were duty-bound to abide by the laws and regulations  
20 and to enforce compliance therewith.

21 162. The Officer Defendants consciously violated and breached these duties by causing  
22 Wells Fargo to employ a deliberate and systematic business plan of artificially increasing sales  
23 by engaging in unlawful sales and promotion practices by numerous Wells Fargo employees for  
24 a prolonged period of time.

25 163. The Officer Defendants authorized and implemented Wells Fargo's policies and  
26 practices of encouraging the widespread unlawful sales and marketing practices, and retaliation  
27 against employees who reported such unlawful practices to management.

28 164. As a direct and proximate result of the Officer Defendants' breaches of fiduciary  
duty, the Company has sustained, and will continue to sustain, substantial harm, including the

1 damages set forth herein.

2 165. The Officer Defendants are liable to the Company as a result of the acts alleged  
3 herein.

4 **THIRD CAUSE OF ACTION**  
5 **Derivative Claim for Unjust Enrichment**  
6 **(Against All Defendants)**

7 166. Plaintiff incorporates by reference paragraphs 1 through 165 above as if fully set  
8 forth herein.

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

11 168. Plaintiff, as a stockholder and representative of Wells Fargo, seek restitution,  
12 damages, an order of this Court disgorging all profits, benefits, and other compensation obtained  
13 by these Defendants from their wrongful conduct and fiduciary breaches, and other relief for the  
14 Company, in an amount to be proven at trial.

15 **FOURTH CAUSE OF ACTION**  
16 **Violation of Section 14(a) of the Exchange Act**  
17 **(Against The Director Defendants)**

18 169. Plaintiff incorporates by reference paragraphs 1 through 152 above as if fully set  
19 forth herein.

20 170. SEC Rule 14a-9, 17 C.F.R. § 240.14a-9, promulgated pursuant to Section 14(a) of  
21 the Exchange Act, provides:

22 No solicitation subject to this regulation shall be made by means of any  
23 proxy statement form of proxy, notice of meeting or other communication,  
24 written or oral, containing any statement which, at the time and in the light  
25 of the circumstances under which it is made, is false or misleading with  
26 respect to any material fact, or which omits to state any material fact  
27 necessary in order to make the statements therein not false or misleading  
28 or necessary to correct any statement in any earlier communication with  
29 respect to the solicitation of a proxy for the same meeting or subject  
30 matter which has become false or misleading.

31 171. The Director Defendants exercised control over Wells Fargo and caused Wells  
32 Fargo to disseminate the false and misleading 2016 Proxy, which materially misrepresented the  
33 manner in which nominees for Wells Fargo's Board were selected, the effectiveness of the  
34 Board's oversight of compliance issues at the Company and the Board's compliance with the  
35 VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

1 Company's Code of Ethics and Corporate Governance Guidelines.

2 172. As alleged herein, the 2016 Proxy contained untrue statements of material facts  
3 and omitted to state material facts necessary to make the statements that were made not  
4 misleading in violation of section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated  
5 thereunder. These false statements and omissions were essential links in the election of the  
6 Director Defendants to Wells Fargo's Board and the continued illegal management of the  
7 Company.

8 173. The written communications made by the Director Defendants described herein  
9 constitute violations of Rule 14a-9 and section 14(a) because such communications were  
10 materially false or misleading and were provided in a negligent manner.

11 174. At all relevant times to the dissemination of the materially false or misleading  
12 2016 Proxy, Director Defendants were aware of or had access to the true facts concerning Wells  
13 Fargo's operations.

14 175. Wells Fargo has been severely injured by this conduct and is entitled to damages  
15 and equitable relief.

16 **FIFTH CAUSE OF ACTION**  
17 **Violation of Section 29(b) of the Exchange Act**  
18 **(Against The Director Defendants)**

19 176. Plaintiff incorporates by reference paragraphs 1 through 152 and 169 through 175  
20 above as if fully set forth herein.

21 177. By their wrongful acts and omissions, the Director Defendants were unjustly  
22 enriched at the expense of and to the detriment of Wells Fargo.

23 178. The Director Defendants each received incentive compensation and fees,  
24 including stock awards, while engaging in conduct that violates Section 14(a) of the Exchange  
25 Act. The Director Defendants' incentive compensation and fees should be rescinded under  
26 Section 29(b) of the Exchange Act because the Director Defendants violated Section 14(a) by  
27 issuing a false and misleading proxy statement to Wells Fargo shareholders regarding the nature  
28 of, and responsibility for the misconduct alleged herein. All of the payments the Director  
Defendants received are therefore voidable by Wells Fargo under Section 29(b) of the Exchange



1 Act.

2 179. Wells Fargo is in privity with the Director Defendants with respect to the  
3 incentive compensation and fees provided by Wells Fargo to the Director Defendants. The  
4 Director Defendants have engaged in prohibited conduct in violation of the securities laws as  
5 alleged herein.

