IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

IN RE: WELLS FARGO ERISA 401(k) LITIGATION	Case No. 0:16-cv-03405 (PJS/BRT)

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Dated: December 21, 2016

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Plaintiffs, Francesca Allen, John Sterling Ross, and Mary Lou Shank ("Plaintiffs"), individually, and on behalf of all other similarly-situated participants in, and beneficiaries of, Wells Fargo & Company's 401(k) Plan (the "Class"), by their undersigned counsel, bring this Consolidated Amended Class Action Complaint against the defendants listed herein (collectively "Defendants," as defined below), for their violations of Sections 409 and 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1109 and 1132, alleging as follows:

I. NATURE OF THE ACTION

"We found that Wells Fargo's business model imposed unrealistic sales quotas that, among other things, incentivized employees to engage in highly aggressive sales practices, creating the conditions for unlawful activity…."

Michael N. Feuer, Los Angeles City Attorney
September 20, 2016

"Failing to notify these customers about these sham accounts, this isn't cross-selling, this is fraud."

Senator Pat Toomey (R-PA)
September 20, 2016

1. Plaintiffs – Wells Fargo & Company ("Wells Fargo" or the "Company") "team members" and participants in Wells Fargo's 401(k) Plan (the "Plan") – bring this action concerning the Plan's investments in Wells Fargo stock individually, as representatives of the Plan and on behalf of a class of all Plan participants and beneficiaries (collectively "Participants") for whose individual accounts the Plan invested in funds that invested primarily in Wells Fargo stock from January 1, 2014 through September 15, 2016 (the "Class Period").

2. Defendants withheld material, non-public information from the public, including Plan Participants, about a long-running criminal epidemic at Wells Fargo associated with critical components of Wells Fargo's business model and key drivers of its stock price – cross-selling and a reputation for truthfulness and integrity.

3. This criminal epidemic was created by Wells Fargo's senior executives, including its former CEO and Chairman, through an incentive structure that encouraged and rewarded employees for signing up customers for millions of unauthorized, unknown, and unwanted accounts, as well as other banking products, in order to generate artificially-inflated share price growth.

4. Defendants breached their duty of loyalty to Plan Participants by concealing the scheme, failing to take corrective action, and failing to protect Plan assets. Even after Defendants knew, or should have known, that Wells Fargo's stock price was destined to drop upon the eventual public disclosure of the systemic fraud, Defendants failed to take prudent corrective actions to protect Plan Participants from purchasing artificially-inflated Wells Fargo stock.

5. Thus, Defendants violated their ERISA fiduciary duties to the Plan Participants, causing hundreds of millions of dollars, if not more, in losses to the Plan.

II. JURISDICTION AND VENUE

6. Plaintiffs bring this action pursuant to 29 U.S.C. § 1132(a)(2) and (3), which provide that participants in an employee retirement plan may pursue a civil action on behalf of the plan to remedy breaches of fiduciary duties and other prohibited conduct,

and to obtain monetary and appropriate equitable relief as set forth in 29 U.S.C. §§ 1109 and 1132.

7. This case presents a federal question under ERISA, and, therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

8. Venue is proper pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b) and, based on information and belief, because this is the district where the Plan is administered and where breaches of fiduciary duties giving rise to this action occurred.

III. PARTIES

Plaintiffs

9. Francesca Allen is a Plan Participant, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who purchased and held, through the end of the Class Period, Wells Fargo shares in her retirement investment portfolio during the Class Period. From at least 2013 through the present, Ms. Allen's 401(k) Plan assets have included the Wells Fargo employee stock ownership plan ("ESOP") and Non-ESOP Funds.

10. John Sterling Ross is a Plan Participant, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who purchased and held, through the end of the Class Period, Wells Fargo shares in his retirement investment portfolio during the Class Period. From at least 2013 through the present, Mr. Ross's 401(k) Plan assets have included the Wells Fargo ESOP and Non-ESOP Funds.

11. Mary Lou Shank is a Plan Participant, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), who purchased and held Wells Fargo shares in her retirement

investment portfolio during the Class Period. From at least 2013 through the present, Ms. Shank's 401(k) Plan assets have included the Wells Fargo ESOP Fund.

Defendants

12. ERISA requires every plan to provide for one or more named fiduciaries who will have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

13. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who, in fact, perform fiduciary functions. Therefore, a person is a fiduciary to the extent: "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

14. Each of the named Defendants was a fiduciary during the Class Period as defined by ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) – either as a named fiduciary or de facto fiduciary – with respect to the Plan, and owed fiduciary duties to the Plan and its Participants under ERISA.

A. Wells Fargo & Company

15. With $1.5 trillion in assets, Wells Fargo is one of the nation's largest financial services companies. Wells Fargo is the Plan "sponsor" within the meaning of 29 U.S.C. § 1002(16)(B), is a participating employer in the Plan, and provides funding for the Plan.

16. On information and belief, through its selection, management and supervision of the Human Resources Committee, the Employee Benefits Review Committee ("EBRC"), the Director of Human Resources, and the Director of Compensation and Benefits, Wells Fargo exercises discretionary authority or discretionary control concerning management of the Plan, as well as discretionary authority and responsibility with respect to the administration of the Plan. Therefore, the Company is a fiduciary under 29 U.S.C. § 1002(21)(A).

B. Director of Human Resources and Director of Compensation and Benefits

17. The Plan Administrators, the Wells Fargo Director of Human Resources, Hope Hardison, and the Wells Fargo Director of Compensation and Benefits, Justin Thornton, are "Named Fiduciar[ies]" under the Plan. Plan § 2.29.[1] The Plan Administrators are empowered "[t]o adopt and enforce such rules and regulations and prescribe the use of such forms as may be necessary to carry out the provisions of the Plan," Plan § 12.3(a), and they have "sole authority … to make any determinations required in the administration of the Plan." Plan § 12.1. As the Plan Administrators, they

[1] Unless otherwise noted, all citations to the "Plan" refer to the Wells Fargo & Company 401(k) Plan, as Amended and Restated January 1, 2015.

have full discretionary authority to administer and interpret the Plan and, therefore, are fiduciaries pursuant to 29 U.S.C. § 1002(21)(A).

C. Wells Fargo Employee Benefits Review Committee (EBRC)

18. Per the Wells Fargo Summary Plan Description, the investment options offered within the 401(k) Plan are monitored and reviewed periodically by the EBRC, which has "authority to control or manage the assets of the Plan." Plan § 2.29. Therefore, the EBRC and its members are fiduciaries under 29 U.S.C. § 1002(21)(A).

19. The Trust Agreement further states that the EBRC "shall direct the Trustee as to matters involving the investment of the Trust Fund," Trust Agreement § 1.4, and "shall manage and control the Plan assets held in the Trust Fund, and the Trustee shall be subject to the directions of the [EBRC] or an Investment Manager, if applicable, at all times regarding the investments of the Trust Fund and other matters herein." Trust Agreement § 3.1(a).

20. Defendant John Shrewsberry is a Senior Executive Vice President and Wells Fargo's Chief Financial Officer. He is responsible for the Company's financial management functions, including accounting and control, financial planning and analysis, line of business finance functions, asset-liability management, treasury, tax management, investor relations, and the company's investment portfolios. He serves on the Wells Fargo Operating, Management, and Market Risk Committees and was a member of the EBRC from at least January 1, 2010 through May 14, 2014.

21. Defendant Kevin Oden is an executive vice president and head of Operational Risk and Compliance within Corporate Risk at Wells Fargo. Oden manages

second-line risk activities across information security, financial crimes risk, model risk, operational risk, regulatory compliance risk, and technology risk, and he also serves on the Wells Fargo Management Committee. Oden reports to Michael Loughlin, Senior Executive Vice President and Chief Risk Officer. Prior to his current position, Oden was the Chief Market & Institutional Risk Officer, where his responsibilities included managing market risk oversight, market risk regulatory capital calculation, model risk management, counterparty credit and issuer risk as well as country risk. Prior to that, Oden was the head of Market Risk for Wells Fargo Securities. He has been a member of the EBRC from at least December 8, 2014 through the present.

22. Defendant Patricia Callahan is a recently retired senior executive officer of Wells Fargo. When she retired, she held the prominent role of Chief Administrative Officer where she oversaw the company's brand, communications, reputation management and stakeholder engagement efforts. She also served on Wells Fargo's Corporate Responsibility Committee. She was a member of the EBRC from at least January 1, 1999 through August 31, 2015.

23. Defendant Stanhope Kelly was a top executive of Wells Fargo, serving as Wells Fargo's lead regional president for the Carolinas, covering retail, small business and business banking operations until his retirement in 2014. He served on the EBRC from at least March 1, 2009 through June 30, 2014. Carrie Tolstedt, one of the ringleaders and primary beneficiaries of the Wells Fargo fake account scandal, was in close contact with Kelly, commenting on his retirement: "When I think about the definition of a great community banker, I think about Stan Kelly."

24. Defendant Dawn Martin Harp is a member of the Wells Fargo Management Committee and serves as the head of Wells Fargo Dealer Services. She is responsible for the strategy, growth, and profitability of Indirect Auto Finance and Commercial Services. Harp served on the EBRC from at least March 1, 2016 to the present.

25. Defendant Suzanne Ramos is a member of Wells Fargo's Management Committee. She serves as Executive Vice President, Wells Fargo's National Affluent Sales Leader. She has served in that position since January 2013. Prior to that, Ramos served as Executive Vice President, Border Region President. She has been a member of the EBRC since at least December 1, 2010.

26. Defendant James Steiner is the president of Abbot Downing, a Wells Fargo brand that caters to ultra-high net worth clients. Steiner has been a member of the EBRC from at least July 1, 2011 to the present.

27. Defendant George Wick is the head of Principal Investments for Wells Fargo Securities and reports to Shrewsberry. He has been a member of the EBRC from at least March 15, 2015 to the present.

28. Defendant Martin Davis served as the head of enterprise technology services, executive vice president and chief technology officer for Wells Fargo until his departure in mid-2015. He was a member of the EBRC from at least March 1, 2009 through December 10, 2014.

29. Defendant Thomas Wolfe was head of the Consumer Credit Solutions Group at Wells Fargo. The Consumer Credit Solutions Group was a part of the

Consumer Lending Group. Wolfe retired on October 31, 2015. He was a member of the EBRC from at least March 1, 2012-August 31, 2014.

30. Based on (a) their roles within the Company; (b) their participation in various committees with other executives; and (c) their position on the EBRC, all EBRC members knew, or should have known about: the importance of cross-selling metrics to the Company's share price; the importance of Wells Fargo's reputation; the systemic fraud being committed and concealed; and the resulting impact on Wells Fargo's stock price from the continued concealment and failure to correct the fraudulent practices.

D. Human Resources Committee of the Board

31. From at least January 1, 2010 through January 1, 2015, the Human Resources Committee of the Board ("HRC") was a "Named Fiduciary" under the Plan. Wells Fargo & Company 401(k) Plan, as Amended and Restated January 1, 2010, at § 2.26.

32. Throughout the Class Period, the HRC had the express authority to amend the Plan at any time. Plan § 13.1.

33. Accordingly, the HRC had, and has, discretionary authority with respect to the management and administration of the Plan.

34. According to answers provided by Wells Fargo to the Senate Committee for Banking, Housing, and Urban Affairs ("Senate Banking Committee") in November 2016, as top management of Wells Fargo became aware of fraudulent practices in the Community Banking segment of the Company, they informed the HRC that they were "monitoring sales integrity in Community Banking."

35. The HRC members are currently Lloyd H. Dean, John S. Chen, Susan E. Engel, Donald M. James, and Stephen W. Sanger.

36. According to the HRC Charter, the HRC's purpose is to assist the Board "in fulfilling its responsibilities relating to the overall compensation strategy for the Company and the compensation of the Company's executive officers."

37. Significantly, the HRC is tasked with overseeing "the implementation of risk-balancing and risk management methodologies for incentive compensation plans and programs for senior executives and those identified employees in a position to expose the Company to material risk."

38. The HRC Charter further states, in pertinent part, that:

- The HRC shall establish, in consultation with senior management, the overall strategy for the Company with respect to incentive compensation and shall oversee the Company's incentive compensation practices to help ensure that they are consistent with the safety and soundness of the Company and do not encourage excessive risk-taking;

  and

- The HRC shall make recommendations to the Board with respect to the Company's incentive compensation and equity-based plans that are subject to Board approval, discharge any responsibilities assigned to the HRC by any of these plans, and periodically review the Company's stock ownership retention guidelines for participants in the Company's Long-Term Incentive Compensation Plan.

39. Wells Fargo's 2016 Annual Proxy further reiterates the HRC's primary responsibilities in both establishing the Company's incentive compensation policies and monitoring any risk exposure created from such policies, including:

- Discharging the Board's responsibilities relating to the Company's overall compensation strategy and the compensation of its executive officers;

- Overseeing the Company's incentive compensation practices so that they are consistent with the safety and soundness of the Company and do not encourage excessive risk-taking, and reviewing and approving benefit and compensation plans and arrangements applicable to executive officers of the Company;

- Evaluating the CEO's performance and approving and recommending the CEO's compensation to the Board for ratification and approval, and approving compensation for other executive officers and any other officers or employees as the HRC determines appropriate; and

- Having the sole authority to retain or obtain the advice of and terminate any compensation consultant, independent legal counsel or other advisor to the HRC, and evaluating the independence of its advisors in accordance with NYSE rules.

40. Based on (a) their roles on the Board, (b) the scope of misconduct discussed below, and (c) senior management informing them of the scandal and the underlying mechanics, the HRC had actual knowledge of: the importance of cross-selling metrics to the Company's share price; the importance of Wells Fargo's reputation; the systemic fraud being committed and concealed; and the resulting impact on Wells Fargo's stock price from the continued concealment and failure to correct the fraudulent practices.

