UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JOHN STERLING ROSS, and all other individuals similarly situated, Plaintiff, vs. HOPE HARDISON, TIMOTHY J. SLOAN, DAVID A. HOYT, MICHAEL J. HEID, FRANK CODEL, and JUSTIN C. THORNTON, Defendants.	Case No.: **CLASS ACTION COMPLAINT** JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

Plaintiff John Sterling Ross ("Plaintiff"), by and through his attorneys, files this Complaint on behalf of himself and other similarly situated current and former employees of Wells Fargo & Company ("Wells Fargo" or the "Company"), or its predecessor companies, who were participants in and beneficiaries of the Wells Fargo 401(k) Plan (the "Plan") and who were invested in the Company stock during the period of February 28, 2013, through September 20, 2016, inclusive (the "Class Period"). Plaintiff alleges the following based on the investigation of his counsel, which included a review of the Plan's governing documents; the Plan's annual reports filed with the United States Securities and Exchange Commission ("SEC") and U.S. Department of Labor; discussions with Plan participants; other SEC filings by Wells Fargo; other lawsuits against Wells Fargo; press releases and other public statements issued by Wells Fargo; and media reports about Wells Fargo. Plaintiff believes that substantial additional evidentiary support exists and will emerge for the allegations set forth herein after there has been a reasonable opportunity for discovery.

1. This is a class action brought pursuant to Section 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132, by participants in the Plan, and on behalf of the Plan, to recover many millions of dollars of damage suffered in their retirement accounts due to breaches of fiduciary duties owed to them relating to the recent *Wells Fargo Fake Account Scandal*.

2. On September 8, 2016, the U.S. Consumer Financial Protection Bureau ("CFPB") published its Consent Order ("Consent Order") with Wells Fargo, which shocked its investors and the market. The Consent Order revealed that, for many years, Wells Fargo had engaged in fraudulent illegal activities, and perpetuated a corporate culture which promoted these activities, to grow its cross-selling opportunities and bank revenues. Wells Fargo bankers opened unauthorized deposit and credit card accounts, and engaged in forgery and other improper activities, because these employees were pushed by management and supervisors to meet aggressive and highly unrealistic sales quotas or they faced demotions and firings. Wells Fargo's management ***at all levels***, from district and regional managers up to its most senior officers, not only knew of the improper business practices, but promoted and encouraged them so the quotas were met. The Consent Order imposed a fine of $185 million on Wells Fargo, but the revelations about its fraudulent practices have likely done greater harm to the bank's reputation.

3. News of the *Wells Fargo Fake Account Scandal* drew an enormous public and political response. For more than a week, it was the top story on nearly every major news agency and Wells Fargo's CEO John Stumpf was called to testify before U.S. Senate Committee on Banking, Housing and Urban Affairs. Moreover, as details about the truth emerged, Wells Fargo's stock price, which had artificially grown from the fraud, declined by **9%**, from a close of $49.90 per share on September 8, 2016 to a close of $45.43 per share on September 16, 2016. The stock

price has remained stagnant in the time since. Recently, the California Office of the Attorney General opened up a *criminal* investigation of Wells Fargo's disreputable business practices. In response to all of these events, Wells Fargo has had to announce fundamental changes to its business practices, including the elimination of its sales quotas and incentive compensation structure, which will likely reduce the Company's heretofore-inflated revenues for years to come.

4. Defendants are senior corporate officers of Wells Fargo, and are some of the members of the Employee Benefits Review Committee (the "EBRC") that was the Plan's "Named Fiduciary," responsible for overseeing the prudence of all investment options available under the Plan, including Wells Fargo stock.

5. The Plan is a defined contribution plan under ERISA sponsored by Wells Fargo for eligible employees to contribute a portion of their income towards their retirement savings. Among the investment options available to Plan participants are the Wells Fargo ESOP Stock Fund and Wells Fargo Non-ESOP Stock Fund (together, the "Stock Fund"),[1] which both invest primarily in shares of Wells Fargo stock. During the Class Period, Wells Fargo stock was the largest single investment purchased and held under the Plan by the Plan participants through the Stock Fund.

6. Defendants' breaches of fiduciary duty occurred when they knew or should have known that Wells Fargo's stock had become artificially inflated in value due to fraud and misrepresentation relating to the *Wells Fargo Fake Account Scandal*, which made Wells Fargo stock an imprudent investment under ERISA, thereby damaging the Plan and those Plan participants invested in the Stock Fund.

7. Defendants, as Plan fiduciaries, were required by law to ensure that the investment of the Plan and its participants' retirement funds in the Stock Fund remained a prudent investment

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[1] "ESOP" stands for employee stock option plan.

option. This duty exists notwithstanding any language in the Plan or any policy adopted by them or the Company that attempted to remove decision-making responsibility for, or discretion over, the Stock Fund. Under ERISA, Defendants' responsibility to ensure the prudence of the Stock Fund as an investment option cannot be delegated, abnegated or otherwise avoided.

8. Defendants knew or should have known that Wells Fargo stock had become imprudent during the Class Period because false and undisclosed material information had artificially inflated its stock price. Defendants are among Wells Fargo's most senior officers, and thus were directly involved in fostering the Company's sales culture, conducting internal investigations and responding to regulatory inquiries; thus, they knew or should have known about the fraudulent practices of the Company's bankers. This knowledge was within the direct scope of their duties as Wells Fargo's most senior officers. And, because Wells Fargo's fraudulent activity drove the Company's success at cross-selling, they also knew or should have known how material and important this information was to the market and to investors.

9. Based on their knowledge, Defendants were duty-bound by ERISA to prevent harm to the Plan and its participants from undisclosed and/or false material information that they knew or should have known had made Wells Fargo stock and the Stock Fund an imprudent investment for retirement purposes. They knew or should have known that the Plan was harmed with every purchase made of the Stock Fund at inflated prices, and that the Plan's large holdings of Wells Fargo stock were at risk for a sizeable downward price correction when the truth finally and inevitably emerged. They also knew that any fraud or scandal revelation would damage investors—and employees'—long-term confidence in Wells Fargo, and that this damage would only increase the longer Wells Fargo's fraud lasted.

10. Pursuant to the Plan, as well as their general powers as ERISA fiduciaries, Defendants, through their positions on EBRC, could have halted new contributions or investments into the Wells Fargo Stock Fund. Defendants could also have tried to effectuate, through personnel with disclosure responsibilities, or, failing that, through their own agency, truthful or corrective disclosures to cure the fraud and make Wells Fargo stock a prudent investment again. Defendants also could have directed the Plan to divert a portion of its holdings into a low-cost hedging product that would at least serve as a buffer to offset some of the damage the Company's fraud would inevitably cause once the truth came to light.

11. Defendants could not reasonably have believed that taking any of these actions would do more harm than good to the Plan or to Plan participants. Wells Fargo stock traded in an efficient market. As experienced senior executives, Defendants were—or should have been—familiar with the rudimentary principles of how securities trade in efficient markets. Thus, they should have known that correcting the Company's fraud would reduce Wells Fargo's stock price only by the amount by which it was artificially inflated to begin with. They had no basis to believe that any factor was distorting the market for Wells Fargo stock at the time—such as widespread short-selling or liquidity problems or the like—and thus no reason to fear that public correction of the Company's fraud would result in an overcorrection of Wells Fargo's stock price.

12. Moreover, Defendants knew or should have known that, the longer a fraud of a public company like Wells Fargo persists, the harsher the correction is likely to be when that fraud is finally revealed. Economists have known for years that 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.

13. Such a consideration should have been in the forefront of Defendants' minds once they knew (or should have known) that Wells Fargo's stock price was artificially inflated by fraud. The sooner they corrected that fraud, the less reputational damage the Company would suffer, and therefore the gentler the price correction would be. And, in the long term, the Company's reputational trustworthiness would have been less undermined as well, making a swifter price recovery, and greater future gains, more likely. Indeed, the fact that Wells Fargo's price continues to trade at post-revelation levels approximately one month after the truth came out strongly suggests that significant damage to the Company's reputation has been done by the Company's prolonged fraud.

14. As a last resort, 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. Such products have been available to providers of ESOPs for many years now. They impose very few transaction costs on a retirement plan, and their proprietary hedging formula allows for an ERISA fiduciary to make at least a contingency plan to deal with the inevitable drop in stock price that will come from the perpetuation of a corporate fraud. And, because such hedging products are not derivatives, an ESOP's purchase of them does not qualify as a disclosable event under the federal securities laws. Defendants' failure to put into action such a hedge strategy therefore resulted in specific financial damage to the Plan, which, upon information and belief, can be quantified with access to necessary fact discovery and through the use of expert analysis.

15. The point is, Defendants knew, or should have known, that no fraud lasts forever. The federal securities laws, if nothing else, would eventually have forced Wells Fargo to come clean with the public. Defendants knew (or should have known) that the ongoing regulatory inquiries being conducted by the CFPB and others would eventually result in disclosure of the Company's misconduct. And, because Defendants should also have known that the longer a fraud goes on, the more damage it does to investors—including Plan participants invested in the Stock Fund—they should have recognized that acting as soon as possible to end the fraud, or at least stop further inflated-value purchases, or at least take on a hedged position, could not have done the Plan or its participants more harm than good.

16. Defendants cannot have reasonably believed that there would be more harm than good to the Plan or its participants from acting to prevent the fraud or the damage caused by it. First, Defendants could not have reasonably believed that restricting new purchases of the Wells Fargo Stock Fund would likely do more harm than good to the Plan or its participants. The act of preventing any new purchases of the Wells Fargo Stock Fund is not illegal "insider trading" under the federal securities laws because no transaction would occur and no insider benefit would be received by anyone. Defendants would simply have to ensure that neither purchases nor sales of the Wells Fargo Stock Fund would be permitted during the time that the freeze was in place. However, taking this action would have prevented serious harm to the Plan by at least preventing additional purchases of Stock Fund shares at inflated prices.

17. The Plan participants who chose to purchase the Wells Fargo Stock Fund paid fraudulent, excessive prices for the stock during the Class Period. They suffered concrete financial harm to their retirement savings by over-paying for Wells Fargo stock which, Defendants knew, would fall sharply in value when the truth came out and the stock corrected. When the fraud was

revealed, Wells Fargo's stock fell by approximately 9%. The Plan participants who purchased Wells Fargo tock were damaged by overpaying this amount, and they bore this foreseeable loss which could have been avoided. No matter what happens to the stock price in the future, these Plan participants sustained a loss due to paying the excessive artificial price, and they will bear this loss even if Wells Fargo stock recovers in the future. Defendants should have acted to end and prevent this concrete, present harm to the Plan, and no harm would have resulted from their action.

18. Additionally, Defendants could not have reasonably believed that effectuating truthful, corrective disclosure would do more harm than good to the Plan or its participants. First and foremost, Defendants' participation, even if passive, in a fraud or its concealment which deceives Plan participants runs counter to ERISA's fundamental obligation that fiduciaries must communicate truthfully and accurately with those to whom a fiduciary duty is owed. At a minimum, Defendants had the fiduciary obligation to disclose the truth to correct the known fraud and not participate in its concealment.

19. Truthful disclosure was also needed to prevent worse future harm to the Plan and Wells Fargo's stock price. Defendants may argue that they were concerned that correcting the fraud would temporarily lower the stock price, but that concern should not have deterred disclosing the truth. Every stock fraud in history, when corrected, has resulted in a temporary drop in the stock price; that is an inherent quality of efficient markets. But, in virtually every fraud case, the longer the fraud persists, the harsher the correction tends to be, usually because a prolonged fraud necessarily means that long-term damage is also done to a fraudster's reputation for trustworthiness. Defendants should have disclosed the truth sooner rather than later to prevent

further artificial inflation and purchases at excessive prices, as well as to forestall worse future damage to Wells Fargo's stock price owing to reputational damage.

20. Defendants' inaction towards the known fraud caused not merely theoretical harm, but concrete damage. Upon information and belief, over the course of the Class Period, the Plan was a ***net buyer*** of Wells Fargo stock by a margin of approximately $3.5 ***billion***. Even if Defendants thought that some "good" was being done for Plan participants fortunate enough to be selling their Stock Fund shares during the Company's ongoing fraud, they knew or should have known that the "harm" being done to Plan participants who were buying Stock Fund shares during that time was far greater—3.5 billion times greater, in fact.

21. The longer that Wells Fargo's fraud went on, the more Plan purchasers bought at artificially inflated prices, and the size of the harm to each purchaser increased over time as the stock price inflated. As a result, Wells Fargo's stock had farther to fall when the truth inevitably came out, so that the purchases were hurt even worse as the result of choosing to invest in Wells Fargo stock.

22. The Plan holders of Wells Fargo shares suffered greater harm and damage in this same manner from Defendants' failure to end the fraud. While they held Wells Fargo shares over the period of time when the stock price was artificially appreciating in value, they were deceived by the false growth. They suffered greater losses when Wells Fargo's stock price corrected, and fell further due to the loss of management credulity. They also were deprived of the option of transferring their shares into one of the different, prudent investment alternatives under the Plan, which would have spared them from the greater losses when the stock correction took place. Most important, holders suffered a harsher correction than they would have had Defendants acted in a timelier fashion.

