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DEPARTMENT 212

1 JOSEPH W. COTCHETT (#036324)
 2 MARK C. MOLUMPY (#168009)
 3 NANCI E. NISHIMURA (#152621)
 4 DANIEL R. STERRETT (#260290)
 5 **COTCHETT, PITRE & McCARTHY**
 6 San Francisco Airport Office Center
 7 840 Malcolm Road, Suite 200
 8 Burlingame, CA 94010
 9 Telephone: (650) 697-6000
 10 Facsimile: (650) 697-0577
 11 jcotchett@cpmlegal.com; mmolumphy@cpmlegal.com;
 12 nnishimura@cpmlegal.com; dsterrett@cpmlegal.com

13 *Attorneys for Plaintiff Robert Marshall,*
 14 *derivatively on behalf of Wells Fargo & Company*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

17 CGC-10-496137

18 ROBERT MARSHALL, derivatively on
 19 behalf of Wells Fargo & Company,

CASE NO.: _____

20 Plaintiff,

21 v.

22 **COMPLAINT FOR:**

23 RICHARD M. KOVACEVICH;
 24 JOHN G. STUMPF;
 25 ENRIQUE HERNANDEZ, JR.;
 26 CYNTHIA H. MILLIGAN;
 27 PHILIP J. QUIGLEY;
 28 JUDITH M. RUNSTAD;
 SUSAN G. SWENSON;
 LLOYD H. DEAN;
 NICHOLAS G. MOORE;
 SUSAN E. ENGEL;
 DONALD M. JAMES;
 RICHARD D. McCORMICK;
 STEPHEN W. SANGER; and
 DOES 1 through 50, inclusive,

1. BREACH OF FIDUCIARY DUTY
2. ABUSE OF CONTROL
3. GROSS MISMANAGEMENT

JURY TRIAL DEMANDED

Defendants,

-and-

WELLS FARGO & COMPANY,

Nominal Defendant.

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1 Plaintiff, derivatively and on behalf of Wells Fargo & Company (“Wells
2 Fargo” or the “Company”), allege the following based upon the investigation of
3 Plaintiff and counsel, including review of legal and regulatory filings, press
4 releases and media reports about Wells Fargo.

5 I. INTRODUCTION

6 1. Over the past several years, Defendants, and each of them, authorized
7 Wells Fargo to avoid paying taxes to the United States government by approving
8 and ratifying Wells Fargo’s participation in sham tax shelters involving numerous
9 lease transactions with public agencies. The lease transactions are known as “sale
10 in/lease out” or SILO tax shelters (“SILO” or “SILO transactions”), where a tax-
11 exempt entity such as a public transit agency transfers tax benefits to Wells Fargo
12 in a sham transaction. The assets in these lease transactions include rail cars or
13 buses in the transit leases, or telecommunications equipment. The Wells Fargo tax
14 shelters are collectively referred to as the “SILO Transactions.” In a nutshell, the
15 bank “bought” the rail car or bus, then “leased” it back to the agency, and took all
16 of the deductions for the rail car or bus on its corporate Franchise income taxes.
17 Nothing changed hands – only pieces of paper.

18 2. Wells Fargo authorized and paid millions of dollars in bonuses to
19 officers and employees, and fees to attorneys, accountants, and consultants, for
20 coming up with these sham transactions to defraud the government and taxpayers
21 out of millions of dollars in tax revenues. They sought to cover these actions with
22 faulty and bogus legal opinions, for which they paid hundreds of thousands of
23 dollars, if not more. Meanwhile, while fighting with the Federal government to
24 avoid paying Federal income taxes, Wells Fargo took \$25 billion in TARP funds
25 from the Federal government and paid millions in bonuses.

26 3. This is a shareholder derivative action on behalf of nominal defendant
27 Wells Fargo, a financial institution with its principal place of business in San
28 Francisco, California, against certain present and former members of Wells

1 Fargo’s Board of Directors and certain senior executives (collectively
2 “Defendants”) for breaches of fiduciary duty, abuse of control, and gross
3 mismanagement.

4 4. Wells Fargo’s objective was simple – to avoid paying taxes. The
5 SILO Transactions allowed Wells Fargo to take advantage of large tax deductions
6 bought from the tax-exempt public entities to offset taxable income and thereby
7 reduce overall tax liability to the United States.

8 5. For example, in the taxable year ended December 31, 2002, Wells
9 Fargo filed a consolidated Federal income tax return on behalf of itself and its
10 subsidiaries, which took deductions of \$115,174,203 for the SILO Transactions.
11 On its 2002 Federal income tax return, Wells Fargo reported “rental income” with
12 respect to the SILO Transactions and deducted the appreciation of equipment,
13 amortization of transactions expenses, and interest expense relating to the property
14 in these SILO Transactions.

15 6. The Internal Revenue Service (“IRS”) conducted a routine audit of
16 Wells Fargo’s Federal income tax return for the 2002 taxable year. As part of the
17 audit, the IRS disputed Wells Fargo’s tax treatment of the SILO Transactions and,
18 as a result, disallowed the tax deductions, proposed an increase in Wells Fargo’s
19 taxable income for the amount of the deductions, and sought to impose a penalty
20 of over \$8 million under 26 U.S.C. § 6662 against Wells Fargo for participating in
21 these sham transactions.

22 7. By 2002, Wells Fargo was well aware of the fact that the IRS was
23 challenging tax shelters such as these SILO Transactions, and their predecessors,
24 LILO (“lease in/lease out”) transactions. In fact, in April 2002, a federal tax court
25 denied a Wells Fargo subsidiary’s tax deduction of \$87.8 million from a SILO
26 involving computer equipment. Indeed, in 1996, the IRS issued proposed
27 regulations that largely eliminated the tax benefits associated with LILOs; these
28

1 regulations became effective in 1999. Section 467 Rental Agreements, 61 Fed.
2 Reg. 27,834 (proposed June 3, 1996); 26 C.F.R. § 1.467-1 to-5 (2007).

3 8. Tax deductions for LILO transactions were formally disallowed in
4 2002. In March 2002, the IRS issued Revenue Ruling 99-14, 1999-1 C.B. 835,
5 which disallows deductions claimed with respect to LILO transactions. In October
6 2002, the IRS issued Revenue Ruling 2002-69, 2002-2 C.B. 760, which modified
7 and superseded Revenue Ruling 99-14, but maintained the same position
8 disallowing deductions.

9 9. In the taxable year ended December 31, 2003, Wells Fargo filed a
10 consolidated Federal income tax return on behalf of itself and its subsidiaries,
11 which took deductions of more than \$160 million for the SILO Transactions.

12 10. By early 2004, Wells Fargo was among a handful of financial
13 institutions that were the largest users of these SILO tax shelters, collecting
14 approximately *\$3.3 billion in federal tax breaks*. At the time, it was reported that
15 Wells Fargo bought \$1.6 billion worth of assets in 35 transactions. While public
16 transit agencies obtained only about 5 percent of the value of the assets, investors
17 like Wells Fargo claimed 100 percent depreciation. The sham deals brought an
18 investment return on saved taxes, of almost 600 percent for the biggest investors,
19 including Wells Fargo.

20 11. In February 2004, the IRS released Appeals Settlement Guidelines
21 designed to bring an end to the tax benefits associated with LILO transactions. In
22 October 2004, Congress followed up on these efforts and passed legislation which
23 substantially increased the penalties and sanctions for failing to comply with tax
24 shelter rules. See American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118
25 Stat. 1418.

26 12. Wells Fargo knew that it was only a matter of time before tax
27 deductions for the SILO Transactions would be formally disallowed. As early as
28 March 2004, the IRS's commissioner revealed that companies that were using

1 SILOs “are trying to stay several steps ahead of the IRS,...” adding that, “[a]ll
2 you’re doing here in some of the transactions is you’re really abusing the system.”
3 Senator Charles Grassley, Republican head of the Senate Finance Committee,
4 added that these SILO deals are, “just good old-fashioned fraud.” On February
5 11, 2005, the IRS issued Notice 2005-13, which disallowed tax deductions with
6 respect to SILO transactions, like those involved herein. (See IRS Notice 2005-13,
7 2005-1 C.B. 630, 2005-1 C.B. 630, 2005-9 I.R.B. 630). Since then, and as alleged
8 herein, the IRS has successfully challenged these SILO transactions as having no
9 economic purpose other than creating tax benefits.

10 13. As expected, the IRS formally challenged Wells Fargo’s SILO
11 Transaction tax deductions. On April 22, 2005, the IRS issued to Wells Fargo
12 Letter 950 with two Forms 870, “Waiver of Restrictions on Assessment and
13 Collection of Deficiency in Tax and Acceptance of Overassessment”. This Letter
14 reflected a refund of income described above. The refund was partially offset by a
15 penalty of \$8,062,194 million, with respect to the SILO Transactions imposed
16 pursuant to 26 U.S.C. § 6662. On April 27, 2005, Wells Fargo signed the Form
17 870.

18 14. On May 11, 2005, Wells Fargo challenged the IRS’s disallowance of
19 the deductions for the SILO Transactions by filing a Form 1120X, “Amended U.S.
20 Corporation Income Tax Return”, with the IRS requesting refund of erroneously
21 paid Federal income tax for the 2002 taxable year. Wells Fargo claimed that the
22 IRS had erred by increasing Wells Fargo’s taxable income for 2002 by
23 \$115,174,203 with respect to the SILO Transactions, and by \$7,594,248 with
24 respect to a proposed adjustment unrelated to the SILO Transactions. As a result,
25 Wells Fargo requested a refund of \$42,968,958 in taxes. It also requested a refund
26 of the \$8,062,194 paid for the penalty imposed by the IRS for the SILO
27 Transactions.

28

1 15. On September 7, 2006, Wells Fargo, on behalf of itself and its
2 subsidiaries, filed suit against the United States in the United States Court of
3 Federal Claims seeking a refund of \$115,174,203 that the IRS disallowed from its
4 2002 Federal income taxes (“2006 Tax Refund Suit”). Wells Fargo sought to
5 characterize the SILO Transactions as though they were tangible pieces of
6 property for tax purposes. By way of example, Wells Fargo falsely asserted that
7 the SILO Transactions “qualified as a sale” for tax purposes because “(i) the
8 agreement transferred the benefits and burdens of ownership to Wells Fargo, (ii)
9 Wells Fargo’s purchase price was equal to the fair value market of the property (as
10 determined by the independent appraiser), and (iii) there is a reasonable possibility
11 that Wells Fargo can recoup its investment in the leased equipment from its
12 income producing potential and residual value.” In addition, Wells Fargo falsely
13 asserted that each SILO Transaction qualified as a “lease” for tax purposes
14 because it obtained a possessory interest in the property (*e.g.*, “each Lease
15 transferred possession of the property interest in return for the obligation to pay
16 rent and provided for transfer of possession back to Wells Fargo in the event of
17 default,”).

18 16. On June 6, 2007, the IRS concluded an audit of Wells Fargo’s 2003
19 Federal income tax, and proposed a deficiency of more than \$160 million for the
20 2003 taxable year, more than \$140 million of which involved disallowed tax
21 deductions for SILO transactions. Wells Fargo formally disputed the IRS’s
22 findings shortly thereafter.

23 17. Despite having already disallowed tax deductions for SILO
24 transactions, on August 6, 2008, the IRS offered a penalty-free, tax shelter
25 settlement initiative to parties involved in SILO transactions. Called the IRS’s
26 Appeals Settlement Guideline, the initiative offered settlements to many of the
27 nation’s largest corporations, including Wells Fargo, contingent on them ending
28 the tax benefits of these sham transactions by the end of that year. The SILO

1 structure, like its predecessor LILO, is no longer an acceptable tax haven for the
2 banks that created them. Among the terms of the IRS's Appeals Settlement
3 Guideline, a taxpayer would have to concede 80 percent of any claimed interest
4 expense deduction, amortized transaction costs, and head lease, described *infra*,
5 rent expense for each tax year through 2007, and the IRS would agree to disregard
6 80 percent of any reported taxable rental income with respect to the SILO
7 transactions for each tax year through 2007.

8 18. Wells Fargo knowingly rejected an opportunity to benefit financially
9 from the proposed IRS settlement for its numerous SILO Transactions. Under the
10 IRS's proposed settlement, despite being allowed to avoid penalties for seeking an
11 unlawful tax deduction, Wells Fargo was offered the opportunity to retain 20
12 percent of the tax benefits it derived from the illegal tax shelters. Not surprisingly,
13 after efforts by both Congress and the IRS to eliminate the tax benefits originally
14 available from SILO transactions, these abusive tax shelters have become virtually
15 non-existent in new transactions created by the leveraged leasing industry today.

16 19. In its 2008 annual report posted on its website, Wells Fargo reported
17 that it was appealing or litigating IRS audits for periods 1997 to 2004 (including
18 the lawsuits described herein), and that the IRS is auditing Wells Fargo's Federal
19 income tax returns for 2005 and 2006 (presumably including deductions for
20 certain SILO Transactions). Wells Fargo also reported that in "October 2008,
21 Wachovia submitted a non-binding acceptance to participate in the IRS resolution
22 offer related to sale-in/lease out (SILO) transactions", and although the financial
23 impact was uncertain, it could significantly impact the Company's unrecognized
24 tax benefits. Wells Fargo's Form 10-K filed with the SEC for this period makes
25 no mention of any SILO transactions.

26 20. In fact, on October 5, 2009, Wells Fargo filed a second suit against
27 the United States, but this time in federal court in Minnesota ("2009 Tax Refund
28 Suit"). Alleging that it has "acquired the benefits and burdens of ownership" in

1 public transit property under additional SILO Transactions, Wells Fargo seeks a
2 refund of at least \$54,652,605, for what it asserts it erroneously paid in Federal
3 income taxes for SILO Transactions that were disallowed for the taxable year
4 ended December 31, 2003. The total refund Wells Fargo seeks in its suit is more
5 than \$162 million involving numerous disputed tax deductions. As with Wells
6 Fargo's efforts to take tax deductions on the SILO Transactions in 2002, the IRS
7 also audited Wells Fargo's 2003 efforts to deduct taxes on additional SILO
8 Transactions, and notified Wells Fargo in 2007 that it was disallowing certain of
9 those 2003 deductions as well. Wells Fargo rejected the IRS's disallowances,
10 rejected the opportunity to settle, and filed the second, 2009 Tax Refund Suit
11 instead.

12 21. Despite knowing that the IRS had disallowed tax deductions for the
13 sham tax shelters at issue, Wells Fargo engaged in prolonged litigation over the
14 2006 Tax Refund Suit that culminated in a court trial in April 2009. The parties
15 agreed to limit their trial presentation to five SILO Transactions (four involving
16 public transit agencies, including the State of California Department of
17 Transportation ("Caltrans"), and one technological equipment ("QTE") lease).

18 22. On January 8, 2010, the Court presiding over Wells Fargo's 2006 Tax
19 Refund Suit rejected Wells Fargo's claims against the IRS, including its
20 characterization of the SILO Transactions. The Court ruled that Wells Fargo is
21 not entitled to the claimed tax deductions. As alleged in more detail herein, the
22 Court previewed its decision in the following synopsis:

23 In brief summary, the Court finds that Wells Fargo is not entitled to
24 the claimed tax deductions on the five trial transactions. ***The SILO***
25 ***transactions did not grant Wells Fargo the burdens and benefits of***
26 ***property ownership. The transactions lacked economic substance,***
27 ***and were intended only to reduce Wells Fargo's federal taxes by***
28 ***millions of dollars.*** Although well disguised in a sea of paper and
complexity, the SILO transactions essentially amount to Wells
Fargo's purchase of tax benefits for a fee from a tax-exempt entity
that cannot use the deductions. The transactions are designed to
minimize risk and assure a desired outcome to Wells Fargo,
regardless of how the value of the property may fluctuate during the

1 term of the transactions. Indeed, nothing of any substance changes in
2 the tax-exempt entity's operation and ownership of the assets. The
3 only money that changes hands is Wells Fargo's up-front fee to the
4 tax-exempt entity, and Wells Fargo's payments to those who have
5 participated in or created the intricate agreements. The equity and
6 debt "loop" transactions simply are offsetting accounting entries not
7 involving actual payments, or pools of money eventually returned to
8 the original holder. ***If the Court were to approve of these SILO
9 schemes, the big losers would be the Internal Revenue Service
10 ("IRS"), deprived of millions of taxes rightfully due from a
11 financial giant, and the taxpaying public, forced to bear the burden
12 of the taxes avoided by Wells Fargo.***

13 *Wells Fargo & Company and Subsidiaries v. The United States*, Case No. 06-628T
14 (January 8, 2010) at 3-4 (emphasis added).

15 23. To further support its rejection of Wells Fargo's refund suit against he
16 United States, the Court expressed its disdain for the individuals who created and
17 perpetuated Wells Fargo's SILO Transactions, stating that:

18 The SILO transactions here are offensive to the Court on many
19 levels. ***A cadre of company executives, in concert with teams well
20 known legal and accounting firms and other consultants, regularly
21 constructed and participated in these tax schemes for Wells Fargo,
22 apparently blind to professional standards of care.*** Representatives
23 from the Federal Transit Administration ("FTA") encouraged transit
24 agencies to participate in SILO transactions as a way to raise
25 additional funds, without seriously considering the probable adverse
26 tax treatment of the transactions. Even when the IRS issued a 1999
27 Revenue Ruling disallowing tax deductions for LILLO transactions,
28 the participants continued on with only slight adjustments to create
the SILO transactions. ***The Court has little sympathy for those who
have lost out as a result of this decision.***

Id. at 4-5 (emphasis added and internal note omitted).

21 24. The District Court in Minnesota, where Wells Fargo filed the 2009
22 Tax Refund Suit on behalf of itself and its affiliated group, will most likely reject
23 Wells Fargo's claims for the same reasons.

24 25. These sham SILO tax shelters were characterized as "blatantly
25 abusive" and "rotten to the core." Even when it was known that Congress and the
26 IRS were challenging these aggressive tax shelters, and then formally disallowed
27 them, Wells Fargo was allowed to continue seeking millions of dollars in tax
28 deductions, at great cost and waste of corporate and judicial assets. Simply stated,

1 this conduct exemplified bad corporate citizenship that was blatantly abusive and
2 rotten to the core.

3 **II. JURISDICTION AND VENUE**

4 26. The amount in controversy exceeds the jurisdictional minimum of
5 this Court.

6 27. Venue is proper because certain of the Defendants resided, transacted
7 business, were found, or had agents in this county, and because San Francisco is
8 the closest major financial center to Plaintiff where the Defendants conducted
9 significant business.

10 **III. PARTIES**

11 **A. Plaintiff**

12 Plaintiff Robert Marshall ("Marshall") is a resident of San Mateo County,
13 California, and a registered Wells Fargo shareholder. During the time of the
14 injurious acts complained of herein, Plaintiff Marshall held and continues to hold
15 shares of Wells Fargo stock.

16 **B. Defendants**

17 **1. Nominal Defendant**

18 28. Defendant **Wells Fargo & Company** ("**Wells Fargo**") is a financial
19 institution with its principal place of business in San Francisco, California. At all
20 times alleged, Wells Fargo participated in numerous lease transactions sometimes
21 referred to as "SILO" ("Sale in/Lease out") tax shelters, pursuant to which Wells
22 Fargo purchased tax benefits for a fee from tax-exempt public entities. Wells
23 Fargo's origins as a banking giant began in 1852 when it opened for business in
24 San Francisco to serve fortune seekers during the California gold rush.

25 **2. Executive Officer Defendants**

26 29. Defendant **Richard M. Kovacevich** ("Kovacevich") served on Wells
27 Fargo & Company's Chairman, President and CEO from 2002-2004. He
28 relinquished his President duties and remained Chairman and CEO from 2005-

1 2006. From 2007-2008, Kovacevich was Chairman of Wells Fargo & Company.
2 Kovacevich was also a member of the Board of Directors from 2002-2008. On
3 information and belief, Kovacevich is a resident of San Francisco County,
4 California.

5 30. Defendant **John G. Stumpf** (“Stumpf”) became Chairman for Wells
6 Fargo & Company in January 2010. He was named Chief Executive Officer in
7 June 2007, elected to Wells Fargo’s Board of Directors in June 2006, and has been
8 President since August 2005. Stumpf joined the former Norwest Corporation
9 (predecessor to Wells Fargo) in 1982 in the loan administration department and
10 then became senior vice president and chief credit officer for Norwest Bank, N.A.,
11 Minneapolis. In 1998, with the merger of Norwest Corporation and Wells Fargo
12 & Company, he became head of the new Western Banking Group. In 2000,
13 Stumpf led the integration of Wells Fargo’s acquisition of the \$23 billion First
14 Security Corporation. In May 2002, he was named Group EVP of Community
15 Banking and then in December 2008, Stumpf led one of the largest mergers in
16 history with the purchase of Wachovia. On information and belief, Stumpf is a
17 resident of San Francisco County, California.

18 31. Each of the Defendants identified above as Executive Officers are
19 collectively referred to as “Executive Officer Defendants”.

20 3. **Audit Committee Defendants**

21 32. Defendant **Enrique Hernandez, Jr.** (“Hernandez”) is currently on
22 the Board of Directors for Wells Fargo & Company. He has been a director since
23 2003 and since that time has also been a member of the Audit and Examination
24 Committee, and the Finance Committee. On information and belief, Hernandez is
25 a resident of Los Angeles County, California.

26 33. Defendant **Cynthia H. Milligan** (“Milligan”) is currently a member
27 of Wells Fargo's Board of Directors. Since 1992, she has been a Director. She has
28

1 been a member of the Audit and Examination Committee since at least 2001. On
2 information and belief, Milligan is a resident of Travis County, Texas.

3 34. Defendant **Philip J. Quigley** (“Quigley”) is currently a member of
4 Wells Fargo’s Board of Directors. Since 1994, he has been a Director. He has
5 been a member of the Audit and Examination Committee since at least 2001. On
6 information and belief, Quigley is a resident of San Mateo County, California.

7 35. Defendant **Judith M. Runstad** (“Runstad”) is currently a member of
8 Wells Fargo’s Board of Directors. Since 1998, she has been a Director. She was a
9 member of the Audit and Examination Committee from 2002-2005, and has served
10 on the Finance Committee since 2005. On information and belief, Runstad is a
11 resident of King County, Washington.

12 36. Defendant **Susan G. Swenson** (“Swenson”) is currently a member of
13 Wells Fargo’s Board of Directors. Since 1994, she has been a Director. She has
14 been a member of the Audit and Examination Committee since at least 2001. On
15 information and belief, Swenson is a resident of San Diego County, California.

16 37. Defendant **Lloyd H. Dean** (“Dean”) is currently on the Board of
17 Directors for Wells Fargo & Company. He has been a director since 2005 and
18 since that time has also been a member of the Audit and Examination Committee.
19 On information and belief, Dean is a resident of San Mateo County, California.