41. Each Defendant identified above as a Plan fiduciary is also subject to co-fiduciary liability under 29 U.S.C. § 1105(a)(1)-(3) because she, he, or it enabled other fiduciaries to commit breaches of fiduciary duties, failed to comply with 29 U.S.C. § 1104(a)(1) in the administration of its duties, and/or failed to remedy other fiduciaries' breaches of their duties, despite having knowledge of the breaches.

E. "John Doe" Defendants 1-30

42. Because the universe of individuals and/or entities that: (a) had monitoring or appointment responsibilities of other Plan fiduciaries; or (b) have either delegated or been delegated Plan-related fiduciary responsibilities, they are collectively named as John Does 1-30 herein.[2]

IV. DEFENDANTS' FIDUCIARY DUTIES

43. ERISA imposes strict fiduciary duties upon plan fiduciaries. ERISA § 404(a), 29 U.S.C. § 1104(a), states, in relevant part, that:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and … for the exclusive purpose of providing benefit to participants and their beneficiaries; and defraying reasonable expenses of administering the plan; with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV.

44. *The Duty of Loyalty*: ERISA imposes on a plan fiduciary the duty of loyalty – that is, the duty to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and … for the exclusive purpose of … providing benefits to participants and their beneficiaries…." ERISA § 404(a)(1)(A), 29 U.S.C. § 11404(a)(1)(A).

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[2] Despite requesting information from Defendants' counsel regarding other HRC members relevant to the Class Period, Defendants' counsel refused to provide such information, thereby necessitating this "Doe" pleading to protect the Plan Participants.

45. The duty of loyalty entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an eye toward the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

46. *The Duty of Prudence*: ERISA also imposes on a plan fiduciary the duty of prudence – that is, the duty "to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and … with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims…." ERISA § 404(a)(1)(B), 29 U.S.C. § 11404(a)(1)(B).

47. Wells Fargo recognizes these duties explicitly in its 401(k) Plan documents. For example, in its October 1, 2013 Summary Plan Description, it informs Plan Participants: "In addition to creating rights for plan participants, ERISA imposes duties on people who are responsible for the operation of the team member benefits plan. The people who operate the 401(k) Plan, called "fiduciaries" of the 401(k) Plan, have a duty to do so prudently and in the interest of you and other 401(k) Plan participants and beneficiaries."

48. *The Duty to Investigate and Monitor Investment Alternatives*: The duties of loyalty and prudence also entail a duty to conduct an independent investigation into, and continually to monitor, the merits of the investment alternatives in the Plan, including employer securities, to ensure that each investment is a suitable option for the Plan.

49. *The Duty to Monitor Appointed Fiduciaries*: Fiduciaries who have the responsibility for appointing other fiduciaries have the further duty to monitor the fiduciaries thus appointed. The duty to monitor entails both giving information to and reviewing the actions of the appointed fiduciaries. The monitoring fiduciaries must ensure that the appointed fiduciaries:

(a) possess the needed credentials and experience, or use qualified advisors and service providers to fulfill their duties;

(b) are knowledgeable about the operations of the plan, the goals of the plan, and the behavior of plan's participants;

(c) are provided with adequate financial resources to do their jobs;

(d) have adequate information to do their jobs of overseeing the plan investments with respect to company stock;

(e) have access to outside, impartial advisors when needed;

(f) maintain adequate records of the information on which they base their decisions and analysis with respect to the plan's investment options; and

(g) report regularly to the monitoring fiduciaries.

The monitoring fiduciaries must then review, understand, and approve the conduct of the hands-on fiduciaries with whom they are charged with monitoring.

50. *The Duty to Disregard Plan Documents, if Required*: A fiduciary cannot avoid its fiduciary responsibilities by relying solely on the language of the Plan documents. While the basic structure of a Plan may be specified, within limits, by the Plan sponsor, the fiduciary cannot blindly follow the Plan document if doing so leads to an imprudent result. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

51. *Co-Fiduciary Liability*: A fiduciary is liable, not only for fiduciary breaches within the sphere of his own responsibility, but also as a co-fiduciary in certain circumstances.

52. Indeed, ERISA § 405(a), 29 U.S.C. § 1105(a), states, in relevant part, that:

> In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
>
> (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; or
>
> (2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
>
> (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

53. *Non-Fiduciary Liability*: Under ERISA, non-fiduciaries who knowingly participate in a fiduciary breach may themselves be liable under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

V. THE PLAN

54. The Plan was established in 1953 and was restated multiple times, including in 2010 and 2015.

55. The Plan is a "defined contribution" benefit plan that is sponsored by Wells Fargo and available to eligible employees of Wells Fargo and its subsidiaries. All contributions to the Plan are held in the 401(k) Plan Trust.

56. The Plan is tax qualified under the Internal Revenue Code as both an employee stock ownership plan and as a 401(k)-qualified cash or deferred arrangement.

57. At all relevant times to this Complaint, the Plan was a "defined contribution" or "individual account" plan within the meaning of ERISA Section 3(34), 29 U.S.C. § 1002(34), in that the Plan provided for individual accounts for each Participant and for benefits based solely upon the amount contributed to the Participant's account, and any income, expenses, gains, and losses, and any forfeitures of accounts of other Participants which could be allocated to such Participant's accounts. As such, the Plan is subject to ERISA.

58. An eligible employee can make salary deferral contributions to the Plan. Salary deferral contributions to the Plan are made from certified compensation earned during the entire pay period containing the date in which the employee salary deferral election is effective.

59. The Plan has more than 350,000 Participants and contains total assets of approximately $35 billion.

60. On information and belief, as of 2016, approximately 34% of the 401(k) Plan Assets, totaling approximately $11 billion out of the total $35 billion, were invested in Wells Fargo common stock.

61. Participants are eligible to receive employer matching and employer discretionary profit sharing contributions.

62. All matching contributions of the Plan are invested automatically in Wells Fargo stock.

Wells Fargo ESOP Fund

63. Participant contributions to the Plan's ESOP Fund are invested primarily in Wells Fargo common stock and such participation is available exclusively to Plan Participants.

64. Dividends on the ESOP may be distributed or passed through to Participants who are invested in the ESOP Fund.

Wells Fargo Non-ESOP Fund

65. Participant contributions to the Plan's Non-ESOP Fund are invested primarily in Wells Fargo common stock and such participation is available exclusively to Participants.

66. Due to certain Internal Revenue Code regulations, dividends declared or paid on Participants' account balances in the Non-ESOP Fund are reinvested within the Fund.

VI. FACTUAL ALLEGATIONS

A. Wells Fargo Touted its Reputation for Trust and Integrity.

67. Trust and reputation are at the cornerstone of the financial industry. Any breach of those principles will have harsh consequences for a malefactor's company stock price.

68. Wells Fargo has consistently emphasized the importance of trust, loyalty and integrity to its business model in its external communications.

69. Indeed, protecting its reputation is one of Wells Fargo's seven risk management principles. According to a presentation at Wells Fargo's 2014 Investor Day

by Wells Fargo's Chief Risk Officer, Mike Loughlin, "reputation is paramount" and Wells Fargo "strive[s] to minimize activities that could damage the franchise."

70. Indeed, Wells Fargo has put its reputation for trust and loyalty at the forefront of its public communications, including the following examples:

a. On its website: "From the Gold Rush to the early 20th Century, through prosperity, depression and war, Wells Fargo earned a reputation of trust due to its attention and loyalty to customers."

b. In its Vision and Values (removed from their website just recently): "Corporate America is littered with the debris of companies that crafted lofty values on paper but, when put to the test, failed to live by them. We believe in values lived, not phrases memorized…. **We strive to be recognized by our stakeholders as setting the standard among the world's great companies for integrity and principled performance**. This is more than just doing the right thing. We also have to do it in the right way. **Honesty, trust, and integrity are essential for meeting the highest standards of corporate governance**…. **We will not engage in activities or business practices that could cause damage to our reputation….**" (emphasis added).

c. In its Code of Ethics: "Integrity is not a commodity. It's the most rare and precious of personal attributes. It is the core of a person's – and a company's – reputation…. At Wells Fargo, holding ourselves to the highest standards of ethical behavior is nothing new … it's been the cornerstone of our culture since 1852!"

d. In its Corporate Social Responsibility Report: "For 160 years, our customers have trusted us with their financial assets. To honor that trust, we hold ourselves to the highest ethical standards. We regularly monitor and refine our business practices and risk management structure to ensure there are appropriate controls in place to reduce risks to our customers and communities and ensure all team members are performing honestly and with integrity."

e. In its Corporate Governance Guidelines: "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." (emphasis added).

f. In its Annual Reports: "Today, I sum up Wells Fargo's culture with this word: 'Relationships.' It captures the passion we all share for serving our key stakeholders — customers, communities, investors, and team members. **To earn their trust, we strive to do the right thing and act under the highest ethical standards where honesty, trust, and integrity matter**." (2014 Report; emphasis added).

71. Wells Fargo's public campaign emphasizing its reputation for trust and loyalty was effective. Indeed, Wells Fargo's stock has received a higher price-to-book multiple compared to other big banks because of this reputation.

B. Cross-Selling Was Critical to Wells Fargo's Business Model.

72. Attempting to capitalize on its reputation for trust and loyalty, Wells Fargo engaged in an aggressive marketing practice known as "cross-selling" – the sale of multiple banking products to the same customer.

73. Cross-selling was central to Wells Fargo's business model and share price. The goal of Wells Fargo's high pressure cross-selling strategy was to show steady quarterly growth in the opening of customer accounts and, most importantly, drive up the Company's share price. The multiple accounts held by many Wells Fargo customers signaled to Wall Street that the Company maintained deep relationships with its customers, meaning the Company would continue making money from them.

74. The (alleged) increase in customer accounts was particularly important to Wells Fargo, since it could be viewed as a testament to its purportedly client-centric approach and heritage. In other words, it enhanced the perception that Wells Fargo was

so good to its customers that those customers were deepening their connection to Wells Fargo by opening new accounts and adding new services at a record pace.

75. Wells Fargo promoted cross-selling so aggressively that Former Chairman and CEO Richard Kovacevich created a target for each customer called the "Gr-eight initiative," meaning *eight add-on products per household*.

76. In Wells Fargo's Vision and Values Statement, cross-selling was described as "our most important strategy."

77. Cross-selling was so central to the Company's bottom line and financial metrics that Wells Fargo management mentioned it 108 times at a two-day investor conference in 2010.

78. Wells Fargo's senior management knew of, encouraged, and closely monitored the cross-selling program. They regularly received updated cross-selling data and discussed the push for cross-selling with investors and securities analysts.

79. Wells Fargo's Annual Reports are filled with examples of the Company touting its cross-selling strategies and the corresponding impact on its financial results, including:

2010 Annual Report

- "Selling more products to our customers – 'cross-selling' – is very important to our business model and key to our ability to grow revenue and earnings."

2011 Annual Report

- "Because we conduct most of our businesses under the 'Wells Fargo' brand, negative public opinion about one business could affect our other businesses and also could negatively affect our 'cross-sell' strategy."

2012 Annual Report

- "Cross-sell of our products is an important part of our strategy to achieve our vision to satisfy all our customers' financial needs. Our retail bank household cross-sell was 6.05 products per household in fourth quarter 2012, up from 5.93 a year ago. We believe there is more opportunity for cross-sell as we continue to earn more business from our customers. Our goal is eight products per customer, which is approximately half of our estimate of potential demand for an average U.S. household. In fourth quarter 2012, one of every four of our retail banking households had eight or more of our products."

2013 Annual Report

- "Our cross-sell strategy, diversified business model and the breadth of our geographic reach facilitates growth in both strong and weak economic cycles. We can grow by expanding the number of products our current customers have with us, gain new customers in our extended markets, and increase market share in many businesses."

2014 Annual Report

- "Our ability to grow primary customers is important to our results because these customers have more interactions with us, have higher cross-sell and are more than twice as profitable as non-primary customers."

2015 Annual Report

- "An outcome of offering customers the products and services they need, want and value is that we earn more opportunities to serve them, or what we call cross-sell. Cross-sell is the result of serving our customers well, understanding their financial needs and goals over their lifetimes, and ensuring we innovate our products, services and channels so that we earn more of their business and help them

> succeed financially. Our approach to cross-sell is needs-based as some customers will benefit from more products, and some may need fewer."

80. In addition to statements in its financial disclosures, Wells Fargo made many other public statements touting its alleged cross-selling success.

81. During quarterly earnings calls and investor presentations, Wells Fargo's CEO and other officials consistently cited the Company's alleged cross-selling achievements as the key driver of its revenues and share value. Following such calls and the release of Wells Fargo's financial disclosures, third-party analysts would routinely give favorable value assessments of Wells Fargo stock based on the Company's claims regarding cross-selling.

82. For example, on May 19, 2014, the day before Wells Fargo's Analyst Day, anticipating the Company's routine of emphasizing cross-selling, the Motley Fool released an article entitled, "1 Reason Wells Fargo & Co Will Remain the Biggest and Best Bank," stating:

> Cross-selling is one of the most cost-effective ways for a bank to add to its deposit base, loan portfolio, and other businesses. According to a recent report by Fiserv, it costs banks 8-10 times more to gain a new customer than it does to sell a new product to an existing customer. The more products each customer has with a bank, the longer the bank retains those customers. Customer retention is one of the keys to stability in banks, and cross-selling is the best way to do it.