23. Additionally, the issuance of corrective disclosure was required by the federal securities laws. By the very same mechanism that Wells Fargo could have used to make corrective disclosures to the general public under the federal securities laws, it could also have made disclosures to Plan participants, because Plan participants are, after all, part of the general public. Defendants did not have to make a "special" disclosure only to Plan participants, but could simply have sought to have one corrective disclosure made to the world and thereby simultaneously satisfied the obligations of the federal securities laws *and* ERISA.

24. Indeed, earlier disclosure by Wells Fargo would have affirmatively benefitted the Plan and its participants, as well as mitigated the harm. With the truth about Wells Fargo's prospects, Plan participants could properly evaluate the Wells Fargo stock and Stock Fund versus their other investment alternatives for their retirement savings. Plan participants considering new purchases with their annual contributions could select healthier, prudent investment options such as diversified mutual funds which outperformed Wells Fargo stock during the Class Period. And over the long term, the failures to act by the Plan fiduciaries to expose corporate fraud is likely to have a chilling effect on future purchases of the Wells Fargo and Stock Fund by Plan participants, whose trust in their employer is inevitably eroded by this malfeasance. Such an effect constitutes a net harm to the Plan.

25. In conclusion, Defendants breached their fiduciary duty to the Plan and its participants: the "highest [duty] known to the law." Defendants were many of Wells Fargo's most senior officers, who knew or should have known that its success at cross-selling and generating revenues was the result of fraudulent practices, that its public statements about its cross-selling success were false and misleading, and that its stock price was artificially inflated and imprudent as a result. Defendants knew or should have known that there was an ongoing fraud

that was damaging all new purchasers of Wells Fargo stock through the Plan as well as existing holders through the Plan, yet they failed to restrict new purchases of the Wells Fargo Stock Fund by the Plan or to make corrective disclosures so that Plan participants were not further harmed by overpaying for imprudent stock at artificially inflated prices, and were not further denied the opportunity to make informed alternative investments.

26. While Defendants did nothing, Wells Fargo's stock price traded up to over $55 per share, then fell to below $45 per share, costing its employees many millions of dollars in retirement savings. Meanwhile, other investments in the Plan have fared far better, while the Plan and its participants have suffered greater losses because of investment decisions that were based on materially false information. Defendants are directly responsible for this enormous harm to the Plan and Plan participants that their breach of duty has caused.

I. JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

28. Venue is proper in this district pursuant to ERISA § 501 (e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in this district and some or all of the fiduciary breaches for which relief is sought occurred in this district.

II. THE PARTIES

29. Plaintiff John Sterling Ross is a Plan participant within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7). He is a former employee of Wells Fargo who was and continues to be a participant in the Plan. He purchased and held shares of the Wells Fargo Stock Fund in his Plan retirement savings account during the Class Period.

30. At all times, Defendant Hope Hardison was the Director of Human Resources of Wells Fargo, and later also became the Company's Chief Administrative Officer. Upon information and belief, she was also a Plan Administrator and a member of the EBRC and thus a "Named Fiduciary" of the Plan. Defendant Hardison was also a fiduciary of the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because she had discretionary authority and control over the Plan and investments in Wells Fargo stock.

31. From May 15, 2014 through the end of the Class Period, Defendant Timothy J. Sloan was the Head of Wholesale Banking at Wells Fargo, and, therefore, upon information and belief, a member of the EBRC and thus a "Named Fiduciary" of the Plan. Defendant Sloan was also a fiduciary of the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because he had discretionary authority and control over the Plan and investments in Wells Fargo stock. Defendant Sloan was recently named the new Chief Executive Officer of Wells Fargo.

32. From the beginning of the Class Period until May 15, 2014, Defendant David A. Hoyt was the Head of Wholesale Banking at Wells Fargo, and, therefore, upon information and belief, a member of the EBRC and thus a "Named Fiduciary" of the Plan. Defendant Hoyt was also a fiduciary of the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because he had discretionary authority and control over the Plan and investments in Wells Fargo stock.

33. From the beginning of the Class Period through September 30, 2015, Defendant Michael J. Heid was the Head of Home Lending at Wells Fargo, and, therefore, upon information and belief, a member of the EBRC and thus a "Named Fiduciary" of the Plan. Defendant Heid was also a fiduciary of the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because he had discretionary authority and control over the Plan and investments in Wells Fargo stock.

34. From October 1, 2015 through the end of the Class Period, Defendant Frank Codel was the Head of Home Lending at Wells Fargo, and, therefore, upon information and belief, a member of the EBRC and thus a "Named Fiduciary" of the Plan. Defendant Codel was also a fiduciary of the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because he had discretionary authority and control over the Plan and investments in Wells Fargo stock.

35. At all times, Defendant Justin C. Thornton is and was the Director of Compensation and Benefits at Wells Fargo. He was also the Plan Administrator and thus a "Named Fiduciary" of the Plan as well as a fiduciary of the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because he had discretionary authority and control over the Plan and investments in Wells Fargo stock.

III. PLAINTIFF'S PLAN DOCUMENT REQUEST

36. On September 21, 2016, by and through his attorneys, Plaintiff made a formal Plan document request pursuant to 29 U.S.C. § 1024(b)(4). The request was sent by letter to Defendant Thornton in his capacity as Plan Administrator.

37. Among other things, the letter requested "[t]he Plan documents and any amendments thereto, and any other documents governing the terms, conditions, rules and regulations of the Plan" as well as "[d]ocuments sufficient to identify during the relevant time the individuals who were the Plan Fiduciaries …. includ[ing] individuals on the Employee Benefits Review Committee[.]"

38. Under applicable authority, the Company's response to Plaintiff's request made to Mr. Thornton was due 30 days after the date of the request—October 21, 2016.

39. Plaintiff, through his counsel, contacted Mr. Thornton directly prior to October 21, 2016 to confirm that the documents and information requested in the September 21, 2016 letter

would be provided in a timely fashion. Plaintiff's counsel was directed to a different Human Resources employee of Wells Fargo, the Senior Vice President and Head of Corporate Benefits.

40. On October 20, 2016, Plaintiff's counsel wrote to the Head of Corporate Benefits to confirm that Plaintiff would receive, in response to his request, "the names, or at very least the job titles/positions, of the members of the Employee Benefits Review Committee." In response, Wells Fargo's Head of Corporate Benefits stated: "We will be providing the information requested as part of our response to the request dated September 21, 2016. As noted in our phone discussion, we anticipate having that response to you by the end of this week."

41. The Plan documents were received by Plaintiff's counsel on October 24, 2016. The documents provided, however, did not identify, by name or job title, the members of the EBRC.

42. According to an internal Wells Fargo email produced to Plaintiff along with the Plan documents, Wells Fargo personnel were specifically directed to provide only the governing Plan document, the Summary Plan Description, certain Summaries of Material Modifications to the Plan, and the Plan Trust Agreement to Plaintiff. These personnel were not directed to provide Plaintiff with the identities of the members of the EBRC.

43. Upon information and belief, based on the independent research and due diligence conducted by Plaintiff via his attorneys, the EBRC was composed during the Class Period of the Heads of Wells Fargo's Wholesale Banking, Commercial Banking, Home Lending, Private Client Services, Trust Service and Insurance businesses. Plaintiff has only named as defendants those members of the EBRC whom he can plausibly allege at this time knew or should have known about the misconduct at Wells Fargo that made the Stock Fund an imprudent investment under ERISA. Plaintiff intends to seek an order from the Court compelling Wells Fargo to identify the

names of the members of the EBRC during the Class Period, and he reserves his right to amend his complaint based on the receipt of such information.

IV. THE PLAN AND ITS FIDUCIARIES

44. The Plan is a defined contribution benefit plan that is sponsored by Wells Fargo and eligible employees can elect to contribute up to 25% of their compensation into the Plan. Generally, Wells Fargo will generally make a matching contribution for some employees of 6%. A Plan participant contributes into an individual retirement account and can invest his or her contributions into various specified investment options.

45. Under the Plan, the EBRC is the Plan's "Named Fiduciary" which is responsible for the investment options. The EBRC has "authority to control or manage the assets of the Plan." (Plan § 2.29.) Upon information and belief, the EBRC is made up of Defendant Hardison as well as the senior executive officers responsible for Wells Fargo's Wholesale Banking, Home Mortgage, Private Client Services, Trust Service and Insurance businesses.

46. According to the Trust Agreement, Plan assets, including those invested in the Stock Fund, are held in Trust. 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.) The Trust Agreement also states that the EBRC "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).)

47. The Plan Administrator, according to a 2016 Summary of Material Modifications, is "[t]he Director of Human Resources and the Director of Compensation and Benefits[.]" Upon

information and belief, Defendants Hardison and Thornton, respectively, have these positions. The Plan Administrator is also a "Named Fiduciary" under the Plan. (Plan § 2.29.)

48. The Plan Administrator is 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).) The Plan Administrator also has "sole authority … to make any determinations required in the administration of the Plan." (Plan § 12.1.)

49. The Plan states that the Plan Administrator and the EBRC, as fiduciaries of the Plan, "shall discharge his or her duties with respect to the Plan solely in the interests of Participants and their beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person 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." (Plan § 12.8.)

50. Thus, if investment in the Stock Fund contravenes applicable law—like if it becomes imprudent under ERISA—the EBRC is empowered to take necessary action to protect Plan participants, including temporarily closing the Stock Fund (via instruction to the Trustee or any appointed third-party investment manager) until such time as it becomes a prudent investment again.

51. As the Supreme Court has made clear in *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014), Defendants' fiduciary duty to ensure the prudence of the Wells Fargo ESOP and non-ESOP Fund cannot be eliminated. Even where the Plan may contain language suggesting that Defendants were precluded from removing the Stock Fund as an investment option, even temporarily, the Plan also required Defendants to adhere to the requirements of ERISA, and *Dudenhoeffer* makes clear that Defendants could not be bound by preclusive Plan language if the Stock Fund became an imprudent investment.

52. Similarly, the Plan allowed Defendants to delegate day-to-day management of Plan investments, including the Stock Fund, to a third-party investment manager; upon information and belief, Defendants had done so with respect to the Stock Fund during the Class Period. Nevertheless, the scope of Defendants' grant of authority to this third-party investment manager was controlled *by Defendants*. Thus, at any time, Defendants could have revised the investment guidelines to which a third-party investment manager was subject—and, if necessary, Defendants specifically could have revised those guidelines to compel a third-party investment manager to take the step of temporarily closing the Stock Fund to new investment while Wells Fargo remained a fraudulently priced, and therefore imprudent, investment choice.

53. Thus, based on the language of the Plan and the requirements of ERISA, throughout the Class Period, Defendants had the power and authority to take action to cease offering or to temporarily close the Stock Fund under the Plan, if necessary, to achieve compliance with ERISA or to correct any breaches of fiduciary duty toward Plan participants.

54. Defendants also could have effectuated disclosure of the truth to the public in order to correct the artificial inflation that had given rise to the Stock Fund's imprudence in the first place. As high-level corporate officers, Defendants could have petitioned those with disclosure responsibilities to correct the fraud. Such disclosure would have consistent with, and, indeed, required by, the federal securities laws and ERISA. Had their petition been rejected, Defendants could have, as a last resort, made corrective disclosures themselves.

55. When Wells Fargo stock became imprudent for investment of retirement savings, Defendants knew (or should have known) that action was needed to prevent harm to the Plan and its participants. The Wells Fargo Stock Fund represented the single largest holding of the Plan, approximately $9 billion. Each year, Wells Fargo employees purchased approximately $3 billion

of the Stock Fund with their additional and matching contributions. Defendants knew (or should have known) that any fraud or material non-disclosure about Wells Fargo which hurt its stock price would cause substantial harm to the Plan.

V. WELLS FARGO'S FRAUD MADE ITS STOCK IMPRUDENT

A. The Fraudulent "Cross-Selling" Scheme

56. Wells Fargo is a diversified financial services company with its headquarters in San Francisco, California, which provides banking, investments, insurance, mortgage, and consumer and commercial finance products and services. Wells Fargo owns the largest national bank by market capitalization and securities brokerage firm, and has 9,000 branch offices nation-wide, 265,000 full-time employees and $1.5 trillion in assets. Wells Fargo was ranked 29th on *Fortune Magazine's* 2014 ranking of America's 500 largest corporations.

57. Wells Fargo has approximately 5.4 billion of stock shares trade on the New York Stock Exchange Inc. ("NYSE") under the ticker symbol "WFC." Over the last three months, the average daily trading volume on the NYSE was 22 million shares, and its stock trades in an efficient, liquid and transparent market.