6 180. Wells Fargo has been severely injured by the misconduct of the Director  
7 Defendants. According, Wells Fargo is entitled to recession of the incentive and compensation  
8 and fees granted to Director Defendants.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against the Defendants jointly, severally, or  
11 individually, as follows:

- 12 1. determining that this action is a proper derivative action maintainable under law  
13 and that demand is excused;
- 14 2. granting judgment in Plaintiff's favor on all claims;
- 15 3. awarding the Company damages in an amount to be proven at trial;
- 16 4. awarding appropriate equitable relief to remedy the Individual Defendants'  
17 breaches of fiduciary duties;
- 18 5. awarding the Plaintiff the costs and disbursements of this action, including its  
19 reasonable attorneys' fees and expenses; and
- 20 6. awarding such other relief as the Court deems just and proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a trial by jury on all issues so triable.

23 DATED: September 29, 2016

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

24  
25 By: /s/ Betsy C. Manifold  
26 BETSY C. MANIFOLD

27 BETSY C. MANIFOLD  
28 manifold@whafh.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RACHELE R. RICKERT  
rickert@whafh.com  
BRITTANY N. DEJONG  
dejong@whafh.com  
750 B Street, Suite 2770  
San Diego, CA 92101  
Telephone: 619/239-4599  
Facsimile: 619/234-4599

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**  
GREGORY M. NESPOLE  
nespole@whafh.com  
MARK C. RIFKIN  
rifkin@whafh.com  
GLORIA KUI MELWANI  
melwani@whafh.com  
270 Madison Avenue  
New York, New York 10016  
Telephone: 212/545-4600  
Facsimile: 212/545-4653

*Counsel for Plaintiff Victoria Shaev*

WELLSFARGO:23366

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VICTORIA SHAEV,	)	
derivatively on behalf of	)	Case No.
WELLS FARGO & COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JOHN D. BAKER II, ELAINE L.	)	
CHAO, JOHN S. CHEN, LLOYD H.	)	
DEAN, ELIZABETH A. DUKE,	)	
ENRIQUE HERNANDEZ JR.,	)	
DONALD M. JAMES, CYNTHIA M.	)	
MILLIGAN, FEDERICO F. PEÑA,	)	
JAMES H. QUIGLY, STEPHEN W.	)	
SANGER, JOHN G. STUMPF,	)	
SUSAN G. SWENSON, CARRIE L.	)	
TOLSTEDT, and SUZANNE M.	)	
VAUTRINOT,	)	
	)	
Defendants.	)	
	)	
-and-	)	
	)	
WELLS FARGO & COMPANY,	)	
	)	
Nominal Defendant.	)	
	)	

**VERIFICATION OF VICTORIA SHAEV**

1. I am the plaintiff in the above-entitled action, have read the foregoing Verified Stockholder Derivative Complaint (“Complaint”), and believe it to be true and correct, and the same is true as to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I

1 believe them to be true.

2           2. I have not received, been promised or offered and will not accept any  
3 form of compensation, directly or indirectly, for prosecuting or serving as a  
4 representative party in this stockholder derivative action except for (i) such  
5 damages or other relief as the Court may award me, (ii) such fees, costs or other  
6 payments as the Court expressly approves to be paid to me, or (iii) reimbursement,  
7 paid by my attorneys, of actual and reasonable out-of-pocket expenditures incurred  
8 directly in connection with the prosecution of this stockholder derivative action.

9           3. I have been a Wells Fargo & Company (“Wells Fargo”) stockholder  
10 during relevant periods alleged in the Complaint and I continue to hold my shares.  
11 I confirm that the action is not a collusive one and that I am capable and willing to  
12 fairly and adequately represent the interests of stockholders who are similarly  
13 situated in enforcing the rights of Wells Fargo.

14           4. I hereby authorize the filing of the Complaint.

15  
16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this 28th day of September, 2016 in the County of Nassau, New  
18 York.

19

20

21

22

23

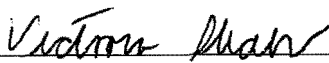
24

25

26

27

28



Victoria Shaev