83. And during the May 20, 2014 Analyst Day, as was customary, Wells Fargo proudly trumpeted its cross-selling efforts and the financial results the Company had achieved due to the effectiveness of its cross-selling strategy. Chief Financial Officer John Shrewsberry summarized it this way: "Our relationship focus and cross-sell

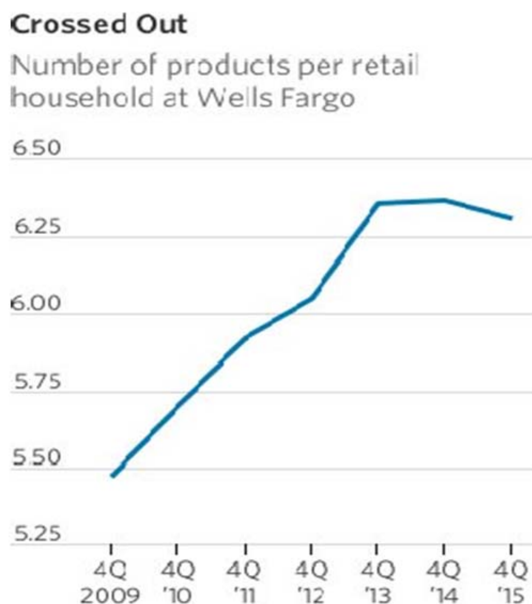
capability is hopefully legendary at this point. It has been our vision for decades. We've stuck to it."

84. The very next day, UBS issued a report focusing on the Company's cross-selling:

> **Management is focused on growth and execution of cross-selling strategy**
>
> [Wells Fargo]'s investor day highlighted a growth strategy – the presentations mention growth 116 times versus 39 mentions of costs. The strategy for growth is unchanged and focuses on cross-selling across all products and client segments with particular attention paid to cards, wealth management (where pre-tax margin target was increased from 22% to 25%) and corporate banking.

85. The reported cross-sell metrics, discussed extensively by Wells Fargo and external analysts, strongly distinguished Wells Fargo from its competitors, adding significantly to Wells Fargo's share price.

86. From 2009 to 2015, Wells Fargo reported a steep incline in cross-sell success. Compared to the industry average of three products per retail customer, Wells Fargo reported approximately twice that amount, as shown in the following chart published by The Wall Street Journal:



87. The positive trend in the cross-sell results that Wells Fargo touted in its Annual Reports, investor presentations, and other public statements, coincides with the positively-trending Company stock price throughout the Class Period. Based on Wells Fargo's fraudulent cross-selling metrics, the marketplace investors rewarded the Company's stock price, which, from mid-2010 to September 7, 2016, *increased 111%* – from approximately $24 to $50.56 per share.

C. The Truth: Wells Fargo's Cross-Selling Metrics were a Façade, Masking a Rampant Fake Accounts Scam.

88. As is now known, far from being the trusted and loyal bank it represented itself to be in external communications, Wells Fargo, through its senior management's direction, imposed an extremely aggressive sales program on its branch employees and encouraged its branch employees to engage in widespread unlawful and unethical behavior, including creating millions of fake accounts to meet unrealistic and heavy-handed goals.

89. In an effort to boost revenues and inflate its stock price, dating back to at least 2010 (and, apparently, much earlier), Wells Fargo's management imposed on its branch offices daily quotas to achieve cross-sell goals.

90. For example, if a customer had a checking account, Wells Fargo employees were pressured to engage in abusive sales practices to sign that customer up for a savings account, a credit card and a debit card, online banking services, and many other products, regardless of whether the customer needed or wanted such products.

91. As recently discovered, Wells Fargo management consistently coerced and threatened employees to meet these unreasonable quotas and to engage in fraudulent practices.

92. A common tactic involved creating a false deposit account by moving a small amount of money from the customer's existing Wells Fargo account to open a new one without customer authorization. In this scenario, the Wells Fargo internal systems would give the employee credit toward her sales goals for opening a new account, and the accounts would often, in turn, generate fees for Wells Fargo.

93. Another common tactic involved applying for credit card accounts without customer authorization. When customers later complained about receiving cards they did not request, they were advised to simply destroy the unrequested and unauthorized cards. At other times, Wells Fargo employees would advise customers who did not want credit cards that they would be sent a credit card anyway, and instruct them to simply tear up the credit card when they received it. But destroying the unauthorized cards did not close the account, reimburse unauthorized fees, or repair the effect on a customer's credit

profile. Indeed, customers' credit reports were often negatively affected and customers were sometimes forced to purchase costly identity theft protection services to protect against further fraudulent activity. Among other tactics, Wells Fargo employees targeted individuals holding Mexican Consular cards because the lack of a Social Security number made it easier to open numerous fraudulent accounts.

94. Another practice was known as "pinning," in which a Wells Fargo banker obtained a customer's debit card number and set the PIN (often to 0000) without customer authorization. Pinning allowed a Wells Fargo banker to enroll a customer in online banking, for which the employee received a sales credit. In order to bypass computer prompts requiring customer contact information, bankers would impersonate the customer online and input false generic email addresses, such as noname@wellsfargo.com to ensure that the transaction was completed and that the customer was not alerted to the activity.

95. Another practice, known as "bundling," involved Wells Fargo sales personnel telling customers that the account they legitimately sought to open could be obtained only with the purchase of additional accounts or products, when the desired product was actually available on its own. Employees were coached by managers to lie to customers by telling them that each checking account automatically comes with a savings account, credit card, or other products.

96. Yet another practice, known at Wells Fargo as "sandbagging," involved a banker delaying the opening of a new account or processing a sale (without knowledge of the account holder) until a time that was most beneficial to Wells Fargo or the employee,

such as when a new sales reporting period commenced. New Year's Day was an especially common date to open "sandbagged" accounts because of the Company's "Jump into January" sales program. This program required bankers to meet even more aggressive sales goals than usual, which encouraged bankers to hold onto, or not process, new accounts or other requests until January 1. When customers inquired why an account had not been opened promptly, they were given false explanations, such as a "technical problem" or an oversight that would be corrected eventually. Sandbagging allowed Wells Fargo management to report inflated first quarter sales.

97. Management pressured Wells Fargo employees into engaging in a variety of other fraudulent tactics as well. They would misrepresent to potential customers that they would incur a monthly fee on their checking account unless they opened a savings account, when this was not the case. Wells Fargo employees would also misrepresent that additional accounts did not have monthly fees when, in fact, they did. Wells Fargo would then withdraw money from customers' authorized accounts to pay the fees assessed by Wells Fargo on unauthorized accounts opened in the customers' names. In some cases, Wells Fargo referred unauthorized, and thus unfunded, accounts to collection agencies because the accounts had negative balances.

98. There is also evidence that Wells Fargo employees were routinely opening unauthorized accounts for customers who they thought would not notice, such as elderly clients or those who did not speak English as their first language.

99. In one poignant example demonstrating the depth and financial entanglement of the fraud, a Wells Fargo customer specifically rejected a request for

overdraft protection. However, in violation of the customer's specific rejection, the Wells Fargo branch authorized overdraft protection and, to further the scam, opened an unauthorized credit card for that customer and linked the overdraft charges to the credit card. After several months, the credit card company was pursuing the customer for payment. The customer, however, had no knowledge of the credit card, no knowledge that overdraft protection was opened in violation of orders, and no knowledge that the overdraft charges were being slipped onto the credit card.

100. As in this example, in most cases, the fake accounts went unnoticed by the customers.

101. After news of the scandal and the resulting $185 million regulatory fine broke on September 8, 2016, numerous Wells Fargo employees confirmed that the Company's unethical and unlawful sales practices were widespread and dated back to at least 2004.

102. Wells Fargo itself has concluded that its employees opened at least 1.5 million deposit accounts and submitted applications for at least 500,000 credit-card accounts without customer authorization to do so during the period of 2011-2015.

103. It is still unknown outside of Wells Fargo's walls how many more fraudulent accounts were actually opened, and how much more damage has been done by the criminal conduct and cover-up. Wells Fargo has only recently announced that it will begin to review similar conduct prior to 2011.

D. Wells Fargo Senior Management Structured, Implemented, and Rewarded the Systemic Fraud.

104. Wells Fargo senior management designed an incentive system, and rewarded employees based on that system, with knowledge of the systemic fraud, thereby encouraging and promoting that now-uncovered fraud.

105. Setting unreasonably high sales quotas and threatening employees with termination if they failed to meet these quotas, Wells Fargo management encouraged, condoned, rewarded, and profited from thousands of its employees stealing the confidential personal financial information of Wells Fargo's own customers and then exploiting that protected information to open over two million unauthorized accounts and credit cards in their names.

106. Wells Fargo's sales quotas were generally unattainable simply because not enough customers interact with their banks on a daily basis, nor do they want or need that many products, particularly from a single provider.

107. Thus, thousands of Wells Fargo employees faced a Hobson's choice: fail to meet the unethical and unlawful demands of management and risk losing their jobs, or succumb to the overwhelming pressure to meet their quotas by any means possible. In order to keep their jobs and support their families, many employees resorted to opening accounts without customer consent, using inaccurate or misleading information about potential accounts to induce customers to open them, and engaging in other high-pressure sales tactics to coerce customers into opening additional accounts.

108. As Shrewsberry admitted after the scam was revealed, the quotas and demands Wells Fargo management imposed on branch office employees were so unreasonable that many employees, at risk of being fired otherwise, were compelled to "game" the system, stating that the problem stemmed from "people trying to meet their minimum goals to hang onto their job."

109. And now, only after getting caught, fined and publicly rebuked has Wells Fargo management feigned contrition to the marketplace. Wells Fargo CEO and Chairman Stumpf (who knew of the fraud as early as 2007, but did nothing) testified before the Senate Banking Committee in September 2016:

> I want to apologize to all Wells Fargo customers. I want to apologize for violating the trust our customers have invested in Wells Fargo. And I want to apologize for not doing more sooner to address the causes of this unacceptable activity. That said, I accept full responsibility for all unethical sales practices in our retail banking business…. We should have done more sooner to eliminate unethical conduct and unintended incentives for that conduct to occur.

110. Stumpf "retired" a few days later.

111. The man who replaced Stumpf as Wells Fargo CEO, Defendant Tim Sloan, recently acknowledged in a speech to Wells Fargo employees that the Company did not respond to the problems in its branches soon enough and that Wells Fargo's upper management inappropriately dodged responsibility for the bad behavior and wrongly placed blame on branch employees.

E. The Plan Fiduciaries Knew or Should Have Known About the Fraud, Yet Concealed It, Exacerbating Harm to Plan Participants.

112. Since at least 2005, Wells Fargo senior management, including Plan fiduciaries, knew or should have known that the Company's incentive structure was inducing some employees to secretly sign up customers for unauthorized and unwanted accounts and other banking products to generate record, albeit fabricated, cross-selling metrics and concomitant share price growth.

113. In 2005, the Human Resources Department directly received specific information regarding fraudulent accounts, forged customer signatures, and unsolicited credit cards.

114. As noted above, the HRC is explicitly tasked with overseeing "the implementation of risk-balancing and risk management methodologies for incentive compensation plans and programs for senior executives and those identified employees in a position to expose the Company to material risk." And Wells Fargo has already admitted in sworn answers provided to the Senate in November 2016 that top management of Wells Fargo became aware of fraudulent practices in the Community Banking segment of the Company and they informed the HRC that it was "monitoring sales integrity in Community Banking."

115. Wells Fargo further admitted in its sworn responses to the U.S. Senate that the Risk Committee was apprised by management of "noteworthy risk issues, which included, among other risks, sales conduct and practice issues affecting customers and management's efforts to address those risks."

116. Pursuant to the Risk Committee Charter, the Risk Committee met at least quarterly before and during the Class Period. The Risk Committee met with Wells Fargo's Chief Risk Officer, who is charged with communicating any significant risk issues to the Risk Committee. Michael Loughlin is Wells Fargo's Chief Risk Officer. Beneath him, on his Corporate Risk Leadership Team during the Class Period, were Claudia Russ Anderson and Kevin Moss, who were responsible for monitoring risk within, respectively, Wells Fargo's community banking and consumer lending lines of business.

117. The Risk Committee includes, among other Directors, Dean and Sanger, who are also members of the HRC. Because the HRC's charter requires it to oversee "the implementation of risk-balancing and risk management methodologies for incentive compensation plans and programs for senior executives and those identified employees in a position to expose the Company to material risk," the systemic fraud being caused by the onerous Wells Fargo incentive system would have been (or should have been) at the very top of their threat list.

118. In sum, Wells Fargo has admitted in sworn testimony that management was aware of the fraud and that they informed the HRC, Plan fiduciaries, and the Risk Committee, which consists of at least two Plan fiduciaries.

119. And several other Plan fiduciaries were on the front lines of the cross-selling scandal. Hardison was certainly aware of the scandal and its implications for Wells Fargo. Indeed, Hardison had actual knowledge of: the importance of cross-selling metrics and Wells Fargo's reputation to the Company's share price; the systemic fraud

being committed and concealed; and the resulting impact on Wells Fargo's stock price from the continued failure to correct the fraudulent practices and the Company's concealment thereof.

120. In her position leading the Human Resources Department since 2010, Hardison was integrally involved in the cross-selling scandal because she "leads a team that develops and implements people strategies to support Wells Fargo's business objectives, as well as the management of compensation and benefits." Indeed, thousands of employees were fired and disciplined over the years for such conduct.

121. Given the gravity of repeated instances of Wells Fargo employees stealing a customer's identity, opening unauthorized accounts, and violating multiple banking laws, Hardison was certainly aware of these serious violations. Additionally, Hardison had actual knowledge because the Human Resources Department was directly informed, as early as 2005, about Wells Fargo's cross-selling problems.

122. Hardison was also aware of whistleblowers raising alarm bells regarding the systemic fraud. Hardison knew that Wells Fargo employees were elevating concerns about abusive sales practices and unlawful conduct, among other things, to Wells Fargo senior management.