58. The Company has three reportable operating segments, Community Banking, Wholesale Banking, and Wealth and Investment Management. According to the Company, the management accounting process measures the performance of the operating segments based on Wells Fargo's management structure and is not necessarily comparable with similar information for other financial services companies. The operating segments are described below:

> a) *Community Banking*: The Company's Community Banking segment offers diversified financial products and services to consumers and small businesses that have annual sales generally up to $5 million in which the owner is the financial decision maker. Community Banking also offers, among other things, investment management and other products and services to retail customers and securities brokerages, including loan lines of credit, equipment

and transportation loans, education loans, residential mortgage loans and credit cards.

b) *Wholesale Banking*: The Company's Wholesale Banking segment provides financial solutions to businesses across the United States with annual sales generally in excess of $5 million and to financial institutions globally. Wholesale Banking provides business banking, commercial, corporate, capital markets, cash management and real estate banking products and services.

c) *Wealth and Investment Management*: The Wealth and Investment Management segment provides personalized wealth management, investment and retirement products and services to clients through Wells Fargo Advisors, The Private Bank, Abbot Downing, Wells Fargo Institutional Retirement and Trust, and Wells Fargo Asset Management.

59. As part of the Company's business strategy, throughout the Class Period, Wells Fargo emphasized to investors, customers and employees that "cross-selling" was a key part of its strategy to increase the number of retail products that each of its customers, or households, used. For example, if a customer held a mortgage with Wells Fargo, the cross-selling opportunity would be to have the same customer open a credit card or a savings account, or get an auto loan. Wells Fargo's execution on these cross-selling opportunities was considered central to the Company's business and growth prospects and recognized by the analyst community to be among Wells Fargo's best performing business strategies.

60. Cross-selling has generally been viewed as an essential performance metric and defining characteristic of Wells Fargo, setting it apart from other banks. The Company has often been lauded for the effectiveness of its sales culture and cross-selling business model, which has enabled Wells Fargo to dominate market share in comparison to other large banks. Specifically, Wells Fargo's cross-selling business model was designed to drive growth by selling new products to existing customers versus relying on new client growth. Wells Fargo's stated goal was to sell each customer household at least **eight** consumer products, a selling motto called "Gr-eight."

According to the Company, "[s]elling more products to our customers – 'cross-selling' – is very important to our business model and key to our ability to grow revenue and earnings."

61. As part of the Community Banking segment, the Company's retail banking business was particularly successful in driving growth through "cross-sell." Whereas the average bank had **three** products per customer, Wells Fargo had **six**, and pushed for a goal of **eight** per customer. Morningstar Corporate Credit Research wrote in July 2013 and again in early 2014 about client asset growth in Wells Fargo's retail banking unit, concluding that Wells Fargo's leadership and business strategy of cross-selling its products across clients and households was indeed vaunted and intact, which would lead to continued financial strength:

> ***Retail brokerage client assets grew 12% during the year***, wealth management client assets expanded 7%, and retirement assets – both individual and institutional – grew by double digits. ***In our view, the fact that these balances are growing as fast as or faster than deposits is a sign that the company's vaunted cross-selling expertise is intact. In fact, reported products per household grew across the bank's segments***.

62. Throughout the Class Period, Wells Fargo reported financial results driven by its cross-selling in the Company's retail banking business and growth attributed to its cross-selling business model:

- "***Our retail bank household cross-sell is now at 6.17 products, up from two years ago 5.98*** . . . ."
- "***Retail Banking household cross-sell ratio of 6.27 products per household, compared with 6.32 year-over- year***."

63. However, during the Class Period, Wells Fargo knew and deliberately failed to disclose known material true facts, including that the Company's cross-selling strategy and purported growth was not focused on or designed to benefit customers, but was instead generated through fraudulent activity and compliance violations. Wells Fargo's cross-selling was designed

to fulfill sales quotas or otherwise advance the interests of Wells Fargo or its employees and increase sources of profitability, while burdening customers with financial products they did not authorize, need and/or even know about. Wells Fargo engaged in this activity to maximize its revenues and business generated during the short-term, as it knew that it was regulatory scrutiny (and a proposed rule) that would soon end its aggressive cross-selling.

64. In fact, Wells Fargo and its senior officers knowingly implemented a cross-sell strategy which relied on fraudulent activity. Wells Fargo management designed a corrupted sales culture designed that incentivized and rewarded employees for pushing products on customers in order to show growth without regard for the impact on customers, and punished them for failing to do so. Thus, in order to meet cross-sell targets set by management, Wells Fargo employees illegally opened millions of accounts (deposit, credit, online banking services, etc.) by forging documents or by other fraudulent means with the knowledge, approval and enforcement by supervisors and management, but without the consent of Wells Fargo's customers.

57. Wells Fargo's illegal and fraudulent practices to generate cross-selling business were so pervasive that some methods have been given their own names; for example:

> a. *"Sandbagging"* refers to wells Fargo's practice of failing to open accounts when requested by customers, and instead accumulating a number of account applications to be opened at a later date. Specifically, Wells Fargo employees collect manual applications for various products, stockpile them in an unsecured fashion, and belatedly open up the accounts (often with additional unauthorized accounts) in the next sales reporting period, frequently before or after banking hours or on bank holidays such as New Year's Day.
>
> b. *"Pinning"* refers to wells Fargo's practice of assigning, without customer authorization, Personal Identification Numbers ("PINs") to ATM card numbers with the intention of, among other things, impersonating customers on Wells Fargo computers, and enrolling those customers in online banking and online bill paying without their consent.

c. "*Bundling*" refers to Wells Fargo's practice of incorrectly informing customers that certain products are available only in packages with other products such as additional accounts, insurance, annuities and retirement plans. See "Banker Assessment Presentation" internal memo highlighting Wells Fargo's policy and training for employees to open accounts regardless of customer objections.

58. This unlawful activity, driven by a sales culture engineered by Wells Fargo and its most senior officers was admittedly known internally to senior officers, before the commencement of the Class Period and was confirmed by internal investigations that resulted in the termination of thousands of employees.

59. On September 20, 2016, Wells Fargo's practices were revealed publicly for the first-time by the congressional testimony of Thomas J. Curry, the U.S. Comptroller and head of the Office of the Comptroller of the Currency ("OCC"), which regulates and supervises national banks. In his testimony, Mr. Curry outlined that Wells Fargo's senior officers have known for years of its fraudulent sales practices, yet they consistently failed to correct them.

60. In fact, in March 2012, the OCC received several complaints about sales practices at Wells Fargo. In February 2013, the OCC issued a Supervisory Letter which required Wells Fargo to develop operational risk compliance program to address these problems. Unfortunately, Wells Fargo failed to sufficiently do so.

61. In December 2013, OCC Examiners held meetings with various levels of Wells Fargo managers including its executive leadership to evaluate its business practices. Following the meetings, the OCC directed Wells Fargo to address its weaknesses in compliance risk and to establish a comprehensive compliance risk management program related to unfair and deceptive practices, including its cross-selling sales practices. Wells Fargo failed to sufficient do so.

62. During 2014, OCC Bank Examiners had several meetings with Wells Fargo in which they reviewed Wells Fargo's management information systems, internal audits, and

documents describing the efforts to improve its compliance oversight and monitoring. Wells Fargo's senior managers knew the OCC was examining its practices and still failed to correct or alter its cross-selling push.

63. In March 2015, after completing a multi-year assessment of Wells Fargo's compliance management systems, the OCC instructed the Company that it needed to improve its risk management and governance related to operational and compliance risk. It noted that Wells Fargo lacked a formalized governance framework to oversee sales practices, and issued a Supervisory Letter requiring Wells Fargo to address the governance of sales practices.

64. In June 2015, the OCC issued an additional Supervisory Letter to Chairman and CEO Stumpf identifying matters relating to the Company's enterprise risk management and oversight of sales practices that required correction action. The OCC cited the "inappropriate tone at the top" and lack of adequate control and oversight structure given the Company's emphasis on cross-selling. The OCC also instructed Wells Fargo to re-evaluate its compensation and sales incentive plans and to improve and independently access it sales oversight processes. The OCC even ordered that Wells Fargo retain an Independent Compliance Consultant. Wells Fargo failed to comply with these directives.

65. On July 16, 2016 the OCC issued a Report of Examination which concluded that Wells Fargo failed to address the previous corrective actions, that its sales practices were unethical and caused harm to customers, and the management had not responded promptly to these issues. A letter was issued to Wells Fargo's Chairman stating that the Bank had engaged in unsafe and unsound banking practices, and assessed civil monetary penalties.

66. Thus, as early as 2012, the OCC put Wells Fargo and its senior management on notice of its deficiencies at supervising compliance risk related to cross-selling and sales incentive

compensation. Wells Fargo's management including its executive leadership consciously ignored the OCC directives, so as to maximize its drive to cross-sell, increase its relationships with customers and increase revenue growth before the Company would be forced, if ever, to comply with OCC directives. Indeed, Wells Fargo may have been prepared and willing to incur civil monetary penalties because of the enormous revenues the Company was earning.

67. Additionally, Wells Fargo also knew that its aggressive cross-selling through sales incentives were coming to an end. In April 2011, the OCC issued a proposed rule which would restrict sales incentive compensation and require heightened risk management and controls, and the submission of annual reports. The comment period for the proposed rule was scheduled to end July 22, 2016. Wells Fargo knew that this proposed rule was likely to be adopted after the comment period ended, and its senior officers sought to take aggressive push all cross-selling through sales incentives before the new rule began.

68. During the Class Period, the public was unaware that Wells Fargo was under OCC investigation and scrutiny over its cross-selling sales practices. Wells Fargo failed to disclose the OCC's regulatory letters and actions against it or their findings. The OCC's ongoing investigation and directives which were not met was material information that would impact how investors viewed Wells Fargo's financial results and reported success at cross-selling.

69. In fact, from 2012 through 2016, Wells Fargo reported enormous success at cross-selling which boosted its financial results and shareholder value. Wells Fargo's stock price appreciated substantially during these years from approximately $21 per share at the end of 2001, to over $55 per share at its peak. Unfortunately, this growth was artificial and driven by Wells Fargo's fraudulent sales practices, and disregard of bank regulator directives.

70. Wells Fargo's employees who purchased the Stock Fund through the Plan did not know the full extent of the fraudulent scheme or the bank's regulatory problems. They did not know that it was Wells Fargo's fraudulent activity that had impacted its financial results and artificially inflated the Company's stock price. They also did not know that when they directed their 401(k) contributions into the Stock Fund, they were overpaying for Wells Fargo stock at inflated prices that were short-term and due for correction when the Company would inevitably be forced to comply with regulators, drop its fraudulent aggressive practices and ramp up its compliance supervision.

B. The Company's False and Misleading Statements

71. During the Class Period, Wells Fargo made repeated false and misleading statements in its SEC filings, earnings releases and in public statements about the legitimacy of its growth and financial results through cross-selling which caused its stock price to rise.

72. On February 27, 2013, the Company filed with the SEC its Form 10-K for the fiscal year ended December 31, 2012, which included its 2012 Annual Report to Stockholders. The 2012 Annual Report discussed Wells Fargo's goals and vision for cross-selling to drive its growth (which subsequently happens), as follows:

> Our vision is to satisfy all our customers' financial needs, help them succeed financially, be recognized as the premier financial services company in our markets and be one of America's great companies. **Our primary strategy to achieve this vision is to increase the number of our products our customers utilize and to offer them all of the financial products that fulfill their needs**. **Our cross-sell strategy, diversified business model and the breadth of our geographic reach facilitate 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.** (emphasis added)

* * *

> **Cross-sell of our products is an important part of our strategy to achieve our vision to satisfy all our customers' financial needs**.…Our goal is eight products per customer, which is approximately half of our estimate of potential demand for an average U.S. household.

65. The 2012 Annual Report also warned investors under "**Risk Factors**" that if these efforts were unsuccessful, the Company's financial results could suffer:

> **Our "cross-selling" efforts to increase the number of products our customers buy from us . . . is a key part of our growth strategy, and our failure to execute this strategy effectively could have a material adverse effect on our revenue growth and financial results. 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 . . . .**

73. In the quarters to follow during 2013, Wells Fargo reported record quarterly net income in its earnings releases filed with the SEC on Form 8-K of $5.2 billion in 1Q 2013; $5.5 billion in 2Q 2013; $5.5 billion in 3Q 2013; and the same $5.5 billion in 4Q 2013.

74. In addition to various increases in accounts, Wells Fargo also reported increasing cross-sell rates across several segments:

<u>1Q 2013</u>

- "Retail Bank household cross-sell ratio of 6.10 products per household, up from 5.98 year-over-year"
- *Wholesale Banking*: "Cross-sell of 6.8 products per relationship as of December 2012, up from 6.6 as of December 2011"

<u>2Q 2013</u>

- "Retail Bank household cross-sell ratio of 6.14 products per household, up from 6.00 year-over-year"
- *Wholesale Banking*: "Cross-sell of 6.9 products per relationship improved from 6.8 in prior quarter"

3Q 2013

- "Retail Bank household cross-sell ratio of 6.15 products per household, up from 6.04 year-over-year"
- *Wholesale Banking*: "Cross-sell of 7.0 products per relationship up from 6.9 in prior quarter"
- "WBR cross-sell ratio of 10.41 products per household, up from 10.27 a year ago"

4Q 2013

- "Retail Bank household cross-sell ratio of 6.16 products per household, up from 6.05 year-over-year"
- *Wholesale Banking*: "Cross-sell of 7.1 products per relationship up from 7.0 in prior quarter"
- "[Wealth, Brokerage and Retirement] cross-sell ratio of 10.42 products per household, up from 10.27 a year ago" (reported on earnings releases for the first-time)

75. Wells Fargo's 2013 Annual Report was filed with the SEC with the February 26, 2014 Form 10-K, and contained the same statement (from the 2012 Annual Report) about the Company's "vision" and "primary strategy" of cross-selling, as well as the same "Risk Factor" warning about the importance of its success.