20 38. Defendant **Nicholas G. Moore** (“Moore”) is currently on the Board
21 of Directors for Wells Fargo & Company. He has been a director since 2006 and
22 since that time has also been a member of the Audit and Examination Committee.
23 On information and belief, Moore is a resident of Santa Clara County, California.

24 39. Each of the Defendants identified above who are members of the
25 Audit Committee are collectively referred to as “Audit Committee Defendants.”

26 **4. Finance Committee Defendants**

27 40. Defendant **Susan E. Engel** (“Engel”) is currently a member of Wells
28 Fargo's Board of Directors. Since 1998, she has been a Director. She has been a

1 member of the Finance Committee since at least 2001. On information and belief,
2 Engel is a resident of Hennepin County, Minnesota.

3 41. Defendant **Donald M. James** (“James”) is currently on the Board of
4 Directors for Wells Fargo & Company. He has been a director since 2008. James
5 is also a member of the Finance Committee and Human Resources Committee. On
6 information and belief, James is a resident of Jefferson County, Alabama.

7 42. Defendant **Richard D. McCormick** (“McCormick”) is currently a
8 member of Wells Fargo's Board of Directors. Since 1983, he has been a Director.
9 He has been a member of the Finance Committee since at least 2001. On
10 information and belief, McCormick is a resident of Denver County, Colorado.

11 43. Defendant **Stephen W. Sanger** (“Sanger”) is currently on the Board
12 of Directors for Wells Fargo & Company. He has been a director since 2003.
13 Sanger is also a member of the Finance Committee. On information and belief,
14 Sanger is a resident of Hennepin County, Minnesota.

15 44. The Executive Offer Defendants, Audit Committee Defendants and
16 Finance Committee Defendants are collectively referred to as the “Defendants.”

17 **C. Fiduciary Duties Owed To Wells Fargo**

18 45. By virtue of their respective positions with respect to Wells Fargo,
19 each of the Defendants owed Wells Fargo and its shareholders the duty to exercise
20 a high degree of care, good faith, loyalty, and diligence to manage and administer
21 Wells Fargo in its best interests, to preserve its property and assets, and not to seek
22 to personally profit at Wells Fargo’s expense. The conduct of the Defendants, as
23 alleged herein, involves knowing, intentional, and culpable violations of their
24 fiduciary duties and other obligations to Wells Fargo. Moreover, the misconduct
25 of the Defendants has been ratified by Wells Fargo’s Board, which has failed and
26 cannot be expected to take any legal action on behalf of Wells Fargo given that its
27 members have ratified and consented to the conduct alleged herein.

1 46. Defendants, including those Defendants who served on various
2 committees, including the Audit Committee and/or Finance Committee, had a
3 special duty to investigate, know and understand material information set forth in
4 corporate by-laws and/or charters, and/or policies and procedures, and not to
5 delegate or disregard matters for which they are specifically responsible.
6 Defendants also had the duty to ensure that Wells Fargo had adequate internal
7 controls in place.

8 47. Defendants knew or should have known since at least 1996, that the
9 IRS considered the types of leveraged lease transactions at issue here to be
10 dubious tax shelters. Regulations largely eliminating the tax benefits for LILO
11 transactions became effective in 1999, and tax deductions were formally
12 disallowed in 2002. Defendants were clearly on notice, and had a duty to
13 investigate and monitor developments concerning the tax implications of these
14 leveraged lease transactions and to monitor the actions of the Company's officers,
15 managers, and employees.

16 48. Defendants should have had cause for suspicion that Wells Fargo's
17 tax deductions for the SILO Transactions in its Franchise income taxes were not
18 allowed or legitimate, and should have exercised their duty to identify and remedy
19 the wrongdoing. Defendants should have known that the SILO Transactions and
20 Wells Fargo's attempt to file tax deductions for them were violations of IRS
21 regulations, but took no steps in a good faith effort to prevent or remedy the
22 situation.

23 49. Instead, Defendants approved or ratified conduct by Wells Fargo
24 which was not in the best interests of the Company or shareholders, including
25 continued participation in the SILO Transactions and/or filing Franchise income
26 taxes seeking millions of dollars in SILO tax deductions; appealing IRS rulings
27 that disallowed the SILO tax deductions; rejecting IRS offers to accept penalty-
28 free settlements and 20% of the SILO tax deductions sought; and suing the United

1 States for the refund of the disallowed tax deductions and penalties. Defendants
2 engaged in sustained and systematic failure to exercise reasonable oversight over
3 circumstances that should have aroused suspicion at the highest level of the
4 Company.

5 50. Despite these duties, the Defendants negligently, recklessly, and/or
6 intentionally caused or allowed, by their acts or omissions, the Company's
7 participation in sham SILO Transactions, the filing of false Federal income tax
8 returns; the filing and protracted litigation of meritless lawsuits designed to cover
9 up years of corporate neglect and malfeasance; the rejection of an IRS offer to the
10 settle tax dispute concerning said sham transactions; and the use of said sham
11 SILO Transactions to inflate profits to support undeserved benefits including
12 exorbitant bonuses. All of the foregoing conduct was in breach of Defendants'
13 fiduciary duties of good faith, honesty and loyalty to Wells Fargo.

14 **D. Defendants' Control Of Wells Fargo**

15 51. By virtue of their positions at Wells Fargo, and the control and
16 authority they had as directors and/or officers of Wells Fargo, each of the
17 Defendants was able to and did, directly and indirectly, control the wrongful acts
18 complained of herein. These acts include their agreement to and/or acquiescence
19 in the participation in sham SILO Transactions, the filing of false Federal income
20 tax returns; the filing and pursuit of meritless lawsuits designed to cover up years
21 of corporate neglect and malfeasance; the rejection of an IRS offer to settle the tax
22 dispute concerning said sham SILO Transactions designed again to cover up years
23 of corporate neglect and malfeasance, and the use of said sham SILO Transactions
24 to inflate profits to support exorbitant bonuses.

25 **E. Agency And Aiding And Abetting**

26 52. The Defendants, and each of them, are sued as participants and as
27 aiders and abettors herein alleged. At all times alleged herein, each of the
28 Defendants was the agent, servant, partner, aider and abettor, co-conspirator,

1 and/or joint venturer of each of the remaining Defendants herein. They were at all
2 times operating and acting within the purpose and scope of said agency, service,
3 employment, partnership, conspiracy, and/or joint venture and rendered substantial
4 assistance and encouragement to the other Defendants, knowing that their conduct
5 constituted a breach of duty.

6 **F. Doe Allegations**

7 53. Except as described herein, Plaintiff is ignorant of the true names of
8 Defendants sued as Does 1 through 50, inclusive, and, therefore, Plaintiff sues
9 these Defendants by such fictitious names. Following further investigation and
10 discovery, Plaintiff will seek leave of this Court to amend this Complaint to allege
11 their true names and capacities when ascertained. These fictitiously named
12 Defendants may be the Company's officers, other members of management,
13 employees, agents and/or consultants who were involved in the wrongdoing
14 detailed herein. These Defendants aided and abetted, and participated with and/or
15 conspired with the named Defendants in the wrongful acts and course of conduct
16 or otherwise caused the damages and injuries claimed herein and are responsible
17 in some manner for the acts, occurrences and events alleged in this Complaint.
18 Plaintiff will seek leave of the Court to amend this Complaint to allege their true
19 names and capacities when they are ascertained.

20 **IV. FACTUAL ALLEGATIONS**

21 **A. Summary Of Defendants' Wrongdoing**

22 54. As alleged herein, in gross breach of their duties and obligations to
23 Wells Fargo, Defendants, and each of them, as members of the Board of Directors
24 and various committees, including the Audit Committee and/or Finance
25 Committee, knowingly approved and ratified conduct by Wells Fargo related to
26 the sham SILO Transactions including, but not limited to, the following:

- 27 a. Wells Fargo's participation in the sham SILO Transactions;

- 1 b. Wells Fargo’s filing of the Federal income tax for the taxable
2 year December 31, 2002, seeking \$115,174,203 in tax
3 deductions for the sham SILO Transactions;
- 4 c. Wells Fargo’s May 2005 challenge to the IRS audit and
5 disallowance of the \$115,174,203 in tax deductions sought for
6 the sham SILO Transactions for which Wells Fargo was
7 penalized more than \$8 million under 26 U.S.C. § 6662;
- 8 d. Wells Fargo’s September 2006 lawsuit against the United
9 States seeking a refund of the \$115,174,203 in tax deductions
10 sought for the sham SILO Transactions, and refund of the
11 penalty of more than \$8 million;
- 12 e. Wells Fargo’s rejection of the IRS’s August 2008 offer to the
13 settle the tax dispute concerning the sham SILO Transactions,
14 under which the IRS would not impose any penalties on Wells
15 Fargo, and Wells Fargo would also be allowed to retain 20
16 percent of the tax benefits derived from the sham SILO
17 Transactions;
- 18 f. Wells Fargo’s continuation of protracted litigation with the
19 United States and pursuit of a lengthy trial that resulted in a
20 ruling that affirmed the IRS’s disallowance of the \$115,
21 174,203 tax deduction and upheld the penalty of more than \$8
22 million;
- 23 g. Wells Fargo’s filing of the Federal Income tax for the taxable
24 year December 31, 2003, more than \$140 million in tax
25 deductions for a number of SILO Transactions. On June 6,
26 2007, the IRS concluded an audit of Wells Fargo’s 2003
27 Federal income tax, and proposed a deficiency of more than
28 \$220 million for the 2003 taxable year, more than \$140 million

1 of which involved disallowed tax deductions for SILO
2 transactions. Wells Fargo disputed the IRS's findings shortly
3 thereafter;

4 h. Wells Fargo's October 2009 lawsuit against the United States
5 for a refund of \$54,652,605 the Federal income taxes paid
6 arising from the IRS's disallowance of 2003 tax deductions
7 sought for additional SILO Transactions, including disputing
8 the IRS's disallowance of these deductions, and rejecting the
9 opportunity to settle with the IRS;

10 i. Wells Fargo's exploitation of the SILO Transactions to avoid
11 taxes and to inflate profits to pay exorbitant bonuses,
12 demonstrating that Wells Fargo did not engage in good
13 corporate citizenship to the detriment of its shareholders, the
14 United States government, and taxpayers.

15 j. Other damages due to different and similar SILO transactions
16 not yet disclosed to the public.

17 55. As a result of the egregious misconduct by Defendants, Wells Fargo
18 has incurred expenses, and exposed itself to potentially millions of dollars in fines
19 and/or penalties, damage to its reputation and loss of goodwill.

20 56. The Defendants knew, or should have known, that participation in the
21 SILO Transactions was very likely to result in Wells Fargo incurring substantial
22 costs and fees for the transaction documents and opinions, loss of tax deductions,
23 tax penalties, costs and expenses of appeals, litigation and trial, and loss of value
24 of the millions of dollars that it paid the counterparties in exchange for
25 participating in these SILO Transactions.

26 **B. Overview Of The Dubious Nature Of SILO Transactions**

27 57. Abraham Lincoln is credited with posing the following riddle: "How
28 many legs does a dog have if you call a tail a leg?" The answer is "four," because

1 "calling a tail a leg does not make it one." That is because to call something that
2 which it is not, is a sham. The metaphorical riddle to pose here is, when does
3 purchasing tax benefits for a fee from a tax-exempt entity that cannot use the tax
4 deductions confer the benefits and burdens of property ownership for the purposes
5 of taking a legitimate tax deduction? The answer is: never. This is because to call
6 the circular flow of money in a SILO transaction an actual purchase of property for
7 purposes of deducting the depreciation is a sham.

8 58. It is a fundamental precept in tax law that in evaluating whether a
9 transaction is an illegal tax shelter or has true economic substance that standard is
10 substance over form. Under this standard, whether or not something qualifies as a
11 legitimate transaction, as opposed to a tax shelter, depends not on what the
12 transaction is made to look like, but rather on what it in fact is.

13 59. The applicability of this standard to disputing leveraged "leasing
14 deals" was officially recognized over six years before Wells Fargo claimed
15 deductions in 2002 and 2003. In 1996, the IRS issued proposed regulations that
16 largely eliminated the ability for investors to take tax deductions associated with
17 their participation in the predecessors to SILOs, known as "lease-in-lease-out
18 transactions" or "LILOs"; these rules became effective in 1999. *See* Section 467
19 Rental Agreements, 61 Fed. Reg. 27,834 (proposed June 3, 1996); 26 C.F.R. §
20 1.467-1 to-5 (2007). In two well-publicized rulings in 2002, Revenue Ruling 99-
21 14,1999-1 C.B. 835 and Revenue Ruling 2002-69, 2002-2 C.B. 760, the IRS
22 completely eliminated the ability of investors to take tax deductions through
23 participation in LILO deals.

24 60. SILO transactions were developed in reaction to the IRS's decision to
25 disallow LILO transactions. It was clear at the time that the IRS was almost
26 guaranteed to find that SILO transactions are contrary to U.S. tax laws just like
27 LILOs. SILO transactions were only a change in form from LILO deals, and still
28 lacked any true economic substance. The standard, again, is substance over form.

1 Defendants knew or should have known this when they approved or ratified
2 participation by Wells Fargo in the SILO Transactions and approved or ratified the
3 filing of the Federal income taxes for the taxable years December 31, 2002 and
4 2003, seeking approximately \$115 million and \$140 million, respectively, in tax
5 deductions for the sham SILO Transactions.

6 61. Not long after Wells Fargo claimed its 2002 and 2003 tax deductions
7 relating to its SILO Transactions, it was confirmed that such deductions were
8 improper. On February 11, 2005, the IRS issued Notice 2005-13, which formally
9 disallowed tax deductions with respect to SILO transactions. (See IRS Notice
10 2005-13, 2005-1 C.B. 630, 2005-1 C.B. 630, 2005-9 I.R.B. 630).

11 62. To understand references to SILO transactions, the following is a
12 brief description of the type of SILO transaction at issue herein.

13 **1. Background Of Leveraged Tax Shelters**

14 63. The predecessor to the SILO was created in 1981, when Congress
15 enacted laws that permitted leasing transactions with tax-exempt entities, often
16 referred to as “safe-harbor leasing rules.” See Economic Recovery Tax Act, Pub.
17 L. No. 97-34, 95 Stat. 172 (1981); see also Staff of the Joint Committee on
18 Taxation, 97th Cong., General Explanation of the Revenue Provisions of the Tax
19 Equity and Fiscal Responsibility Act of 1982, at 45-62 (Dec. 31, 1982) (“TEFRA
20 Bluebook”). Under the safe-harbor leasing rules, a transaction could qualify as a
21 sale and lease-back for tax purposes if it met the safe-harbor criteria, regardless of
22 whether the lessor could only obtain a profit on the transaction by taking tax
23 benefits into account, and regardless of whether the lessor obtained the substantive
24 benefits and burdens of ownership of the property as a result of the transaction.
25 TEFRA Bluebook at 50-51. Safe-harbor leasing criteria permitted a
26 sale-leaseback transaction even if it was nothing more than a “tax benefit
27 transfer.” *Id.* at 51-52. Safe-harbor leases in many respects were similar to SILO

1 transactions. The enactment of the safe-harbor leasing rules led to a proliferation
2 of leasing transactions whose sole purpose was tax avoidance.

3 64. Just one year later, in 1982, Congress shut down safe-harbor leasing
4 transactions. Congress enacted laws that limited the tax benefits available for
5 safe-harbor leases entered into between July 1, 1982 and January 1, 1984, and
6 repealed the safe-harbor leasing rules thereafter. Tax Equity and Fiscal
7 Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324 (1982); TEFRA
8 Bluebook at 54. Congress took this action because of “the tax avoidance
9 opportunities that safe-harbor leasing had created,” and “adverse public reaction to
10 the sale of tax benefits.” TEFRA Bluebook at 53.

11 65. In 1984, Congress enacted what is known as the “Pickle Rule.” By
12 this rule, Congress intended to limit the tax benefits associated with leasing
13 transactions involving tax-exempt entities by requiring the taxpayer to depreciate
14 the value of the leased assets over a longer time period than otherwise would be
15 required. Deficit Reduction Act, Pub. L. No. 98-369, 98 Stat. 494 (1984). The
16 Pickle Rule required any leased tax-exempt property to be depreciated on a
17 straight-line basis over an assigned asset class, or 125 percent of the lease term,
18 whichever was longer. Deficit Reduction Act, § 31. Congress also added IRC
19 § 7701(e), which requires arrangements denominated as “service contracts” to be
20 treated as leases if they are “properly treated” as such, and the arrangement meets
21 other relevant factors.

22 66. After the repeal of safe-harbor leasing and the enactment of the Pickle
23 Rule, some taxpaying entities sought ways to structure transactions that would
24 allow the purchase of tax benefits from tax-exempt entities, but would not run
25 afoul of the Pickle Rule. One of these was the LILO transaction.

26 67. The typical LILO transaction is similar to the SILO transaction,
27 described above. The taxpayer purports to lease assets from a tax-exempt entity,
28 and then immediately lease them back to the tax-exempt entity for a shorter period.

1 See Maxim Shvedov, CRS Report of Congress: Tax Implications of SILOs, QTEs
2 and Other Leasing Transactions with Tax Exempt Entities, pp. 8-9 (Nov. 30, 2004)
3 (“CRS Report”). As in a SILO transaction, the tax-exempt entity continues to use
4 the property just as it did before the LILO transaction, and remains responsible for
5 the maintenance and operation of the asset during the lease-back period. A portion
6 of the head lease is prepaid, and is funded largely with a purported non-recourse
7 loan that is defeased in a loop debt structure. The timing and amount of the tax-
8 exempt entity’s sublease rental payments and the taxpayer’s debt service payments
9 on the non-recourse loan match exactly, so neither party makes any out-of-pocket
10 payments during the lease-back period.

11 68. Also, as in a SILO transaction, the taxpayer makes an “equity
12 investment” with its own funds, most of which is paid as an “equity undertaking
13 fee” to an equity undertaker. The remainder is paid to the tax-exempt entity as its
14 inducement fee for transferring the tax benefits. The funds paid to the equity
15 undertaker are used to purchase securities that pay a fixed rate of return, which
16 matches the amount needed for the tax-exempt entity to exercise the purchase
17 option at the end of the sublease term.

18 69. There are two principal “differences” between LILO and SILO
19 transactions. In a LILO tax shelter, the head lease term is structured to span less
20 than 80 percent of the remaining useful life of the assets, so the taxpayer can assert
21 the head lease is not equivalent to a sale for tax purposes. See CRS Report at 12.
22 Instead, the taxpayer claims to have a leasehold interest in the assets for tax
23 purposes, and claims deductions for its purported rental obligations, not
24 depreciation deductions associated with an ownership interest, thereby avoiding
25 the Pickle Rule. The LILO transaction is structured so that the rental deductions
26 are claimed more quickly than taxable income is realized on the sublease, thereby
27 creating a tax benefit for the taxpayer.

1 70. The second difference between LILO and SILO transactions is the
2 description of the options available to the taxpayer at the end of the lease-back
3 period if the tax-exempt entity does not exercise the purchase option. In a LILO
4 transaction, the taxpayer can (1) require the tax-exempt entity to surrender the
5 assets to the taxpayer for its own use; (2) lease the assets to a third party (“the
6 replacement lease option”); or (3) compel the tax-exempt entity to lease the
7 property under a renewal lease. See Rev. Rul. 2002-69. If the taxpayer elects
8 either of the latter two options, it would be obligated to make a second “deferred
9 rent” payment at the end of the sublease period. *Id.* However, because of
10 off-setting rents under the renewal or replacement lease, the taxpayer never needs
11 its own funds to satisfy the deferred rent payment. Similar to the service contract
12 option in a SILO transaction, the renewal and replacement lease options in a LILO
13 transaction are structured so that the taxpayer obtains a return of its equity and has
14 an expected after-tax return as if the tax-exempt entity had exercised the purchase
15 option.

16 **2. The Dubious SILO Transaction**

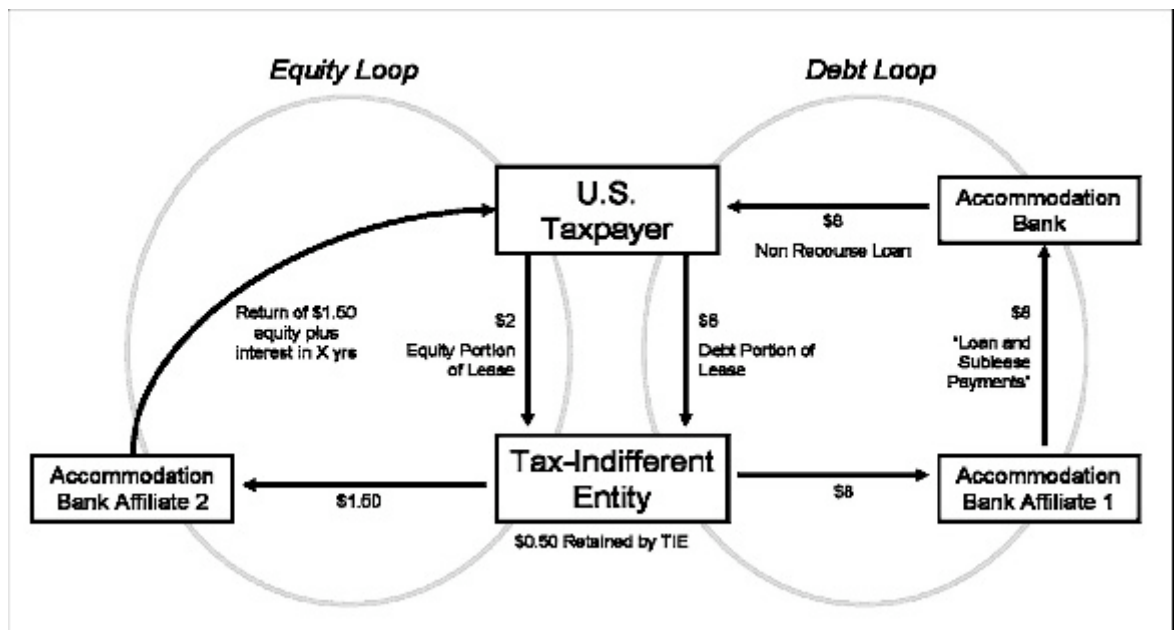
17 71. In a SILO transaction, a U.S. taxpayer like Wells Fargo enters into a
18 transaction with a tax-exempt entity that is not subject to U.S. federal income tax –
19 as well as financial institutions that serve in various accommodating roles –
20 through numerous seemingly separate agreements, described as “leases” and
21 “subleases” and “loans,” among others. All these agreements, however, are part of
22 a single, integrated SILO transaction. That is, a SILO transaction is a package
23 deal in which each part is precisely interwoven with the others, and is dependant
24 on the others. The substance of the SILO transaction is, therefore, not the same as
25 its various component parts, if pulled apart and viewed separately.