123. As alleged in numerous, recently-filed, anti-retaliation lawsuits, multiple whistleblowers came forward during the Class Period to executives in Human Resources to complain about pressure to hit Wells Fargo cross-selling targets and the illicit conduct that making those targets engendered. For their honesty, Wells Fargo fired these would-be whistleblowers.

124. For example, according to an article in *The New York Times*, one Wells Fargo employee was fired just three days after calling the Company's so-called "ethics hotline," and subsequently ended up living in his truck. According to CNN Money, a single mother was fired soon after submitting a similar whistleblowing report – and was then accused by Wells Fargo of falsifying documents. Such complaints were known, or should have been known, by Defendant Hardison, Wells Fargo's Director of Human Resources.

125. On September 20, 2016, Wells Fargo's former CEO, John Stumpf, testified before the Senate Banking Committee that he learned of the ongoing fraud in 2013. He further testified that the knowledge that there was an ongoing fraud issue that had yet to be solved "got to the corporate level in 2013 because progress was not being made, and the board level in 2014…."

126. Additionally, with respect to the board, Stumpf testified that "in 2014 various committees of the board were made aware of [the ongoing fraud scandal] – the risk committee, the audit and examination, the corporate responsibility."

127. Defendant Shrewsberry, Wells Fargo's CFO, was also intimately familiar with the cross-selling scandal. Shrewsberry was carefully monitoring the cross-selling scandal and had elevated it to one of the most dire problems at the Company years before the scandal became public in September 2016.

128. In an April 14, 2015 Reuters interview, Shrewsberry said that Wells Fargo was aware that some employees had pushed unwanted and unneeded products on customers, stating: "We have to be cautious and make sure we're not creating incentives

for people to sell products and provide services that are not in the best interest of the customer. **We take that deadly seriously, and we have for a long time**." (emphasis added). This statement was false and misleading. Shrewsberry knew that Wells Fargo was, in fact, creating such incentives and was sitting on a powder keg of regulatory and legal problems. It was also misleading because Wells Fargo did not take it "deadly seriously." In reality, Shrewsberry and other Plan fiduciaries were carefully concealing that: they fostered the perverse incentive system; the incentive system and employee misconduct had spun wildly out of control; and Wells Fargo was on the verge of devastating regulatory actions, crushing legal actions, and public blowback. Shrewsberry's carefully-worded statement was yet another step in the Wells Fargo concealment campaign.

129. The incentive structure, referenced by Shrewsberry, was squarely within the charter of the HRC, which included various Risk Committee members who had been apprised by senior management of the cross-selling fraud being perpetrated across Wells Fargo.

130. Shrewsberry also said: "Wells Fargo looks into allegations of inappropriate cross-selling pressure and wants to set up the right incentives for workers" and further stated that: "While sales quotas are part of a 'scorecard' for bankers in Wells Fargo branches, it is not the only measurement used to evaluate performance."

131. Shrewsberry, one of Wells Fargo's top executives, is integrally involved in all aspects of company strategy and serves on the EBRC. With his prominent position as the CFO and a lead member on the Wells Fargo Operating, Management, and Market

Risk Committees, he had a fiduciary obligation to remain abreast of, and inform others, of risk to the company, including inappropriate behavior by employees under the guise of cross-selling. Indeed, under the Sarbanes-Oxley Act of 2002 ("SOX"), Shrewsberry was required to personally certify – and did personally certify – that the Company had adequate financial and operational controls. Thus, Shrewsberry would have been, or should have been, apprised of all aspects of the cross-selling scandal.

132. Shrewsberry, among his other committee positions, served alongside Chief Administrative Officer and Human Resources Director Hope Hardison, Chief Risk Officer Michael Loughlin, General Counsel James Strother, Chief Auditor David Julian, new CEO Tim Sloan, and former CEO John Stumpf, on Wells Fargo's Operating Committee. Each of these executives was aware of the cross-selling scandal and its importance to the Company's stock price.

133. On or around September 13, 2016, Plan fiduciary Shrewsberry acknowledged the materiality of the misconduct, the scope and breadth of which had been concealed from the public, including Plan Participants: "The pattern of behavior that we've seen here is something that needs to stop. It is not acceptable to do things that are designed to increase either individual or firm bottom lines by deceiving customers or passing along charges that are either invisible or they don't know about."

134. At the same conference where Shrewsberry, speaking on behalf of the Company, stated that the unacceptable conduct needed to stop, he further stated that Wells Fargo would develop a new compensation model for employees that gives "incentives for people to behave in a manner that's consistent with our principles."

135. Shrewsberry also spoke on behalf of the Company when he said: "The people who we're talking about here weren't the high performers. It was really more at the lower end of the performance scale, where people apparently were making bad choices to hang on in their job."

136. Defendant Oden also served on the EBRC with Shrewsberry. Oden is and was a member of the corporate risk leadership team, where he reported to Loughlin, the Chief Risk Officer and a Management Committee member along with Shrewsberry. Oden's responsibilities include managing regulatory compliance risk, which would have required knowledge about the regulatory investigations (discussed below) of the extensive fraud within Wells Fargo. Oden was, therefore, privy to details of the Wells Fargo fraud and the impending regulatory fines.

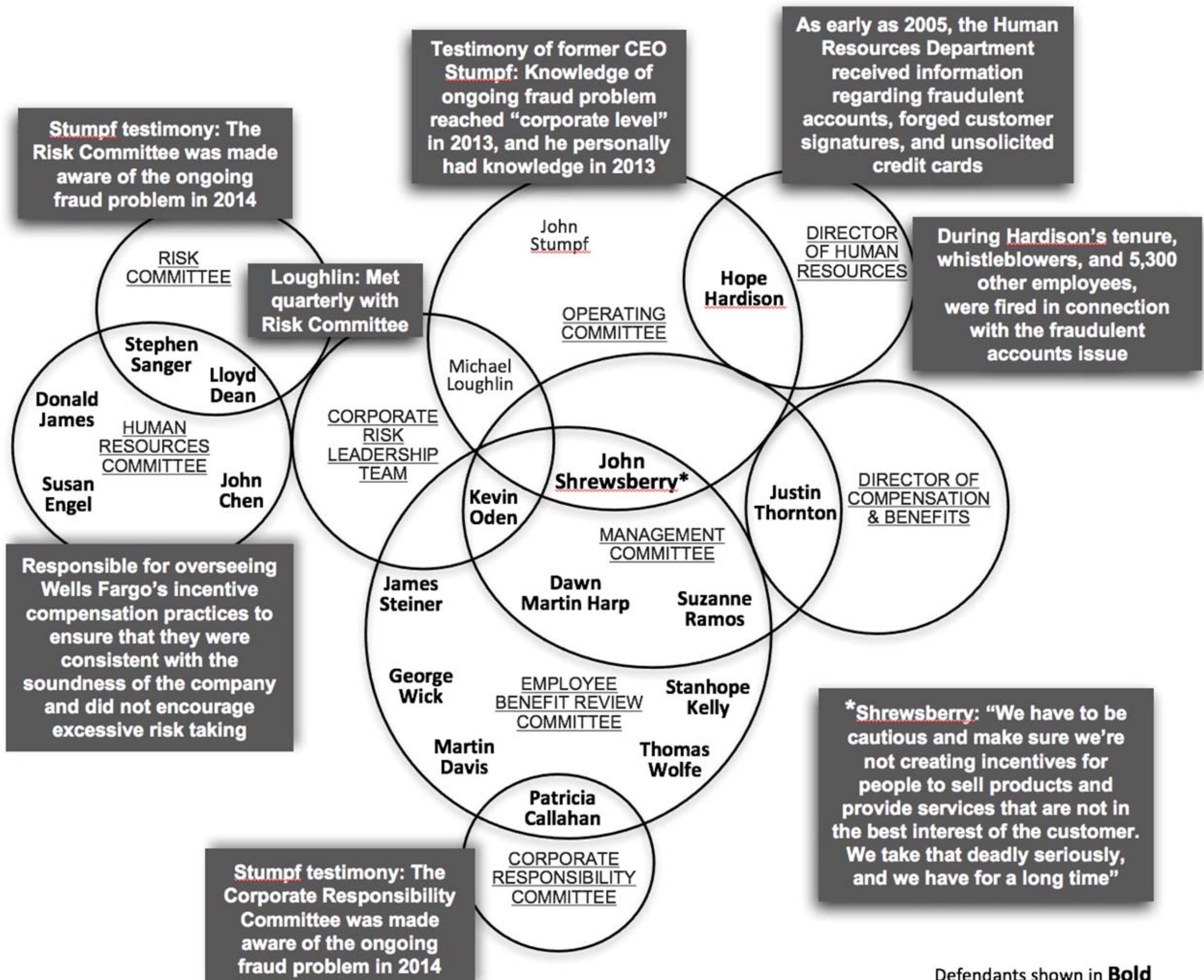
137. Defendant Callahan was another EBRC member who was immersed in the details of the cross-selling scandal (until she retired just before the scam was publicly revealed). Callahan served on the Corporate Responsibility Committee, which Stumpf testified was notified of the ongoing cross-selling scandal in 2014. Because Callahan oversaw the Company's reputation management, she understood the severe implications that the scandal would have on Wells Fargo's reputation and, therefore, its stock price.

138. Defendant Thornton was also directly aware of the cross-selling scandal. Thornton served on the Management Committee along with Defendants Shrewsberry and Oden, among others. Further, while the Company was firing thousands of employees for fraudulent misconduct, and firing whistleblowers for reporting on the misconduct,

Thornton had front-line responsibility for those issues since he was responsible for their benefits and severances.

139. Further, based on Thornton's role at the Company, he had actual knowledge of: (a) the importance of cross-selling metrics and Wells Fargo's reputation to the Company's share price; (b) the systemic fraud being committed and concealed; and (c) the resulting impact on Wells Fargo's stock price from the continued failure to correct the fraudulent practices and the Company's concealment thereof.

140. Below is a diagram showing the interconnectedness of the Defendant fiduciaries, and how not a single one was isolated from knowledge of the rampant fraud:



141. With full knowledge of the ongoing fraud, Wells Fargo management – which included Plan fiduciaries like Hardison – took numerous steps to actively conceal the cross-selling fraud by knowingly and intentionally filing misleading, inaccurate, and incomplete Financial Industry Regulatory Authority ("FINRA") forms regarding employees fired for cross-selling fraud.

142. According to a November 2, 2016 letter written by three United States Senators to new-CEO Tim Sloan, Wells Fargo deliberately misled FINRA about the reasons for employees' dismissals: "It would appear that Wells Fargo concealed key information from regulators that may have revealed the bank's misdeeds long before the September 2016 settlement [with regulators]."

143. Wells Fargo's active concealment of its scheme as it related to regulator investigations went well beyond its FINRA lies, however. For example, in July 2016, the same time that the OCC sent a Supervisory Letter to the Company, Wells Fargo announced that Tolstedt would be "retiring," never mentioning the massive fraud perpetrated by her division, and failing to disclose pending investigations into the rampant misconduct by regulators.

144. The Wells Fargo press release concerning Tolstedt's "retirement" evidences the Company's concealment campaign. Although Wells Fargo's senior management and Plan fiduciaries knew that Tolstedt's Community Banking division had engaged in rampant fraud against customers for many years, the Company's official press release in July 2016 contained a statement by Stumpf extolling Tolstedt's role at Wells Fargo as a "champion" for customers: "A trusted colleague and dear friend, Carrie Tolstedt has

been one of our most valuable Wells Fargo leaders, a standard-bearer of our culture, a champion for our customers, and a role model for responsible, principled and inclusive leadership."

145. And Tolstedt is not the only senior executive to furtively "retire" under the impending doom of the scam. On information and belief, there are other senior executives who have been allowed to "resign" or "retire" on amicable terms (with no disclosure of wrongdoing) rather than be fired for their knowledge of, and role in, the illegal fraud.

146. Still other Wells Fargo senior executives were privately disciplined, removed, or replaced without the Company revealing to Plan Participants or the public that those actions were connected, in any manner, to the fraudulent misconduct or regulatory investigations.

147. For example, Claudia Russ Anderson, the Company's risk officer charged with helping to police the division that created millions of fake accounts, took a six-month unpaid "leave of absence" (announced to employees back in June 2016), and was later replaced in her position. Anderson was a member of the corporate risk team, along with Defendant Oden, and a member of the EBRC. Anderson's boss was Michael Loughlin, the Chief Risk Officer, who reported to Defendants Dean and Sanger, in their roles as members of the Risk Committee, as well as Wells Fargo management. Further, Loughlin was a member of the Operating Committee with Defendants Hardison and Shrewsberry.

F. The OCC Investigation

148. Wells Fargo senior executives were acutely aware of ongoing regulatory investigations related to the fraudulent misconduct.

149. In February 2013, the Office of the Comptroller of the Currency ("OCC") issued a Supervisory Letter which required Wells Fargo to develop an operational risk compliance program to address widespread problems in its business practices. In defiance of the admonitions, particularly coupled with ample evidence from prior internal complaints, the Company continued down the path of fraud, inaction, and concealment.

150. Following the receipt of additional complaints by consumers and bank employees alleging improper sales practices, OCC examiners initiated meetings with Wells Fargo senior executives to further evaluate Wells Fargo's business practices, including cross-selling.

151. In early 2014, the OCC directed Wells Fargo to address its weaknesses in compliance and to establish a comprehensive compliance risk management program related to unfair and deceptive practices, including its cross-selling sales practices. Again, the Company took insufficient measures to address the problems, and the fraud, inaction, and concealment continued.

152. OCC examiners met with Wells Fargo management throughout 2014 in furtherance of their examination of Wells Fargo's corporate governance practices, which included an assessment of Wells Fargo's cross-selling and sales practices.