76. The 2013 Annual Report emphasized that the Company had generated "record earnings" because the Company had "continued to focus on meeting [its] customers' financial needs," and in doing so had "achieved record cross-sell across the Company." The Company further explained that to satisfy its customers' financial needs, it was providing "financial products that fulfill their needs."

77. The 2013 Annual Report stated as follows:

> **Financial Performance.**
>
> We produced another outstanding year of financial results in 2013 and ended the year as America's most profitable bank. We continued to demonstrate

the benefit of our diversified business model by generating record earnings, growing loans and deposits . . . .

Noteworthy items included:
* * *
- [O]ur deposit franchise continued to generate strong deposit growth, with total deposits up $76.3 billion, or 8%;

* * *
- [W]e continued to focus on meeting our customers' financial needs and **achieved record cross-sell across the Company**.

66. In addition to the Company's financial performance, the 2013 Annual Report specifically discussed the impact of Wells Fargo's cross-selling efforts in each of its key business segments:

> Community Banking offers a complete line of diversified financial products and services for consumers and small businesses. . . . 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 a record 6.16 products per household in November 2013, up from 6.05 in November 2012 and 5.93 in November 2011. 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 household, which is approximately one-half of our estimate of potential demand for an average U.S. household.
>
> * * *
>
> Wholesale Banking provides financial solutions to businesses across the United States and globally with annual sales generally in excess of $20 million.
>
> * * *
>
> Wholesale Banking cross-sell was a record 7.1 products per customer in September 2013, up from 6.8 in September 2012 and 6.5 in September 2011.
>
> * * *
>
> Wealth, Brokerage and Retirement provides a full range of financial advisory services to clients using a planning approach to meet each client's financial needs. . . . Wealth, Brokerage and Retirement cross-sell reached a record 10.42 products per household in November 2013, up from 10.27 in November 2012 and 10.05 in November 2011.

78. In the quarters to follow during 2014, Wells Fargo reported quarterly net income in its earnings releases filed with the SEC on Form 8-K of $5.9 billion in 1Q 2013 (record); $5.9 billion in 2Q2013 (record); $5.7 billion in 3Q 2013; and the same $5.7 billion in 4Q 2013.

79. In addition to various increases in accounts, Wells Fargo also reported increasing cross-sell rates across several segments while it touted its ability to "serve its customers' needs" :

<u>1Q 2014</u>

- "Retail Bank household cross-sell ratio of 6.17 products per household, up from 6.10 year-over-year"
- Cross-sell of 7.2 products per relationship up from 7.1 in prior quarter and 6.8 in first quarter 2013
- WBR cross-sell ratio of 10.42 products per household, up from 10.33 in first quarter 2013

<u>2Q 2014</u>

- "Retail Bank household cross-sell ratio of 6.17 products per household, up from 6.14 year-over-year"
- *Wholesale Banking*: "Cross-sell of 7.2 products per relationship, up from 6.9 in second quarter 2013 driven by new product sales to existing customers"
- "WBR cross-sell ratio of 10.44 products per household, up from 10.35 a year ago"

<u>3Q 2014</u>

- Retail Bank household cross-sell ratio of 6.15 products per household, unchanged year-over-year
- *Wholesale Banking*: "Cross-sell of 7.2 products per relationship, up from 7.0 in third quarter 2013 driven by new product sales to existing customers"
- "WBR cross-sell ratio of 10.44 products per household, up from 10.41 a year ago

<u>4Q 2014</u>

- "Retail Bank household cross-sell ratio of 6.17 products per household, up from 6.16 year-over-year"

- *Wholesale Banking*: "Cross-sell of 7.2 products per relationship, up from 7.1 in fourth quarter 2013 driven by new product sales to existing customers"
- "WBR cross-sell ratio of 10.49 products per household, up from 10.42 a year ago"

67. In addition to its financial results, Wells Fargo made numerous public statements touting its success with its cross-selling strategy.

68. On May 20, 2014, the Company held its Analyst Day conference for analysts and investors. During the conference the Company emphasized its efforts on cross-selling products to its clients and the financial results the Company had achieved due to the effectiveness of its cross-selling strategy. For example, Wells Fargo's Chief Financial Officer John Shrewsberry described its cross-selling performance as "legendary," stating:

> [Stumpf:] We have the broadest coast-to-coast banking franchise, and in serving these customers, we want to help them succeed financially. . . .
>
> . . . But if I had to pick just one number, one area I would focus most on, I could only pick one, it would be revenue. Because when you are growing revenue, you are growing the business.
> * * *
> And what is revenue? It is deposits and loans and more credit cards, deeper cross-sell, longer relationships, more assets under management.
> * * *
> [Shrewsberry:] 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.

69. During the conference, Carrie Tolstedt, Wells Fargo's then-Head of Community Banking, discussed the financial performance of that segment and the growth resulting from its cross-selling efforts, emphasizing that Wells Fargo's cross-selling was "helping [its] customers succeed financially and meet[] all of their needs." Tolstedt further stated:

> Primary checking customers, those that use their accounts actively, grew 5% this year. . . . We've also earned more business from our existing customers over the last two years. For example, we saw outstanding growth in our credit card business with retail bank credit card penetration up 30% . . . .
>
> * * *
>
> Retail banking, when executed well, benefits from the economies of scale. We believe this scale allows us to serve each customer and deliver value efficiently. We translate these economics into a series of operating models.
>
> First, the density model. Ensuring the right physical distribution density, format mix, and site quality so that we can grow households faster than the market, complemented by our very strong virtual distribution. Second, the cross-sell model. This ties directly to our vision of helping our customers succeed financially and meeting all of their needs. Together, the density and cross-sell model[s] drive revenue.
>
> * * *
>
> The beneficial cycle of cross-sell continues. The more products the customers have with us, the better deal and greater value we can provide. . . .
>
> Our retail bank household cross-sell is now at 6.17 products, up from two years ago 5.98, and at the time of the merger we were at 5.2. Our long-term goal continues to be an average cross-sell of 8 and achieving this goal will come with higher household purchase rates and growth in profitability.

56. On May 21, 2014, UBS issued a report, titled "WFC promises more of the same," discussing the Company's Analyst Day comments and the emphasis on cross-selling to existing customers:

Management is focused on growth and execution of cross-selling strategy

> WFC'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.

80. On September 10, 2014, the Company made a presentation at the Barclays Global Financial Services Conference. During the conference, CFO Shrewsberry compared Wells Fargo's financial performance to its peers, noting that the Company generated more fee income than its peers in large part due to the Company's focus on earning more customer business through cross-selling:

> [W]e generate more fee income per average assets than our peers. This outperformance demonstrates our consistent focus on earning more of our customers' business and our culture of cross-sell.

81. After the September 10, 2014 Barclays conference, Wells Fargo's stock traded above $51 per share.

82. In November 2014, RBC Capital Markets met with Stumpf, Shrewsberry and Tolstedt to discuss the Company's financial performance and future prospects. On November 5, 2014, RBC issued a report, titled "Highlights from recent company visit," which discussed the meetings:

> **Highlights from recent company visit**
>
> Our view: After meeting management, we remain positive on Wells' prospects to continue to outperform many of its large bank peers.
>
> Key points:
>
> • **Meetings With Senior Management**. We recently visited Wells Fargo and met several of its senior executives including the CEO, CFO, Treasurer, Chief Risk Officer, and Head of Consumer Banking. . . .
>
> • **Attractive Growth Opportunities**. Looking forward, Wells sees multiple growth opportunities across its business. Loan growth has been broad based at a mid-to-high single-digit rate, and the pipeline looks solid heading into year-end given the improving economy and ongoing market share gains. To that end, Wells is willing to price more aggressively on the lending side, partly because it is confident in its ability to cross-sell other products and build a profitable relationship.

83. In January 2015, Morningstar issued a report discussing the Company's fourth quarter results, specifically noting the Company's cross-selling expertise and the growth of its credit card loans by $4 billion:

> **Wells Fargo Advances Slowly but Surely in 4Q 14 Jan 2015**
>
> Wells Fargo's full-year results, including net interest margin of only 3.11% and a 58% efficiency ratio – at the high end of its 55%-59% target . . . .
>
> * * *
>
> Wells Fargo also demonstrated a continued ability to cross-sell during the quarter. The company added more than $4 billion in credit card loans during the year, including an expansion of its private-label business.

84. On February 25, 2015, the Company filed its Form 10-K for the fiscal year ended December 31, 2014, with its 2104 Annual Report to Stockholders. The 2014 Annual Report again emphasized the Company's cross-selling strategy:

> **Financial Performance**
>
> We completed another outstanding year of financial results in 2014 and remained America's most profitable bank. We generated record earnings, produced strong loan and deposit growth, grew the number of customers we serve, improved credit quality, enhanced our strong risk management practices, strengthened our capital and liquidity levels and rewarded our shareholders by increasing our dividend and buying back more shares. . . .
>
> Noteworthy items included:
>
> * * *
>
> • our loans increased $40.3 billion, up 5%, even with the planned runoff in our non-strategic/liquidating portfolios, and our core loan portfolio grew by $60.3 billion, up 8%;
>
> • our deposit franchise continued to generate strong customer deposit growth, with total deposits up $89.1 billion, or 8%;
>
> * * *
>
> • we continued to maintain solid customer relationships across the Company, with retail banking household cross-sell of 6.17 products per household (November 2014); Wholesale Banking

> cross-sell of 7.2 products per relationship (September 2014); and Wealth, Brokerage and Retirement cross-sell of 10.49 products per retail banking household (November 2014) . . . .

85. The 2014 Annual Report also detailed individual cross-selling performance by business segment:

> COMMUNITY BANKING offers a complete line of diversified financial products and services for consumers and small businesses including checking and savings accounts, [and] credit and debit cards . . . . Our retail banking household cross-sell was 6.17 products per household in November 2014, up from 6.16 in November 2013 and 6.05 in November 2012.
>
> * * *
>
> Wealth, Brokerage and Retirement cross-sell was 10.49 products per retail banking household in November 2014, up from 10.42 in November 2013 and 10.27 in November 2012.

86. In the quarters to follow during 2015, Wells Fargo reported quarterly net income in its earnings releases filed with the SEC on Form 8-K of $5.8 billion in 1Q 2013; $5.7 billion in 2Q 2013; $5.8 billion in 3Q 2013; and the same $5.7 billion in 4Q 2013.

87. In addition to various increases in accounts, Wells Fargo also reported increasing cross-sell rates across several segments:

<u>1Q 2014</u>

- "Retail Bank household cross-sell ratio of 6.13 products per household, compared with 6.17 year-over-year"
- *Wholesale Banking*: "Cross-sell of 7.2 products per relationship, unchanged from first quarter 2014"
- "WBR cross-sell ratio of 10.44 products per household, up from 10.42 a year ago"

<u>2Q 2014</u>

- "Retail Bank household cross-sell ratio of 6.13 products per household, compared with 6.17 year-over-year"
- *Wholesale Banking*: "Cross-sell of 7.3 products per relationship, up from 7.2 in second quarter 2014"

- "WBR cross-sell ratio of 10.53 products per household, up from 10.44 a year ago"

3Q 2014

- "Retail Bank household cross-sell ratio of 6.13 products per household, compared with 6.15 year-over-year"
- *Wholesale Banking*: "Cross-sell of 7.3 products per relationship, up 0.1 from third quarter 2014"
- "Brokerage and Wealth cross-sell ratio of 10.52 products per household, up from 10.44 a year ago"

4Q 2014

- "Retail Bank household cross-sell ratio of 6.11 products per household, compared with 6.17 year-over-year"
- *Wholesale Banking*: "Cross-sell of 7.3 products per relationship, up 0.1 from fourth quarter 2014"
- Brokerage and Wealth cross-sell ratio of 10.55 products per household, up from 10.49 a year ago"

88. On April 14, 2015, Morningstar issued a report underscoring that Wells Fargo had reported increased income of 6.7% sequentially for its largest unit, Community Banking. It further reported that results in Wholesale Banking had increased 3.25%, stating that "[m]anagement attributed this growth to successful cross-selling with the Community Banking segment." Morningstar further noted that Wells Fargo was spending a great deal to incentivize its employees to cross-sell products: "Wells Fargo's emphasis on cross-selling is associated with significant incentive spending. We see these expenses as worthwhile in building long-term customer relationships and consequently, switching costs."