26 72. When considered as a whole, a SILO transaction is, in fact, a
27 transaction designed to provide the U.S. taxpayer like Wells Fargo with: (i) a
28 purported basis to claim large depreciation deductions as the alleged owner of

1 assets that are used merely as a platform for the transaction, without the taxpayer
2 taking on the risks and burdens of being a true owner of the assets; (ii) artificial
3 interest expense deductions based on a nonrecourse “loop debt” that the taxpayer
4 does not actually repay, but is, instead, immediately repaid from the loan proceeds
5 themselves; and (iii) a return of its purported “equity investment” through a secure
6 circular flow of funds. Additionally, although the SILO transaction is often
7 designed to last up to 25 years, the actual cash-flow during the “sublease” term
8 (after closing, and before the SILOs termination) is, in fact, only tax benefits –
9 coming from the U.S. Treasury to the Bank through the claimed reduction of the
10 taxpayer’s taxes. Purported “rental” payments and “interest” payments are not
11 actually made between the SILO participants. Instead, there are internal, offsetting
12 accounting entries at the accommodation banks.

13 73. The assets that are used as part of a SILO transaction are always
14 assets that the tax-exempt entity previously acquired and used, and continues to
15 use and have financial and operational responsibility for (and legal title of) after
16 the SILO transaction is entered into. Assets include rail cars and buses, or other
17 equipment. Practically, not much changes. Nevertheless, because the parties
18 describe parts of the SILO transaction as a “lease,” “sublease” and “loan,” the U.S.
19 taxpayer claims that ownership of the assets – for tax purposes only – has shifted
20 to it, pursuant to one of the leases, and that it is also incurring interest expense on
21 a nonrecourse loan. Tax benefits based on depreciation deductions and interest
22 expense deductions are, therefore, purportedly created by the SILO transaction
23 itself – tax benefits that didn’t previously exist because the tax-exempt entities do
24 not pay federal income tax, and cannot use such deductions. Indeed, tax-exempt
25 entities refer to SILO transactions as “*tax benefit transfer*” transactions. For their
26 participation in the attempted creation and purchase of tax benefits, tax-exempt
27 entities receive an up-front payment at the closing of the transaction. That is the
28 essence of a SILO.

74. The tax-exempt entities have the right to terminate the SILO transaction – and the taxpayer’s nominal “lease” of the assets – at some point in the future through a so-called “purchase option.” The tax-exempt entities do not contribute any of their own money to pay the “purchase option” price, however. Rather, “equity funds” from the U.S. taxpayer are set aside at the inception of the transaction, invested in securities in a collateral account, and then later used to fully-fund the “purchase option” price. Thus, the U.S. taxpayer’s equity is returned to it. Graphically, a typical SILO transaction looks as follows:



a. Components And Mechanics Of A SILO Tax Shelter

75. The typical SILO transaction, and the type at issue here, includes numerous interdependent components. As one component, a U.S. taxpayer purports to lease assets from a tax-exempt entity by means of an agreement often called a “head lease.” See *AWG Leasing Trust v. United States* (N.D. Ohio 2008) 101 A.F.T.R.2d 2008-2397, at *2.; I.R.S. Notice 2005-13; Maxim Shvedov, *CRS Report for Congress: Tax Implications of SILOs, QTEs, and Other Leasing Transactions with Tax-Exempt Entities*, pp. 10-13 (Nov. 30, 2004) (hereafter “CRS Report”). The length of the head lease is set to be longer than the purported

1 remaining economic useful life of the assets, in an attempt to have the head lease
2 treated as a sale for U.S. income tax purposes, and so that the U.S. taxpayer can
3 attempt to claim depreciation deductions for income tax purposes on these assets
4 as the purported new owner.

5 76. As a second component, the tax-exempt entity concurrently enters
6 into an agreement, sometimes called a “sublease,” in which it purports to lease the
7 asset back from the U.S. taxpayer for a shorter period of time than the head lease.
8 The head lease and the sublease, along with the other agreements comprising the
9 SILO transaction, are all entered into simultaneously by means of an over-arching
10 agreement often called a “participation agreement.” After documents are executed,
11 the tax-exempt entity continues to use the asset, just as it did before the SILO
12 transaction. The tax-exempt entity retains all maintenance, insurance and other
13 obligations associated with ownership of the property, just as it did before the
14 SILO transaction. At the end of the sublease, the tax-exempt entity has the right to
15 exercise a pre-funded “purchase option,” which, if exercised, terminates the
16 transaction.

17 77. As payment of the so-called “head lease rent,” the U.S. taxpayer
18 makes a single payment to the tax-exempt entity at closing. *See AWG*, 2008 101
19 A.F.T.R.2d 2008-2397, at **10-11. The funds for the head lease rent come from
20 two sources. The first source is the proceeds of a purported nonrecourse loan,
21 sometimes called the “debt funds.” The U.S. taxpayer intends to claim interest
22 expense deductions based on this nonrecourse loan. The second source of funds is
23 cash from the U.S. taxpayer, often called the “equity funds.”

24 78. Under the terms of the SILO transactional documents, however, the
25 tax-exempt entity does not retain the head lease payment. All of the debt funds
26 nominally paid to the tax-exempt entity – as part of the head lease payment – are
27 immediately paid to an affiliate of the lender, often called a “debt payment
28 undertaker,” as part of a debt defeasance arrangement. This payment is not

1 refundable to the tax-exempt entity, and the tax-exempt entity does not have
2 access to the debt funds paid to the debt payment undertaker. *See AWG*, 101
3 A.F.T.R.2d 2008-2397, at *13; CRS Report at 11. The debt payment undertaker is
4 then obligated to make the tax-exempt entity’s “rent payments” on the sublease to
5 the U.S. taxpayer. These payments, however, are not actually made to the U.S.
6 taxpayer. Instead, in accordance with the SILO transactional documents, they are
7 made to the lender (the debt payment undertaker’s affiliate), in order to satisfy the
8 U.S. taxpayer’s debt service obligations on the nonrecourse loan.

9 79. The debt service obligations on this nonrecourse loan are set to
10 match, in timing and amount, the tax-exempt entity’s rent payments under the
11 sublease. Thus, the debt funds given to the debt payment undertaker alone are
12 sufficient to satisfy both the tax-exempt entity’s sublease rental obligations and the
13 U.S. taxpayer’s debt service obligations on the loan throughout the sublease,
14 without any additional payments by either the U.S. taxpayer or the indifferent
15 entity. The loan proceeds themselves are, in fact, used to “repay” the loan, and the
16 interest on the loan. In this structure, often called “loop debt,” the debt funds
17 merely flow in a circle, from the lender, to the U.S. taxpayer, to the tax-exempt
18 entity, and then back to an affiliate of the lender, all in accordance with terms
19 agreed to by the parties at the closing of the SILO transaction. In fact, in some
20 SILO transactions, including Well’s Fargo SILO Transactions, the debt payment
21 undertaker immediately returns the debt funds to the lender, purportedly to
22 purchase a financial instrument whose obligations exactly offset the payment
23 obligations of the debt payment undertaker. Thereafter, the lender and debt
24 payment undertaker merely make offsetting accounting entries through the term of
25 the sublease, not actual cash payments. Nevertheless, the U.S. taxpayer claims
26 interest deductions for tax purposes throughout the sublease term.

27 80. Like the debt funds, most of the equity funds contributed by the U.S.
28 taxpayer, and nominally paid to the tax-exempt party as part of the head lease

1 payment, are immediately paid as a fee to an “equity payment undertaker” at
2 closing, as part of an equity defeasance arrangement. *AWG*, 101 A.F.T.R.2d 2008-
3 2397, at *13; CRS Report at 11. The remaining portion of the equity funds, are
4 retained by the tax-exempt entity as its inducement for entering into the SILO
5 transaction. The funds paid to the equity payment undertaker are typically invested
6 in government bonds or other high-grade debt securities, and are referred to as the
7 “equity collateral.” As with the debt defeasance arrangement, the tax-exempt
8 entity does not have access to these funds during the term of the sublease. At the
9 end of the sublease, when the tax-exempt entity can exercise its “purchase option,”
10 the payments due from the equity payment undertaker (and the equity collateral)
11 will be sufficient to provide exactly the amount of money that is necessary under
12 the terms of the SILO transaction for the tax-exempt entity to terminate the
13 transaction. These funds will be made available for that purpose if the tax-exempt
14 entity chooses to exercise its purchase option, with the remaining payments under
15 the debt defeasance arrangement going to the lender to pay off the remaining
16 balance on the nonrecourse loan, and the payments due under the equity payment
17 undertaking agreement going to the U.S. taxpayer. Thus, the tax-exempt entity
18 does not need to use any funds of its own to exercise the purchase option (and
19 terminate the transaction), and the U.S. taxpayer’s equity funds, along with a
20 predetermined return, are repaid to it – in a second circular flow of funds –
21 through the equity payment undertaker’s payment of the purchase option price to
22 the U.S. taxpayer. From the date of closing, however, the U.S. taxpayer claims to
23 be the owner of the property and claim depreciation deductions, even though the
24 tax-exempt entity continued to use and maintain the assets, just as it had before the
25 SILO transaction.

26 ///

27 ///

28 ///

1 **b. Common Types Of SILO Transactions**

2 **i. Lease-To-Service Contract SILO Transactions**

3 81. As noted above, in a typical SILO transaction, at the end of the
4 sublease, the tax-exempt entity has, in the first instance, the unilateral right to
5 exercise a pre-funded purchase option, and terminate the SILO transaction. In a
6 “lease-to-service contract” SILO transaction, if the tax-exempt entity does not
7 exercise its purchase option, then the U.S. taxpayer can select between one of two
8 options: (1) it can require the tax-exempt entity to transfer the assets to the U.S.
9 taxpayer (described as a “the return option” in the transactional documents), or (2)
10 it can require the tax-exempt entity to arrange a so-called service contract for the
11 operation of the assets (“the service contract option”). *AWG*, 101 A.F.T.R.2d
12 2008-2397, at *2, *10; CRS Report at 10. Many of Wells Fargo’s SILO
13 Transactions are lease-to-service contract SILOs.

14 82. If the tax-exempt entity does not exercise the purchase option, and the
15 U.S. taxpayer then elects the service contract option, the tax-exempt entity would
16 be obligated to arrange for the assets to be operated under a service contract, many
17 of the terms of which are expressly provided for in the SILO closing documents.
18 If the U.S. taxpayer so elects, the tax-exempt entity would also be obligated to
19 locate an “operator” for the assets, which must be someone other than the so-
20 called “service recipient,” *i.e.*, the entity for whom the assets are operated. In
21 addition, the tax-exempt entity is also typically required to arrange for a
22 refinancing of the original nonrecourse loan. Like the original loan, this
23 refinancing loan must be a nonrecourse loan.

24 83. In the SILO transactional documents many of the terms of the
25 hypothetical service contract are specified, including fees that the service recipient
26 must pay to the U.S. taxpayer for the use of the assets. *AWG*, 101 A.F.T.R.2d
27 2008-2397, at **15-16. The amount and timing of the payment of the fees is
28 specified, even though the beginning of any hypothetical service contract is

1 typically at least 20+ years in the future. They are set in advance so that the
2 service contract will provide the funds necessary to repay any nonrecourse
3 refinancing loan (if one can be obtained), without the U.S. taxpayer having to
4 contribute any of its own funds, and repay the U.S. taxpayer's original equity
5 contribution, along with the same or similar return that it would receive if the tax-
6 exempt entity exercised its purchase option. From the inception of the SILO,
7 therefore, the transaction is designed to "collar" the after-tax returns to the U.S.
8 taxpayer, regardless of whether the purchase option is exercised, while at the same
9 time insulating the taxpayer, and its equity from any meaningful exposure to risks
10 associated with actual ownership of the assets.

11 **ii. Qualified Technological Equipment ("QTE") SILO**
12 **Tax Shelters**

13 84. A second type of SILO transaction is one involving assets that are
14 intended to qualify as "qualified technological equipment" under Section 168(i)(2)
15 of the Internal Revenue Code ("Code"), and hence to qualify for accelerated
16 depreciation over a five year period. CRS Report at 12-13. These SILO
17 transactions are often called "QTEs."

18 85. A typical QTE SILO differs from a lease-to-service contract SILO in
19 some respects. *See* CRS Report at 12-13. First, the tax-exempt entity's purchase
20 option typically is earlier than the end of the sublease period, and is often termed
21 an "early buyout option" or "EBO." Second, the U.S. taxpayer typically, but not
22 always, does not have the option to force the tax-exempt entity to enter into a
23 service contract at the end of the sublease if the tax-exempt entity does not
24 exercise the EBO. Third, QTE SILO transactions typically have strict conditions
25 that the tax-exempt entity must ensure that the assets meet if the tax-exempt entity
26 declines the EBO and is required to transfer the equipment to the U.S. taxpayer.
27 These so-called "return conditions" typically require the tax-exempt entity to
28 return the equipment in "as new" condition, and with the most recent hardware

1 and software releases from the manufacturer of the equipment included. Because
2 they are overly onerous, all the parties expect the tax-exempt party to exercise the
3 EBO, and terminate the SILO.

4 **C. Congress And The IRS Halt Leveraged Lease Tax Breaks**

5 **1. LILO Tax Shelters Are Illegal Because They Lack Economic**
6 **Substance**

7 86. In 1999, the Treasury Department issued amendments to IRC § 467
8 that effectively eliminated the market for LILO tax shelters. Under these
9 amendments, the taxpayer in a LILO transaction had to treat the prepayment of the
10 head lease rent as a loan for tax purposes, and the rental income as interest on that
11 loan, thereby eliminating the tax benefit generated by the prepayment of the head
12 lease. See Treas. Reg. § 1.467-4 (1999). Also in 1999, the IRS issued Revenue
13 Ruling 1999-14, holding that taxpayers could not take rental payment or interest
14 deductions in *LILO transactions because they lack economic substance*. Later,
15 in Revenue Ruling 2002-69, the IRS held that LILO transactions did not satisfy
16 the substance-over-form doctrine. See Rev. Rul. 2002-69. In light of these IRS
17 actions, taxpayers and tax-exempt entities, including public transit agencies,
18 stopped engaging in LILOs.

19 **2. Defendants Knew Or Should Have Known That SILOs Are**
20 **Illegal Tax Shelters Because They Lack Economic Substance**

21 87. The government's crack down on LILOs did not end the attempts to
22 create alternative tax shelters from leases involving tax-exempt entities. Lawyers,
23 promoters, and other arrangers involved with LILOs, despite full knowledge that
24 LILOs were abusive tax shelters, next created the SILO transaction.

25 88. After the government crack down on LILO transactions, Defendants
26 authorized Wells Fargo to enter into equally sham SILO Transactions. In light of
27 the adverse rulings against LILO transactions and calls from commentators (*see*,
28 *e.g.*, David P. Hariton, *Response to "Old 'Brine' in New Bottles"* (*New Brine in*

1 *Old Bottles*), 55 Tax L. Rev. 397, 402 (2002)), Defendants knew, or should have
2 known SILO transactions were abusive tax-structures. Despite this knowledge,
3 Defendants approved or ratified the payment of hundreds of dollars, or more, to
4 outside attorneys and financial advisors to set up these sham transactions.

5 89. It did not take long for the government to formally target SILO
6 transactions. On November 17, 2003, Senator Charles Grassley (Iowa), Chair of
7 the Senate Finance Committee, sent a letter to Norman Mineta, Secretary of the
8 Department of Transportation (“DOT”), inquiring about the Federal Transit
9 Administration’s (“FTA”) approval of SILO transactions, and requesting
10 information about these transactions. Senator Grassley referenced the March 1999
11 Department of Treasury “enforcement actions” against LILO transactions, and
12 then stated “[y]ou can imagine our surprise when we discovered that in February
13 2000, the [FTA] issued guidance entitled ‘Financing Techniques for Public
14 Transit,’ which listed LILOs as a funding technique.” Senator Grassley referred to
15 one manager of a tax-exempt entity who described these transactions as “[p]eople
16 giving him money which he never had to pay back, for doing something that he
17 was already doing.” Senator Grassley concluded by stating “***I am certain that you
18 share my concern that bridges, water lines, sports stadiums, and subway systems
19 constructed with taxpayer dollars are being used by big corporations to shelter
20 billions of dollars in taxes through bogus depreciation deductions.***”

21 90. On November 26, 2003, Pamela Olson, the Department of the
22 Treasury’s Assistant Secretary (Tax Policy), sent a letter to Transportation
23 Secretary Norman Mineta stating that “the cost of these [SILO] transactions to the
24 Federal Treasury is significantly higher than the benefits to the municipalities,”
25 and “should no longer be permitted by the Department of Transportation.”

26 91. To remove any doubt as to the illegality of SILO transactions,
27 Congress enacted the American Jobs Creation Act of 2004, Pub. L. No. 108-357,
28 118 Stat. 1418 (2004) (“AJCA”), amending the IRC to eliminate the purported tax

1 benefits associated with LILO and SILO transactions. See also IRS Notice
2 2005-13, 2005-1 C.B. 630. Congress made these Code amendments to “curtail[]
3 the ability of a tax-exempt entity to transfer . . . tax benefits to a taxable entity.”
4 Staff of the Joint Committee on Taxation, 108th Congress, *General Explanation of*
5 *Tax Legislation Enacted in the 108th Congress*, at 420 (May 2005). Congress was
6 concerned that taxpayers, like Wells Fargo, were “attempting to circumvent” the
7 Pickle Rule “through the creative use of service contracts with . . . tax-exempt
8 entities,” and were thereby frustrating the purpose of the Pickle Rule to “prevent
9 tax-exempt entities from using leasing arrangements to transfer the tax benefits of
10 accelerated depreciation on property they used to a taxable entity.” *Id.* Although
11 the AJCA provisions relating to LILO and SILO transactions applied
12 prospectively, the AJCA’s legislative history states that the amendments to the
13 Code were “not intended to affect the scope of any other present-law tax rules or
14 doctrines applicable to purported leasing transactions,” and that “[*n*o *inference is*
15 *intended regarding the appropriate present-law tax treatment of transactions*
16 *entered into prior to the effective date.*” H.R. No. 108-755 at 660 (2004)
17 (emphasis added).

18 92. Indeed, Defendants knew or should have known of the risks inherent
19 in SILO Transactions when they approved or ratified Wells Fargo’s participation
20 in these deals. The tax-exempt entities that entered into these transactions did not
21 agree to indemnify Wells Fargo for "structural tax risk" that were inherent in these
22 transactions. That is, the tax-exempt entity did not agree to indemnify Wells
23 Fargo if the IRS or a court were to disallow the tax benefits – depreciation
24 deductions, interest deductions, and amortization – that Wells Fargo intended to
25 claim. Wells Fargo alone agreed to assume that risk.

26 93. After efforts by both Congress and the IRS to eliminate the tax
27 benefits available through SILO tax shelters, these structured transactions have
28

1 become almost non-existent in new transactions created by the leveraged leasing
2 industry today.

3 94. Indeed, courts across the country have found that LILO and SILO
4 transactions are abusive tax shelters. See *AWG Leasing Trust v. United States*
5 (N.D. Ohio 2008) 592 F.Supp.2d 953; *BB&T Corp. v. United States* (M.D.N.C.,
6 Jan.4, 2007) 2007 WL 37798, at *1, aff'd, 523 F.3d 461 (4th Cir. 2008). In the
7 *AWG* and *BB&T* cases, the court concluded that the taxpayer lacked a substantial
8 risk of loss to its initial cash outlay in the transaction. In the cases involving jury
9 trials, the jury returned a verdict each time disallowing the claimed tax benefits.
10 See *Altria Group, Inc. v. United States* (S.D.N.Y. July 9, 2009) No.
11 1:06-cv-09430; *Fifth Third Bancorp & Subs. v. United States* (S.D. Ohio, April 18,
12 2008) No. 1:05.

13 **D. Defendants Approve Wells Fargo's Rejection Of IRS Settlement**

14 95. On August 6, 2008 the IRS released Appeals Settlement Guidelines
15 targeting SILO transactions. This Appeals Settlement Guideline was a settlement
16 initiative offered to Wells Fargo and similarly situated banks, contingent on their
17 agreement that they would end the illegal tax "benefits" of these SILO transactions
18 by the end of that year. In addition, the settlement offer was penalty free.

19 96. Under the initiative, more than 45 of the nation's largest corporations
20 that participated in sham SILO and LILO schemes received the settlement offer
21 and were given 30 days to decide whether to accept this generous offer. Two-
22 thirds or 30 institutions accepted the offer. Wells Fargo did not.

23 97. Under the terms of this settlement offer, Wells Fargo would have
24 been allowed the benefit of 20 percent of the tax deductions it sought for the SILO
25 Transactions, or millions of dollars, and would have avoided substantial IRS tax
26 penalties (see 26 U.S.C. § 6662). Ignoring the fact that the IRS, and several
27 Courts, had found these transactions to be illegal, Defendants, in an attempt to
28

1 justify years of utter disregard for the law and welfare of the Company, allowed
2 Wells Fargo to reject the IRS offer.

3 98. Instead of accepting this get out of jail free card, the Defendants
4 plunged the Company into prolonged and costly litigation. In September 2006, the
5 Defendants approved a decision to file a lawsuit against the United States seeking
6 a refund of more than \$115 million in depreciation, interest, and transaction cost
7 deductions for 2002 connected with participation in dozens of SILO Transactions,
8 and a refund of the penalty of more than \$8 million. The litigation cumulated in a
9 court trial in April–May 2009 centering around five specific test SILO
10 transactions, four involving public transit agencies and one involving cellular
11 telecommunications equipment.

12 **E. Wells Fargo’s SILO Transactions Are Illegal Tax Shelters**

13 99. Not surprisingly, Wells Fargo fared no better than other financial
14 institutions that challenged the IRS. On January 8, 2010, the United States Court
15 of Federal Claims found that Wells Fargo did not have ownership of the property
16 under the SILO Transactions, the SILO Transactions lacked economic substance
17 and, therefore, they were illegal tax shelters. As a consequence, the Court ruled
18 that Wells Fargo was not entitled to a refund of the tax deductions it sought for
19 2002 of more than \$115 million, nor a refund of tax penalties of more than \$8
20 million.

21 100. In fact, the Court directly attacked any possible suggestion that
22 Defendants did not know that these were sham transactions when they allowed
23 Wells Fargo to participate in the SILO Transactions, stating that:

24 Here, *the SILO was nothing more than a sequel to the LILO*
25 *structure that the IRS determined was without any economic*
26 *substance.* See Rev. Rule 1999-14. Once the SILO structure came to
27 the attention of the IRS, and the tax benefits again became
28 unavailable, taxpayers immediately stopped entering into SILOs, just
as happened with LILOs. The SILO transaction simply was another
way to transfer tax deductions from tax-exempt entities that could not
use them.