153. From at least 2014 and onwards, Wells Fargo senior executives and Plan fiduciaries, most notably, but not limited to, Defendants Hardison, Shrewsberry and

Oden, knew the OCC was examining the Company's practices. Nonetheless, the Company continued to foster the cross-selling fraud, continued concealing it, and did nothing to protect the Plan from the impending peril.

154. The OCC's ongoing review of Wells Fargo's corporate governance and compliance practices, including those relating to cross-selling, continued into 2015. This included continued meetings with Wells Fargo's management. In March 2015, the OCC completed a multi-year assessment of Wells Fargo's compliance management systems, and identified the need for Wells Fargo to improve its risk management and corporate governance relating to operational and compliance risk.

155. In February 2015, the OCC conducted an examination of Wells Fargo's Community Bank Operational Risk Management, which included evaluating the Community Bank division's sales practices oversight. In April 2015, the OCC issued a Supervisory Letter requiring Wells Fargo to address the corporate governance of sales practices within its Community Bank division.

156. Three months later, in June 2015, the OCC issued another Supervisory Letter to the Company, citing an "inappropriate tone at the top," and addressing Wells Fargo's lack of adequate control and oversight structure in light of: (a) Wells Fargo's emphasis on product sales and cross-selling; (b) Wells Fargo's lack of an enterprise-wide sales practices oversight program; (c) Wells Fargo's lack of an effective enterprise-wide customer complaint process; and (d) the lack of a formalized governance process to oversee sales practices.

157. The June 2015 Supervisory Letter further instructed Wells Fargo to take specific remedial actions, such as to reevaluate its compensation and sales incentive plans, and to independently assess and improve it sales oversight processes. The OCC further instructed Wells Fargo to remediate any consumer harm that resulted from the sales practices at issue. Wells Fargo failed to comply with *any* of these directives.

158. Additionally, the June 2015 Supervisory Letter ordered Wells Fargo to retain an independent consultant to review its sales practices and to assess consumer harm. The consultants that Wells Fargo retained issued their findings in October 2015, February 2016, and May 2016.

159. In July 2015, the OCC issued a Notice of Deficiency to Wells Fargo that cited Wells Fargo's failures to comply with the OCC's safety and soundness expectations.

160. On July 16, 2016, the OCC issued a Report of Examination, in which the OCC found and concluded that Wells Fargo failed to address the previous corrective directives, that Wells Fargo's sales practices were unethical and harmed customers, and that Wells Fargo management had not promptly responded to these issues. In addition, the OCC issued a letter to Wells Fargo, stating that Wells Fargo had engaged in unsafe and unsound banking practices.

161. Wells Fargo senior executives, including Plan fiduciaries, thus intentionally flouted regulator directives and investigations, and, instead, concealed the misconduct in order to increase Wells Fargo's profits and maximize personal gains.

162. The public was unaware that Wells Fargo was under OCC investigation and scrutiny over its cross-selling sales practices. Wells Fargo did not disclose the material information regarding the internal complaints, nor the OCC's regulatory letters, actions, and findings.

163. Wells Fargo's campaign of concealment included affirmative acts to mislead and conceal the Company's widespread campaign of deceit and customer abuse. Wells Fargo also intentionally withheld material information from the public – including Plan Participants – about pending regulatory investigations. In sum, Defendants were aware of systemic criminal and unethical conduct at the Company since as early as 2005, through internal and external reports and regulatory investigations, yet Defendants actively concealed the scope and extent of the problem from the public (including Plan Participants), failed to protect Plan assets, and significantly increased the inevitable harm to Plan Participants caused by years of additional misconduct and concealment.

G. Senior Management and Plan Fiduciaries Enriched Themselves While Concealing the Fraud.

164. While concealing the systemic misconduct, and taking no actions to protect Plan Participants, Defendants took affirmative actions to benefit themselves from the systemic criminal conduct and the active concealment by senior executives of the criminal conduct.

165. Indeed, Defendants were trading their own artificially-inflated Wells Fargo shares for vast personal benefit, while they allowed Plan Participants to continue buying

shares of Wells Fargo stock at prices artificially inflated by the Company's concealment of the ongoing fraud.

166. During the period in which Defendants had actual or constructive knowledge regarding Wells Fargo's widespread criminal activity relating to cross-selling fraud, they reaped the benefits of the inflated stock price and related bonuses, resulting in exorbitant compensation and profits.

H. The Inevitable Revelation of the Fraud Destroyed Wells Fargo's Reputation and Its Stock Price.

167. While Wells Fargo management withheld material information and rewarded themselves, Company investors (with the 401(k) Plan being one of the largest), paid a very heavy price for the Company's misconduct, mismanagement, and, perhaps most notably, deliberate deception.

168. While Wells Fargo's bad conduct was common knowledge to its senior leadership for many years, the public revelation of that conduct in September 2016 took the marketplace and Plan Participants by surprise due to Defendants' campaign of concealment.

169. On September 8, 2016, federal banking regulators announced that Wells Fargo had been fined $185 million for a host of illegal banking practices related to the cross-selling scandal. The settlement included penalties of $100 million assessed by the Consumer Finance Protection Bureau ("CFPB") (the largest penalty in the history of that agency), $35 million by the OCC, and $50 million by the City of Los Angeles (the largest

such penalty in the history of the City Attorney's office). The OCC simultaneously issued a cease and desist order outlining the Company's unsafe and unsound practices.

170. Specifically, in the Consent Order, the OCC made several findings, including that the Company's "incentive compensation program and plans within the Community Bank Group were not properly aligned with local branch traffic, staff turnover, or customer demand, and they fostered the unsafe or unsound sales practices … and pressured Bank employees to sell Bank products not authorized by the customer."

171. Significantly, the OCC rejected any notion that Wells Fargo's illegal behavior was somehow isolated in scope or duration, concluding instead that "the Bank engaged in reckless unsafe or unsound banking practices that were part of a pattern of misconduct." The OCC required full restitution to the Bank's customers.

172. The CFPB's Consent Order similarly found, among other things, that Wells Fargo's "employees opened hundreds of thousands of unauthorized deposit accounts and applied for tens of thousands of credit cards without consumers' knowledge or consent."

173. In the news conference announcing the penalties, regulators said that Wells Fargo employees opened roughly 1.5 million bank accounts and applied for 565,000 credit cards that may not have been authorized by customers in the 2011-2015 timeframe.

174. The regulators stated that these practices reflected serious flaws in the internal culture and oversight at Wells Fargo. As Richard Cordray, director of the CFPB, explained, "The gravity and breadth of the fraud that occurred at Wells Fargo cannot be pushed aside as the stray misconduct of just a few bad apples. The stunning nature and scale of these practices reflects instead the consequences of a diseased orchard."

175. The fallout from the scandal was immediate and devastating to Wells Fargo's reputation, its market value, and Plan assets. And, as information continued to leak out to the marketplace regarding the Company's misconduct, Wells Fargo's stock price continued to be detrimentally affected as a direct result thereof.

176. Lawmakers throughout the government promptly delivered stinging criticisms of the Company, with Senator Elizabeth Warren at the forefront, describing Wells Fargo's behavior as a "staggering fraud." Treasury Secretary Jack Lew commented: "The pattern of behavior that we've seen here is something that needs to stop. It is not acceptable to do things that are designed to increase either an individual or firm's bottom line by deceiving customers or passing on charges that are either invisible or they don't know about." Comptroller of the Currency Thomas Curry echoed these sentiments, stating: "These practices … undermine the fundamental trust that goes to the heart of the bank-customer relationship. They are unacceptable and have no place in the federal banking system."

177. On September 20, 2016, the Senate Banking Committee held a hearing on the matter (the "Senate Hearing"), and Committee members from both parties lambasted Stumpf and the Company. Below are just a few of the statements the Senators directed to Stumpf:

- *Senator Elizabeth Warren*: "You squeezed your employees to the breaking point so you could cheat customers and drive up the value of your stock. And when it all blew up, you kept your job, your multi-million dollar bonuses, and went on TV and blamed thousands of $12-an-hour employees trying to meet cross-sell quotas. You should resign. You should be criminally investigated by the Department of Justice and Securities and Exchange Commission."

- *Senator Pat Toomey*: "Wells Fargo wasn't cross-selling. Failing to notify these customers about these sham accounts, this isn't cross-selling, this is fraud."

- *Senator Toomey*: "You state unequivocally that there are no orchestrated effort or scheme [sic], as some have called it, by the company. But when thousands of people conduct the same kind of fraudulent activity, it's a stretch to believe that every one of them independently conjured up this idea of how they would commit this fraud."

- *Senator Warren*: "You keep saying, 'The board, the board,' as if they're strangers you met in a dark alley…. You are not passive here. If you have nothing to do, then what are you doing serving as chairman of the board? If you have no opinion on the most massive fraud to hit this bank since the beginning of time, how do you get to continue getting a check as chairman of the board?"

178. After the hearing, the harsh criticism continued. Ed Mierzwinski, consumer program director at the U.S. Public Interest Research Group, said Stumpf's apology was not enough to contain the scandal. "I think the CEO of Wells Fargo failed to disprove that it was a massive fraud," said Mierzwinski, who attended the hearing. "No senator believed him."

179. On September 29, 2016, the U.S. House of Representatives Financial Services Committee held a hearing (the "House Hearing") on the matter, during which Representative Brad Sherman criticized Stumpf for his position that the non-disclosed information relating to the broad and systematic fraud scheme "was not material." Examples of Sherman's admonitions include (emphasis added):

- "This sham was not an attempt to steal a few million dollars in fees from your customers, although that's important, because you could say that a few million dollars wasn't material. What was material was the price of your stock. You opened two million phony accounts and then went and told … and it had to be material because

> you were bragging about it to the people investing in your stock – that you had higher penetration rates, more accounts per customer, that the number of banking customers that had credit cards had grown from the mid-20% up to 42%, so it had to be material. You were talking about it. ***The peak firings, according to your own documents, was in 2013, so you knew you had a problem then***."

- "Why didn't you tell shareholders our penetration rates are phony, our new accounts are phony accounts, and when we tell you we're deepening our relationship with our customers, we're doing so by putting them through the wringer. What internal audit system did you have that assured you that you didn't have a material problem?"

- "Mr. Stumpf, you were bragging … you were firing, according to your own documents, the highest number of people in 2013, but bragging about your penetration rates, the number of accounts opening, in 2014, so you knew it was material to shareholders and you knew it was a phony number that you had fired people for falsifying."

- "You fired 5,300 people. You took 5,300 good Americans and turned them into felons, with a system that you created, benefited from, ***and drove your stock price up by bragging about your levels of new accounts***."

180. On November 18, 2016, Senator Sherrod Brown of the Senate Banking Committee harshly criticized Wells Fargo for providing unsatisfactory written responses to questions that the Committee submitted to it. Senator Brown questioned how "Wells Fargo can restore the trust of its customers if it continues to ignore or dodge basic questions about the causes and consequences of the fraud that it permitted for years."

181. Further, on November 18, 2016, the OCC announced that it was restricting the Company from offering departing executives "golden parachute" payouts, and that

the Company must get the OCC's permission before it changes its business plans, hires or fires senior executives, or revamps its Board of Directors.

182. Since the scandal was revealed to the public in September 2016, many additional investigations have been launched at both the federal and state level, certain of which may result in criminal indictments and further damage to the Wells Fargo and its shareholders.

183. Federal prosecutors in U.S. Attorney's Offices in New York, California, and North Carolina have opened investigations into Wells Fargo's sales practices.

184. The State of California has also opened a criminal investigation on allegations of identity theft.

185. And on November 2, 2016, Wells Fargo confirmed that the SEC is investigating it for its fraudulent sales practices, along with a myriad of other state, local, and federal government agencies.

186. The rampant misconduct and management's campaign of concealment resulted in fines of $185 million, an approximate 12% drop in the Company's stock (a loss of approximately $22 billion in market capitalization), numerous stock downgrades, and significant lost business (*e.g.*, the State of California, the State of Illinois, the Commonwealth of Massachusetts, and the State of Ohio).

187. Further government investigations beckon, and multiple lawsuits have been filed and are expected seeking various forms of redress for the Company's rampant legal violations.

188. Wells Fargo's systemic fraud, and prolonged concealment of it from the marketplace, has devastated its reputation among its customers, the financial services industry, government representatives and regulators, and the public at large, thereby devastating its share price:

a. The Wall Street Journal reported on September 9, 2016: "A $185 million fine is small change for Wells Fargo & Co., which had profit last year of almost $23 billion. But the reputational blow from claims of 'widespread illegal' sales practices could prove costly…. But in the case of Wells Fargo, banking specialists, analysts and investors say the damage may be just starting. 'This scandal, easy to understand and not nearly as complex as mortgage-backed securities, seriously undermines Wells Fargo's Main Street image,' wrote Ian Katz, director at research firm Capital Alpha Partners LLC. Those allegations could hurt the bank's ability to attract new customers, could prompt current customers to look for another bank and affect the amount of products and services Wells Fargo is able to sell to new or existing customers, said Allen Tischler, a senior vice president at Moody's who focuses on U.S. banks."

b. "The regulators' findings are consequential for a bank such as Wells Fargo, which historically has had strong customer satisfaction scores and a reputation for sound risk management," Moody's analyst Allen Tischler wrote. "We do expect some immediate damage to Wells Fargo's reputation from this embarrassing episode."

c. In its most recent quarterly earnings report, Wells Fargo reported: (i) double-digit percentage drops in bank account openings; (ii) declines in bank branch traffic; (iii) new account openings had taken a nosedive – customers opened 25 percent fewer checking accounts and applied for 20 percent fewer credit cards in September compared with a year ago; (iv) a gauge of customer loyalty – which asks customers whether they would recommend Wells Fargo to family and friends — was also down in September. Wells Fargo executives acknowledged that customers may have shunned the bank as the result of the scandal.

d. On December 16, 2016, Wells Fargo reported that (i) new consumer checking-account openings continued to fall in November, down

41% from the previous November; and (ii) new credit card applications fell 45% from the previous November.

e. According to a recent survey, fourteen percent (14%) of Wells Fargo customers have decided to leave the bank, with another thirty percent (30%) considering other alternatives, including walking out the door.