89. On May 29, 2015, the Company gave a presentation at the Sanford C. Bernstein Strategic Decisions Conference. During the conference, CEO Stumpf was specifically asked about regulatory investigations and whether he was concerned that the Company was pushing products

onto customers that the customers did not want. Stumpf rejected the notion that Wells Fargo could cross-sell to customers products that they did not need, as such conduct was not in the best interest of its customers or Wells Fargo. Instead, according to Stumpf, the Company's culture was one that helped customers succeed financially:

> [Analyst:] There's a question about the regulatory investigations. A key part of your strategy has been sales. You have always been revenue focused on cross-selling. Sometimes that might be able to go too far and I guess there's been some investigations; are you selling the wrong thing to the wrong people? How do you make sure you're pushing a sales culture but not giving a customer something that they don't need or don't understand?
>
> [Stumpf:] Absolutely. Our culture for 163 years has been to help our customers succeed financially and provide all their financial needs. It is not in our interest, not in our team members' interest, not in our customers' interest, surely not in our shareholders' interest to have a customer have a product or service they didn't want, don't need, or it doesn't help them.

90. After the May 29, 2015 Sanford C. Bernstein conference, Wells Fargo's stock price continued to trade above $56 per share.

91. On June 23, 2015, Morningstar published a report, titled "Recent Housing Data Supports Our Case for an Accelerated, Above-Consensus Recovery," which consolidated its recently published research and noted that the Company's business had been expertly overseen by Stumpf and was not "too big to manage." Importantly, Morningstar noted that the Company gave employees incentives to grow their cross-selling efforts, and therefore investors should not be concerned with increases in the Company's overall headcount:

> Wells Fargo's longstanding focus on cross-selling helps lock in customer relationships and access to low-cost funding – namely, $1 trillion in deposits at a cost of only 9 basis points as 2014 came to a close.
>
> * * *
>
> The company's simple, domestically focused business is clearly not "too big to manage" as the company has thrived under the leadership

> of several CEOs. Though the company expects its efficiency ratio to be at the high end of its 55%-59% target for 2015, we don't view increases in headcount negatively. Along these lines, Wells Fargo's emphasis on cross-selling is associated with significant incentive spending. We see these expenses as worthwhile in building long-term customer relationships and consequently, switching costs.

92. On February 24, 2016, Wells Fargo filed its Form 10-K for the year ended December 31, 2015, and its 2015 Annual Report to Stockholders, which noted the importance of cross-selling products to its customers to create a financial ecosystem purportedly for the benefit and need of its customers:

> **<u>Cross-sell</u>** . . . 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. We believe there is continued opportunity to meet our customers' financial needs as we build lifelong relationships with them. One way we track the degree to which we are satisfying our customers' financial needs is through our cross-sell metrics, which are based on whether the customer is a retail banking household or has a wholesale banking relationship. . . .
>
> **We report cross-sell metrics for Community Banking and WIM based on the average number of retail products used per retail banking household. . . .**
>
> **Products included in our retail banking household cross-sell metrics must be retail products and have the potential for revenue generation and long-term viability.**

93. With respect to the Community Banking segment, of which retail banking was a part, Wells Fargo stated as follows:

> Our retail banking household cross-sell was 6.11 products per household in November 2015, compared with 6.17 in November 2014 and 6.16 in November 2013.

94. On April 14, 2016, the Company announced its financial results for the first quarter of fiscal 2016, discussing, among other things, the impact of cross-selling on its retail banking unit:

WELLS FARGO REPORTS $5.5 BILLION IN QUARTERLY NET INCOME; Diluted EPS of $0.99; Revenue Up 4 Percent from Prior Year Regional Banking

- Continued strong financial results:
  - Net income of $5.5 billion, compared with $5.8 billion in first quarter 2015
  - Diluted earnings per share (EPS) of $0.99, compared with $1.04
  - First quarter 2015 results included discrete tax benefit of $359 million, or $0.07 per share
  - Revenue of $22.2 billion, up 4 percent
  - Pre-tax pre-provision profit of $9.2 billion, up 5 percent
  - Return on assets (ROA) of 1.21 percent and return on equity (ROE) of 11.75 percent

* * *

- Retail Banking:
  - Primary consumer checking customers up 5.0 percent year-over-year
  - Debit card purchase volume of $72 billion in first quarter, up 9 percent year-over-year
  - Retail Bank household cross-sell ratio of 6.09 products per household, compared with 6.13 year-over-year

* * *

<u>Wholesale Banking</u>

* * *

Wholesale Banking reported net income of $1.9 billion, down $183 million, or 9 percent, from fourth quarter 2015. Revenue of $7.0 billion increased $399 million, or 6 percent, from prior quarter and included the acquisitions of GE Railcar Services (closed 1/1/16) and GE Capital's North American Commercial Distribution Finance and Vendor Finance businesses (closed 3/1/16).

* * *

• Cross-sell of 7.3 products per relationship, up from 7.2 products in first quarter 2015 (Footnotes omitted.)

95. On May 24, 2016, the Company held an Analyst Day conference in San Francisco for analysts and investors. The conference was hosted by Stumpf and Tolstedt. During the conference, Tolstedt stated with respect to "products per household or cross-sell, the first thing we anchor ourselves on is our vision of satisfying our customers' needs and helping them succeed financially. And so everything that we do is really about that."

96. On May 25, 2016, Evercore issued a report discussing the Company May 24, 2016 conference titled "Investor Day Wrap: Targets Sliced, but Still a Conservative Drive Down the Fairway." The report discussed, among other things, the growth in the Company's credit card business due to its cross-selling ability:

> Wells Fargo hosted its Investor Day yesterday in San Francisco. Bottom line: While long-term profitability targets were cut due to the challenging rate and operating environment, such is not a major surprise, and we remain positive on the bank's L/T above-peer returns.
> * * *
> Card biz growth to remain above industry pace with greater cross-sell and new products. WFC expects to continue to grow its $25B consumer credit card book (2.6% of loans) via new cards to existing and new customers. WFC plans to introduce a new, refreshed card product with richer rewards (1.5% cash back). Mgmt noted they have improved their penetration rates with 43.2% of checking customers now holding a WFC card, versus 33.5% in 2012. Lastly, competition in the card business remains brisk, albeit mainly on the co-branding side.

97. On July 15, 2016, the Company issued a press release announcing its financial results for the second quarter of fiscal 2016. The release discussed the cross-selling results, this time only for the Company's retail banking unit July 15, 2016, the Company issued a press release announcing its financial results for the second quarter of fiscal 2016. The release discussed the cross-selling results, this time only for the Company's retail banking unit:

WELLS FARGO REPORTS $5.6 BILLION IN QUARTERLY NET INCOME; Diluted EPS of $1.01; Revenue Up 4 Percent from Prior Year

- Continued strong financial results:
  - Net income of $5.6 billion, compared with $5.7 billion in second quarter 2015
  - Diluted earnings per share (EPS) of $1.01, compared with $1.03
  - Revenue of $22.2 billion, up 4 percent
  - Strong growth in loans and deposits:

* * *

- ***Regional Banking***
  - Retail Banking
  - Primary consumer checking customers up 4.7 percent year over year
  - Debit card purchase volume of $76.4 billion in second quarter, up 8 percent year-over-year

- ***Retail Banking household cross-sell ratio of 6.27 products per household, compared with 6.32 year-over- year***
  (Footnotes omitted.)

98. On July 15, 2016, the Company held a conference call for analysts and investors to discuss the Company's second quarter 2016 financial results. During the call, Stumpf noted that the Company had previously announced that Tolstedt, the Head of the Community Banking segment, was retiring. Stumpf concealed the fact that the Company had made substantial findings of the unlawful activity and actual fraud in its Community Banking segment as part of its investigation, which not only exposed millions of customers to unlawful fees and potential identity theft, but put the Company in the crosshairs of federal investigations. Instead, defendants emphasized that Wells Fargo was committed to "transparency[] and ensur[ing] customers are receiving the right products to meet their financial needs," with Stumpf claiming that Tolstedt had built an extraordinary franchise that met the needs of millions of customers:

> [Stumpf:] Before I conclude, I want to highlight the announcement we made earlier this week, Carrie Tolstedt, Head of Community Banking who has been with Wells Fargo for 27 years has decided to retire at year end. She and her team have built an extraordinary franchise, one that meets the needs of millions of customers nationwide, and has served investors very well for decades.

99. During the call, Shrewsberry stated:

> Turning to our business segments, starting on page 14, community banking earned $3.2 billion in the second quarter, down 1% from a year ago, and 4% from the first quarter. . . .
>
> ***We continually work to enhance customer satisfaction and transparency, and ensure customers are receiving the right products to meet their financial needs, because the key to our success is long-lasting customer relationships built on trust***.

100. Following the release of Wells Fargo's financial results on July 15, 2016 through September 16, 2016, Wells Fargo stock traded at prices above $50 per share.

101. Wells Fargo's statements about its financial results and cross-selling were materially false and misleading when made in that they misrepresented and/or omitted material facts necessary to make the statements made therein not misleading, as follows:

a) Wells Fargo's cross-selling efforts to retail and commercial customers were neither designed to meet customers' financial needs nor drive customer satisfaction, but rather were the product of a carefully designed performance management system that resulted in the opening of millions of deposit and credit card accounts for customers without their knowledge in an effort to generate fee income for Wells Fargo and compensation rewards for Wells Fargo employees and senior officers;

b) The Company illegally, through forgery and other electronic means, applied for and opened credit card accounts on behalf of customers without their knowledge or consent;

c) The Company illegally, through forgery and other electronic means, opened bank deposit accounts on behalf of customers without their knowledge or consent;

d) The Company used fake e-mail addresses to enroll customers in online banking services and request debit cards, including the creation of PINs, without customers' knowledge or consent;

e) Wells Fargo engineered a sales culture that was designed to incentivize and reward employees for pushing products on customers they did not want or need and rewarded employees for bank and credit card accounts that were opened without the customers' knowledge through forgery or other means;

f) An ongoing internal investigation had in fact found that in excess of 5% of the employees in the Community Banking segment had engaged in a wide ranging scheme to inflate the Company's financial performance figures by, among other things, opening millions of

unauthorized deposit and credit card accounts, resulting in mass terminations of employees, ultimately reaching more than 5,000 firings;

g) Wells Fargo was issued numerous directives by the OCC, its bank examiner, to improve and correct deficiencies with its operations and sales risk management and compliance oversight as it related to cross-selling, and that it failed to do so.

h) The Company's reported cross-selling metrics and the financial results derived from them were the product of defendants' misconduct as detailed in (a)-(g) above.

C. The Truth About Cross-Selling Emerges

102. On September 8, 2016, the CFPB published its Consent Order with Wells Fargo detailing the Company's fraudulent practices, which were centered on a corporate culture intent on growing its cross-selling opportunities and unlawfully and without its customers' consent opening millions of unauthorized deposit and credit card accounts, and imposing a fine of more than $185 million. The announcement noted that these facts were known to the Company through an internal investigation that had uncovered the fraudulent practices, and not as a result of an independent government investigation:

> **Consumer Financial Protection Bureau Fines Wells Fargo $100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts**
> Bank Incentives to Boost Sales Figures Spurred Employees to Secretly Open Deposit and Credit Card Accounts
>
> Today the Consumer Financial Protection Bureau (CFPB) fined Wells Fargo Bank, N.A. $100 million for the ***widespread illegal practice of secretly opening unauthorized deposit and credit card accounts***. Spurred by sales targets and compensation incentives, employees boosted sales figures by covertly opening accounts and funding them by transferring funds from consumers' authorized accounts without their knowledge or consent, often racking up fees or other charges.

> ***According to the bank's own analysis, employees opened more than two million deposit and credit card accounts that may not have been authorized by consumers****. . . .*
>
> ***"Wells Fargo employees secretly opened unauthorized accounts to hit sales targets and receive bonuses***," said CFPB Director Richard Cordray.

103. The CFPB announcement explained that the illegal conduct was not only caused by rogue sales staff, but had been driven by the Company's effort to be the leader in cross-selling:

> ***In recent years, the bank has sought to distinguish itself in the marketplace as a leader in "cross selling***" these products and services to existing customers who did not already have them. When cross selling is based on efforts to generate more business from existing customers based on strong customer satisfaction and excellent customer service, it is a common and accepted business practice. ***But here the bank had compensation incentive programs for its employees that encouraged them to sign up existing clients for deposit accounts, credit cards, debit cards, and online banking***, and the bank failed to monitor the implementation of these programs with adequate care.
>
> According to today's enforcement action, thousands of Wells Fargo employees illegally enrolled consumers in these products and services without their knowledge or consent in order to obtain financial compensation for meeting sales targets. The Dodd-Frank Wall Street Reform and Consumer Protection Act prohibits unfair, deceptive, and abusive acts and practices. Wells Fargo's violations include:
>
> • ***Opening deposit accounts and transferring funds without authorization***: According to the bank's own analysis, employees opened roughly 1.5 million deposit accounts that may not have been authorized by consumers. Employees then transferred funds from consumers' authorized accounts to temporarily fund the new, unauthorized accounts. This widespread practice gave the employees credit for opening the new accounts, allowing them to earn additional compensation and to meet the bank's sales goals. Consumers, in turn, were sometimes harmed because the bank charged them for insufficient funds or overdraft fees because the money was not in their original accounts.
>
> • ***Applying for credit card accounts without authorization***:
> According to the bank's own analysis, Wells Fargo employees applied for roughly 565,000 credit card accounts that may not have been authorized by consumers. On those unauthorized credit cards, many consumers incurred annual fees, as well as associated finance or interest charges and other fees.