1 *Wells Fargo & Company and Subsidiaries v. The United States*, Case No. 06-628T
2 (Jan. 9, 2010) at 69 (emphasis added).

3 101. In a scathing critique of the involvement of Wells Fargo and others in
4 these illegal SILO Transactions, the Court noted that:

5 The heart of these transactions is that Wells Fargo paid a fee to
6 tax-exempt entities to acquire valuable tax deductions that the
7 tax-exempt entities could not use. Wells Fargo also invested an
8 amount with an equity undertaker that it could have done directly,
9 without involving any tax-exempt entities or their equipment. Aside
10 from these two elements, *the circular flow of funds adds nothing to
the transaction, except to eliminate any risk to Wells Fargo and to
produce more claimed tax deductions. The involvement of lenders
like AIG, appraisers like Ernst & Young, and law firms like King &
Spalding is “window dressing” serving only to generate fees and
lengthy documents to give the SILOs an appearance of validity.*

11 *Id.* at 62 (emphasis added).

12 102. The Court made clear that the illicit motive for participating in sham
13 SILO transactions was transparent:

14 For the reasons stated, the transaction appears to have had one
15 motivating force: *abusive and fraudulent use of tax deductions by a
party who had no significant benefits or burdens of ownership of
the property in question. The volume of paper used to dress up this
16 central purpose does not affect its core illegality.*

17 *Id.* at 63 (quoting *Hoosier Energy Rural Elec. Coop. Inc. v. John Hancock Life*
18 *Insurance Company* (S.D. Ind. 2008) 588 F.Supp.2d 919, 921, 928, *aff’d* (7th Cir.
19 2009) 582 F.3d 721) (emphasis added).

20 103. If there was any doubt that Wells Fargo’s SILOs were not sham tax
21 shetlers, the United States Court of Federal Claims has put that idea to rest.

22 **F. Defendants Disregarded Fiduciary Duties For Self-Interest**

23 104. As alleged herein, Defendants disregarded their responsibilities and
24 fiduciary duties to Wells Fargo for self interest, pecuniary or otherwise. By way
25 of further example, by approving and/or ratifying Wells Fargo’s participation in
26 the sham SILOs, and taking the illegal tax deductions, Defendants contributed to
27 the Company’s corporate “performance” by reporting artificially higher short-term
28 net income. This translated into bonuses to Defendants and/or certain employees

1 whose compensation and/or bonuses were tied to the short-term "performance" of
 2 the Company. In other words, Defendants leveraged the long-term financial health
 3 and goodwill of Wells Fargo for their own personal gain. The following tables
 4 illustrate that Wells Fargo executives, including certain Defendants, derived a
 5 significant portion of their income through performance-based bonuses that were
 6 tied to the short-term success of the Company:

7 **2000 Officer Compensation Chart**

8 (Source: Wells Fargo & Company Proxy Statement (2001))

9

Name and principal position (a)	Annual Compensation				Long-Term Compensation Awards		
	Year	Salary (\$) (b)	Bonus (\$) (1) (d)	Other annual compensation (\$) (2) (e)	Restricted Securities		All other compensation (\$) (5) (i)
					award(s) (3) (f)	underlying options/ SARs (#) (4) (g)	
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Richard M. Kovacevich President and Chief Executive Officer	2000 1999 1998	\$995,000 983,333 925,000	\$5,475,000 4,500,000 3,000,000	\$280,799 852,421 68,747	\$ -0- -0- 1,500,000	646,300 246,200 -0-	\$329,700 239,000 193,500
Les Biller Vice Chairman and Chief Operating Officer	2000 1999 1998	750,000 715,000 525,417	3,550,000 2,800,000 2,500,000	237,897 766,793 13,896	-0- -0- -0-	403,900 427,670 236,405	213,000 192,900 143,125
Terri A. Dial Group Executive Vice President, California Banking	2000 1999 1998	520,833 500,000 479,167	1,522,500 1,350,000 1,000,000	5,338 8,901 14,976	-0- -0- -0-	202,000 175,900 257,500	112,250 40,000 47,917
David A. Hoyt Group Executive Vice President, Wholesale Banking	2000 1999 1998	520,833 483,333 383,333	1,522,500 1,350,000 1,000,000	-- 2,795 1,801	-0- -0- -0-	202,000 175,900 -0-	112,250 38,333 24,044
C. Webb Edwards Executive Vice President, Technology and Operations	2000 1999 1998	491,667 447,500 435,000	1,450,000 1,215,000 1,174,000	65,786 202,201 205,320	-0- -0- -0-	222,200 89,700 -0-	102,400 97,320 68,700

14 </TABLE>

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2001 Officer Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2002))

Summary Compensation Table

(a)	(b)	Annual Compensation			Long-Term Compensation Awards		
		(c)	(d)	(e)	(f)	(g)	(i)
Name and principal position	Year	Salary (\$)	Bonus \$(1)	Other annual compensation \$(2)	Restricted stock award(s) \$(3)	Securities underlying options/SARs (#)	All other compensation \$(4)
Richard M. Kovacevich <i>Chairman, President and Chief Executive Officer</i>	2001	\$995,000	\$2,400,000	\$ 78,579	\$ —	1,128,012	\$388,200
	2000	995,000	5,475,000	280,799	—	646,300	329,700
	1999	983,333	4,500,000	852,421	—	246,200	239,000
Les Biller <i>Vice Chairman and Chief Operating Officer</i>	2001	791,667	1,500,000	217,370	—	446,670	257,412
	2000	750,000	3,550,000	237,897	—	403,900	213,000
	1999	715,000	2,800,000	766,793	—	427,670	192,900
Mark C. Oman <i>Group Executive Vice President, Mortgage and Home Equity</i>	2001	475,000	2,000,000	—	—	277,813	111,150
	2000	470,833	1,377,500	—	—	242,720	107,781
	1999	442,500	1,325,512	—	—	176,607	107,238
C. Webb Edwards <i>Executive Vice President, Technology and Operations</i>	2001	500,000	980,000	6,195	—	184,720	117,300
	2000	491,667	1,450,000	65,786	—	222,200	102,400
	1999	447,500	1,215,000	202,201	—	89,700	97,320
David A. Hoyt <i>Group Executive Vice President, Wholesale Banking</i>	2001	525,000	777,000	—	—	235,090	123,150
	2000	520,833	1,522,500	—	—	202,000	112,250
	1999	483,333	1,350,000	2,795	—	175,900	38,333

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2002 Officer Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2003))

Summary Compensation Table

(a)	(b)	Annual Compensation			Long-Term Compensation Awards		
		(c)	(d)	(e)	(f)	(g)	(i)
Name and Principal Position	Year	Salary (\$)	Bonus \$(1)	Other Annual Compensation \$(2)	Restricted Stock Award(s) \$(3)	Securities Underlying Options/SARs (#)	All Other Compensation \$(4)
Richard M. Kovacevich <i>Chairman, President and Chief Executive Officer</i>	2002	\$995,000	\$7,000,000	\$ 5,256	\$ —	865,330	\$203,700
	2001	995,000	2,400,000	78,579	—	1,128,012	388,200
	2000	995,000	5,475,000	280,799	—	646,300	329,700
Les Biller <i>Vice Chairman and Chief Operating Officer</i>	2002	800,000	3,375,000	127,765	—	1,085,372	340,195
	2001	791,667	1,500,000	217,370	—	446,670	257,412
	2000	750,000	3,550,000	237,897	—	403,900	213,000
Mark C. Oman <i>Group Executive Vice President, Mortgage and Home Equity</i>	2002	485,417	2,250,000	77,985	—	355,417	149,125
	2001	475,000	2,000,000	—	—	277,813	111,150
	2000	470,833	1,377,500	—	—	242,720	107,781
John G. Stumpf <i>Group Executive Vice President, Community Banking</i>	2002	420,833	2,025,000	464,402	500,018	196,670	58,850
	2001	400,000	560,000	205,180	—	134,340	88,800
	2000	370,833	1,080,000	264,066	—	96,900	61,850
David A. Hoyt <i>Group Executive Vice President, Wholesale Banking</i>	2002	525,000	1,675,000	2,558	—	366,481	78,120
	2001	525,000	777,000	—	—	235,090	123,150
	2000	520,833	1,522,500	—	—	202,000	112,250
C. Webb Edwards <i>Executive Vice President, Technology and Operations</i>	2002	500,000	1,875,000	6,163	2,000,226	259,790	88,800
	2001	500,000	980,000	6,195	—	184,720	117,300
	2000	491,667	1,450,000	65,786	—	222,200	102,400
Howard I. Atkins <i>Executive Vice President and Chief Financial Officer</i>	2002	550,000	1,650,000	255,260	—	—	—
	2001	222,917*	412,500	50,967	5,000,110	253,100	—

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2003 Officer Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2004))

Summary Compensation Table

(a)	(b)	Annual Compensation			Long-Term Compensation Awards		
		(c)	(d)	(e)	(f)	(g)	(i)
Name and Principal Position	Year	Salary (\$)	Bonus \$(1)	Other Annual Compensation \$(2)	Restricted Stock Award(s) \$(3)	Securities Underlying Options/SARs (#)	All Other Compensation \$(4)
Richard M. Kovacevich <i>Chairman, President and Chief Executive Officer</i>	2003	\$995,000	\$7,500,000	\$ 1,513	\$ —	865,740	\$479,700
	2002	995,000	7,000,000	5,256	—	865,330	203,700
	2001	995,000	2,400,000	78,579	—	1,128,012	388,200
David A. Hoyt <i>Group Executive Vice President, Wholesale Banking</i>	2003	545,833	2,750,000	828	—	330,560	133,250
	2002	525,000	1,675,000	2,558	—	366,481	78,120
	2001	525,000	777,000	—	—	235,090	123,150
Mark C. Oman <i>Group Executive Vice President, Mortgage and Home Equity</i>	2003	500,000	2,500,000	5,932	—	331,448	165,000
	2002	485,417	2,250,000	77,985	—	355,417	149,125
	2001	475,000	2,000,000	—	—	277,813	111,150
Howard I. Atkins <i>Executive Vice President and Chief Financial Officer</i>	2003	550,000	2,200,000	148,326	—	196,760	132,000
	2002	550,000	1,650,000	255,260	—	—	—
	2001	222,917*	412,500	50,967	5,000,110	253,100	—
C. Webb Edwards <i>Executive Vice President, Technology and Operations</i>	2003	500,000	2,000,000	—	—	342,517	142,500
	2002	500,000	1,875,000	6,163	2,000,226	259,790	88,800
	2001	500,000	980,000	6,195	—	184,720	117,300
John G. Stumpf <i>Group Executive Vice President, Community Banking</i>	2003	450,000	1,900,000	183,696	—	275,470	148,500
	2002	420,833	2,025,000	464,402	500,018	196,670	58,850
	2001	400,000	560,000	205,180	—	134,340	88,800

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2004 Officer Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2005))

Summary Compensation Table

(a)	(b)	Annual Compensation			Long-Term Compensation Awards		
		(c)	(d)	(e)	(f)	(g)	(i)
Name and Principal Position	Year	Salary (\$)	Bonus \$(1)	Other Annual Compensation \$(2)(3)	Restricted Stock Award(s) \$(4)	Securities Underlying Options/SARs (#)(5)	All Other Compensation \$(6)
Richard M. Kovacevich <i>Chairman, President and Chief Executive Officer</i>	2004	\$995,000	\$7,500,000	\$258,774	\$ —	1,853,306	\$509,602
	2003	995,000	7,500,000	102,179	—	865,740	479,700
	2002	995,000	7,000,000	96,389	—	865,330	203,700
David A. Hoyt <i>Group Executive Vice President, Wholesale Banking</i>	2004	550,000	2,750,000	984	—	309,520	197,902
	2003	545,833	2,750,000	828	—	330,560	133,250
	2002	525,000	1,675,000	2,558	—	366,481	78,120
Mark C. Oman <i>Group Executive Vice President, Mortgage and Home Equity</i>	2004	500,000	2,500,000	5,274	—	509,571	179,902
	2003	500,000	2,500,000	5,932	—	331,448	165,000
	2002	485,417	2,250,000	78,405	—	355,417	149,125
John G. Stumpf <i>Group Executive Vice President, Community Banking</i>	2004	470,833	2,375,000	100,538	—	313,254	142,152
	2003	450,000	1,900,000	184,284	—	275,470	148,500
	2002	420,833	2,025,000	460,290	500,018	196,670	58,850
Howard I. Atkins <i>Executive Vice President and Chief Financial Officer</i>	2004	550,000	2,200,000	266,247	—	171,960	163,086
	2003	550,000	2,200,000	148,902	—	196,760	132,000
	2002	550,000	1,650,000	255,836	—	—	—

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2005 Officer Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2006))

Summary Compensation Table

(a)	(b)	Annual Compensation			Long-Term Compensation Awards	
		(c)	(d)	(e)	(g)	(i)
Name and Principal Position	Year	Salary (\$)	Bonus \$(1)	Other Annual Compensation \$(2)(3)	Securities Underlying Options/SARs #(4)	All Other Compensation \$(5)
Richard M. Kovacevich <i>Chairman and Chief Executive Officer</i>	2005	\$995,000	\$7,000,000	\$ 57,809	1,009,596	\$509,700
	2004	995,000	7,500,000	259,342	1,853,306	509,602
	2003	995,000	7,500,000	102,661	865,740	479,700
John G. Stumpf <i>President and Chief Operating Officer</i>	2005	600,000	4,000,000	68,422	539,378	178,500
	2004	470,833	2,375,000	100,538	313,254	142,152
	2003	450,000	1,900,000	184,284	275,470	148,500
David A. Hoyt <i>Senior Executive Vice President, Wholesale Banking</i>	2005	570,883	3,300,000	—	362,140	199,250
	2004	550,000	2,750,000	984	309,520	197,902
	2003	550,000	2,750,000	828	330,560	133,250
Mark C. Oman <i>Senior Executive Vice President, Home and Consumer Finance</i>	2005	562,500	3,300,000	8,382	530,424	183,750
	2004	500,000	2,500,000	5,274	509,571	179,902
	2003	500,000	2,500,000	5,932	331,448	165,000
Howard I. Atkins <i>Senior Executive Vice President, Chief Financial Officer</i>	2005	570,833	3,000,000	8,624	304,169	166,250
	2004	550,000	2,200,000	266,247	171,960	163,086
	2003	550,000	2,200,000	148,902	196,760	132,000
Carric L. Tolstedt <i>Group Executive Vice President, Retail Banking</i>	2005	441,667	2,125,000	102,878	265,365	134,500
	2004	400,000	1,800,000	235,566	209,846	107,902
	2003	400,000	1,400,000	5,113	207,117	118,560

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2006 Officer Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2007))

SUMMARY COMPENSATION TABLE

Name and Principal Position	Year	Salary (\$)	Stock Awards (\$)(1)	Option Awards (\$)(1)	Non-Equity Incentive Plan Compensation (\$)(3)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)(4)(5)	All Other Compensation (\$)(7)	Total (\$)
(a)	(b)	(c)	(e)	(f)	(g)	(h)	(i)	(j)
Richard M. Kovacevich <i>Chairman & Chief Executive Officer</i>	2006	\$995,000	—	\$16,826,148	\$8,500,000	\$2,982,214	\$543,521	\$29,846,883
John G. Stumpf <i>President & Chief Operating Officer</i>	2006	700,000	\$56,736(2)	3,057,718	5,500,000	2,055,327	385,691	11,755,472
David A. Hoyt <i>Senior Executive Vice President, Wholesale Banking</i>	2006	600,000	—	2,038,437	3,300,000	291,392	255,358	6,485,187
Mark C. Oman <i>Senior Executive Vice President, Home & Consumer Finance</i>	2006	600,000	—	2,078,512	2,150,000	1,251,516(6)	270,969	6,350,997
Howard I. Atkins <i>Senior Executive Vice President & Chief Financial Officer</i>	2006	600,000	116,669(2)	1,119,091	3,000,000	202,576	250,947	5,289,283
Carrie L. Tolstedt <i>Group Executive Vice President, Community Banking</i>	2006	470,673	—	1,408,725	2,375,000	158,939	241,636	4,654,973

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2006 Director Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2007))

DIRECTOR COMPENSATION

Name	Fees Earned or Paid in Cash \$(1)	Stock Awards \$(2)	Option Awards \$(3)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Non-qualified Deferred Compensation Earnings	All Other Compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
J. A. Blanchard, III (4)	\$ 42,467	—	—	—	—	—	\$ 42,467
John S. Chen (5)	26,467	\$65,016	\$ 9,066	—	—	—	100,549
Lloyd H. Dean	109,800	65,035	31,060	—	—	—	205,895
Susan E. Engel	93,800	65,035	31,060	—	—	—	189,895
Enrique Hernandez, Jr.	95,400	65,035	31,060	—	—	—	191,495
Robert L. Joss	132,800	65,035	31,060	—	—	—	228,895
Reatha Clark King (4)	37,667	—	—	—	\$170(6)	—	37,837
Richard D. McCormick	97,600	65,035	31,060	—	—	—	193,695
Cynthia H. Milligan	103,400	65,035	31,060	—	—	—	199,495
Nicholas G. Moore (7)	81,983	97,520	35,850	—	—	—	215,353
Philip J. Quigley	149,200	65,035	31,060	—	—	—	245,295
Donald B. Rice	104,000	65,035	31,060	—	—	—	200,095
Judith M. Runstad	92,200	65,035	31,060	—	—	—	188,295
Stephen W. Sanger	100,733	65,035	31,060	—	—	—	196,828
Susan G. Swenson	106,600	65,035	31,060	—	—	—	202,695
Michael W. Wright	95,667	65,035	31,060	—	—	—	191,762

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2007 Officer Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2008))

SUMMARY COMPENSATION TABLE

Name and Principal Position	Year	Salary (\$)	Stock Awards \$(2)(3)	Option Awards \$(2)	Non-Equity Incentive Plan Compensa- tion \$(4)	Change in Pension Value and Nonqualified Deferred Compensa- tion Earnings \$(5)(6)(7)	All Other Compensa- tion \$(8)	Total (\$)
(a)	(b)	(c)	(e)	(f)	(g)	(h)	(i)	(j)
Richard M. Kovacevich (1) <i>Chairman</i>	2007	\$995,000	\$ —	\$11,211,155	\$5,700,000	\$4,364,258	\$604,539	\$22,874,952
	2006	995,000	—	16,826,148	8,500,000	2,982,214	543,521	29,846,883
John G. Stumpf (1) <i>President & Chief Executive Officer</i>	2007	749,615	21,539	3,811,408	4,200,000	3,349,498	436,857	12,568,917
	2006	700,000	56,736	3,057,718	5,500,000	2,055,327	385,691	11,755,472
Howard I. Atkins <i>Senior Executive Vice President & Chief Financial Officer</i>	2007	600,000	—	2,125,054	2,000,000	138,999	251,663	5,115,716
	2006	600,000	116,669	1,119,091	3,000,000	202,576	250,947	5,289,283
David A. Hoyt <i>Senior Executive Vice President, Wholesale Banking</i>	2007	600,000	—	2,449,401	3,000,000	81,830	249,900	6,381,131
	2006	600,000	—	2,038,437	3,300,000	291,392	255,358	6,485,187
Mark C. Oman <i>Senior Executive Vice President, Home & Consumer Finance</i>	2007	600,000	—	5,133,379	—	484,947	201,837	6,420,163
	2006	600,000	—	2,078,512	2,150,000	1,251,516	270,969	6,350,997
Carrie L. Tolstedt <i>Senior Executive Vice President, Community Banking</i>	2007	495,192	—	1,751,140	1,500,000	18,932	226,487	3,991,751
	2006	470,673	—	1,408,725	2,375,000	158,939	241,636	4,654,973
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2007 Director Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2008))

Name	Fees Earned or Paid in Cash (\$ (1))	Stock Awards (\$ (2))	Option Awards (\$ (3))	Non-Equity Incentive Plan Compensation (\$ (e))	Change in Pension Value and Non-qualified Deferred Compensation Earnings (f)	All Other Compensation (\$ (g))	Total (\$ (h))
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
John S. Chen	\$ 91,000	\$70,021	\$37,879	—	—	—	\$198,900
Lloyd H. Dean	129,000	70,021	29,946	—	—	—	228,967
Susan E. Engel	109,000	70,021	29,946	—	—	—	208,967
Enrique Hernandez, Jr.	117,000	70,021	29,946	—	—	—	216,967
Robert L. Joss	150,000	70,021	29,946	—	—	—	249,967
Richard D. McCormick	118,000	70,021	29,946	—	—	—	217,967
Cynthia H. Milligan	121,000	70,021	29,946	—	—	—	220,967
Nicholas G. Moore	115,000	70,021	29,946	—	—	—	214,967
Philip J. Quigley	160,000	70,021	29,946	—	—	—	259,967
Donald B. Rice	118,000	70,021	29,946	—	—	—	217,967
Judith M. Runstad	101,000	70,021	29,946	—	—	—	200,967
Stephen W. Sanger	123,000	70,021	29,946	—	—	—	222,967
Susan G. Swenson	123,000	70,021	29,946	—	—	—	222,967
Michael W. Wright	105,000	70,021	29,946	—	—	—	204,967

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2008 Officer Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2009))

SUMMARY COMPENSATION TABLE

Name and Principal Position	Year	Salary \$(1)	Stock Awards (\$)	Option Awards \$(2)	Non-Equity Incentive Plan Compensa- tion \$(3)	Change in Pension Value and Nonqualified Deferred Compensa- tion Earnings \$(4)(5)(6)	All Other Compensa- tion \$(7)	Total \$(2)
(a)	(b)	(c)	(e)	(f)	(g)	(h)	(i)	(j)
John G. Stumpf <i>President & Chief Executive Officer</i>	2008	\$878,920	\$ —	\$12,933,498	\$ —	\$ (272,152)	\$242,167	\$13,782,433
	2007	749,615	21,539	3,811,408	4,200,000	3,349,498	436,857	12,568,917
	2006	700,000	56,736	3,057,718	5,500,000	2,055,327	385,691	11,755,472
Howard I. Atkins <i>Senior Executive Vice President & Chief Financial Officer</i>	2008	598,767	—	3,820,585	—	67,057	130,974	4,617,383
	2007	600,000	—	2,125,054	2,000,000	138,999	251,663	5,115,716
	2006	600,000	116,669	1,119,091	3,000,000	202,576	250,947	5,289,283
Richard M. Kovacevich <i>Chairman</i>	2008	992,955	—	2,283,333	—	223,028	250,540	3,749,856
	2007	995,000	—	11,211,155	5,700,000	4,364,258	604,539	22,874,952
	2006	995,000	—	16,826,148	8,500,000	2,982,214	543,521	29,846,883
David A. Hoyt <i>Senior Executive Vice President, Wholesale Banking</i>	2008	598,767	—	7,132,935	—	51,111	149,994	7,932,807
	2007	600,000	—	2,449,401	3,000,000	81,830	249,900	6,381,131
	2006	600,000	—	2,038,437	3,300,000	291,392	255,358	6,485,187
Mark C. Oman <i>Senior Executive Vice President, Home & Consumer Finance</i>	2008	598,767	—	3,260,902	—	(351,578)	72,844	3,580,935
	2007	600,000	—	5,133,379	—	484,947	201,837	6,420,163
	2006	600,000	—	2,078,512	2,150,000	1,251,516	270,969	6,350,997

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2008 Director Compensation Chart

(Source: Wells Fargo & Company Proxy Statement (2009))

Name	Fees Earned or Paid in Cash \$(1)	Stock Awards \$(2)	Option Awards \$(3)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Non-qualified Deferred Compensation Earnings	All Other Compen- sation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
John S. Chen	\$111,000	\$70,009	\$45,422	—	—	—	\$226,431
Lloyd H. Dean	135,000	70,009	45,422	—	—	—	250,431
Susan E. Engel	133,000	70,009	45,422	—	—	—	248,431
Enrique Hernandez, Jr.	154,250	70,009	45,422	—	—	—	269,681
Robert L. Joss	158,000	70,009	45,422	—	—	—	273,431
Richard D. McCormick	130,750	70,009	45,422	—	—	—	246,181
Cynthia H. Milligan	137,000	70,009	45,422	—	—	—	252,431
Nicholas G. Moore	139,000	70,009	45,422	—	—	—	254,431
Philip J. Quigley	167,000	70,009	45,422	—	—	—	282,431
Donald B. Rice	134,000	70,009	45,422	—	—	—	249,431
Judith M. Runstad	123,000	70,009	45,422	—	—	—	238,431
Stephen W. Sanger	149,000	70,009	45,422	—	—	—	264,431
Susan G. Swenson	137,000	70,009	45,422	—	—	—	252,431
Michael W. Wright(4)	125,000	70,009	45,422	—	—	—	240,431

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1 105. Defendants' approval and/or ratification of the payment of fees to
2 tax-exempt entities who participated in SILO Transactions has cost Wells Fargo
3 millions of dollars and has generated no benefit for the Company. In fact, as a
4 result of Defendants acts or omissions, Wells Fargo paid enormous fees and costs
5 on the front end to attorneys, accountants, consultants and other to participate in
6 the SILOs, and enormous taxes penalties, legal fees and other expenses on the
7 back end, of these illegal tax shelters. Moreover, Defendants, in an effort to
8 validate years of mismanagement have condoned the Company's pursuit of
9 protracted and costly IRS appeals and litigation. Defendants have also sacrificed
10 significant governmental and public goodwill at a time when such goodwill is at a
11 premium, especially for a financial goliath like Wells Fargo.