189. Indeed, Wells Fargo's misconduct and years of concealment will continue to have long-lasting detrimental effects. This is especially harmful to Wells Fargo because banking, and particularly retail banking, is an industry built on customer trust and the integrity of the bank – the very things Wells Fargo repeatedly promoted and emphasized while it engaged in its above-described trust and integrity-killing scheme.

190. As explained above, Wells Fargo has taken great pains to try to set itself apart from its competitors with a reputation based on integrity and honesty. Thus, the negative effect when that reputation is destroyed is that much greater.

191. Investor Place, an investing and financial news site, summarized it as follows:

> The scale of the deception was so vast that it was immediately clear that the company's incentive system bears a large part of the blame. With their jobs on the line, lower-level WFC employees did what it took to make their numbers. That's not an excuse in any way for their behavior, but the blame ultimately lies with Wells Fargo. Eliminating sales goals helps ensure that the bank doesn't have another such scandal. It's also important for optics. WFC needs to be seen moving swiftly and decisively to address the problem. **But it doesn't help Wells Fargo stock. It certainly does nothing for WFC's once-sterling reputation as the 'cleanest' of the big banks. In fact, Wells Fargo will never get its name back in quite the same way.**

(Emphasis added).

192. Reputational damage leads to the public's loss of confidence in a bank and negatively affects the bank's consumer sales and ultimately its revenue and profits as it is likely that both current customers and prospective customers will refrain from doing business with a bank that they cannot trust.

193. In addition to the above facts, on September 29, 2016, California's State Treasurer announced that, due to the actions of Wells Fargo described herein, it would suspend its business relationship with Wells Fargo for one year. This is estimated to cost Wells Fargo over $700 million, not to mention the inevitable ripple effects of such a public rebuke.

194. Likewise, on October 3, 2016, Illinois's State Treasurer announced that Illinois would suspend most business with Wells Fargo for one year, amounting to approximately $30 billion in transactions.

195. Ohio, Massachusetts, Pennsylvania, and others followed suit.

196. The key principles of good corporate governance are transparency, integrity, responsibility, and fairness. Until Wells Fargo can once again prove to the public that it possesses good corporate governance and integrity, its reputation will continue to be harmed and market confidence in the Company will remain low.

197. The damages to Wells Fargo's cross-selling platform are immense. The metrics they touted, and the consequent praise bestowed upon them by analysts and the investor marketplace, were fraudulent, calling into question Wells Fargo's number one competitive advantage. And because Wells Fargo fostered and concealed the fraud for so

long, it had to entirely abandon any type of incentive system for legitimate and beneficial cross-selling.

198. Moody's issued a report stating that revelations that bank employees had opened the accounts are "highly disturbing" and that the "deficiencies" uncovered by the CFPB and other government investigators show that the bank's "vaunted cross-selling capabilities were inflated."

199. Wells Fargo's wrongful conduct directly caused a substantial drop in Wells Fargo's stock price. For example, between the close of the market on September 7, 2016, the day before Wells Fargo's fines and the partial extent of the scandal were first disclosed, and September 15, 2016, Wells Fargo's stock price declined from $49.77 per share to $46.15 per share, representing a loss of more than $18 billion in market capitalization and resulting in losses to the Plan of *$1 billion*. The Wells Fargo price drop stands in stark contrast to the S&P 500 index, which, during that same time frame, increased 8.7%.

200. And immediately after news of the fraud went public, J.P. Morgan downgraded Wells Fargo stock, with analyst Vivek Juneja warning that the Company has suffered a "material reputational hit" and that "mounting public scrutiny" of the unauthorized account openings "will result in additional investigations."

201. Similarly, on October 4, 2016, Raymond James downgraded Wells Fargo stock, stating that it has a "cloudy outlook on Wells Fargo as the company undergoes additional investigations, lawsuits and fines in connection to the misconduct."

202. And on October 4, 2016, Fitch downgraded its outlook on Wells Fargo from stable to negative, warning that Wells Fargo may lose its AA credit rating for the first time in two decades because of damage to its reputation and profits from the scandal.

203. Standard & Poor's likewise downgraded Wells Fargo from stable to negative, "saying risks for the magnitude of the reputational damage have increased in the wake of the unauthorized accounts scandal and the potential for ongoing legal and regulatory investigations."

204. On October 12, 2016, Zacks Equity Research stated, as a reason to sell, that "Wells Fargo is likely to face further troubles following the recent $190-million settlement tied with opening of millions of unauthorized accounts." Specifically, Zacks noted: "'Cross-selling,' which has been the company's key strength in recent years, drew regulators' attention as they found thousands of employees of the bank unlawfully enrolled consumers in products and services without their knowledge or consent in order to receive incentives for meeting sales targets." Further, Zacks noted that Wells Fargo "faces suspension of business relations with states including Illinois and California and cities such as Chicago and Seattle."

I. Defendants Violated Their Fiduciary Duties to the Plan.

205. Defendants breached their fiduciary duties owed to the Plan and Plan Participants, including the fiduciary duties set forth in ERISA § 404, 29 U.S.C. § 1104, and Department of Labor Regulations, 29 C.F.R. § 2550. As a result of these breaches, Defendants are liable to the Plan for all losses resulting from each such fiduciary duty breach.

206. Defendants' failure to act prudently, loyally, and competently has resulted in losses to the Plan and its Participants because of the significant drop in the Company's stock price immediately upon the news of the scandal, causing not less than hundreds of millions of dollars in Plan losses.

207. In light of that knowledge and involvement, Defendants each violated their ERISA duties of prudence, loyalty, and competence, among others, by failing to take any alternative actions to protect the Plan and its Participants from losses in the value of Wells Fargo stock.

208. Because Defendants knew or should have known the precise nature of the fraud, and the impact it would have on Wells Fargo's cross-selling program and reputation when the scheme was inevitably discovered, Defendants also knew that: (a) the value of Wells Fargo stock was artificially inflated; and (b) the value of Wells Fargo stock would be materially and detrimentally affected once this non-public and non-disclosed fraud was disclosed following the Company's prolonged cover-up; and (c) the longer the fraud is permitted to fester, and the longer the fraud is concealed, the greater the inflation and the greater the ultimate damage upon revelation – which is *precisely* what happened here.

209. A prudent and loyal fiduciary would have recognized that the inevitable disclosure of the broad and systemic fraudulent scheme, after the prolonged time period for which it was concealed, would severely and detrimentally affect the Plan's investment of employees' retirement savings in Wells Fargo stock and would inevitably result in significant losses.

210. And most importantly, no prudent fiduciary could have concluded that failing to stop the fraud and continuing to cover up the scandal – amidst government investigations and knowing that the truth would inevitably be revealed – was a proper (or legal) course of conduct. Indeed, common sense tells us this, as confirmed by the Motley Fool's summary on September 27, 2016 concerning the Wells Fargo scandal: "Sometimes the cover-up is worse than the crime."

211. Rather than honor their fiduciary obligations to the Plan, Defendants chose to protect Company executives, and thus their own positions, at the expense of the Plan Participants. Executives were lauded and rewarded with millions of dollars of bonuses and stock options based on cross-selling "successes," motivating Defendants to do nothing that would reveal the fraudulent practices or indicate their materiality, in essence, kicking the proverbial can down the road.

212. Plan Participants invested in Wells Fargo stock, on the other hand, did not have full knowledge of the wide-reaching fraudulent scheme or of Wells Fargo's regulatory problems. Unlike Defendants, Plan Participants did not know that more than 5,000 employees had been fired as part of the scheme or that millions of unauthorized accounts had been opened on behalf of unsuspecting customers over a period of several years. They did not know of the existence or reach of numerous regulatory investigations. They did not know that Wells Fargo executives were "retiring" as a result of the rampant misconduct or that large regulatory fines were imminent. They did not know that Wells Fargo's concealed fraud was distorting the Company's financial results and artificially inflating its stock price. And they did not know that when their retirement

assets were invested in Wells Fargo stock, they were overpaying and would inevitably suffer losses when the Company's ill-fated campaign of concealment was exposed, and when the Company would be forced to stop its fraudulent practices.

213. Accordingly, any Plan Participants who purchased Wells Fargo stock during the Class Period did so at artificially-inflated prices. Additionally, any Plan Participant who purchased or held Wells Fargo stock during the Class Period suffered investment losses, and also lost out on gains experienced in alternative investments under the Plan.

214. Because they claim that the systemic fraud and regulatory scandal was "not material" (which was clearly untrue), Defendants concede that they did not conduct an appropriate investigation into whether Wells Fargo stock was a prudent investment for the Plan. An adequate (or even cursory) investigation by Defendants would have revealed to a reasonable fiduciary that investment by the Plan in Wells Fargo stock was clearly imprudent, as well as disloyal.

215. As fiduciaries, Defendants were obligated to consider whether the non-public information to which they were privy regarding the breadth and systemic extent of the fraud scheme would be material to investors and, specifically, Plan Participants. And it was, indisputably, material.

216. At the very least, Defendants should have *evaluated* the non-disclosed information in light of the total mix of information. Had Defendants done so, they would have readily determined that the information would be material to the market, shareholders, and Plan Participants. There is more than a substantial likelihood that a

reasonable investor would have viewed this broad and systemic fraud scheme, and the Company's lengthy cover-up, as having significantly altered the total mix of information available. In fact, the market reaction to the disclosure, following the sustained nature of the fraud and the corresponding cover-up, definitively proves this point.

217. A materiality analysis requires both a quantitative analysis and a qualitative analysis which turns on what a reasonable investor would find important in making an investment decision, including the potential impact of corporate activities upon the company's reputation and share value.

218. Here, Wells Fargo failed to disclose material information and engaged in a sustained cover-up, continuing to this day, despite being mandated to disclose under federal securities laws and ERISA.

219. The omitted information about Wells Fargo's broad and systemic fraud scheme was material because, among other reasons: (a) such an omission masked changes in earnings or sales trends; (b) the omission concerns the Banking and Retail Services divisions, each of which plays a significant role in operations and profitability; (c) the omission related directly to Wells Fargo's reputation, specifically its position of trust with its own customers; and (d) the omissions involve the concealment of unlawful transactions.

220. Accordingly, the undisclosed fraud not only inflated Wells Fargo stock price but likely also violated the federal securities laws. In addition, the lengthy cover-up made the situation far worse for Plan Participants.

221. Defendants should have prudently and loyally considered whether, in light of the material non-disclosed information, Wells Fargo stock was trading at an artificially-inflated price. Such consideration could be based on whether the Company stock price is artificially inflated due to the non-disclosure of material information or such consideration could be based on whether it is reasonably foreseeable that the value of Company stock would inevitably suffer when the non-public material information was eventually disclosed. Such delayed disclosure can typically have severe results for the value of a stock – and, indeed, here it did.

222. Defendants knew (or should have known) that due to the Company's illegal and fraudulent acts, Wells Fargo's stock price would suffer and negatively affect Plan Participants' retirement savings when the truth ultimately emerged. Based on Defendants' extensive business and fiduciary experience, they clearly should have expected the extremely negative market reaction that the Wells Fargo's stock and reputation experienced.

223. The reasonable and easily foreseeable results of Wells Fargo's non-disclosure of the broad and systemic fraud scheme were material, including: (a) large regulatory fines; (b) shareholder lawsuits; (c) consumer lawsuits; (d) civil fines; (e) loss of stock value; (f) the adverse effect on Wells Fargo's reputation; (g) dismantling of the legitimate aspects of the cross-selling program; and (h) and Wells Fargo's employees' losses resulting from the Plan's continued investment in Wells Fargo stock.

224. Any tension between the securities law and Defendants' fiduciary obligations is one of their own making. Fiduciaries without disclosure obligations under

the federal securities laws, as well as those with such obligations, have it within their power to prevent harmful investments by Plan Participants. Fiduciaries without disclosure obligations should act to protect Plan Participants as soon as they know or should know that material information for which disclosure is required under securities laws is not being released to the public. Fiduciaries with securities law disclosure obligations should act to protect the Plan Participants under ERISA as soon as the federal securities laws require disclosure.

225. The fact that certain fiduciary Defendants decided not to act at an early stage does not mean that ERISA fiduciary duties do not apply thereafter. Rather, it means quite the opposite. It means that they are continuing to violate their fiduciary duties by not acting.

J. No Prudent Fiduciary Could Have Concluded That Alternative Actions For The Plan Would Have Caused More Harm Than Good; Defendants' Failure to Consider and Implement Alternative Actions Damaged The Plan.

226. Under the specific facts of this case, no prudent fiduciary could have concluded that alternative actions for the Plan would have caused more harm than good.

227. Defendants were required to take alternative actions for the Plan because the underlying fraud, and concealment thereof, went to the very heart of Wells Fargo's two key drivers of share value – cross-selling and a reputation for truthfulness and loyalty. Wells Fargo repeatedly touted these key aspects of their business model and share value, and analysts and the investing public relied on these aspects to drive up share value for years.

228. And because the nature of the fraud and related investigations was such that it was inevitable that the existence and facts of the scheme were ultimately going to be unearthed and disclosed, taking alternative action was mandatory to protect the Plan.