> • ***Issuing and activating debit cards without authorization***:
> Wells Fargo employees requested and issued debit cards without consumers' knowledge or consent, going so far as to create PINs without telling consumers.
>
> • ***Creating phony email addresses to enroll consumers in online-banking services***:
> Wells Fargo employees created phony email addresses not belonging to consumers to enroll them in online-banking services without their knowledge or consent.

104. On September 9, 2016, Piper Jaffray issued a report, titled "CFPB Settlement, Fallout May Be More Than Initially Expected," which described its expectation that Wells Fargo shares would trade lower in light of the revelations of the CFPB and the disclosure that Wells Fargo had terminated more than 5,300 employees for the opening of unauthorized accounts:

> ***We are incrementally more negative on shares of WFC following further revelations about the unauthorized account issues that have surfaced over the past day***. Since our initial note (here), we learned that 5,300 employees have been let go due to their involvement in setting up unauthorized accounts, which was a bigger amount than we initially expected given WFC was considered one of the better managed large banks (2% of workforce). ***In addition, the public relations fallout appears larger than we initially expected*** given the optics of the issue at hand. We expect this additional spotlight on WFC could open the bank to greater scrutiny from regulators and community groups, particularly if the broader public continues to take an interest in the issue (e.g., an article in Vanity Fair magazine).
>
> • . . . ***We would expect the stock to see incremental pressure in the near-term*** given the issues described will bring up a series of questions about internal controls within the bank.
>
> * * *
>
> • . . . ***We believe WFC will have a difficult time meeting Street expectations for earnings growth in a low rate environment while the stock screens as expensive at 13.0x***.

105. In response, on September 9, 2016, the price of the Company's stock fell from a close of $49.90 per share on September 8, 2016, to close at $48.72 per share on September 9, 2016, on trading volume of 32 million shares.

106. On September 13, 2016, *The Fiscal Times* published an article titled "The Real Scandal at Wells Fargo: Execs Got Rich by 'Sandbagging' Clients." The article noted that the purpose of the scheme, which resulted in the charges by the CFPB, was primarily to show steady growth to investors, describing the scheme as a "securities fraud gambit":

> **The Real Scandal at Wells Fargo: Execs Got Rich by 'Sandbagging' Clients**
> Wells Fargo has habitually tried to cultivate a reputation as "the good bank." Its executives maintain with pride that they stay away from high-risk investment products, and focus on traditional banking, with the highest ethical standards. Except for the part where bank employees created over 2 million fake accounts in their customers' names.
>
> The Consumer Financial Protection Bureau (CFPB), Office of the Comptroller of the Currency and the Los Angeles City Attorney fined Wells Fargo $185 million last week for generating fictitious accounts over a five-year period. Employees forged signatures, conjured phony email addresses and shifted funds between real and phony accounts, sometimes generating unwarranted fees for customers.
>
> Now, it may sound strange to say that this was not, at the root, a consumer fraud case. But it really wasn't. ***This was more of a securities fraud gambit, combined with wage theft, and that explains why the lack of accountability at the top in this matter is so galling***.
>
> What drove this scheme? The whole story could be found in the pages of the Los Angeles Times nearly three years ago (they gift-wrapped this investigation, first for the City Attorney and then for the federal regulators who piled on). ***Wells Fargo regional managers gave their branch offices daily quotas to "cross-sell" financial products to existing customers. If someone had a checking account, you sign them up for a savings account. Or a credit or debit card. Or online banking services***.
>
> Former CEO Dick Kovacevich actually invented a target for each customer called the "Gr-eight initiative" – eight add-on products per household. This is the equivalent of a used car salesman up-selling the undercoating. (Hilariously, Kovacevich is now on the board of another fraudulent company, Theranos). Employees who missed sales quotas would have to work weekends or stay late to catch up. They were also threatened with firing. To handle the pressure, some employees opened accounts or ordered credit cards without customer permission. ***Wells Fargo says 5,300 workers have been fired for such conduct over the past five years***.
>
> The goal of this enterprise was not really to make money through fees on the add-on products. CFPB's complaint states that only 85,000 of the 1.5 million fake accounts incurred fees (of about $2 million), and just 14,000 of the half-million unauthorized credit cards incurred fees (of about $400,000). . . . Consumers who have to deal with the aftermath – hits to their credit score, the mandatory arbitration they're locked into on accounts they never asked for – suffered additional harm.

> ***The idea here was to show steady quarterly growth to investors. The daily sales quotas weren't plucked from the sky, but designed to maintain industry leadership in cross-selling***. . . . The bank tracks cross-selling metrics; the average Wells Fargo retail banking customer had 6.11 products at the end of 2015.
>
> Multiple accounts signal to Wall Street that Wells maintains deep relationships with its customers, meaning that the bank will keep making money off them. ***Growth in cross-selling plus growth in the customer base equals growth in earnings, investors assume. Wells Fargo stock doubled from 2011 to mid-August 2015, the period described in the fraud complaint***.
>
> Now keep in mind that John Stumpf, the CEO of Wells, took $155 million in stock options between 2012 and 2015, as the share price soared, in part based on the successful cross-selling strategy. And, as Fortune reported yesterday, the executive who oversaw the banking unit the entire time those millions of fake accounts were opened is "retiring" with a $124.6 million golden parachute. ***So the fake accounts goosed the stock price, directly benefiting executives. That's securities fraud. Wells Fargo knew that the cross-selling metrics, which it put in its annual reports, were bogus; it didn't fire all 5,300 employees last week, but over a five-year period. Yet the bank continued to promote those numbers to investors without informing them of the fake account generation***.

107. Also on September 13, 2016, *The Motley Fool* published an article about Tolstedt, who oversaw the Community Banking segment wherein thousands of employees had created millions of fake bank and credit card accounts:

> **Wells Fargo's Massive Fraud Made This Woman Filthy Rich**
>
> **Overseeing a massive fraud translated into generational wealth for one Wells Fargo executive.**
>
> Just in case you weren't outraged enough at the fact that thousands of employees at Wells Fargo fraudulently opened up to 2 million accounts for customers without their consent, then I have a chart for you. ***It reveals the one person who, more than anyone else, appears to have personally benefited from the fraud***.
>
> I'm referring to Carrie Tolstedt, the executive who oversaw Wells Fargo's community banking division for much of the past decade. That includes the years from 2011 to 2015, when more than 5% of the employees under her watch engaged in a wide-ranging, systematic scheme to boost revenue by taking advantage of millions of unwitting customers.
>
> As an aside, Wells Fargo claims that only 1% of its employees engaged in this behavior. This is based on the fact that it fired approximately 1,000 employees a year over five

> years, equating to 1% of its branch-based staff each year. But if you aggregate the terminations, which I believe offers a more accurate reflection of the underlying point, then you get 5,300 terminations, or 5.3% of its 100,000 branch based employees.
>
> Wells Fargo reported two months ago that Tolstedt had decided to retire at the end of this year, though she stepped down from her role overseeing the bank's branch network on July 31. "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," said chairman and CEO John Stumpf at the time.
>
> As a parting gift, Tolstedt will earn a purported $93 million payday, according to *The Financial Times*, the lion's share of which stems from the exercise of stock awards that she received from the bank along the way. The bank's latest proxy filing shows that the 27-year Wells Fargo veteran owns more than 2.5 million shares of stock in one way, shape, or form.

108. On September 13, 2016, the Company announced that it would eliminate the sales goals and incentives that drove the culture and environment known to defendants to have substantially contributed to the fraudulent conduct:

> **Wells Fargo to Eliminate Product Sales Goals for Retail Bankers**
>
> ***Wells Fargo & Company, announced today that it will eliminate all product sales goals in retail banking, effective January 1, 2017.***
>
> "Our objective has always been and continues to be to meet our customers' financial needs and drive customer satisfaction," said CEO John Stumpf. "We are eliminating product sales goals because we want to make certain our customers have full confidence that our retail bankers are always focused on the best interests of customers."
>
> "We believe this decision is both good for our customers and good for our business. The key to our success is the lifelong relationships that result from providing each customer with great value. For the past several years, we have significantly strengthened our training programs, controls and oversight and have evolved our model to ensure we are rewarding deeper relationships and providing excellent customer service. The elimination of product sales goals represents another step to reinforce our service culture, helps ensure that nothing gets in the way of our ability to achieve our mission, and is consistent with our commitment to providing a great place to work," concluded Stumpf.

109. On September 13, 2016, the price of Wells Fargo stock fell another 3%, from a close of $48.54 per share on September 12, 2016, to a close of $46.96 per share on September 13, 2016, on volume of 59 million shares traded.

110. On September 14, 2016, *Bloomberg* published an article, titled "Wells Fargo's Fake Account Scandal Snares CEO Stumpf," which reported that Stumpf had been subpoenaed to testify before Congress on September 20, 2016:

> Wells Fargo's scandal surrounding allegations that it opened two million accounts for customers without their knowledge is proving to be far-reaching. Chief Executive Officer John Stumpf faces damage to the bank's reputation and his personal legacy and has been called to testify before Congress next week, while investor Warren Buffett lost $1.4 billion after Wells Fargo shares fell 3.3 percent.

111. On September 16, 2016, *Reuters* published an article titled "Wells Fargo faces scrutiny over lack of sales scandal disclosure." The article discusses the 7.5% stock price decline caused by revelations that the Company had created millions of bank accounts and applied for credit cards without account holders' permission. The article noted specifically that Wells Fargo had given investors no indication of the scale and scope of the problems, the disclosure of which caused $19 billion in market losses. The article stated:

> A phantom account scandal at Wells Fargo & Co has put the U.S. bank's disclosure policies under a harsh spotlight.
>
> Despite press reports that a federal regulator and the Los Angeles prosecutor were investigating sales practices at retail branches of the San Francisco-based lender, the bank, which agreed to a $190 million settlement, gave investors no indication of the scale of the problem.
>
> The surprise spooked investors and has lopped roughly $19 billion off its market value since the probe disclosed last week that Wells employees had created roughly 2 million accounts for customers without their knowledge in order to meet internal sales targets. The bank has fired 5,300 people over the scandal.

While the settlement barely makes a dent in the $23 billion of profit the bank earned last year, ***the scandal's aftermath has caused a 7.5 percent drop in Wells' stock compared with a roughly 2.4 percent decline for the Dow Jones US Banks Index***.

Investors, analysts and legal experts who spoke to Reuters said Wells Fargo' silence did not mean it had broken the law. But there is broad agreement that it made matters worse by not being more forthcoming with Chief Executive John Stumpf under pressure to explain why this happened on his watch.

"Look, they're lawyered up to the sky. They did the minimum legally required. Do I think that that's fair to investors or that that's all that investors need to know or want to know? No I do not," said Nell Minow, vice chair of ValueEdge advisors, a corporate governance advisory firm. "***It further diminishes their already significantly diminished credibility in terms of their willingness to be transparent***."
* * *
Meanwhile, Stumpf will testify before the Senate Banking Committee next week and U.S. prosecutors have begun an investigation into the bank's sales practices. "It is a scandal of almost unimaginable proportions," former U.S. Securities and Exchange Commission Chairman Arthur Levitt told Reuters this week. "You cannot hold management immune from its consequences."

MATERIAL OR NOT?

The tactics deployed in its branches were not a surprise for Wells. The bank had been looking into them since 2011, when it started firing employees over "inappropriate sales conduct." A Los Angeles Times investigation published in 2013 described a "pressure-cooker sales culture" at the bank.

No mention is made of the bank's internal probe, or authorities' probes in the "legal actions" section of its latest quarterly or annual securities filings. The bank also did not say until this week that during the second quarter it had set aside money for the settlement.

Stumpf has since apologized and said management takes responsibility for what happened. Spokesman Mark Folk said the bank did not believe it had to disclose information to investors ahead of the settlement. "Each quarter, we consider all available relevant and appropriate facts and circumstances in determining whether a litigation matter is material and disclosed in our public filings," he said. "Based on that review, we determined that the matter was not material."

* * *

Experts said Wells Fargo would have been wise to at least flag the issue earlier. "They should have tried to get control over the release of the news, so that it wasn't a bombshell that went off on someone else's schedule." Said Erik Gordon, a University of Michigan business professor. "Now they're in the terrible position of looking like they did something and hid it."

112. Between September 8, 2016 and September 16, 2016, the Company's stock price declined 9%, from a close of $49.90 per share on September 8, 2016 to a close of $45.43 per share on September 16, 2016, as information about defendants' conduct and its impact on Wells Fargo's operations reached the market, inflicting billions of dollars of harm on investors, including Plaintiff and other Plan participants.

113. On September 20, 2016, Stumpf testified under oath before the Senate Committee on Banking, Housing and Urban Affairs. Among other things, Stumpf admitted:

- The Company had pulled credit reports by the credit bureaus for credit cards that were not authorized.
- Stumpf and the Board knew in late 2013 that there was wrongdoing by employees in the Company's retail banking segment, including the unauthorized opening of bank and credit card accounts.
- In July 2016, when Tolstedt announced her retirement, that retirement was in part precipitated by communications regarding the findings of an internal investigation of the unauthorized opening of accounts.