12 **G. Defendants' Conduct Damaged Wells Fargo's Reputation And Good**
13 **Will With The Government And The Taxpaying Public**

14 106. In addition to the financial costs of Defendants' approval of Wells
15 Fargo's participation in SILO Transactions, their acts or omissions have also cost
16 Wells Fargo its reputation and goodwill with the federal government and
17 taxpaying public.

18 107. Indeed, Wells Fargo & Company's subsidiary, Wells Fargo N.A., as a
19 nationally chartered bank, is subject not only to the oversight of the Federal Deposit
20 Insurance Corporation ("FDIC") and the Federal Reserve Bank, but also the Office
21 of the Comptroller of the Currency. The bank also exists to serve customers
22 taxpaying individuals and corporations. Goodwill between Wells Fargo and these
23 institutions and individuals are virtually important to its success in a difficult
24 economy. Being found to have engaged in a massive scheme to cheat the U.S.
25 Treasury and taxpayers out of millions of dollars through illegal tax shelters have
26 jeopardized that goodwill, by at the very least reducing Wells Fargo's credibility,
27 particularly where thousands of Wells Fargo mortgages are facing foreclosure,
28 while Wells Fargo received a \$25 billion bailout, and its executives received

1 millions of dollars in bonuses. Defendants were aware of this, or should have
2 been aware of this when they authorized Wells Fargo to engage in the SILO
3 Transactions and when they decided to pursue litigation against the government.
4 However, they disregarded the impact that their conduct would have on that
5 destruction of Wells Fargo’s reputation and goodwill in favor of their own
6 self-interest.

7 108. In addition to the importance that goodwill between Wells Fargo and
8 its regulating entities always has, goodwill between Wells Fargo and the Federal
9 government is particularly important now. In the wake of the financial crisis,
10 efforts to reform financial regulations is unprecedented since the Great
11 Depression.

12 109. As far back as 2004, when Congress was investigating corporate tax
13 abuses by corporations including Wells Fargo and Bank of America, Charles
14 Grassley of Iowa, Republican head of the Senate Finance Committee put it in plain
15 English, stating that these lease back scams are “just good old-fashioned fraud.”
16 While these scams add corporate cash flows, they deny state and Federal
17 governments tax revenues broadly needed for the whole society, not just the
18 people who ride the rail cars and buses.

19 **H. Defendants Duties And Responsibilities As Members Of The Board Of**
20 **Directors Audit Committee And Finance Committee**

21 **1. Duties And Responsibilities**

22 **a. Board Of Directors**

23 110. Wells Fargo’s Board of Directors is charged with running the
24 Company in a manner that serves the best interests of Wells Fargo; that is fair,
25 honest and trustworthy; that is in compliance with applicable laws, rules and
26 regulations; that will preserve confidential information; that will avoid conflicts of
27 interest or the appearance of conflicts of interest; and that will protect and promote
28 the proper use of Wells Fargo’s assets.

1 **b. Audit And Examination Committee**

2 111. According to Wells Fargo’s Audit and Examination Committee
3 Charter, Wells Fargo’s Audit and Examination Committee is charged with
4 assisting the Board of Directors in fulfilling its responsibilities to oversee
5 management activities related to internal control, accounting and financial
6 reporting policies and auditing practices. The Audit and Examination Committee
7 also reviews the independence of the outside auditors and the objectivity of
8 internal auditors and the adequacy and reliability of disclosures to stockholders.
9 The members also perform the audit committee and fiduciary audit committee
10 functions on behalf of the Company’s bank subsidiaries in accordance with federal
11 banking regulations.

12 **c. Finance Committee**

13 112. According to Wells Fargo’s Finance Committee Charter, Wells
14 Fargo’s Finance Committee is charged with reviewing and reporting to the Board
15 on strategies for achieving financial objectives, financial performance, proposed
16 debt and equity issues, dividends, various funding requirements, and certain
17 capital expenditures. They also review policies and procedures and status of
18 financial risk management programs regarding investment portfolio composition,
19 interest sensitivity and liquidity, capital funding and debt structures, derivatives
20 usage, and the Company’s structured transactions.

21 **2. Board And Committee Meetings**

22 **a. 2001 Meetings**

23 113. According to the 2002 Proxy Statement for Wells Fargo & Company,
24 the Board of Directors held six regular meetings in 2001. The Director attendance
25 at these meetings averaged 91% during 2001. Each Director attended 75% or
26 more of the total number of Board and committee meetings on which he or she
27 served.

1 114. The Audit and Examination Committee which consisted of Philip J.
2 Quigley (Chair), J.A. Blanchard, III, Reatha Clark King, Cynthia H. Milligan,
3 Benjamin F. Montoya, Judith M. Runstad and Susan G. Swenson had four
4 meetings in 2001.

5 115. The Finance Committee which consisted of Richard D. McCormick
6 (Chair), Michael R. Bowlin, Spencer F. Eccles, Susan E. Engel, Reatha Clark
7 King, Benjamin F. Montoya and Judith M. Runstad had three meetings in 2001.

8 116. During these meetings the Board, Finance Committee, and/or the
9 Audit and Examination Committee discussed Wells Fargo's finances and business
10 dealings, including structured transactions. In addition, the Board, Finance
11 Committee, and/or the Audit and Examination Committee approved and/or ratified
12 the Company's financial statements, SEC filings, business and the conduct alleged
13 herein including, but not limited to, Wells Fargo's participation in the sham SILO
14 Transactions and efforts to take approximately \$1.6 billion dollars in illegal
15 federal tax deductions.

16 **b. 2002 Meetings**

17 117. According to the 2003 Proxy Statement for Wells Fargo & Company,
18 the Board of Directors held six regular meetings in 2002. The Director attendance
19 at these meetings averaged 97% during 2002. Each Director attended 75% or
20 more of the total number of Board and committee meetings on which he or she
21 served.

22 118. The Audit and Examination Committee which consisted of Philip J.
23 Quigley (Chair), J.A. Blanchard, III, Enrique Hernandez, Jr., Reatha Clark King,
24 Cynthia H. Milligan, Benjamin F. Montoya, Judith M. Runstad and Susan G.
25 Swenson had seven meetings in 2002.

26 119. The Finance Committee which consisted of Richard D. McCormick
27 (Chair), Michael R. Bowlin, Spencer F. Eccles, Susan E. Engel, Enrique
28

1 Hernandez, Jr., Reatha Clark King, Benjamin F. Montoya and Judith M. Runstad
2 had three meetings in 2002.

3 120. During these meetings the Board, Finance Committee, and/or the
4 Audit and Examination Committee discussed Wells Fargo's finances and business
5 dealings, including structured transactions. In addition, the Board, Finance
6 Committee, and/or the Audit and Examination Committee approved and/or ratified
7 the Company's financial statements, SEC filings, business and the conduct alleged
8 herein including, but not limited to, Wells Fargo's participation in the sham SILO
9 Transactions and efforts to take approximately \$1.6 billion dollars in illegal
10 federal tax deductions.

11 **c. 2003 Meetings**

12 121. According to the 2003 Proxy Statement for Wells Fargo & Company,
13 the Board of Directors held six regular meetings in 2002. The Director attendance
14 at these meetings averaged 97% during 2002. Each Director attended 75% or
15 more of the total number of Board and committee meetings on which he or she
16 served.

17 122. The Audit and Examination Committee which consisted of Philip J.
18 Quigley (Chair), J.A. Blanchard, III, Enrique Hernandez, Jr., Reatha Clark King,
19 Cynthia H. Milligan, Benjamin F. Montoya, Judith M. Runstad and Susan G.
20 Swenson had eight meetings in 2002.

21 123. The Finance Committee which consisted of Richard D. McCormick
22 (Chair), Susan E. Engel, Enrique Hernandez, Jr., Robert L. Joss, Reatha Clark
23 King, Benjamin F. Montoya, Judith M. Runstad and Stephen W. Sanger had three
24 meetings in 2002.

25 124. During these meetings the Board, Finance Committee, and/or the
26 Audit and Examination Committee discussed Wells Fargo's finances and business
27 dealings, including structured transactions. In addition, the Board, Finance
28 Committee, and/or the Audit and Examination Committee approved and/or ratified

1 the Company's financial statements, SEC filings, business and the conduct alleged
2 herein including, but not limited to, Wells Fargo's participation in the sham SILO
3 Transactions and efforts to take approximately \$1.6 billion dollars in illegal
4 federal tax deductions.

5 **d. 2004 Meetings**

6 125. According to the 2005 Proxy Statement for Wells Fargo & Company,
7 the Board of Directors held six regular meetings in 2004. The Director attendance
8 at these meetings averaged 98% during 2004. Each Director attended 75% or
9 more of the total number of Board and committee meetings on which he or she
10 served.

11 126. The Audit and Examination Committee which consisted of Philip J.
12 Quigley (Chair), J.A. Blanchard, III, Enrique Hernandez, Jr., Reatha Clark King,
13 Cynthia H. Milligan, Judith M. Runstad and Susan G. Swenson had eight meetings
14 in 2004.

15 127. The Finance Committee which consisted of Richard D. McCormick
16 (Chair), Susan E. Engel, Enrique Hernandez, Jr., Robert L. Joss, Reatha Clark
17 King, Judith M. Runstad and Stephen W. Sanger had four meetings in 2004.

18 128. During these meetings the Board, Finance Committee, and/or the
19 Audit and Examination Committee discussed Wells Fargo's finances and business
20 dealings, including structured transactions. In addition, the Board, Finance
21 Committee, and/or the Audit and Examination Committee approved and/or ratified
22 the Company's financial statements, SEC filings, business and the conduct alleged
23 herein including, but not limited to, Wells Fargo's participation in the sham SILO
24 Transactions and efforts to take approximately \$1.6 billion dollars in illegal
25 federal tax deductions.

26 **e. 2005 Meetings**

27 129. According to the 2006 Proxy Statement for Wells Fargo & Company,
28 the Board of Directors held six regular and two special meetings in 2005. The

1 Director attendance at these meetings averaged 97% during 2005. Each Director
2 attended 75% or more of the total number of Board and committee meetings on
3 which he or she served.

4 130. The Audit and Examination Committee which consisted of Philip J.
5 Quigley (Chair), J.A. Blanchard, III, Lloyd H. Dean, Enrique Hernandez, Jr.,
6 Reatha Clark King, Cynthia H. Milligan, Judith M. Runstad and Susan G.
7 Swenson had eight meetings in 2005.

8 131. The Finance Committee which consisted of Richard D. McCormick
9 (Chair), Lloyd H. Dean, Susan E. Engel, Enrique Hernandez, Jr., Robert L. Joss,
10 Reatha Clark King, Judith M. Runstad and Stephen W. Sanger had three meetings
11 in 2005.

12 132. During these meetings the Board, Finance Committee, and/or the
13 Audit and Examination Committee discussed Wells Fargo's finances and business
14 dealings, including structured transactions. In addition, the Board, Finance
15 Committee, and/or the Audit and Examination Committee approved and/or ratified
16 the Company's financial statements, SEC filings, business and the conduct alleged
17 herein including, but not limited to, Wells Fargo's participation in the sham SILO
18 Transactions and efforts to take approximately \$1.6 billion dollars in illegal
19 federal tax deductions.

20 **f. 2006 Meetings**

21 133. According to the 2007 Proxy Statement for Wells Fargo & Company,
22 the Board of Directors held eight regular meetings in 2006. The Director
23 attendance at these meetings averaged 95% during 2006. Each Director attended
24 75% or more of the total number of Board and committee meetings on which he or
25 she served.

26 134. The Audit and Examination Committee which consisted of Philip J.
27 Quigley (Chair), Lloyd H. Dean, Enrique Hernandez, Jr., Robert L. Joss, Cynthia
28

1 H. Milligan, Nicholas J. Moore and Susan G. Swenson had twelve meetings in
2 2006.

3 135. The Finance Committee which consisted of Richard D. McCormick
4 (Chair), John S. Chen, Lloyd H. Dean, Susan E. Engel, Enrique Hernandez, Jr.,
5 Nicholas G. Moore, Judith M. Runstad and Stephen W. Sanger had three meetings
6 in 2006.

7 136. During these meetings the Board, Finance Committee, and/or the
8 Audit and Examination Committee discussed Wells Fargo's finances and business
9 dealings, including structured transactions. In addition, the Board, Finance
10 Committee, and/or the Audit and Examination Committee approved and/or ratified
11 the Company's financial statements, SEC filings, business and the conduct alleged
12 herein including, but not limited to, Wells Fargo's participation in the sham SILO
13 Transactions and efforts to take approximately \$1.6 billion dollars in illegal
14 federal tax deductions.

15 **g. 2007 Meetings**

16 137. According to the 2008 Proxy Statement for Wells Fargo & Company,
17 the Board of Directors held seven regular meetings in 2007. The Director
18 attendance at these meetings averaged 97% during 2007. Each Director attended
19 75% or more of the total number of Board and committee meetings on which he or
20 she served.

21 138. The Audit and Examination Committee which consisted of Philip J.
22 Quigley (Chair), Lloyd H. Dean, Enrique Hernandez, Jr., Robert L. Joss, Cynthia
23 H. Milligan, Nicholas J. Moore and Susan G. Swenson had eleven meetings in
24 2007.

25 139. The Finance Committee which consisted of Richard D. McCormick
26 (Chair), John S. Chen, Lloyd H. Dean, Susan E. Engel, Enrique Hernandez, Jr.,
27 Nicholas G. Moore, Judith M. Runstad and Stephen W. Sanger had three meetings
28 in 2007.

1 140. During these meetings the Board, Finance Committee, and/or the
2 Audit and Examination Committee discussed Wells Fargo's finances and business
3 dealings, including structured transactions. In addition, the Board, Finance
4 Committee, and/or the Audit and Examination Committee approved and/or ratified
5 the Company's financial statements, SEC filings, business and the conduct alleged
6 herein including, but not limited to, Wells Fargo's participation in the sham SILO
7 Transactions and efforts to take approximately \$1.6 billion dollars in illegal
8 federal tax deductions.

9 **h. 2008 Meetings**

10 141. According to the 2009 Proxy Statement for Wells Fargo & Company,
11 the Board of Directors held fifteen meetings (seven regular and eight special
12 meetings) in 2008. The Director attendance at these meetings averaged 96%
13 during 2008. Each Director attended 75% or more of the total number of Board
14 and committee meetings on which he or she served.

15 142. The Audit and Examination Committee which consisted of Nicholas
16 G. Moore (Chair), John D. Baker, II, Lloyd H. Dean, Enrique Hernandez, Jr.,
17 Robert L. Joss, Cynthia H. Milligan, Philip J. Quigley and Susan G. Swenson had
18 ten meetings in 2008.

19 143. The Finance Committee which consisted of Enrique Hernandez, Jr.
20 (Chair), Susan E. Engel, Donald M. James, Richard D. McCormick, Judith M.
21 Runstad, Stephen W. Sanger and Robert K. Steel had seven meetings in 2008.

22 144. During these meetings the Board, Finance Committee, and/or the
23 Audit and Examination Committee discussed Wells Fargo's finances and business
24 dealings, including structured transactions. In addition, the Board, Finance
25 Committee, and/or the Audit and Examination Committee approved and/or ratified
26 the Company's financial statements, SEC filings, business and the conduct alleged
27 herein including, but not limited to, Wells Fargo's participation in the sham SILO
28

1 Transactions and efforts to take approximately \$1.6 billion dollars in illegal
2 federal tax deductions.

3 **V. FUTILITY OF PRE-FILING DEMAND**

4 **A. Plaintiff Is Excused From Making A Demand, Since A Majority Of**
5 **Wells Fargo's Board Participated In The Wrongdoing And There is**
6 **Reasonable Doubt That The Board Is Disinterested And Independent**

7 145. Plaintiff brings this action derivatively in the right and for the benefit
8 of Wells Fargo to redress the Defendants' breaches of fiduciary duties, corporate
9 mismanagement, and abuse of control.

10 146. Plaintiff is an owner of Wells Fargo common stock, and has standing
11 to bring this derivative action. Plaintiff will adequately and fairly represent the
12 interests of the Company and its shareholders in enforcing and prosecuting its
13 rights.

14 147. As a result of the facts set forth herein, Plaintiff has not made any
15 demand on the Wells Fargo Board of Directors to institute this action against the
16 Defendants named herein. Such demand is excused because making a demand
17 would be a futile and useless act due to the fact that the Directors are the
18 Defendants who engaged in the wrongdoing alleged in this Complaint and are
19 therefore incapable of making an independent and disinterested decision to
20 institute and vigorously prosecute this action. Moreover, as discussed *infra*, the
21 wrongful conduct alleged herein is not subject to protection under the business
22 judgment rule.

23 148. The demand requirement is excused where: (1) the directors are not
24 disinterested and independent, and (2) the challenged transaction is not the
25 product of a valid exercise of business judgment. Such is the case here because
26 the majority of Wells Fargo's Directors were involved in the alleged wrongdoing
27 and thus have interests adverse to the Company and therefore are incapable of
28 conducting an appropriate investigation or making a fair, unbiased decision.

1 149. At the time this action was commenced, the Wells Fargo Board of
2 Directors was comprised of 17 directors: John J. Stumpf, Robert K. Steel, John D.
3 Baker II, John S. Chen, Lloyd H. Dean, Susan E. Engel, Enrique Hernandez, Jr.,
4 Donald M. James, Richard D. McCormick, Mackey J. McDonald, Cynthia H.
5 Milligan, Nicholas G. Moore, Philip J. Quigley, Donald B. Rice, Judith M.
6 Runstad, Stephen W. Sanger, and Susan G. Swenson.

7 150. Demanding that the Board investigate and act to remand the
8 wrongdoing alleged would be futile because a majority of the Board engaged in
9 the wrongdoing alleged and all have interests adverse to performing a fair,
10 unbiased investigation. The principal wrongdoers and beneficiaries of the
11 wrongdoing dominated and controlled Wells Fargo's Board of Directors and, thus,
12 the Board can neither exercise independent, objective judgment in deciding
13 whether to bring this action, nor could it be expected to vigorously prosecute this
14 action.

15 151. As discussed below, 14 of Wells Fargo's Board members are
16 incapable of independently and disinterestedly considering a demand to commence
17 and vigorously prosecute this action:

18 **1. Defendant Stumpf**

19 152. Defendant Stumpf is Wells Fargo's Chief Executive Officer ("CEO"),
20 President, and a current member of the Board of Directors. Defendant Stumpf
21 served as Group Executive Vice Presidents of Community Banking from 2002-
22 2004, and Chief Operating Officer ("COO") from 2005-2006. Stumpf has been
23 President since August 2005, was elected to Wells Fargo's Board of Directors in
24 June 2006, and was named CEO in June 2007.

25 Defendant Stumpf is incapable of independently and disinterestedly
26 considering a demand to commence and vigorously prosecute this action because:

- 27 i. As member of Wells Fargo's Board of Directors, COO and President
28 of Wells Fargo in 2006, he owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and

1 was required to use his utmost ability to control and manage Wells
2 Fargo in a fair, just, honest, and equitable manner. He approved,
3 ratified, or failed to properly manage and control those officers or
4 employees who were responsible for the filing of the September 2006
5 lawsuit by Wells Fargo against the United States seeking a refund of
6 the \$115,174,203 in tax deductions sought for the sham SILO
7 Transactions, and refund of penalties of more than \$8 million and
8 therefore is substantially likely to be held liable for breaching his
9 fiduciary duties;

10 ii. As member of Wells Fargo's Board of Directors, President and CEO
11 of Wells Fargo in 2008, he owed Wells Fargo and its shareholders the
12 fiduciary obligations of good faith, trust, loyalty, and due care, and
13 was required to use his utmost ability to control and manage Wells
14 Fargo in a fair, just, honest, and equitable manner. He approved,
15 ratified, or failed to properly manage and control those officers or
16 employees who were responsible for Wells Fargo's rejection of the
17 IRS's August 2008 offer to accept the IRS's Appeals Settlement
18 Guideline, the initiative to settle the tax dispute concerning the sham
19 SILO Transactions, under which the IRS would not impose any
20 penalties on Wells Fargo, and Wells Fargo would also be allowed to
21 retain 20 percent of the tax benefits derived from the sham SILO
22 Transactions and therefore is substantially likely to be held liable for
23 breaching his fiduciary duties;

24 iii. As member of Wells Fargo's Board of Directors, President and CEO
25 of Wells Fargo, he owed Wells Fargo and its shareholders the
26 fiduciary obligations of good faith, trust, loyalty, and due care, and
27 was required to use his utmost ability to control and manage Wells
28 Fargo in a fair, just, honest, and equitable manner. He approved,
ratified, or failed to properly manage and control those officers or
employees who were responsible for Wells Fargo's continuation of
protracted litigation with the United States and pursuit of a lengthy
April 2009 trial that resulted in a ruling that affirmed the IRS's
disallowance of the \$115,174,203 tax deduction and upheld the
penalty of more than \$8 million and therefore is substantially likely to
be held liable for breaching his fiduciary duties;

iv. As member of Wells Fargo's Board of Directors, President and CEO
of Wells Fargo in 2008, he owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use his utmost ability to control and manage Wells
Fargo in a fair, just, honest, and equitable manner. He approved,
ratified, or failed to properly manage and control those officers or
employees who were responsible for filing Wells Fargo's October
2009 lawsuit against the United States for a refund of \$54,652,605
and § 6662 penalties, if any, arising from the IRS's disallowance of
2003 tax deductions sought for additional SILO Transactions,
including disputing the IRS's disallowance of these deductions, and
rejecting the opportunity to settle with the IRS and therefore is
substantially likely to be held liable for breaching his fiduciary duties.