229. Among the alternative actions available to Wells Fargo, which no prudent fiduciary would have deemed to cause more harm than good to the Plan, were the following:

a. Adequately implementing processes to stop the known fraud and to mitigate the adverse consequences of the known fraud, including but not limited to, an earlier, comprehensive, and genuine investigation into the known wrongdoing; the protection of whistleblowers; and the implementation of compliance requirements and reporting measures as required and suggested by regulators. As is evidenced by the actions and statements of Wells Fargo after the scandal was revealed on September 8, 2016, Wells Fargo had the ability to implement practical solutions to prevent the fraudulent practices. During a November 3, 2016 investor conference, Wells Fargo announced, through CEO Tim Sloan and retail banking head Mary Mack, "that Wells Fargo is moving quickly to put in place new rules for its workers that will prevent the sort of culture that lead to the scandal…." The alternative action of developing processes to stop the known fraud (such as revising the incentive structure, which they have now abolished entirely) would necessarily have benefitted the Plan. Solely by way of example, other measures that could have been undertaken

include: (i) introducing risk management guidelines regarding the sale and cross-sale of services, and more importantly, the Bank's central values, ethos and compliance-based performance requirements; reviewing and testing regulatory compliance and risk management by the Board of Directors and management (including those responsible for Wells Fargo's 401(k) Plan) and held such individuals responsible and accountable; seeking forfeiture from Board members and/or management and employees for any personal investment gains, compensation and/or benefit packages obtained during and as a result of the illegal and unethical activities within the Community Banking division; (ii) conducting risk assessment analyses, workshops and training at all levels of the organization; and/or (iii) appointing an independent monitor to oversee the actions of the Board, management and 401(k) plan fiduciaries to mitigate the harm caused to customers, employees and investors (including the plaintiffs in this action) and ensure that the Bank's regulatory compliance and risk management are effective and lead to sound sales practices by the Company. Had Wells Fargo adequately implemented processes to stop the known fraud, it would have, at least, reduced the ultimate amount of fraudulent activity and demonstrated its dedication to integrity. This would necessarily have benefitted the Plan because, upon the eventual revelation of the fraud, there would have been, at least, less of a negative impact on Wells Fargo's

reputation and on Wells ability to continue engaging in acceptable sales practices that it has now had to curtail.

b. Undertaking truthful and complete public disclosure earlier, by Board members and managers to the public, including participants in, and beneficiaries of, Wells Fargo's 401(k) Plan, and to government regulators including, but not limited to, the OCC, CFPB, SEC, FDIC, and DOL, in order to protect customers and investors, especially Plan Participants, against the *known* fraud. This alternative action would also have been necessarily more beneficial to the Plan than what the Plan fiduciaries actually did, which was to permit the fraud to fester and then to actively conceal the scandal for years. By making an early and truthful disclosure, the benefits would have been multi-fold: (1) the fraud would have been reduced significantly in scope because the disclosure was a strong signal that employee fraud was being taken seriously and it was not tolerated, (2) investors would have thereby received some assurance that the Company was taking the issue seriously and taking actions to remedy it, and (3) the Company's reputation for integrity would have been far less damaged as opposed to the active concealment and disingenuous posturing after the fact (including Stumpf's ill-fated and scripted positioning during the Senate Hearing). It would have also given Plan Participants a fair opportunity to make informed decisions about the investment of their monies under the Plan. Further, by making an earlier disclosure, it would have led to the

stock no longer being artificially inflated in the market, and would have significantly reduced the amount of artificially-inflated stock purchased by the Plan Participants. In sum, no prudent fiduciary could have deemed an earlier truthful and accurate disclosure would have caused more harm than good when the problem was going to be unearthed eventually, particularly in light of extensive regulatory investigations and increasing pressure due to the pattern of firing thousands of employees, including whistleblowers. Like a Ponzi scheme, the end was coming; rather than reducing the losses much earlier, Wells Fargo Plan fiduciaries let the scheme go until everyone lost everything;

c. Freezing further stock purchases (and sales) by the 401(k) Plan earlier, when the extent of the fraud, its inevitable effect on the Company's reputation, and the increased harm that would occur from continued concealment became clear. The rationale for this alternative action, which would have necessarily benefitted the Plan, is similar to the above. By freezing further stock purchases and sales, Plan fiduciaries would have prevented Plan Participants from purchasing billions of dollars of Wells Fargo stock at fraudulently-inflated values;

d. Discontinuing the automatic investment under the Plan of the employer contributions into Wells Fargo stock. The fact that the Company defaulted employer matching contributions into Wells Fargo stock is particularly problematic because 34% of the Plan was invested in Wells Fargo stock

and, as the Company knows, since it is one of the largest third-party administrators for 401(k) plans, and as found by the Pension Research Council at The Wharton School, University of Pennsylvania, "most 401(k) plan participants are characterized by profound inertia."[3] This alternative action could not possibly have caused damage to the Plan. Rather, it would have provided the benefit of diversification and decreased the amount of Wells Fargo common stock purchased at fraudulently-inflated values;

e. Purchasing a hedging product. Defendants could have used their authority as fiduciaries to divert some of the Plan's funds into a low-cost hedging product that would behave in a countercyclical fashion vis-à-vis Wells Fargo stock. Products such as the ESOP Protection Trust, designed by StockShield, LLC, are structured as irrevocable trusts which pool funds together from a group of financially healthy and diverse companies for a fixed period of time. Applicants are thoroughly screened and vetted for the benefit and protection of other participating companies. The trust is managed by an independent third party. During a fixed time period, the pooled funds are invested in safely and securely, typically in U.S. Treasury

[3] Pension Research Council, The Wharton School, University of Pennsylvania Olivia S. Mitchell, Gary R. Mottola, Stephen P. Utkus, and Takeshi Yamaguchi, *The Inattentive Participant: Portfolio Trading Behavior in 401(k) Plans*: "Most workers in defined contribution retirement plans are inattentive portfolio managers: only a few engage in any trading at all, and only a tiny minority trades actively. Using a rich new dataset on 1.2 million workers in over 1,500 plans, we find that **most 401(k) plan participants are characterized by profound inertia**. Almost all participants (80%) initiate no trades, and an additional 10% makes only a single trade, in a two-year period." (Emphasis added).

securities. At the conclusion of the fixed period, the trust restores losses caused by declines in price of company stock. Typical products offering this protection only require annual cash deposits of 1-2%. However, if the trust is not required to restore any losses to participating companies, refunds of over half of the amount of the annual contributions are typically issued to participants. This can bring the cost of participation down to 0.10% per year. Second, should the participant's stock appreciate in value during the fixed period, the participant retains all of the benefit of that appreciation, and all of the benefit of any dividends paid. No fiduciary would deem this alternative action to do more harm than good because it provides the Plan, and other investors, with the benefits of protecting against the inevitable fallout from the scandal. If Plan fiduciaries pursued a hedging strategy, the effect of the artificial share inflation would have been significantly less, thereby benefitting Plan Participants instead of harming them under the path Wells Fargo actually took.

230. Despite having these corrective options – and other options – available to the Company, Defendants failed to take *any* of these actions to protect Plan Participants.

231. No prudent fiduciary could deem that no corrective action – particularly considering Wells Fargo's systematic concealment and simultaneous self-dealing – would be better than performing one or more of the above alternative actions. Indeed, the radical drop in Wells Fargo's stock price following disclosure of the prolonged Company misconduct and cover-up proves this point.

232. Where a known, ongoing fraud exists – and, therefore, a disclosure (or possibly a corrective disclosure) is separately required by the securities laws – a plan fiduciary's overarching objective must be to stop the fraud and prevent the plan from continuing to purchase artificially-inflated stock while the fraud continues. This is particularly true in this case when the concealed fraud related to Wells Fargo's own professed key drivers of stock value – cross-selling and its reputation.

233. Because Wells Fargo had an obligation under the securities laws to disclose the material information relating to the fraud, a prudent and loyal fiduciary could not have concluded that taking alternative corrective actions would have caused more harm than good to Plan assets. And even if Wells Fargo did not have an obligation under the securities laws to disclose the material information, no prudent and loyal fiduciary could have concluded that taking other alternative actions would cause more harm than good to Plan assets. In failing to do so, Wells Fargo severely damaged its reputation, which the marketplace values, particularly in the banking field. As stated in the 2016 Journal of International Banking Law and Regulation in an article entitled *Fraudsters at the Gate: How Corporate Leaders Confront and Defeat Institutional Fraud*: "Banks and banking rely on trust. Trust can take years, if not decades, to establish, but can be lost in an instant." And as the Charlotte Observer stated: "The allegations have marred the reputation of Wells Fargo, the third-largest U.S. bank by assets and the nation's biggest home lender."

234. Tim Sloan, new CEO of Wells Fargo, echoed this principle and confirmed Wells Fargo's corrupt culture and the impact it had on the Company: "There are things

that need to be fixed within our culture. There are weaknesses within it that must change. If my top priority as CEO is to restore the trust we've lost, then I also need to make it safe to talk about the problems that got us here – no matter where they began, no matter where the responsibility lies."

235. Defendants knew – or should have known – that disclosure of the fraud was going to happen one way or another. The federal securities laws required disclosure. Wells Fargo was being investigated by multiple regulatory agencies; the fruits of those investigations were eventually going to become public and thus reveal the truth about the Company's misconduct – indeed, that is *exactly* what ended up happening. Whistleblowers were coming forward; sooner or later one of them was going to get the ear of the government or the media. Thus, the question was not *whether* they could prevent a stock drop due to Wells Fargo's fraud, but *when* that drop would occur, and how severe it would be. Defendants should have recognized that the sooner they acted, the less severe the drop, and, therefore, the less harm to the Plan and to Plan Participants.

236. If Defendants had undertaken a corrective public disclosure at any time prior to the news of the scandal breaking on September 8, 2016, then every Plan Participant who purchased Wells Fargo stock between that point and September 8, 2016 would not have purchased Wells Fargo stock at an artificially inflated price caused by concealment of the scandalous fraud.

237. Further, any reasonably prudent fiduciary would have foreseen that delaying any corrective action, including the disclosure of the broad and systemic fraud, would exacerbate the negative impact on Company stock value that would occur upon

revelation of the fraud, and would have acted prudently by taking one or more of the alternative actions described above in order to adhere to their ERSIA fiduciary duties. This principle was poignantly echoed by Stumpf during his Senate testimony: "We should have done more sooner."

238. If Defendants had taken steps to eliminate the fraud in combination with corrective public disclosure near the very beginning of Wells Fargo's herein-described fraudulent conduct, almost all of the artificial inflation of Wells Fargo's stock price that occurred could have been avoided, and virtually no Plan Participants would have been harmed. But as the fraud went on, Plan Participants unknowingly continued making purchases at artificially high prices, and thus the harm to Plan Participants steadily increased. As two experts framed the issue:

> If the fraud occurs on one day at the beginning of the class period so that the gap between the value line and the price line appears immediately, the bias will be small because only investors who purchased the securities in the first few days of the class period are affected by the error. However, if the fraud consists of a series of omissions and misrepresentations so that the gap between the price line and the value line widens slowly, ***the inflation will be overstated for a much larger group of purchasers***.

Bradford Cornell and R. Gregory Morgan, *Using Finance Theory to Measure Damages in Fraud on the Market Cases*, 37 UCLA L. Rev. 883, 911 (1990) (emphasis added).

239. Defendants knew that the longer fraud persists, particularly when it relates to a company in an industry in which trust is paramount and the company touts its reputation for trust, and when senior executives are knowingly concealing it while self-dealing, the harsher the correction will be when the fraud is finally revealed.

240. When a public company like Wells Fargo prolongs a fraud, the price correction when the truth emerges is that much harsher, because not only does the price have to be reduced by the amount of artificial inflation, but it is reduced by the damage to the company's overall reputation for trustworthiness as well. Some experts estimate that reputational damage can account for as much as 60% of the price drop that occurs when a fraud is revealed. This figure, moreover, increases over time. So, the earlier a fraud is corrected, the less reputational damage a company is likely to suffer.

241. This reputational damage is not merely theoretical. Economists and finance experts have conducted numerous empirical studies on the matter, and concluded that "the reputational penalty" a company suffers because it perpetrates a prolonged fraud is significantly greater than any regulatory fines or other penalties that may occur—in fact, the reputational penalty is "7.5 times the sum of all penalties imposed through the legal and regulatory system." Jonathan M. Karpoff, D. Scott Lee, and Gerald S. Martin, *The Cost to Firms of Cooking the Books*, Journal of Financial and Quantitative Analysis, Vol. 43, No. 3 (Sept. 2008). Moreover, "*[f]or each dollar that a firm misleadingly inflates its market value, on average, it loses this dollar when its misconduct is revealed, plus an additional $3.08 … **[of which] $2.71 is due to lost reputation***." *See id.* (emphasis added). And this reputational damage, unsurprisingly, increases the longer the fraud goes on. *Id.*

242. Rather than protecting the Plan, Defendants continued to offer and to allow investment of the Plan's assets in Company stock, even as Wells Fargo continued to conceal the scandal and perpetrate the systemic fraud scheme. Defendants' breaches, and

consequent damage to the Plan, were exacerbated by the fact that Defendants continued defaulting matching contributions into the Wells Fargo common stock, which resulted in a massive concentration of assets in the stock. As of 2016, approximately 34% of Plan assets (a staggering $11 billion) of Plan Participants' retirement assets had been invested in Wells Fargo stock.

243. The Plan was devastated by Defendants' breach. Upon information and belief, over the course of the Class Period, the Plan was a net purchaser of Wells Fargo stock by a margin of at least $1.5 billion, showing that far more Plan Participants were damaged than could have possibly benefited from serendipitously selling during the inflation window.