114. During the hearing, Pennsylvania Senator Pat Toomey asked whether Wells Fargo had ever disclosed this misconduct in the Company's SEC filings. According to Senator Toomey:

> [W]e haven't been able to discover such a disclosure and the SEC clearly requires disclosure of material adverse circumstances. And I don't know how this could not be deemed material. I think the market cap lost nine percent over the last couple of weeks [and] that's pretty material.
> * * *
> [T]he reputational damage done to the bank clearly is material. And that has been manifested by this huge adverse movement in stock price.

Stumpf was unable to answer the question.

VI. THE PLAN'S FIDUCIARY BREACHES: FIDUCIARY ACTIONS SHOULD HAVE BEEN TAKEN

115. Throughout the Class Period, the EBRC, the Plan's "Named Fiduciary," was made up of Wells Fargo's most senior corporate officers. As some of the Company's most senior

officers, Defendants knew or should have known that Wells Fargo's success at cross-selling as a driver of "record revenues" and growth was the result of fraudulent or illegal sales practices that were under increasing regulatory scrutiny. They knew or should have known that the Company's financial results were false and misstated because they did not reflect how the results were achieved or that they would likely end when Wells Fargo was compelled to change its culture and enforce a compliant banking environment.

116. Throughout the Class Period, Defendant Hardison served as a senior officer in Human Resources, a department at the epicenter of Wells Fargo's misconduct. As alleged in numerous anti-retaliation lawsuits that have been filed over the past year, 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.

117. For their troubles, these would-be whistleblowers lost their jobs. 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 reporting on CNN Money, a single mother was fired soon after submitting a similar whistleblowing report—and was then accused by Wells Fargo of falsifying documents.

118. It beggars belief that Defendant Hardison, a senior officer and administrator in Human Resources, could have been unaware of these developments during her tenure. Indeed, ***5,300*** employees were terminated as a result of an internal investigation into the misconduct that made up the *Wells Fargo Fake Account Scandal*. The Department of Labor is investigating open *and* closed whistleblower-retaliation complaints made against the Company. As a matter of basic competence, Defendant Hardison knew—or should have known—of these incidents involving

multiple ethics complaints by employees, retaliation against those employees, and mass terminations, all of it stemming from Wells Fargo's pervasive culture of misconduct. And, once Defendant Hardison knew or should have known about Wells Fargo's misconduct, she also should have known that this misconduct and culture of cross-selling at all costs were inflating the Company's financial performance and thus its stock price—making the Stock Fund an imprudent investment for those employees to whom Defendant Hardison owed her fiduciary duty.

119. The allegations regarding Defendant Hardison's knowledge of the massive misconduct at Wells Fargo involving Human Resources apply with equal force to Defendant Thornton, who, like Defendant Hardison, served as a senior officer in Human Resources throughout the Class Period. Indeed, when 5,300 employees were fired for their purported role in the Company's misconduct, Defendant Thornton would have had to have overseen how their benefits and severances, if any, were handled. When whistleblowers were fired for contacting the Wells Fargo "ethics" hotline, Defendant Thornton likewise would have been involved in determining how, if at all, these retaliated-against employees' compensation should be dealt with. Thus, Defendant Thornton knew or should have known about Wells Fargo's cross-selling-related misconduct, and he should have recognized the impact that the concealment of that misconduct was having on Wells Fargo's stock price, rendering the Stock Fund an imprudent investment for Plan participants.

120. Defendants Hoyt and Sloan served as the Head of Wholesale Banking during the Class Period, a business line at Wells Fargo that was one of the principal beneficiaries of the Company's cross-selling strategy, as well as one of the principal promoters of the hyperaggressive sales targets that forced Wells Fargo employees to engage in significant misconduct. Defendants Hoyt and Sloan, overseeing the very division where much of the illicit cross-selling activities took

place, knew or should have known about the misconduct that was taking place and remained concealed from the public, thereby artificial inflating Wells Fargo's stock price and making the Stock Fund an imprudent investment for the duration of the fraud.

121. Defendants Heid and Codel served as the Head of Home Lending during the Class Period, a business line that was also involved in the Company's cross-selling schemes. Customers with mortgages through Wells Fargo were a frequent target of the Company's cross-selling enterprise, directly involving Home Lending in the misconduct that led to the artificial inflation of the Company's stock price via fraud. Thus, Defendants Heid and Codel, overseeing an operation that was directly involved in Wells Fargo's improper cross-selling scheme, knew or should have known of the misconduct going on under their watch, and how the concealment of that misconduct from the public had caused Wells Fargo's stock to trade at artificially high prices, thus making the Stock Fund an imprudent investment for Defendants' fiduciary wards.

122. Defendants knew or should have known that Wells Fargo's financial results and business growth were temporary, and had artificially inflated the Company' stock price. They knew or should have known that the Company's "record" financial results and success at cross-selling could end abruptly (as it did), either by the directive of the bank regulators who were investigating, or if the public found out about the Company's incentives and fraudulent cross-selling practices. This was enormously material information to investors that was not disclosed to the public.

123. As Plan fiduciaries, Defendants knew or should have known that the fraud and undisclosed material information made the Stock Fund an imprudent investment for the Plan. They knew or should have known that the Plan was experiencing ongoing present harm as all purchasers of the Stock Fund paid artificially inflated and increasing false prices which damaged them (and

which attracted more purchasers), and that all shareholders in the Plan would suffer from the steep price correction to come when the truth came out and the fraud was exposed. This immediate and future harm to the Plan could and would have been avoided, in whole or in part, if the Plan's fiduciaries had complied with its ERISA fiduciary duties.

124. As Plan fiduciaries, Defendants were required to (a) investigate and monitor whether Wells Fargo stock was a prudent retirement investment; (b) freeze or restrict additional purchases of the Wells Fargo Stock Fund by the Plan; (c) issue corrective disclosure about Wells Fargo. Notwithstanding these duties, the Defendants did nothing to protect the retirement savings of the Plan participants to whom they owed fiduciary duties from harm as the result of the undisclosed fraud and inflation of Wells Fargo's stock price.

A. Corrective Disclosures Should Have Been Made and Would Not Have Caused "More Harm Than Good"

125. Defendants should have sought out those Company executives with responsibility for making disclosures under the securities laws and entreated them to make the necessary corrective disclosures. And if they were refused, Defendants themselves could have issued the necessary truthful or corrective disclosures to cure the fraud and to make Wells Fargo's stock a prudent investment again for the Plan.

126. Disclosure of the truth to the public was necessary to correct the artificial inflation, and to prevent both present and future harm and damage to the Plan. Disclosure would have ended the artificial inflation in Wells Fargo's stock price, which was damaging all purchasers through the Plan who paid excessive, fraudulent prices for the stock. There were approximately $4.6 billion of new purchases during the Class Period through the Plan made at artificially high prices. Defendants could have prevented some or all of this damage and harm through truthful disclosure.

127. For example, if Defendants had tried to effectuate corrective public disclosure near the very beginning of Wells Fargo's fraud—at the beginning of the Class Period—almost all of the artificial inflation of Wells Fargo's stock price that occurred could have been avoided, and virtually no Plan participants who purchased shares of the Stock Fund would have been harmed. But as the fraud went on and on, more and more Plan participants made 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).

128. Defendants also needed to act to prevent future harm and damage to the Plan's approximately $10 billion investment in Wells Fargo stock. This position was at risk from a large stock price correction when the public learned the truth and realized that Wells Fargo's management had concealed a fraud. As time passed, Wells Fargo's stock price inflated further due to the fraud and the size of the scandal grew, making the eventual collapse worse. The concealment of the fraud put the Plan's $10 billion holding of Wells Fargo stock at risk for a serious and lasting decline in value, hurting management's credibility and the long-term prospects of Wells Fargo as an investment. This significant harm to the Plan could have been prevented or mitigated by timely disclosure.

129. 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 it 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 one. *Id.*

130. Indeed, as of the date of this pleading, Wells Fargo's stock continues to trade at roughly the same price as it did after the truth of its fraud was revealed one month ago, suggesting that the damage to the Company's reputation caused by its prolonging of its fraud has been significant.

131. Defendants cannot argue that the federal securities laws prevented it from making truthful disclosure. In this situation, ERISA and the federal securities laws compelled the EBRC to take exactly the same action—tell the truth and correct the inflated stock price. No law or duty required them to conceal or prevent the disclosure of the truth—quite the opposite.

132. This also means that 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. And common sense should have reminded Defendants that no corporate fraud lasts forever; there is always a day of reckoning. 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.

133. Defendants could not have reasonably believed that effectuating truthful, corrective disclosure would do "more harm than good" to the Plan or its participants. First and foremost, even the passive participation of Defendants in a fraud or its concealment runs counter to ERISA's fundamental obligation that fiduciaries must communicate truthfully and accurately with those to whom a fiduciary duty is owed. At a minimum, Defendants had the fiduciary obligation to disclose the truth to correct the known fraud and not participate in its concealment.

134. Truthful disclosure was also needed to prevent worse future harm to the Plan and Wells Fargo's stock price. Defendants may argue that they were concerned that correcting the fraud would temporarily lower the stock price, but that concern should not have deterred disclosing the truth. Every stock fraud in history, when corrected, has resulted in a temporary drop in the stock price; that is an inherent quality of efficient markets. But, in virtually every fraud case, the longer the fraud persists, the harsher the correction tends to be. Defendants should have disclosed the truth sooner rather than later to minimize the ongoing harm (to prevent further artificial inflation and purchases at excessive prices), as well as worse future damage to Wells Fargo's stock price.

135. Defendants' inaction towards the known fraud caused not merely theoretical harm, but concrete damage. Upon information and belief, over the course of the Class Period, the Plan

was a ***net buyer*** of Wells Fargo stock by a margin of approximately $3.5 ***billion***. Even if Defendants thought that some "good" was being done for Plan participants fortunate enough to be selling their Stock Fund shares during the Company's ongoing fraud, they knew or should have known that the "harm" being done to Plan participants who were buying Stock Fund shares during that time was far greater—3.5 billion times greater, in fact.

136. The Plan holders of Wells Fargo shares suffered greater harm and damage this same manner from Defendants' failure to end the fraud. While they held the Stock Fund over the period of time when the stock price was artificially appreciating in value, they were deceived by its false growth. They suffered greater losses when Wells Fargo's stock price corrected, and fell further due to the loss of management credulity, and the termination of several Wells Fargo officers including its CEO. They also were deprived of the option of transferring their shares into one of the different, prudent investment alternatives under the Plan, which would have spared them from the greater losses when the stock correction took place.

137. Additionally, the issuance of corrective disclosure was required by the federal securities laws. By the very same mechanism that Wells Fargo could have used to make corrective disclosures to the general public under the federal securities laws (at the urging of Defendants), it could also have made disclosures to Plan participants, because Plan participants are, after all, part of the general public. Defendants did not have to make a "special" disclosure only to Plan participants, but could simply have made one corrective disclosure to the world and thereby simultaneously satisfied its obligations under the federal securities laws *and* ERISA.

138. Indeed, earlier disclosure by Wells Fargo would have affirmatively benefitted the Plan and its participants, as well as mitigated the harm that was being done to them. With the truth about the source of Wells Fargo's cross-selling and the ongoing investigation, Plan participants

could properly evaluate the Stock Fund versus their other investment alternatives for their retirement savings. Plan participants considering new purchases with their annual contributions could select healthier, prudent investment options such as diversified mutual funds which outperformed Wells Fargo stock during the Class Period. And, over the long term, Defendants' failure to expose Wells Fargo's fraud is likely to have a chilling effect on future purchases of the Stock Fund by Plan participants, whose trust in their employer is inevitably eroded by this malfeasance. Such an effect constitutes a net harm to the Plan.

B. All New Purchases Should Have Been Halted And Would Not Have Caused "More Harm Than Good"

139. The EBRC was specifically responsible for the Plan's investments and monitoring the investments, including the Stock Fund, and was bound to take whatever actions were required to maintain the prudence of those investments, including the Stock Fund, *regardless of any language in the Plan that purported to strip the EBRC of that responsibility*. Likewise, the Plan Administrator was responsible, as a "Named Fiduciary," for ensuring the fair and equitable operation of the Plan, including the ongoing prudence of Plan investment options (such as the Stock Fund).

140. As members of the EBRC, Defendants had the power under the Plan to cause the EBRC to halt all new contributions or investments into the Stock Fund—or to revise the investment guidelines applicable to a third-party investment manager to accomplish the same end—when Defendants knew (or should have known) that the Stock Fund was an imprudent investment because Wells Fargo's stock price was inflated by fraud and undisclosed material information. The Plan Administrator could have exercised similar power through his/her rules-making and enforcement authority.

141. Defendants were duty-bound by ERISA to prevent the present and future harm to the Plan and its participants due to the Company's undisclosed and misrepresented material information. Defendants knew or should have known that every purchase made under the Plan of the Stock Fund was being made at a fraudulently inflated price—and thus would harm those purchasers.