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1 **2. Defendant Dean**

2 153. Defendant Dean is currently on the Board of Directors for Wells
3 Fargo. Since 2005, he has been a Director as well as a member of the Audit and
4 Examination Committee.

5 154. Defendant Dean is incapable of independently and disinterestedly
6 considering a demand to commence and vigorously prosecute this action because:

- 7 i. As member of Board of Directors and Audit and Examination
8 Committee in 2006, he owed Wells Fargo and its shareholders the
9 fiduciary obligations of good faith, trust, loyalty, and due care, and
10 was required to use his utmost ability to control and manage Wells
11 Fargo in a fair, just, honest, and equitable manner. As a member of
12 the Audit and Examination Committee he had a duty to, *inter alia*,
13 oversee Company policies and management activities related to
14 accounting and financial reporting, internal controls, auditing,
15 operational risk and legal and regulatory compliance; the integrity of
16 the Company's financial statements and the adequacy and reliability
17 of disclosures to stockholders; and the qualifications and
18 independence of the outside auditors and the performance of internal
19 and outside auditors. He approved, ratified, or failed to properly
20 manage and control those officers or employees who were responsible
21 for the filing of the September 2006 lawsuit by Wells Fargo against
22 the United States seeking a refund of the \$115,174,203 in tax
23 deductions sought for the sham SILO Transactions, and refund of
24 penalties of more than \$8 million and therefore is substantially likely
25 to be held liable for breaching his fiduciary duties;
- 26 ii. As a member of the Board of Directors and Audit and Examination
27 Committee in 2008, he owed Wells Fargo and its shareholders the
28 fiduciary obligations of good faith, trust, loyalty, and due care, and
 was required to use his utmost ability to control and manage Wells
 Fargo in a fair, just, honest, and equitable manner. As a member of
 the Audit and Examination Committee he had a duty to, *inter alia*,
 oversee Company policies and management activities related to
 accounting and financial reporting, internal controls, auditing,
 operational risk and legal and regulatory compliance; the integrity of
 the Company's financial statements and the adequacy and reliability
 of disclosures to stockholders; and the qualifications and
 independence of the outside auditors and the performance of internal
 and outside auditors. He approved, ratified, or failed to properly
 manage and control those officers or employees who were responsible
 for Wells Fargo's rejection of the IRS's August 2008 offer to accept
 the IRS's Appeals Settlement Guideline, the initiative to settle the tax
 dispute concerning the sham SILO Transactions, under which the IRS
 would not impose any penalties on Wells Fargo, and Wells Fargo
 would also be allowed to retain 20 percent of the tax benefits derived
 from the sham SILO Transactions and therefore is substantially likely
 to be held liable for breaching his fiduciary duties;

1 iii. As a member of the Board of Directors and Audit and Examination
2 Committee in 2009, he owed Wells Fargo and its shareholders the
3 fiduciary obligations of good faith, trust, loyalty, and due care, and
4 was required to use his utmost ability to control and manage Wells
5 Fargo in a fair, just, honest, and equitable manner. As a member of
6 the Audit and Examination Committee he had a duty to, *inter alia*,
7 oversee Company policies and management activities related to
8 accounting and financial reporting, internal controls, auditing,
9 operational risk and legal and regulatory compliance; the integrity of
10 the Company's financial statements and the adequacy and reliability
11 of disclosures to stockholders; and the qualifications and
12 independence of the outside auditors and the performance of internal
13 and outside auditors. He approved, ratified, or failed to properly
14 manage and control those officers or employees who were responsible
15 for Wells Fargo's continuation of protracted litigation with the United
16 States and pursuit of a lengthy April 2009 trial that resulted in a
17 ruling that affirmed the IRS's disallowance of the \$115,174,203 tax
18 deduction and upheld the penalty of more than \$8 million and
19 therefore is substantially likely to be held liable for breaching his
20 fiduciary duties;

21 iv. As a member of the Board of Directors and Audit and Examination
22 Committee in 2009, he owed Wells Fargo and its shareholders the
23 fiduciary obligations of good faith, trust, loyalty, and due care, and
24 was required to use his utmost ability to control and manage Wells
25 Fargo in a fair, just, honest, and equitable manner. As a member of
26 the Audit and Examination Committee he had a duty to, *inter alia*,
27 oversee Company policies and management activities related to
28 accounting and financial reporting, internal controls, auditing,
operational risk and legal and regulatory compliance; the integrity of
the Company's financial statements and the adequacy and reliability
of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. He approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for filing Wells Fargo's October 2009 lawsuit against the United
States for a refund of \$54,652,605 and § 6662 penalties, if any,
arising from the IRS's disallowance of 2003 tax deductions sought
for additional SILO Transactions, including disputing the IRS's
disallowance of these deductions, and rejecting the opportunity to
settle with the IRS and therefore is substantially likely to be held
liable for breaching his fiduciary duties.

3. **Defendant Hernandez**

155. Defendant Hernandez is currently on the Board of Directors for Wells
Fargo. Since 2003, he has been a Director as well as a member of the Audit and
Examination Committee and the Finance Committee.

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1 156. Defendant Hernandez is incapable of independently and
2 disinterestedly considering a demand to commence and vigorously prosecute this
3 action because:

4 i. As a member of the Board of Directors and Audit and Examination
5 Committee of Wells Fargo in 2003, he owed Wells Fargo and its
6 shareholders the fiduciary obligations of good faith, trust, loyalty, and
7 due care, and was required to use his utmost ability to control and
8 manage Wells Fargo in a fair, just, honest, and equitable manner. As
9 a member of the Audit and Examination Committee he had a duty to,
10 *inter alia*, oversee Company policies and management activities
11 related to accounting and financial reporting, internal controls,
12 auditing, operational risk and legal and regulatory compliance; the
13 integrity of the Company's financial statements and the adequacy and
14 reliability of disclosures to stockholders; and the qualifications and
15 independence of the outside auditors and the performance of internal
16 and outside auditors. As a member of the Finance Committee he had
17 a duty to, *inter alia*, review, approve, and oversee the financial risk
18 management polices of the Company's structured transactions policy
19 and standards. He approved, ratified, or failed to properly manage
20 and control those officers or employees who were responsible for
21 Wells Fargo's continued participation in the sham SILO Transactions,
22 and therefore is substantially likely to be held liable for breaching his
23 fiduciary duties. He also approved, ratified, or failed to properly
24 manage and control those officers or employees who were responsible
25 for filing of the Federal income tax for the taxable year ended
26 December 31, 2003, seeking tax deductions for the sham SILO
27 Transactions, and therefore is substantially likely to be held liable for
28 breaching his fiduciary duties. He also approved, ratified, or failed to
 properly manage and control those officers or employees who were
 responsible for entering into sham SILO Transactions, and therefore
 is substantially likely to be held liable for breaching his fiduciary
 duties;

19 ii. As a member of the Board of Directors and Audit and Examination
20 Committee in 2005, he owed Wells Fargo and its shareholders the
21 fiduciary obligations of good faith, trust, loyalty, and due care, and
22 was required to use his utmost ability to control and manage Wells
23 Fargo in a fair, just, honest, and equitable manner. As a member of
24 the Audit and Examination Committee he had a duty to, *inter alia*,
25 oversee Company policies and management activities related to
26 accounting and financial reporting, internal controls, auditing,
27 operational risk and legal and regulatory compliance; the integrity of
28 the Company's financial statements and the adequacy and reliability
 of disclosures to stockholders; and the qualifications and
 independence of the outside auditors and the performance of internal
 and outside auditors. As a member of the Finance Committee he had a
 duty to, *inter alia*, review, approve, and oversee the financial risk
 management polices of the Company's structured transactions policy
 and standards. He approved, ratified, or failed to properly manage
 and control those officers or employees who were responsible for
 Wells Fargo's May 2005 appeal of the IRS audit and disallowance of
 the \$115,174,203 in tax deductions sought for the sham SILO

1 Transactions for which Wells Fargo was penalized more than \$8
2 million under 26 U.S.C. § 6662 for accuracy-related penalties at the
3 partnership level for substantial understatement of tax liability and
therefore is substantially likely to be held liable for breaching his
fiduciary duties;

- 4 iii. As member of Board of Directors and Audit and Examination
5 Committee in 2006, he owed Wells Fargo and its shareholders the
6 fiduciary obligations of good faith, trust, loyalty, and due care, and
7 was required to use his utmost ability to control and manage Wells
8 Fargo in a fair, just, honest, and equitable manner. As a member of
9 the Audit and Examination Committee he had a duty to, *inter alia*,
10 oversee Company policies and management activities related to
11 accounting and financial reporting, internal controls, auditing,
12 operational risk and legal and regulatory compliance; the integrity of
13 the Company's financial statements and the adequacy and reliability
14 of disclosures to stockholders; and the qualifications and
15 independence of the outside auditors and the performance of internal
16 and outside auditors. As a member of the Finance Committee he had
17 a duty to, *inter alia*, review, approve, and oversee the financial risk
18 management polices of the Company's structured transactions policy
19 and standards. He approved, ratified, or failed to properly manage
20 and control those officers or employees who were responsible for the
21 filing of the September 2006 lawsuit by Wells Fargo against the
22 United States seeking a refund of the \$115,174,203 in tax deductions
23 sought for the sham SILO Transactions, and refund of penalties of
24 more than \$8 million and therefore is substantially likely to be held
25 liable for breaching his fiduciary duties;
- 26 iv. As a member of the Board of Directors and Audit and Examination
27 Committee in 2008, he owed Wells Fargo and its shareholders the
28 fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use his utmost ability to control and manage Wells
Fargo in a fair, just, honest, and equitable manner. As a member of
the Audit and Examination Committee he had a duty to, *inter alia*,
oversee Company policies and management activities related to
accounting and financial reporting, internal controls, auditing,
operational risk and legal and regulatory compliance; the integrity of
the Company's financial statements and the adequacy and reliability
of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. As a member of the Finance Committee he had a
duty to, *inter alia*, review, approve, and oversee the financial risk
management polices of the Company's structured transactions policy
and standards. He approved, ratified, or failed to properly manage
and control those officers or employees who were responsible for
Wells Fargo's rejection of the IRS's August 2008 offer to accept the
IRS's Appeals Settlement Guideline, the initiative to settle the tax
dispute concerning the sham SILO Transactions, under which the IRS
would not impose any penalties on Wells Fargo, and Wells Fargo
would also be allowed to retain 20 percent of the tax benefits derived
from the sham SILO Transactions and therefore is substantially likely
to be held liable for breaching his fiduciary duties;

1 v. As a member of the Board of Directors and Audit and Examination
2 Committee in 2009, he owed Wells Fargo and its shareholders the
3 fiduciary obligations of good faith, trust, loyalty, and due care, and
4 was required to use his utmost ability to control and manage Wells
5 Fargo in a fair, just, honest, and equitable manner. As a member of
6 the Audit and Examination Committee he had a duty to, *inter alia*,
7 oversee Company policies and management activities related to
8 accounting and financial reporting, internal controls, auditing,
9 operational risk and legal and regulatory compliance; the integrity of
10 the Company's financial statements and the adequacy and reliability
11 of disclosures to stockholders; and the qualifications and
12 independence of the outside auditors and the performance of internal
and outside auditors. As a member of the Finance Committee he had a
duty to, *inter alia*, review, approve, and oversee the financial risk
management polices of the Company's structured transactions policy
and standards. He approved, ratified, or failed to properly manage
and control those officers or employees who were responsible for
Wells Fargo's continuation of protracted litigation with the United
States and pursuit of a lengthy April 2009 trial that resulted in a
ruling that affirmed the IRS's disallowance of the \$115,174,203 tax
deduction and upheld the penalty of more than \$8 million and
therefore is substantially likely to be held liable for breaching his
fiduciary duties;

13 vi. As a member of the Board of Directors and Audit and Examination
14 Committee in 2009, he owed Wells Fargo and its shareholders the
15 fiduciary obligations of good faith, trust, loyalty, and due care, and
16 was required to use his utmost ability to control and manage Wells
17 Fargo in a fair, just, honest, and equitable manner. As a member of
18 the Audit and Examination Committee he had a duty to, *inter alia*,
19 oversee Company policies and management activities related to
20 accounting and financial reporting, internal controls, auditing,
21 operational risk and legal and regulatory compliance; the integrity of
22 the Company's financial statements and the adequacy and reliability
23 of disclosures to stockholders; and the qualifications and
24 independence of the outside auditors and the performance of internal
25 and outside auditors. As a member of the Finance Committee he had
26 a duty to, *inter alia*, review, approve, and oversee the financial risk
27 management polices of the Company's structured transactions policy
28 and standards. He approved, ratified, or failed to properly manage and
control those officers or employees who were responsible for filing
Wells Fargo's October 2009 lawsuit against the United States for a
refund of \$54,652,605 and § 6662 penalties, if any, arising from the
IRS's disallowance of 2003 tax deductions sought for additional
SILO Transactions, including disputing the IRS's disallowance of
these deductions, and rejecting the opportunity to settle with the IRS
and therefore is substantially likely to be held liable for breaching his
fiduciary duties.

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1 **4. Defendant Milligan**

2 157. Defendant Milligan is currently a member of Wells Fargo’s Board of
3 Directors. Since 1992, she has been a Director. She has been a member of the
4 Audit and Examination Committee since at least 2001.

5 158. Defendant Milligan is incapable of independently and disinterestedly
6 considering a demand to commence and vigorously prosecute this action because:

- 7 i. As a member of the Board of Directors between 1997 and 2004 she
8 owed Wells Fargo and its shareholders the fiduciary obligations of good faith, trust, loyalty, and due care, and was required to use her
9 utmost ability to control and manage Wells Fargo in a fair, just,
10 honest, and equitable manner. She approved, ratified, or failed to
11 properly manage and control those officers or employees who were
responsible for Wells Fargo's decision to enter into various sham
SILO Transactions and therefore is substantially likely to be held
liable for breaching his fiduciary duties;
- 12 ii. As a member of the Board of Directors and Audit and Examination
13 Committee of Wells Fargo in 2002, she owed Wells Fargo and its
14 shareholders the fiduciary obligations of good faith, trust, loyalty, and
15 due care, and was required to use her utmost ability to control and
16 manage Wells Fargo in a fair, just, honest, and equitable manner. As
17 a member of the Audit and Examination Committee she had a duty to,
18 *inter alia*, oversee Company policies and management activities
19 related to accounting and financial reporting, internal controls,
20 auditing, operational risk and legal and regulatory compliance; the
21 integrity of the Company’s financial statements and the adequacy and
22 reliability of disclosures to stockholders; and the qualifications and
23 independence of the outside auditors and the performance of internal
24 and outside auditors. She approved, ratified, or failed to properly
25 manage and control those officers or employees who were responsible
26 for Wells Fargo’s continued participation in the sham SILO
27 Transactions, and therefore is substantially likely to be held liable for
28 breaching his fiduciary duties. She also approved, ratified, or failed to
properly manage and control those officers or employees who were
responsible for Wells Fargo’s filing of the Federal income tax for the
taxable year December 31, 2002, seeking \$115,174,203 in tax
deductions for the sham SILO Transactions and therefore is
substantially likely to be held liable for breaching her fiduciary
duties. She also approved, ratified, or failed to properly manage and
control those officers or employees who were responsible for entering
into sham SILO Transactions, and therefore is substantially likely to
be held liable for breaching his fiduciary duties;
- iii. As a member of the Board of Directors and Audit and Examination
Committee of Wells Fargo in 2003, she owed Wells Fargo and its
shareholders the fiduciary obligations of good faith, trust, loyalty, and
due care, and was required to use her utmost ability to control and
manage Wells Fargo in a fair, just, honest, and equitable manner. As
a member of the Audit and Examination Committee she had a duty to,

1 *inter alia*, oversee Company policies and management activities
2 related to accounting and financial reporting, internal controls,
3 auditing, operational risk and legal and regulatory compliance; the
4 integrity of the Company's financial statements and the adequacy and
5 reliability of disclosures to stockholders; and the qualifications and
6 independence of the outside auditors and the performance of internal
7 and outside auditors. She approved, ratified, or failed to properly
8 manage and control those officers or employees who were responsible
9 for Wells Fargo's continued participation in the sham SILO
10 Transactions, and therefore is substantially likely to be held liable for
11 breaching his fiduciary duties. She also approved, ratified, or failed
12 to properly manage and control those officers or employees who were
13 responsible for filing of the Federal income tax for the taxable year
14 ended December 31, 2003, seeking tax deductions for the sham SILO
15 Transactions, and therefore is substantially likely to be held liable for
16 breaching his fiduciary duties. She also approved, ratified, or failed
17 to properly manage and control those officers or employees who were
18 responsible for entering into sham SILO Transactions, and therefore
19 is substantially likely to be held liable for breaching his fiduciary
20 duties;

11 iv. As a member of the Board of Directors and Audit and Examination
12 Committee in 2005, she owed Wells Fargo and its shareholders the
13 fiduciary obligations of good faith, trust, loyalty, and due care, and
14 was required to use her utmost ability to control and manage Wells
15 Fargo in a fair, just, honest, and equitable manner. As a member of
16 the Audit and Examination Committee she had a duty to, *inter alia*,
17 oversee Company policies and management activities related to
18 accounting and financial reporting, internal controls, auditing,
19 operational risk and legal and regulatory compliance; the integrity of
20 the Company's financial statements and the adequacy and reliability
21 of disclosures to stockholders; and the qualifications and
22 independence of the outside auditors and the performance of internal
23 and outside auditors. She approved, ratified, or failed to properly
24 manage and control those officers or employees who were responsible
25 for Wells Fargo's May 2005 appeal of the IRS audit and disallowance
26 of the \$115,174,203 in tax deductions sought for the sham SILO
27 Transactions for which Wells Fargo was penalized more than \$8
28 million under 26 U.S.C. § 6662 for accuracy-related penalties at the
partnership level for substantial understatement of tax liability and
therefore is substantially likely to be held liable for breaching her
fiduciary duties;

v. As member of Board of Directors and Audit and Examination
Committee in 2006, she owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use her utmost ability to control and manage Wells
Fargo in a fair, just, honest, and equitable manner. As a member of
the Audit and Examination Committee she had a duty to, *inter alia*,
oversee Company policies and management activities related to
accounting and financial reporting, internal controls, auditing,
operational risk and legal and regulatory compliance; the integrity of
the Company's financial statements and the adequacy and reliability
of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal

1 and outside auditors. She approved, ratified, or failed to properly
2 manage and control those officers or employees who were responsible
3 for the filing of the September 2006 lawsuit by Wells Fargo against
4 the United States seeking a refund of the \$115,174,203 in tax
deductions sought for the sham SILO Transactions, and refund of
penalties of more than \$8 million and therefore is substantially likely
to be held liable for breaching her fiduciary duties;

5 vi. As a member of the Board of Directors and Audit and Examination
6 Committee in 2008, she owed Wells Fargo and its shareholders the
7 fiduciary obligations of good faith, trust, loyalty, and due care, and
8 was required to use her utmost ability to control and manage Wells
9 Fargo in a fair, just, honest, and equitable manner. As a member of
10 the Audit and Examination Committee she had a duty to, *inter alia*,
11 oversee Company policies and management activities related to
12 accounting and financial reporting, internal controls, auditing,
13 operational risk and legal and regulatory compliance; the integrity of
14 the Company's financial statements and the adequacy and reliability
15 of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. She approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's rejection of the IRS's August 2008 offer to accept
the IRS's Appeals Settlement Guideline, the initiative to settle the tax
dispute concerning the sham SILO Transactions, under which the IRS
would not impose any penalties on Wells Fargo, and Wells Fargo
would also be allowed to retain 20 percent of the tax benefits derived
from the sham SILO Transactions and therefore is substantially likely
to be held liable for breaching her fiduciary duties;

16 vii. As a member of the Board of Directors and Audit and Examination
17 Committee in 2009, she owed Wells Fargo and its shareholders the
18 fiduciary obligations of good faith, trust, loyalty, and due care, and
19 was required to use her utmost ability to control and manage Wells
20 Fargo in a fair, just, honest, and equitable manner. As a member of
21 the Audit and Examination Committee she had a duty to, *inter alia*,
22 oversee Company policies and management activities related to
23 accounting and financial reporting, internal controls, auditing,
24 operational risk and legal and regulatory compliance; the integrity of
25 the Company's financial statements and the adequacy and reliability
26 of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. She approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's continuation of protracted litigation with the United
States and pursuit of a lengthy April 2009 trial that resulted in a
ruling that affirmed the IRS's disallowance of the \$115,174,203 tax
deduction and upheld the penalty of more than \$8 million and
therefore is substantially likely to be held liable for breaching her
fiduciary duties;

27 viii. As a member of the Board of Directors and Audit and Examination
28 Committee in 2009, she owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use her utmost ability to control and manage Wells

1 Fargo in a fair, just, honest, and equitable manner. As a member of
2 the Audit and Examination Committee she had a duty to, *inter alia*,
3 oversee Company policies and management activities related to
4 accounting and financial reporting, internal controls, auditing,
5 operational risk and legal and regulatory compliance; the integrity of
6 the Company's financial statements and the adequacy and reliability
7 of disclosures to stockholders; and the qualifications and
8 independence of the outside auditors and the performance of internal
9 and outside auditors. She approved, ratified, or failed to properly
10 manage and control those officers or employees who were responsible
11 for filing Wells Fargo's October 2009 lawsuit against the United
12 States for a refund of \$54,652,605 and § 6662 penalties, if any,
13 arising from the IRS's disallowance of 2003 tax deductions sought
14 for additional SILO Transactions, including disputing the IRS's
15 disallowance of these deductions, and rejecting the opportunity to
16 settle with the IRS and therefore is substantially likely to be held
17 liable for breaching her fiduciary duties.