244. Given that the ongoing fraud was going to inevitably be unearthed (and it was), undertaking alternative action – such as the above-listed exemplars – would not have done more harm to the Plan than good. Rather, taking such alternative action would have protected the Plan and avoided the large Plan losses that resulted from the continuation of the broad and systemic fraud scheme and the delayed disclosure of the non-public material information regarding the scheme.

245. Under the circumstances alleged herein, in order to prevent greater harm caused by delayed corrective actions and disclosure, Plan fiduciaries needed to make inquiries and take prudent alternative actions to avoid continued fraud and continued investment in artificially-inflated Company stock that would inevitably fall. Defendants failed to do that and the Plan and Plan Participants were damaged thereby.

246. Had Defendants fulfilled their fiduciary duties of prudence and loyalty under ERISA and chosen to implement alternative action(s), such as those listed above, they would have protected the Plan from unreasonable and predictable losses exacerbated by years of additional fraud and concealment. Such actions would certainly do more good than harm to the Plan and Plan Participants.

VI. CLASS ACTION ALLEGATIONS

247. Plaintiffs bring this action individually and on behalf of all others similarly situated as a class action pursuant to the provisions of Rules 23(a), (b)(1), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

248. The Class is defined as follows:

> All persons who were Participants of the Wells Fargo & Company 401(k) Plan at any time between January 1, 2014 through September 15, 2016 (the "Class Period") and whose Plan accounts suffered losses, as defined by ERISA, through investments in Wells Fargo common stock (the "Class").

249. Excluded from the Class are Defendants, governmental entities, and the Judge and Magistrate Judge to whom this case is assigned and their immediate families. Plaintiffs reserve the right to revise the Class definition based on information learned through discovery.

250. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

251. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that individual joinder of all the members is impracticable. On information and belief, there were not less than 350,000 Plan Participants during the time period relevant to this action. The precise number of Class members and their addresses is presently unknown to Plaintiffs, but may be ascertained from Wells Fargo's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved, notice dissemination methods.

252. **Commonality and Predominance – Federal Rules of Civil Procedure 23(a)(2) and 23(b)(3).** Numerous common questions of law and fact exist as to Plaintiffs and the other Class members. Such questions Class include, but are not limited to:

a. Whether Defendants caused the Plan to invest its assets in funds and other investment products offered or managed by Wells Fargo subsidiaries and affiliates;

b. Whether Defendants caused the Plan to imprudently invest its assets in funds invested in Wells Fargo stock;

c. Whether Defendants breached their fiduciary duties by engaging in the conduct described herein;

d. Whether Wells Fargo breached its duty to monitor the Plan's fiduciaries to ensure the Plan was being managed in compliance with ERISA;

e. Whether Defendants are additionally or alternatively liable, as co-fiduciaries, for the unlawful conduct described herein pursuant to 29 U.S.C. § 1105;

f. Whether the Plan and its Participants suffered losses as a result of Defendants' fiduciary breaches;

g. Whether Defendants are liable under 29 U.S.C. § 1132(a)(3) to disgorge the revenues they earned as a result of the fiduciary breaches that occurred;

h. The proper form of equitable and injunctive relief; and

i. The proper measure of monetary relief.

Defendants have engaged in a common course of conduct toward Plaintiffs and the other Class members. The common issues arising from this conduct that affect Plaintiffs and the other Class members predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

253. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the above-described uniform misconduct.

254. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other Class members they seek to represent; Plaintiffs have retained counsel competent and experienced in complex commercial and class action litigation, including ERISA litigation; and Plaintiffs intend to vigorously prosecute this action. Class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

255. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and each of the other Class members are small compared to the burden and expense that would be required to individually litigate their claims against Defendants, thus rendering it impracticable for Class members to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. This is particularly true here, where Defendants, as Plan fiduciaries, were obligated to treat all Class members similarly as Plan Participants under written Plan documents and ERISA, which impose uniform standards of conduct on fiduciaries.

256. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other Class members, thereby making appropriate final injunctive and declaratory relief, as described below.

257. **Risk of Inconsistent/Dispositive Adjudications – Federal Rule of Civil Procedure 23(b)(1).** Class certification under Rule 23(b)(1) is merited here because prosecution of separate actions by individual Class members would create the risk of (a)

inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct Defendants; or (b) adjudications with respect to individual Class members that would, as a practical matter, be dispositive of the interests of the other Class members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

VII. CLAIMS FOR RELIEF UNDER ERISA

258. At all relevant times, Defendants were and acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

259. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA§ 409, 29 U.S.C. § 1109.

260. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), provides, in pertinent part, that a participant may seek appropriate equitable relief for a violation of Title I of ERISA.

261. Plaintiffs, therefore, bring this action under the authority of ERISA § 502(a) for Plan-wide relief under ERISA § 409(a) to recover losses sustained by the Plan arising out of the Defendants' breaches of their fiduciary duties for violations under ERISA § 404(a)(l) and ERISA § 405(a), and ERISA § 502(a)(3) for appropriate equitable relief to remedy violations of Title I of ERISA.

COUNT I
Breach of Fiduciary Duty in Managing and Administering Plan
(Violations of ERISA § 404)

262. Plaintiffs incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

263. As alleged above, all Defendants were fiduciaries during the Class Period within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

264. Under ERISA, fiduciaries who exercise discretionary authority or control over management of a Plan or disposition of a Plan's assets are responsible for ensuring that investment options made available to Participants under a Plan, as well as employer matching investments, are prudent and not artificially inflated in value.

265. Furthermore, such fiduciaries are responsible for ensuring that all investments in the Company's stock in the Plan were prudent and not artificially inflated in value, and that such investments are consistent with the purpose of the Plan.

266. Defendants are liable for losses incurred as a result of Wells Fargo's stock being artificially inflated in price during the Class Period, and thus imprudent and inconsistent with the Plan's purposes.

267. A fiduciary's duty of loyalty and prudence requires it to disregard Plan documents or directives that it knows or reasonably should have known would lead to an imprudent result or would otherwise harm Plan Participants or beneficiaries. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

268. Thus a fiduciary may not blindly follow Plan documents or directives that would lead to an imprudent result or that would harm Plan Participants or beneficiaries, nor may it allow others, including those whom they direct or who are directed by the Plan, including Plan trustees, to do so.

269. A fiduciary's duty of loyalty and prudence also obligates them to avoid conflicts of interest, to speak truthfully to Participants, not to mislead them regarding the Plan or its assets, and to disclose information that Plan Participants need in order to exercise their rights and interests under the Plan. This duty to inform Participants includes an obligation to provide Participants of the Plan with complete and accurate information, and to refrain from providing inaccurate or misleading information, or concealing material information, regarding the Plan's investments and investment options such that the Plan Participants can make informed decisions with regard to the prudence of investing in such options made under the Plan.

270. Defendants breached their duties of loyalty and prudence to the Plan and Plan Participants. During the Class Period, Defendants engaged in an illegal scheme to hide or conceal material adverse facts about the broad and systemic fraud scheme. Defendants knew that Wells Fargo stock had become artificially inflated in value and that Plan Participants lacked sufficient and material information to evaluate its prudence and appropriateness as an investment option for Plan Participants' retirement savings. Accordingly, Defendants should have taken appropriate alternative actions, as detailed above, but failed to do so.

271. Defendants knew or should have known that Plan Participants did not have full and complete information about the Company, and thus were unable to make fully informed decisions about whether to purchase Company stock, hold Company stock, or invest in alternatives under the Plan.

272. As a direct and proximate result of Defendants' fiduciary duty breaches alleged herein, the Plan and Plan Participants suffered damage to and/or lost a significant portion of their retirement investments in an amount to be determined at trial. Had Defendants complied with their fiduciary obligations, Plan Participants would have avoided foreseeable losses from transactions in Wells Fargo stock and thereby eliminated, or at least reduced, losses to the Plan.

COUNT II
Co-Fiduciary Liability

273. Plaintiffs incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

274. This count alleges co-fiduciary liability against all Defendants (the "Co-Fiduciary Defendants").

275. As alleged above, during the Class Period, the Co-Fiduciary Defendants were fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Defendants were thus bound by the duties of loyalty, exclusive purpose, and prudence.

276. As alleged above, ERISA § 405(a), 29 U.S.C. § 1105(a), imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same Plan if he knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. The Co-fiduciary Defendants breached all three of these provisions.

277. *Knowledge of a Breach and Failure to Remedy*: ERISA § 405(a)(3), 29 U.S.C. § 1105(a)(3), imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach. Upon information and belief, each Defendant knew, or was reckless in not knowing, of the breaches by the other fiduciaries and made no efforts, much less reasonable efforts, to remedy those breaches.

278. *Knowing Participation in a Breach*: ERISA§ 405(a)(1), 29 U.S.C. § 1105(a)(1), imposes liability on a fiduciary for a breach of fiduciary responsibility of another fiduciary with respect to the same Plan if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach.

279. Various fiduciary Defendants knowingly or recklessly participated in the breaches of other fiduciary Defendants because, as alleged above, they had actual knowledge of, or were reckless in not knowing, the facts that rendered the Company stock an imprudent retirement investment and, yet, ignoring their oversight responsibilities, permitted certain Defendants to breach their duties. Moreover, as alleged above, each of the Defendants participated in the management and/or administration of the Plan's improper investment in the artificially inflated Company stock and, upon information and belief, knowingly or recklessly participated in the improper management of that investment by the other Defendants.

280. *Enabling a Breach*: ERISA § 405(a)(2), 29 U.S.C. §1105(a)(2), imposes liability on a fiduciary if, by failing to comply with ERISA §404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

281. As a direct and proximate result of Defendants' fiduciary duty breaches alleged herein, the Plan, and Plaintiffs, and the other Plan Participants, were damaged and sustained losses in an amount to be determined at trial.

282. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), the Co-fiduciary Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

COUNT III
Failure to Monitor Fiduciaries
(Against Defendants Wells Fargo & Company and Doe Defendants)

283. Plaintiffs incorporate all factual allegations in the preceding paragraphs as if fully set forth herein.

284. As alleged throughout the Complaint, Wells Fargo is a Plan fiduciary.

285. On information and belief, through its selection, management, and supervision of the Employee Benefits Review Committee ("EBRC," defined above), Wells Fargo exercises discretionary authority or discretionary control respecting management of the Plan, as well as discretionary authority and responsibility with respect

to the administration of the Plan, and is, therefore, a fiduciary under 29 U.S.C. § 1002(21)(A).

286. Wells Fargo had overall oversight responsibility for the Plan, and the explicit responsibility for appointing and removing EBRC members. Wells Fargo had a fiduciary responsibility to monitor the performance of the other Plan fiduciaries, including the EBRC.

287. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and monitoring of Plan assets, and must take prompt and effective action to protect the Plan and its Participants when the monitored fiduciaries fail to perform their fiduciary obligations in accordance with ERISA.

288. To the extent that Wells Fargo's fiduciary monitoring responsibilities were delegated, each Defendant's monitoring duty included an obligation to ensure that any delegated tasks were being performed prudently and loyally.

289. Wells Fargo breached its fiduciary monitoring duties by, among other things:

(a) failing to monitor and evaluate the performance of the other fiduciary Defendants or have a system in place for doing so, standing idly by as the Plan suffered losses as a result of the other fiduciary Defendants' imprudent actions and omissions;

(b) failing to monitor the processes by which Plan investments were evaluated, which would have altered a prudent fiduciary to take alternative actions; and

(c) failing to remove fiduciaries whose performance was inadequate in that they continued to imprudently allow Plan investment in artificially inflated Wells Fargo stock.

290. As a consequence of the foregoing breaches of the duty to monitor, the Plan, Plaintiffs, and the other Plan Participants, were damaged and sustained losses in an amount to be determined at trial. Had Wells Fargo not abrogated its duty to monitor, Plan Participants would have avoided foreseeable damages and losses.

291. Pursuant to 29 U.S.C. §§ 1109(a), 1132(a)(2), and 1132(a)(3), Wells Fargo is liable to restore to the Plan all losses suffered as a result of the fiduciary breaches that resulted from their failure to properly monitor the Plan's fiduciaries, and subsequent failure to take prompt and effective action to rectify any observed fiduciary breaches.

VIII. CAUSATION

292. As discussed in detail above, the Plan suffered not less than hundreds of millions of dollars in damages and losses because Defendants breached their fiduciary duties by, among other things, allowing substantial Plan assets to be invested in Wells Fargo stock during the Class Period.

293. Had Defendants properly discharged their fiduciary and co-fiduciary duties by taking any of the above-described alternative actions, the Plan and Plan Participants would have avoided the damages and losses that they sustained.

IX. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other Class members, respectfully request that the Court grant the following relief:

(a) Determining that this action may proceed as a class action under Rule 23(b)(1), Rule 23(b)(2), and Rule 23(b)(3) of the Federal Rules of Civil Procedure.

(b) Designating Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;

(c) Declaring that Defendants have breached their fiduciary duties under ERISA;

(d) Compelling Defendants to personally restore make good to the Plan all losses that the Plan incurred as a result of the above-described fiduciary duty breaches, and to restore the Plan to the position it would have been in but-for this unlawful conduct;

(e) Requiring Defendants to disgorge all revenues received from the Plan, and/or equitable relief pursuant to 29 U.S.C. 1132(a)(3) in the form of an accounting for profits, imposition of constructive trust, or a surcharge against Defendants as necessary to effectuate said relief, and to prevent Defendants' unjust enrichment;

(f) Enjoining Defendants from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

(g) Granting other equitable relief to redress Defendants' illegal practices and to enforce the provisions of ERISA as may be appropriate;

(h) Awarding pre-judgment interest;

(i) Awarding attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g) and/or the common fund doctrine; and

(j) Awarding such other relief as the Court deems equitable and just.

Dated: December 21, 2016

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