142. Defendants knew or should have known that the Plan was purchasing literally billions of dollars of Wells Fargo stock through the Stock Fund during the Class Period at inflated prices. They also knew or should have known that the inflation was getting worse, damaging each purchaser more as the fraud and price inflation continued. Defendants had a duty to stop the Plan from purchasing at fraudulent prices and to mitigate the damage the fraud was causing the Plan as early as possible.

143. Defendants also knew that as the fraud continued, the Plan's purchasers of over $4 billion worth of Wells Fargo stock were at risk for a greater downward price correction when the truth emerged. This downward price correction would be worse the longer the fraud continued. They also knew that any fraud or scandal revelation would damage Wells Fargo's long term confidence with investors, and that the damage would be worse the longer it lasted. Therefore, Defendants had a duty to act to prevent worse future damage to the Plan's purchasers.

144. Defendants could not have reasonably believed that restricting new purchases of the Stock Fund would likely do "more harm than good" to the Plan or its participants. They had a duty to prevent the present and future harm from the Plan's overpayment for Wells Fargo stock at excessive prices. No possible harm to the Plan exists from this action; rather it is the inaction which harmed the Plan. In fact, the Plan would suffer no financial or tangible harm if a halt were placed on new purchases.

145. Most often, plan fiduciaries try to justify their inaction by arguing that they could not halt new purchases because to do so would constitute illegal "insider trading" under the federal securities laws. However, this argument is a *non sequitur* as the Plan would suffer no financial or tangible harm if a halt were put on purchases. And the act of simply preventing new purchases at inflated prices would not constitute "insider trading" because there is no transaction in securities or any benefit conveyed to insiders.

146. Additionally, the act of halting new purchases itself also would not constitute "inside" information" the same way that publicly reported insider sales are legal and do not reveal any "inside information." Halting new purchases would also be unlikely to have a material impact on Wells Fargo's stock price, because the volume of purchases by the Plan was only a small percentage of the overall stock trading volume. But, even if halting purchases did have a negative impact on the stock price, it would only be reducing the artificial inflation of the stock, which ultimately would benefit Plan participants by enabling them to avoid the harm of buying and holding shares at inflated prices. And, by not halting purchases, Defendants enabled substantial additional harm to be done to Plan participants.

147. The SEC has stated that, as long as both purchases *and* sales are halted for an ESOP, the insider-trading laws are not implicated. So, to ensure compliance with the securities laws, Defendants just had to effectuate the temporary closure of the Stock Fund, so that no need purchases or sales could be made, until such time as the Company's fraud finally ended.

148. Even if EBRC's temporary closing of the Fund necessitated a public disclosure under the securities laws, such an action would be all to the good. Any reduction caused by such a disclosure would only be a reduction in the artificial inflation of the fraudulent stock price. Such a disclosure might encourage Wells Fargo's senior executives to go the rest of the way, do the

right thing and make a full corrective disclosure. At the very least, harm to the Plan and Plan participants would have been mitigated.

149. The Plan participants who chose to purchase the Stock Fund paid fraudulent, excessive prices for the stock during the Class Period. They suffered concrete financial harm to their retirement savings by over-paying for Wells Fargo stock which, Defendants knew, would fall sharply in value when the truth came out and the stock corrected. When the fraud was revealed, Wells Fargo's stock fell by more than 9%, or over $9 per share. Those Plan participants who purchased Wells Fargo stock were damaged by overpaying this amount, and they bore this foreseeable loss which could have been avoided. No matter what happens to the stock price in the future, these Plan participants sustained a loss due to paying the excessive artificial price, and they will bear this loss even if Wells Fargo's stock recovers in the future. Defendants should have acted to end and prevent this concrete, present harm to the Plan, and no greater harm would have resulted from their action.

150. Moreover, by failing to halt new purchases of Stock Fund, the Plan participants were also denied the opportunity to invest in the prudent alternative investment options under the Plan. These investment options included various mutual funds which invested in the broad securities markets. These mutual funds performed well from 2012 through 2016, and the Plan participants were damaged because their money went into artificially inflated stock that was poised to decline, rather than the alternative appreciating funds.

C. Defendants Should Have Directed a Portion of the Stock Fund's Holdings Into a Low-Cost Hedging Product

151. As a last resort, Defendants could have used EBRC's authority over the Stock Fund or over the investment guidelines to which any third-party investment manager delegatee was beholden to put a small but significant portion of its holdings into a low-cost hedging product.

Such products have been widely available to ESOPs for many years now. They are not derivatives, and therefore their purchase need not be disclosed under the securities laws. Their costs are relatively small, and are certainly far less than the losses the Stock Fund inevitably experienced when Wells Fargo's fraud came to light. And, because such hedging products are designed to trade counter to the company stock held by the ESOP in question, when the Stock Fund did experience those losses as its fraud came to light, those losses would have been lessened by the hedging position.

152. Thus, once Defendants became aware of Wells Fargo's fraud and the artificial inflation of the Company's stock, they should have sought out a low-cost hedge product to soften the blow to Plan participants that would come when the fraud was finally revealed. Indeed, the prudence of such a measure, in light of the volatility that equities can sometimes experience, is self-evident, and Defendants arguably would have been wise to have invested in such a product even *before* Wells Fargo began to engage in fraud.

153. Had Defendants sought to hedge the ESOP's holdings, they could have mitigated the damages caused to the Plan and Plan participants by Wells Fargo's fraud. But they did nothing, and Plan participants suffered catastrophic losses as a result of this inaction.

154. While Defendants did nothing, Wells Fargo's stock price traded up from $21 per share to over $55 per share, then fell to below $46 per share, costing its employees many millions of dollars in retirement savings. Meanwhile, other investments in the Plan have fared far better, causing losses to the Plan and its participants from investment decisions that were based on materially false information. Defendants who are the Plan fiduciaries are directly responsible for this enormous harm to the Plan and Plan participants that their breach of duty has caused.

VI. CLASS ACTION ALLEGATIONS

155. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure 23(a), (b)(l) and/or (b)(2) on behalf of himself and the following class of persons similarly situated (the "Class"):

> All individuals, excluding defendants, who participated in the Plan and whose individual accounts purchased and/or held the Wells Fargo ESOP and Non-ESOP Stock Fund at any time between February 28, 2013 and September 20, 2016, inclusive.

149. Excluded from the Class are Defendants, other officers and directors of the Company, members of Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

150. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least 360,000 members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by the Company or the Plan and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

151. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law complained of herein.

152. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether Defendants each owed a fiduciary duty to the Plan, to Plaintiff and to members of the Class;

b. Whether Defendants breached fiduciary duties owed to the Plan, Plaintiff and members of the Class by failing to act prudently and solely in the interests of the Plan and the Plan's participants and beneficiaries;

c. Whether Defendants violated ERISA; and

d. The extent to which Class members have sustained damages and the proper measure of those damages.

153. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and the other members of the Class each sustained damages or were negatively affected by defendants' wrongful conduct in violation of ERISA as complained of herein.

154. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel highly competent and experienced in class action and complex litigation, including actions involving ERISA plans. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

155. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because this action is also brought on behalf of the Plan, and any prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to the Plan which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

156. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (ii) Defendants have acted

or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory or other appropriate equitable relief with respect to the Class as a whole.

157. Plaintiff also brings this action on behalf of the Plan pursuant to ERISA §§ 409(a), 502(a)(2), 29 U.S.C. §§ 1109(a), 1132(a)(2).

COUNT I

Failure to Prudently and Loyally Manage the Plan's Assets

158. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

159. At all relevant times, as alleged above, each Defendant was a fiduciary within the meaning of ERISA § 3(21)(a), 29 U.S.C. § 1002(21)(A) in that he or she exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

160. 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 are prudent. Furthermore, such fiduciaries are responsible for ensuring that all investments in the Company's stock in the Plan were prudent and that such investment was consistent with the purpose of the Plan. Each Defendant is liable for losses incurred as a result of such investments being imprudent.

161. A fiduciary's duty of 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)(l)(D), 29 U.S.C. § 1104(a)(l)(D). 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 plans, including plan trustees, to do so.

162. Each Defendant breached his or her duties to prudently manage the Plan's assets. During the Class Period, each Defendant knew or should have known that the Stock Fund had become an imprudent investment for Plan participants' retirement savings because Wells Fargo's stock price was inflated due to fraud and undisclosed material information. Each Defendant knew or should have known that Wells Fargo had engaged in fraudulent illegal activities, and perpetuated a corporate culture which promoted these activities, to grow its cross-selling opportunities and bank revenues. Each Defendant knew or should have known that Wells Fargo bankers opened unauthorized deposit and credit card accounts, engaged in forgery and other improper activities because these were pushed by management and supervisors to meet aggressive and highly unrealistic sales quotas or they faced demotions and firings.

163. Accordingly, Defendants should have taken appropriate responsive action by restricting transactions or new investments by the Plan in the Stock Fund or by effectuating disclosures that would have corrected the stock price and rendered the Stock Fund a prudent investment again.

164. Defendants were obligated under ERISA to discharge their duties with respect to the Plan solely in the interests of Plan participants and for the exclusive purpose of providing benefits to Plan participants.

165. As part of this fiduciary duty of loyalty, Defendants were obligated to be truthful in all communications with Plan participants.

166. When Defendants knew or should have known that the Company's stock price had become artificially inflated by fraud, and that Plan participants who bought and held shares of the

Stock Fund were therefore being victimized by this fraud, Defendants' duty of loyalty should have compelled them to be truthful with Plan participants and not to allow them to continue to be victimized by the Company's fraud. Defendants' passive failure to prevent an ongoing fraud being perpetrated against Plan participants thus breached their fiduciary duty of loyalty

167. As such, between February 28, 2013, through September 20, 2016, Plan participants could not appreciate the true risks presented by investments in Wells Fargo's stock and, therefore, could not make informed decisions regarding their investments.

168. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly Plaintiff and other Plan participants, suffered foreseeable damage to and/or lost a significant portion of their retirement investments. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants are liable to restore the losses to the Plan caused by their breach of fiduciary duty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

A. Determination that the instant action may be maintained as a class action under Rule 23, Federal Rules of Civil Procedure, appointing Plaintiff as class representative, and determining that Plaintiff's counsel satisfies the prerequisites of Rule 23(g);

B. Declaration that Defendants breached ERISA fiduciary duties owed to the Plan and its participants;

C. An Order compelling Defendants to make good to the Plan all losses to the Plan resulting from Defendants' breaches of their fiduciary duties, including losses to the Plan resulting from imprudent investment of the Plan's assets, and to restore to the Plan all profits Defendants

made through use of the Plan's assets, and to restore to the Plan all profits which the participants would have made if Defendants had fulfilled their fiduciary obligations;

D. Imposition of a Constructive Trust on any amounts by which Defendants were unjustly enriched at the expense of the Plan as the result of breaches of fiduciary duty;

E. An Order enjoining Defendants from any further violations of their ERISA fiduciary obligations;

F. Actual damages in the amount of any losses the Plan suffered, to be allocated among the participants' individual accounts in proportion to the accounts' losses including the lost opportunity costs;

G. An Order that Defendants allocate the Plan's recovery to the accounts of all participants who had any portion of their account balances invested in the Stock Fund in proportion to the accounts' losses attributable to the decline in the price of its common stock and/or the value of investment in alternative options under the Plan;

H. Awarding the Plan and/or Plan participants rescission and/or money damages including pre-judgment interest;

I. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);

J. An Order awarding attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine;

K. An Order for equitable restitution and other appropriate equitable monetary relief against Defendants; and

L. Such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff and the Class request a jury trial for any and all Counts for which a trial by jury is permitted by law.

DATED: October 24, 2016

By: */s/ Douglas J. Nill*
Douglas J. Nill (# 0194876)

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Additional Counsel for Plaintiff

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

John Sterling Ross, and all other individuals similarly situated

(b) County of Residence of First Listed Plaintiff: Dakota County, MN
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Douglas J. Nill, Douglas J. Nill, PLLC d/b/a FarmLaw
2050 Canadian Pacific Plaza, 120 South Sixth Street
Minneapolis, MN 55402-1801; (612) 573-3669

DEFENDANTS

Hope Hardison, Timothy J. Sloan, David A. Hoyt, Michael J. Heid, Frank Codel, and Justin C. Thornton

County of Residence of First Listed Defendant: Hennepin County, MN
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ☒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ❒ 2 Removed from State Court
- ❒ 3 Remanded from Appellate Court
- ❒ 4 Reinstated or Reopened
- ❒ 5 Transferred from Another District *(specify)*
- ❒ 6 Multidistrict Litigation - Transfer
- ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Section 502 of the Employee Retirement Income Security Act

Brief description of cause:
This is an ERISA class action brought to recover damages suffered due to breaches of fiduciary duties.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE: Patrick J. Schiltz — DOCKET NUMBER: 16-cv-3405 (PJS/BRT)

DATE: 10/24/2016

SIGNATURE OF ATTORNEY OF RECORD: /s/ Douglas J. Nill

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [ERISA Class Action Filed Against Wells Fargo](https://www.classaction.org)