10 **5. Defendant Moore**

11 159. Defendant Moore is currently a member of Wells Fargo's Board of
12 Directors. Since 2006, he has been a Director as well as a member of the Audit
13 and Examination Committee.

14 160. Defendant Moore is incapable of independently and disinterestedly
15 considering a demand to commence and vigorously prosecute this action because:

- 16 i. As member of Board of Directors and Audit and Examination
17 Committee in 2006, he owed Wells Fargo and its shareholders the
18 fiduciary obligations of good faith, trust, loyalty, and due care, and
19 was required to use his utmost ability to control and manage Wells
20 Fargo in a fair, just, honest, and equitable manner. As a member of
21 the Audit and Examination Committee he had a duty to, *inter alia*,
22 oversee Company policies and management activities related to
23 accounting and financial reporting, internal controls, auditing,
24 operational risk and legal and regulatory compliance; the integrity of
25 the Company's financial statements and the adequacy and reliability
26 of disclosures to stockholders; and the qualifications and
27 independence of the outside auditors and the performance of internal
28 and outside auditors. He approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for the filing of the September 2006 lawsuit by Wells Fargo against
the United States seeking a refund of the \$115,174,203 in tax
deductions sought for the sham SILO Transactions, and refund of
penalties of more than \$8 million and therefore is substantially likely
to be held liable for breaching his fiduciary duties;
- ii. As a member of the Board of Directors and Audit and Examination
Committee in 2008, he owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use his utmost ability to control and manage Wells
Fargo in a fair, just, honest, and equitable manner. As a member of

1 the Audit and Examination Committee he had a duty to, *inter alia*,
2 oversee Company policies and management activities related to
3 accounting and financial reporting, internal controls, auditing,
4 operational risk and legal and regulatory compliance; the integrity of
5 the Company's financial statements and the adequacy and reliability
6 of disclosures to stockholders; and the qualifications and
7 independence of the outside auditors and the performance of internal
8 and outside auditors. He approved, ratified, or failed to properly
9 manage and control those officers or employees who were responsible
10 for Wells Fargo's rejection of the IRS's August 2008 offer to accept
11 the IRS's Appeals Settlement Guideline, the initiative to settle the tax
12 dispute concerning the sham SILO Transactions, under which the IRS
13 would not impose any penalties on Wells Fargo, and Wells Fargo
14 would also be allowed to retain 20 percent of the tax benefits derived
15 from the sham SILO Transactions and therefore is substantially likely
16 to be held liable for breaching his fiduciary duties;

17
18 iii. As a member of the Board of Directors and Audit and Examination
19 Committee in 2009, he owed Wells Fargo and its shareholders the
20 fiduciary obligations of good faith, trust, loyalty, and due care, and
21 was required to use his utmost ability to control and manage Wells
22 Fargo in a fair, just, honest, and equitable manner. As a member of
23 the Audit and Examination Committee he had a duty to, *inter alia*,
24 oversee Company policies and management activities related to
25 accounting and financial reporting, internal controls, auditing,
26 operational risk and legal and regulatory compliance; the integrity of
27 the Company's financial statements and the adequacy and reliability
28 of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. He approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's continuation of protracted litigation with the United
States and pursuit of a lengthy April 2009 trial that resulted in a
ruling that affirmed the IRS's disallowance of the \$115,174,203 tax
deduction and upheld the penalty of more than \$8 million and
therefore is substantially likely to be held liable for breaching his
fiduciary duties;

iv. As a member of the Board of Directors and Audit and Examination
Committee in 2009, he owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use his utmost ability to control and manage Wells
Fargo in a fair, just, honest, and equitable manner. As a member of
the Audit and Examination Committee he had a duty to, *inter alia*,
oversee Company policies and management activities related to
accounting and financial reporting, internal controls, auditing,
operational risk and legal and regulatory compliance; the integrity of
the Company's financial statements and the adequacy and reliability
of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. He approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for filing Wells Fargo's October 2009 lawsuit against the United
States for a refund of \$54,652,605 and § 6662, if any, arising from the
IRS's disallowance of 2003 tax deductions sought for additional

1 SILO Transactions, including disputing the IRS's disallowance of
2 these deductions, and rejecting the opportunity to settle with the IRS
3 and therefore is substantially likely to be held liable for breaching his
4 fiduciary duties.

5 **6. Defendant Quigley**

6 161. Defendant Quigley is currently a member of Wells Fargo's Board of
7 Directors. Since 1994, he has been a Director. He has been a member of the
8 Audit and Examination Committee since at least 2001.

9 162. Defendant Quigley is incapable of independently and disinterestedly
10 considering a demand to commence and vigorously prosecute this action because:

- 11 i. As a member of the Board of Directors between 1997 and 2004 he
12 owed Wells Fargo and its shareholders the fiduciary obligations of
13 good faith, trust, loyalty, and due care, and was required to use his
14 utmost ability to control and manage Wells Fargo in a fair, just,
15 honest, and equitable manner. He approved, ratified, or failed to
16 properly manage and control those officers or employees who were
17 responsible for Wells Fargo's decision to enter into various sham
18 SILO Transactions and therefore is substantially likely to be held
19 liable for breaching his fiduciary duties;
- 20 ii. As a member of the Board of Directors and Audit and Examination
21 Committee of Wells Fargo in 2002, he owed Wells Fargo and its
22 shareholders the fiduciary obligations of good faith, trust, loyalty, and
23 due care, and was required to use his utmost ability to control and
24 manage Wells Fargo in a fair, just, honest, and equitable manner. As
25 a member of the Audit and Examination Committee he had a duty to,
26 *inter alia*, oversee Company policies and management activities
27 related to accounting and financial reporting, internal controls,
28 auditing, operational risk and legal and regulatory compliance; the
integrity of the Company's financial statements and the adequacy and
reliability of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. He approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's continued participation in the sham SILO
Transactions, and therefore is substantially likely to be held liable for
breaching his fiduciary duties. He also approved, ratified, or failed to
properly manage and control those officers or employees who were
responsible for Wells Fargo's filing of the Federal income tax for the
taxable year December 31, 2002, seeking \$115,174,203 in tax
deductions for the sham SILO Transactions and therefore is
substantially likely to be held liable for breaching his fiduciary duties.
He also approved, ratified, or failed to properly manage and control
those officers or employees who were responsible for entering into
sham SILO Transactions, and therefore is substantially likely to be
held liable for breaching his fiduciary duties;

1 iii. As a member of the Board of Directors and Audit and Examination
2 Committee of Wells Fargo in 2003, he owed Wells Fargo and its
3 shareholders the fiduciary obligations of good faith, trust, loyalty, and
4 due care, and was required to use his utmost ability to control and
5 manage Wells Fargo in a fair, just, honest, and equitable manner. As
6 a member of the Audit and Examination Committee he had a duty to,
7 *inter alia*, oversee Company policies and management activities
8 related to accounting and financial reporting, internal controls,
9 auditing, operational risk and legal and regulatory compliance; the
10 integrity of the Company's financial statements and the adequacy and
11 reliability of disclosures to stockholders; and the qualifications and
12 independence of the outside auditors and the performance of internal
13 and outside auditors. He approved, ratified, or failed to properly
14 manage and control those officers or employees who were responsible
15 for Wells Fargo's continued participation in the sham SILO
16 Transactions, and therefore is substantially likely to be held liable for
17 breaching his fiduciary duties. He also approved, ratified, or failed to
18 properly manage and control those officers or employees who were
19 responsible for filing of the Federal income tax for the taxable year
20 ended December 31, 2003, seeking tax deductions for the sham SILO
21 Transactions, and therefore is substantially likely to be held liable for
22 breaching his fiduciary duties. He also approved, ratified, or failed to
23 properly manage and control those officers or employees who were
24 responsible for entering into sham SILO Transactions, and therefore
25 is substantially likely to be held liable for breaching his fiduciary
26 duties;

15 iv. As a member of the Board of Directors and Audit and Examination
16 Committee in 2005, he owed Wells Fargo and its shareholders the
17 fiduciary obligations of good faith, trust, loyalty, and due care, and
18 was required to use his utmost ability to control and manage Wells
19 Fargo in a fair, just, honest, and equitable manner. As a member of
20 the Audit and Examination Committee he had a duty to, *inter alia*,
21 oversee Company policies and management activities related to
22 accounting and financial reporting, internal controls, auditing,
23 operational risk and legal and regulatory compliance; the integrity of
24 the Company's financial statements and the adequacy and reliability
25 of disclosures to stockholders; and the qualifications and
26 independence of the outside auditors and the performance of internal
27 and outside auditors. He approved, ratified, or failed to properly
28 manage and control those officers or employees who were responsible
29 for Wells Fargo's May 2005 appeal of the IRS audit and disallowance
30 of the \$115,174,203 in tax deductions sought for the sham SILO
31 Transactions for which Wells Fargo was penalized more than \$8
32 million under 26 U.S.C. § 6662 for accuracy-related penalties at the
33 partnership level for substantial understatement of tax liability and
34 therefore is substantially likely to be held liable for breaching his
35 fiduciary duties;

26 v. As member of Board of Directors and Audit and Examination
27 Committee in 2006, he owed Wells Fargo and its shareholders the
28 fiduciary obligations of good faith, trust, loyalty, and due care, and
29 was required to use his utmost ability to control and manage Wells
30 Fargo in a fair, just, honest, and equitable manner. As a member of
31 the Audit and Examination Committee he had a duty to, *inter alia*,

1 oversee Company policies and management activities related to
2 accounting and financial reporting, internal controls, auditing,
3 operational risk and legal and regulatory compliance; the integrity of
4 the Company's financial statements and the adequacy and reliability
5 of disclosures to stockholders; and the qualifications and
6 independence of the outside auditors and the performance of internal
7 and outside auditors. He approved, ratified, or failed to properly
8 manage and control those officers or employees who were responsible
9 for the filing of the September 2006 lawsuit by Wells Fargo against
10 the United States seeking a refund of the \$115,174,203 in tax
11 deductions sought for the sham SILO Transactions, and refund of
12 penalties of more than \$8 million and therefore is substantially likely
13 to be held liable for breaching his fiduciary duties;

14 vi. As a member of the Board of Directors and Audit and Examination
15 Committee in 2008, he owed Wells Fargo and its shareholders the
16 fiduciary obligations of good faith, trust, loyalty, and due care, and
17 was required to use his utmost ability to control and manage Wells
18 Fargo in a fair, just, honest, and equitable manner. As a member of
19 the Audit and Examination Committee he had a duty to, *inter alia*,
20 oversee Company policies and management activities related to
21 accounting and financial reporting, internal controls, auditing,
22 operational risk and legal and regulatory compliance; the integrity of
23 the Company's financial statements and the adequacy and reliability
24 of disclosures to stockholders; and the qualifications and
25 independence of the outside auditors and the performance of internal
26 and outside auditors. He approved, ratified, or failed to properly
27 manage and control those officers or employees who were responsible
28 for Wells Fargo's rejection of the IRS's August 2008 offer to accept
the IRS's Appeals Settlement Guideline, the initiative to settle the tax
dispute concerning the sham SILO Transactions, under which the IRS
would not impose any penalties on Wells Fargo, and Wells Fargo
would also be allowed to retain 20 percent of the tax benefits derived
from the sham SILO Transactions and therefore is substantially likely
to be held liable for breaching his fiduciary duties;

19 vii. As a member of the Board of Directors and Audit and Examination
20 Committee in 2009, he owed Wells Fargo and its shareholders the
21 fiduciary obligations of good faith, trust, loyalty, and due care, and
22 was required to use his utmost ability to control and manage Wells
23 Fargo in a fair, just, honest, and equitable manner. As a member of
24 the Audit and Examination Committee he had a duty to, *inter alia*,
25 oversee Company policies and management activities related to
26 accounting and financial reporting, internal controls, auditing,
27 operational risk and legal and regulatory compliance; the integrity of
28 the Company's financial statements and the adequacy and reliability
of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. He approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's continuation of protracted litigation with the United
States and pursuit of a lengthy April 2009 trial that resulted in a
ruling that affirmed the IRS's disallowance of the \$115,174,203 tax
deduction and upheld the penalty of more than \$8 million and

1 therefore is substantially likely to be held liable for breaching his
2 fiduciary duties;

- 3 viii. As a member of the Board of Directors and Audit and Examination
4 Committee in 2009, he owed Wells Fargo and its shareholders the
5 fiduciary obligations of good faith, trust, loyalty, and due care, and
6 was required to use his utmost ability to control and manage Wells
7 Fargo in a fair, just, honest, and equitable manner. As a member of
8 the Audit and Examination Committee he had a duty to, *inter alia*,
9 oversee Company policies and management activities related to
10 accounting and financial reporting, internal controls, auditing,
11 operational risk and legal and regulatory compliance; the integrity of
12 the Company's financial statements and the adequacy and reliability
13 of disclosures to stockholders; and the qualifications and
14 independence of the outside auditors and the performance of internal
15 and outside auditors. He approved, ratified, or failed to properly
16 manage and control those officers or employees who were responsible
17 for filing Wells Fargo's October 2009 lawsuit against the United
18 States for a refund of \$54,652,605 and § 6662 penalties, if any,
19 arising from the IRS's disallowance of 2003 tax deductions sought
20 for additional SILO Transactions, including disputing the IRS's
21 disallowance of these deductions, and rejecting the opportunity to
22 settle with the IRS and therefore is substantially likely to be held
23 liable for breaching his fiduciary duties.

14 7. Defendant Swenson

15 163. Defendant Swenson is currently a member of Wells Fargo's Board of
16 Directors. Since 1994, she has been a Director. She has been a member of the
17 Audit and Examination Committee since at least 2001.

18 164. Defendant Swenson is incapable of independently and disinterestedly
19 considering a demand to commence and vigorously prosecute this action because:

- 20 i. As a member of the Board of Directors between 1997 and 2004 she
21 owed Wells Fargo and its shareholders the fiduciary obligations of
22 good faith, trust, loyalty, and due care, and was required to use her
23 utmost ability to control and manage Wells Fargo in a fair, just,
24 honest, and equitable manner. She approved, ratified, or failed to
25 properly manage and control those officers or employees who were
26 responsible for Wells Fargo's decision to enter into various sham
27 SILO Transactions and therefore is substantially likely to be held
28 liable for breaching her fiduciary duties;
- ii. As a member of the Board of Directors and Audit and Examination
Committee of Wells Fargo in 2002, she owed Wells Fargo and its
shareholders the fiduciary obligations of good faith, trust, loyalty, and
due care, and was required to use her utmost ability to control and
manage Wells Fargo in a fair, just, honest, and equitable manner. As
a member of the Audit and Examination Committee she had a duty to,
inter alia, oversee Company policies and management activities
related to accounting and financial reporting, internal controls,

1 auditing, operational risk and legal and regulatory compliance; the
2 integrity of the Company's financial statements and the adequacy and
3 reliability of disclosures to stockholders; and the qualifications and
4 independence of the outside auditors and the performance of internal
5 and outside auditors. She approved, ratified, or failed to properly
6 manage and control those officers or employees who were responsible
7 for Wells Fargo's filing of the Federal income tax for the taxable year
8 December 31, 2002, seeking \$115,174,203 in tax deductions for the
9 sham SILO Transactions and therefore is substantially likely to be
10 held liable for breaching her fiduciary duties;

11 iii. As a member of the Board of Directors and Audit and Examination
12 Committee of Wells Fargo in 2003, she owed Wells Fargo and its
13 shareholders the fiduciary obligations of good faith, trust, loyalty, and
14 due care, and was required to use her utmost ability to control and
15 manage Wells Fargo in a fair, just, honest, and equitable manner. As
16 a member of the Audit and Examination Committee she had a duty to,
17 *inter alia*, oversee Company policies and management activities
18 related to accounting and financial reporting, internal controls,
19 auditing, operational risk and legal and regulatory compliance; the
20 integrity of the Company's financial statements and the adequacy and
21 reliability of disclosures to stockholders; and the qualifications and
22 independence of the outside auditors and the performance of internal
23 and outside auditors. She approved, ratified, or failed to properly
24 manage and control those officers or employees who were responsible
25 for Wells Fargo's filing of the Federal income tax for the taxable year
26 December 31, 2003, seeking tax deductions for the sham SILO
27 Transactions and therefore is substantially likely to be held liable for
28 breaching her fiduciary duties;

iv. As a member of the Board of Directors and Audit and Examination
Committee in 2005, she owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use her utmost ability to control and manage Wells
Fargo in a fair, just, honest, and equitable manner. As a member of
the Audit and Examination Committee she had a duty to, *inter alia*,
oversee Company policies and management activities related to
accounting and financial reporting, internal controls, auditing,
operational risk and legal and regulatory compliance; the integrity of
the Company's financial statements and the adequacy and reliability
of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. She approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's May 2005 appeal of the IRS audit and disallowance
of the \$115,174,203 in tax deductions sought for the sham SILO
Transactions for which Wells Fargo was penalized more than \$8
million under 26 U.S.C. § 6662 for accuracy-related penalties at the
partnership level for substantial understatement of tax liability and
therefore is substantially likely to be held liable for breaching her
fiduciary duties;

v. As member of Board of Directors and Audit and Examination
Committee in 2006, she owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and

1 was required to use her utmost ability to control and manage Wells
2 Fargo in a fair, just, honest, and equitable manner. As a member of
3 the Audit and Examination Committee she had a duty to, *inter alia*,
4 oversee Company policies and management activities related to
5 accounting and financial reporting, internal controls, auditing,
6 operational risk and legal and regulatory compliance; the integrity of
7 the Company's financial statements and the adequacy and reliability
8 of disclosures to stockholders; and the qualifications and
9 independence of the outside auditors and the performance of internal
10 and outside auditors. She approved, ratified, or failed to properly
11 manage and control those officers or employees who were responsible
12 for the filing of the September 2006 lawsuit by Wells Fargo against
13 the United States seeking a refund of the \$115,174,203 in tax
14 deductions sought for the sham SILO Transactions, and refund of
15 penalties of more than \$8 million and therefore is substantially likely
16 to be held liable for breaching her fiduciary duties;

17 vi. As a member of the Board of Directors and Audit and Examination
18 Committee in 2008, she owed Wells Fargo and its shareholders the
19 fiduciary obligations of good faith, trust, loyalty, and due care, and
20 was required to use her utmost ability to control and manage Wells
21 Fargo in a fair, just, honest, and equitable manner. As a member of
22 the Audit and Examination Committee she had a duty to, *inter alia*,
23 oversee Company policies and management activities related to
24 accounting and financial reporting, internal controls, auditing,
25 operational risk and legal and regulatory compliance; the integrity of
26 the Company's financial statements and the adequacy and reliability
27 of disclosures to stockholders; and the qualifications and
28 independence of the outside auditors and the performance of internal
and outside auditors. She approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's rejection of the IRS's August 2008 offer to accept
the IRS's Appeals Settlement Guideline, the initiative to settle the tax
dispute concerning the sham SILO Transactions, under which the IRS
would not impose any penalties on Wells Fargo, and Wells Fargo
would also be allowed to retain 20 percent of the tax benefits derived
from the sham SILO Transactions and therefore is substantially likely
to be held liable for breaching her fiduciary duties;

vii. As a member of the Board of Directors and Audit and Examination
Committee in 2009, she owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use her utmost ability to control and manage Wells
Fargo in a fair, just, honest, and equitable manner. As a member of
the Audit and Examination Committee she had a duty to, *inter alia*,
oversee Company policies and management activities related to
accounting and financial reporting, internal controls, auditing,
operational risk and legal and regulatory compliance; the integrity of
the Company's financial statements and the adequacy and reliability
of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. She approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's continuation of protracted litigation with the United
States and pursuit of a lengthy April 2009 trial that resulted in a

1 ruling that affirmed the IRS's disallowance of the \$115,174,203 tax
2 deduction and upheld the penalty of more than \$8 million and
3 therefore is substantially likely to be held liable for breaching her
4 fiduciary duties;

- 5 viii. As a member of the Board of Directors and Audit and Examination
6 Committee in 2009, she owed Wells Fargo and its shareholders the
7 fiduciary obligations of good faith, trust, loyalty, and due care, and
8 was required to use her utmost ability to control and manage Wells
9 Fargo in a fair, just, honest, and equitable manner. As a member of
10 the Audit and Examination Committee she had a duty to, *inter alia*,
11 oversee Company policies and management activities related to
12 accounting and financial reporting, internal controls, auditing,
13 operational risk and legal and regulatory compliance; the integrity of
14 the Company's financial statements and the adequacy and reliability
15 of disclosures to stockholders; and the qualifications and
16 independence of the outside auditors and the performance of internal
17 and outside auditors. She approved, ratified, or failed to properly
18 manage and control those officers or employees who were responsible
19 for filing Wells Fargo's October 2009 lawsuit against the United
20 States for a refund of \$54,652,605 and § 6662 penalties, if any,
21 arising from the IRS's disallowance of 2003 tax deductions sought
22 for additional SILO Transactions, including disputing the IRS's
23 disallowance of these deductions, and rejecting the opportunity to
24 settle with the IRS and therefore is substantially likely to be held
25 liable for breaching her fiduciary duties.

26 **8. Defendant Engel**

27 165. Defendant Engel is currently a member of Wells Fargo's Board of
28 Directors. Since 1998, she has been a Director. She has been a member of the
Finance Committee since at least 2001.

166. Defendant Engel is incapable of independently and disinterestedly
considering a demand to commence and vigorously prosecute this action because:

- i. As a member of the Board of Directors between 1998 and 2004 she
owed Wells Fargo and its shareholders the fiduciary obligations of
good faith, trust, loyalty, and due care, and was required to use her
utmost ability to control and manage Wells Fargo in a fair, just,
honest, and equitable manner. She approved, ratified, or failed to
properly manage and control those officers or employees who were
responsible for Wells Fargo's decision to enter into various sham
SILO Transactions and therefore is substantially likely to be held
liable for breaching her fiduciary duties;
- ii. As a member of the Board of Directors and Finance Committee of
Wells Fargo in 2002, she owed Wells Fargo and its shareholders the
fiduciary obligations of good faith, trust, loyalty, and due care, and
was required to use her utmost ability to control and manage Wells
Fargo in a fair, just, honest, and equitable manner. As a member of
the Finance Committee she had a duty to, *inter alia*, review, approve,

1 and oversee the financial risk management polices of the Company's
2 structured transactions policy and standards. She approved, ratified,
3 or failed to properly manage and control those officers or employees
4 who were responsible for Wells Fargo's filing of the Federal income
5 tax for the taxable year December 31, 2002, seeking \$115,174,203 in
6 tax deductions for the sham SILO Transactions and therefore is
7 substantially likely to be held liable for breaching her fiduciary
8 duties;

9
10 iii. As a member of the Board of Directors and Finance Committee of
11 Wells Fargo in 2003, she owed Wells Fargo and its shareholders the
12 fiduciary obligations of good faith, trust, loyalty, and due care, and
13 was required to use her utmost ability to control and manage Wells
14 Fargo in a fair, just, honest, and equitable manner. As a member of
15 the Finance Committee she had a duty to, *inter alia*, review, approve,
16 and oversee the financial risk management polices of the Company's
17 structured transactions policy and standards. She approved, ratified,
18 or failed to properly manage and control those officers or employees
19 who were responsible for Wells Fargo's filing of the Federal income
20 tax for the taxable year December 31, 2003, seeking tax deductions
21 for the sham SILO Transactions and therefore is substantially likely
22 to be held liable for breaching her fiduciary duties;

23
24 iv. As a member of the Board of Directors and Finance Committee in
25 2005, she owed Wells Fargo and its shareholders the fiduciary
26 obligations of good faith, trust, loyalty, and due care, and was
27 required to use her utmost ability to control and manage Wells Fargo
28 in a fair, just, honest, and equitable manner. As a member of the
Finance Committee she had a duty to, *inter alia*, review, approve, and
oversee the financial risk management polices of the Company's
structured transactions policy and standards. She approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for Wells Fargo's May 2005 appeal of the IRS
audit and disallowance of the \$115,174,203 in tax deductions sought
for the sham SILO Transactions for which Wells Fargo was penalized
more than \$8 million under 26 U.S.C. § 6662 for accuracy-related
penalties at the partnership level for substantial understatement of tax
liability and therefore is substantially likely to be held liable for
breaching her fiduciary duties;

21 v. As member of Board of Directors and Finance Committee in 2006,
22 she owed Wells Fargo and its shareholders the fiduciary obligations
23 of good faith, trust, loyalty, and due care, and was required to use her
24 utmost ability to control and manage Wells Fargo in a fair, just,
25 honest, and equitable manner. As a member of the Finance
26 Committee she had a duty to, *inter alia*, review, approve, and oversee
27 the financial risk management polices of the Company's structured
28 transactions policy and standards. She approved, ratified, or failed to
properly manage and control those officers or employees who were
responsible for the filing of the September 2006 lawsuit by Wells
Fargo against the United States seeking a refund of the \$115,174,203
in tax deductions sought for the sham SILO Transactions, and refund
of penalties of more than \$8 million and therefore is substantially
likely to be held liable for breaching her fiduciary duties;

1 vi. As a member of the Board of Directors and Finance Committee in
2 2008, she owed Wells Fargo and its shareholders the fiduciary
3 obligations of good faith, trust, loyalty, and due care, and was
4 required to use her utmost ability to control and manage Wells Fargo
5 in a fair, just, honest, and equitable manner. As a member of the
6 Finance Committee she had a duty to, *inter alia*, review, approve, and
7 oversee the financial risk management policies of the Company's
8 structured transactions policy and standards. She approved, ratified,
9 or failed to properly manage and control those officers or employees
10 who were responsible for Wells Fargo's rejection of the IRS's August
11 2008 offer to accept the IRS's Appeals Settlement Guideline, the
12 initiative to settle the tax dispute concerning the sham SILO
13 Transactions, under which the IRS would not impose any penalties on
14 Wells Fargo, and Wells Fargo would also be allowed to retain 20
15 percent of the tax benefits derived from the sham SILO Transactions
16 and therefore is substantially likely to be held liable for breaching her
17 fiduciary duties;

10 vii. As a member of the Board of Directors and Finance Committee in
11 2009, she owed Wells Fargo and its shareholders the fiduciary
12 obligations of good faith, trust, loyalty, and due care, and was
13 required to use her utmost ability to control and manage Wells Fargo
14 in a fair, just, honest, and equitable manner. As a member of the
15 Finance Committee she had a duty to, *inter alia*, review, approve, and
16 oversee the financial risk management policies of the Company's
17 structured transactions policy and standards. She approved, ratified,
18 or failed to properly manage and control those officers or employees
19 who were responsible for Wells Fargo's continuation of protracted
20 litigation with the United States and pursuit of a lengthy April 2009
21 trial that resulted in a ruling that affirmed the IRS's disallowance of
22 the \$115,174,203 tax deduction and upheld the penalty of more than
23 \$8 million and therefore is substantially likely to be held liable for
24 breaching her fiduciary duties;

18 viii. As a member of the Board of Directors and Finance Committee in
19 2009, she owed Wells Fargo and its shareholders the fiduciary
20 obligations of good faith, trust, loyalty, and due care, and was
21 required to use her utmost ability to control and manage Wells Fargo
22 in a fair, just, honest, and equitable manner. As a member of the
23 Finance Committee she had a duty to, *inter alia*, review, approve, and
24 oversee the financial risk management policies of the Company's
25 structured transactions policy and standards. She approved, ratified,
26 or failed to properly manage and control those officers or employees
27 who were responsible for filing Wells Fargo's October 2009 lawsuit
28 against the United States for a refund of \$54,652,605 and § 6662
penalties, if any, arising from the IRS's disallowance of 2003 tax
deductions sought for additional SILO Transactions, including
disputing the IRS's disallowance of these deductions, and rejecting
the opportunity to settle with the IRS and therefore is substantially
likely to be held liable for breaching her fiduciary duties.

///
///

1 **9. Defendant James**

2 167. Defendant James is currently a member of Wells Fargo’s Board of
3 Directors. Since 2009, he has been a Director as well as a member of the Finance
4 Committee.

5 168. Defendant James is incapable of independently and disinterestedly
6 considering a demand to commence and vigorously prosecute this action because:

7 i. As a member of the Board of Directors and Finance Committee in
8 2009, he owed Wells Fargo and its shareholders the fiduciary
9 obligations of good faith, trust, loyalty, and due care, and was
10 required to use his utmost ability to control and manage Wells Fargo
11 in a fair, just, honest, and equitable manner. As a member of the
12 Finance Committee he had a duty to, *inter alia*, review, approve, and
13 oversee the financial risk management polices of the Company’s
14 structured transactions policy and standards. He approved, ratified,
15 or failed to properly manage and control those officers or employees
16 who were responsible for Wells Fargo’s continuation of protracted
17 litigation with the United States and pursuit of a lengthy April 2009
18 trial that resulted in a ruling that affirmed the IRS’s disallowance of
19 the \$115,174,203 tax deduction and upheld the penalty of more than
20 \$8 million and therefore is substantially likely to be held liable for
21 breaching his fiduciary duties;

22 ii. As a member of the Board of Directors and Finance Committee in
23 2009, he owed Wells Fargo and its shareholders the fiduciary
24 obligations of good faith, trust, loyalty, and due care, and was
25 required to use his utmost ability to control and manage Wells Fargo
26 in a fair, just, honest, and equitable manner. As a member of the
27 Finance Committee he had a duty to, *inter alia*, review, approve, and
28 oversee the financial risk management polices of the Company’s
29 structured transactions policy and standards. He approved, ratified,
30 or failed to properly manage and control those officers or employees
31 who were responsible for filing Wells Fargo’s October 2009 lawsuit
32 against the United States for a refund of \$54,652,605 and \$ 6662
33 penalties, if any, arising from the IRS’s disallowance of 2003 tax
34 deductions sought for additional SILO Transactions, including
35 disputing the IRS’s disallowance of these deductions, and rejecting
36 the opportunity to settle with the IRS and therefore is substantially
37 likely to be held liable for breaching his fiduciary duties.

38 **10. Defendant McCormick**

39 169. Defendant McCormick is currently a member of Wells Fargo’s Board
40 of Directors. Since 1983, he has been a Director. He has been a member of the
41 Finance Committee since at least 2001.

1 170. Defendant McCormick is incapable of independently and
2 disinterestedly considering a demand to commence and vigorously prosecute this
3 action because:

- 4 i. As a member of the Board of Directors between 1997 and 2004 he
5 owed Wells Fargo and its shareholders the fiduciary obligations of
6 good faith, trust, loyalty, and due care, and was required to use his
7 utmost ability to control and manage Wells Fargo in a fair, just,
8 honest, and equitable manner. He approved, ratified, or failed to
properly manage and control those officers or employees who were
responsible for Wells Fargo's decision to enter into various sham
SILO Transactions and therefore is substantially likely to be held
liable for breaching his fiduciary duties;
- 9 ii. As a member of the Board of Directors and Finance Committee of
10 Wells Fargo in 2002, he owed Wells Fargo and its shareholders the
11 fiduciary obligations of good faith, trust, loyalty, and due care, and
12 was required to use his utmost ability to control and manage Wells
13 Fargo in a fair, just, honest, and equitable manner. As a member of
14 the Finance Committee he had a duty to, *inter alia*, review, approve,
15 and oversee the financial risk management polices of the Company's
structured transactions policy and standards. He approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for Wells Fargo's filing of the Federal income
tax for the taxable year December 31, 2002, seeking \$115,174,203 in
tax deductions for the sham SILO Transactions and therefore is
substantially likely to be held liable for breaching his fiduciary duties;
- 16 iii. As a member of the Board of Directors and Finance Committee of
17 Wells Fargo in 2003, he owed Wells Fargo and its shareholders the
18 fiduciary obligations of good faith, trust, loyalty, and due care, and
19 was required to use his utmost ability to control and manage Wells
20 Fargo in a fair, just, honest, and equitable manner. As a member of
21 the Finance Committee he had a duty to, *inter alia*, review, approve,
22 and oversee the financial risk management polices of the Company's
structured transactions policy and standards. He approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for Wells Fargo's filing of the Federal income
tax for the taxable year December 31, 2003, seeking tax deductions
for the sham SILO Transactions and therefore is substantially likely
to be held liable for breaching his fiduciary duties;
- 23 iv. As a member of the Board of Directors and Finance Committee in
24 2005, he owed Wells Fargo and its shareholders the fiduciary
25 obligations of good faith, trust, loyalty, and due care, and was
26 required to use his utmost ability to control and manage Wells Fargo
27 in a fair, just, honest, and equitable manner. As a member of the
28 Finance Committee he had a duty to, *inter alia*, review, approve, and
oversee the financial risk management polices of the Company's
structured transactions policy and standards. He approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for Wells Fargo's May 2005 appeal of the IRS
audit and disallowance of the \$115,174,203 in tax deductions sought

1 for the sham SILO Transactions for which Wells Fargo was penalized
2 more than \$8 million under 26 U.S.C. § 6662 for accuracy-related
3 penalties at the partnership level for substantial understatement of tax
liability and therefore is substantially likely to be held liable for
breaching his fiduciary duties;

4 v. As member of Board of Directors and Finance Committee in 2006, he
5 owed Wells Fargo and its shareholders the fiduciary obligations of
6 good faith, trust, loyalty, and due care, and was required to use his
7 utmost ability to control and manage Wells Fargo in a fair, just,
8 honest, and equitable manner. As a member of the Finance
9 Committee he had a duty to, *inter alia*, review, approve, and oversee
10 the financial risk management polices of the Company's structured
11 transactions policy and standards. He approved, ratified, or failed to
12 properly manage and control those officers or employees who were
13 responsible for the filing of the September 2006 lawsuit by Wells
14 Fargo against the United States seeking a refund of the \$115,174,203
15 in tax deductions sought for the sham SILO Transactions, and refund
16 of penalties of more than \$8 million and therefore is substantially
17 likely to be held liable for breaching his fiduciary duties;

18 vi. As a member of the Board of Directors and Finance Committee in
19 2008, he owed Wells Fargo and its shareholders the fiduciary
20 obligations of good faith, trust, loyalty, and due care, and was
21 required to use his utmost ability to control and manage Wells Fargo
22 in a fair, just, honest, and equitable manner. As a member of the
23 Finance Committee he had a duty to, *inter alia*, review, approve, and
24 oversee the financial risk management polices of the Company's
25 structured transactions policy and standards. He approved, ratified,
26 or failed to properly manage and control those officers or employees
27 who were responsible for Wells Fargo's rejection of the IRS's August
28 2008 offer to accept the IRS's Appeals Settlement Guideline, the
initiative to settle the tax dispute concerning the sham SILO
Transactions, under which the IRS would not impose any penalties on
Wells Fargo, and Wells Fargo would also be allowed to retain 20
percent of the tax benefits derived from the sham SILO Transactions
and therefore is substantially likely to be held liable for breaching his
fiduciary duties;

vii. As a member of the Board of Directors and Finance Committee in
2009, he owed Wells Fargo and its shareholders the fiduciary
obligations of good faith, trust, loyalty, and due care, and was
required to use his utmost ability to control and manage Wells Fargo
in a fair, just, honest, and equitable manner. As a member of the
Finance Committee he had a duty to, *inter alia*, review, approve, and
oversee the financial risk management polices of the Company's
structured transactions policy and standards. He approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for Wells Fargo's continuation of protracted
litigation with the United States and pursuit of a lengthy April 2009
trial that resulted in a ruling that affirmed the IRS's disallowance of
the \$115,174,203 tax deduction and upheld the penalty of more than
\$8 million and therefore is substantially likely to be held liable for
breaching his fiduciary duties;

1 viii. As a member of the Board of Directors and Finance Committee in
2 2009, he owed Wells Fargo and its shareholders the fiduciary
3 obligations of good faith, trust, loyalty, and due care, and was
4 required to use his utmost ability to control and manage Wells Fargo
5 in a fair, just, honest, and equitable manner. As a member of the
6 Finance Committee he had a duty to, *inter alia*, review, approve, and
7 oversee the financial risk management policies of the Company's
8 structured transactions policy and standards. He approved, ratified,
9 or failed to properly manage and control those officers or employees
10 who were responsible for filing Wells Fargo's October 2009 lawsuit
11 against the United States for a refund of \$54,652,605 and § 6662
12 penalties, if any, arising from the IRS's disallowance of 2003 tax
13 deductions sought for additional SILO Transactions, including
14 disputing the IRS's disallowance of these deductions, and rejecting
15 the opportunity to settle with the IRS and therefore is substantially
16 likely to be held liable for breaching his fiduciary duties.

11. Defendant Rustand

171. Defendant Runstad is currently a member of Wells Fargo's Board of
Directors. Since 1998, she has been a Director. She was a member of the Audit
and Examination Committee from 2002-2005, and has served on the Finance
Committee since 2005.

172. Defendant Runstad is incapable of independently and disinterestedly
considering a demand to commence and vigorously prosecute this action because:

- i. As a member of the Board of Directors between 1998 and 2004 she
owed Wells Fargo and its shareholders the fiduciary obligations of
good faith, trust, loyalty, and due care, and was required to use her
utmost ability to control and manage Wells Fargo in a fair, just,
honest, and equitable manner. She approved, ratified, or failed to
properly manage and control those officers or employees who were
responsible for Wells Fargo's decision to enter into various sham
SILO Transactions and therefore is substantially likely to be held
liable for breaching her fiduciary duties;
- ii. As a member of the Board of Directors and Audit and Examination
Committee of Wells Fargo in 2002, she owed Wells Fargo and its
shareholders the fiduciary obligations of good faith, trust, loyalty, and
due care, and was required to use her utmost ability to control and
manage Wells Fargo in a fair, just, honest, and equitable manner. As
a member of the Audit and Examination Committee she had a duty to,
inter alia, oversee Company policies and management activities
related to accounting and financial reporting, internal controls,
auditing, operational risk and legal and regulatory compliance; the
integrity of the Company's financial statements and the adequacy and
reliability of disclosures to stockholders; and the qualifications and
independence of the outside auditors and the performance of internal
and outside auditors. She approved, ratified, or failed to properly
manage and control those officers or employees who were responsible
for Wells Fargo's filing of the Federal income tax for the taxable year

1 December 31, 2002, seeking \$115,174,203 in tax deductions for the
2 sham SILO Transactions and therefore is substantially likely to be
held liable for breaching her fiduciary duties;

3 iii. As a member of the Board of Directors and Audit and Examination
4 Committee of Wells Fargo in 2003, she owed Wells Fargo and its
shareholders the fiduciary obligations of good faith, trust, loyalty, and
5 due care, and was required to use her utmost ability to control and
manage Wells Fargo in a fair, just, honest, and equitable manner. As
6 a member of the Audit and Examination Committee she had a duty to,
inter alia, oversee Company policies and management activities
7 related to accounting and financial reporting, internal controls,
auditing, operational risk and legal and regulatory compliance; the
8 integrity of the Company's financial statements and the adequacy and
reliability of disclosures to stockholders; and the qualifications and
9 independence of the outside auditors and the performance of internal
and outside auditors. She approved, ratified, or failed to properly
10 manage and control those officers or employees who were responsible
for Wells Fargo's filing of the Federal income tax for the taxable year
11 December 31, 2003, seeking tax deductions for the sham SILO
Transactions and therefore is substantially likely to be held liable for
breaching her fiduciary duties;

12 iv. As a member of the Board of Directors and Finance Committee in
13 2005, she owed Wells Fargo and its shareholders the fiduciary
obligations of good faith, trust, loyalty, and due care, and was
14 required to use her utmost ability to control and manage Wells Fargo
in a fair, just, honest, and equitable manner. As a member of the
15 Audit and Examination Committee she had a duty to, *inter alia*,
oversee Company policies and management activities related to
16 accounting and financial reporting, internal controls, auditing,
operational risk and legal and regulatory compliance; the integrity of
17 the Company's financial statements and the adequacy and reliability
of disclosures to stockholders; and the qualifications and
18 independence of the outside auditors and the performance of internal
and outside auditors. As a member of the Finance Committee she had
19 a duty to, *inter alia*, review, approve, and oversee the financial risk
management polices of the Company's structured transactions policy
20 and standards. She approved, ratified, or failed to properly manage
and control those officers or employees who were responsible for
21 Wells Fargo's May 2005 appeal of the IRS audit and disallowance of
the \$115,174,203 in tax deductions sought for the sham SILO
22 Transactions for which Wells Fargo was penalized more than \$8
million under 26 U.S.C. § 6662 for accuracy-related penalties at the
23 partnership level for substantial understatement of tax liability and
therefore is substantially likely to be held liable for breaching her
24 fiduciary duties;

25 v. As member of Board of Directors and Finance Committee in 2006,
26 she owed Wells Fargo and its shareholders the fiduciary obligations
of good faith, trust, loyalty, and due care, and was required to use her
27 utmost ability to control and manage Wells Fargo in a fair, just,
honest, and equitable manner. As a member of the Finance
28 Committee she had a duty to, *inter alia*, review, approve, and oversee
the financial risk management polices of the Company's structured

1 transactions policy and standards. She approved, ratified, or failed to
2 properly manage and control those officers or employees who were
3 responsible for the filing of the September 2006 lawsuit by Wells
4 Fargo against the United States seeking a refund of the \$115,174,203
in tax deductions sought for the sham SILO Transactions, and refund
of penalties of more than \$8 million and therefore is substantially
likely to be held liable for breaching her fiduciary duties;

5 vi. As a member of the Board of Directors and Finance Committee in
6 2008, she owed Wells Fargo and its shareholders the fiduciary
7 obligations of good faith, trust, loyalty, and due care, and was
8 required to use her utmost ability to control and manage Wells Fargo
9 in a fair, just, honest, and equitable manner. As a member of the
10 Finance Committee she had a duty to, *inter alia*, review, approve, and
11 oversee the financial risk management polices of the Company's
12 structured transactions policy and standards. She approved, ratified,
13 or failed to properly manage and control those officers or employees
14 who were responsible for Wells Fargo's rejection of the IRS's August
15 2008 offer to accept the IRS's Appeals Settlement Guideline, the
16 initiative to settle the tax dispute concerning the sham SILO
17 Transactions, under which the IRS would not impose any penalties on
18 Wells Fargo, and Wells Fargo would also be allowed to retain 20
19 percent of the tax benefits derived from the sham SILO Transactions
20 and therefore is substantially likely to be held liable for breaching her
21 fiduciary duties;

22 vii. As a member of the Board of Directors and Finance Committee in
23 2009, she owed Wells Fargo and its shareholders the fiduciary
24 obligations of good faith, trust, loyalty, and due care, and was
25 required to use her utmost ability to control and manage Wells Fargo
26 in a fair, just, honest, and equitable manner. As a member of the
27 Finance Committee she had a duty to, *inter alia*, review, approve, and
28 oversee the financial risk management polices of the Company's
structured transactions policy and standards. She approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for Wells Fargo's continuation of protracted
litigation with the United States and pursuit of a lengthy April 2009
trial that resulted in a ruling that affirmed the IRS's disallowance of
the \$115,174,203 tax deduction and upheld the penalty of more than
\$8 million and therefore is substantially likely to be held liable for
breaching her fiduciary duties;

viii. As a member of the Board of Directors and Finance Committee in
2009, she owed Wells Fargo and its shareholders the fiduciary
obligations of good faith, trust, loyalty, and due care, and was
required to use her utmost ability to control and manage Wells Fargo
in a fair, just, honest, and equitable manner. As a member of the
Finance Committee she had a duty to, *inter alia*, review, approve, and
oversee the financial risk management polices of the Company's
structured transactions policy and standards. She approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for filing Wells Fargo's October 2009 lawsuit
against the United States for a refund of \$54,652,605 and § 6662
penalties, if any, arising from the IRS's disallowance of 2003 tax
deductions sought for additional SILO Transactions, including

1 disputing the IRS's disallowance of these deductions, and rejecting
2 the opportunity to settle with the IRS and therefore is substantially
likely to be held liable for breaching her fiduciary duties.

3 **12. Defendant Sanger**

4 173. Defendant Sanger is currently a member of Wells Fargo's Board of
5 Directors. Since 2003, he has been a Director as well as a member of the Finance
6 Committee.

7 174. Defendant Sanger is incapable of independently and disinterestedly
8 considering a demand to commence and vigorously prosecute this action because:

- 9 i. As a member of the Board of Directors and Finance Committee of
10 Wells Fargo in 2003, he owed Wells Fargo and its shareholders the
11 fiduciary obligations of good faith, trust, loyalty, and due care, and
12 was required to use his utmost ability to control and manage Wells
13 Fargo in a fair, just, honest, and equitable manner. As a member of
14 the Finance Committee he had a duty to, *inter alia*, review, approve,
15 and oversee the financial risk management policies of the Company's
structured transactions policy and standards. He approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for Wells Fargo's filing of the Federal income
tax for the taxable year December 31, 2003, seeking tax deductions
for the sham SILO Transactions and therefore is substantially likely
to be held liable for breaching his fiduciary duties;
- 16 ii. As a member of the Board of Directors and Finance Committee in
17 2005, he owed Wells Fargo and its shareholders the fiduciary
18 obligations of good faith, trust, loyalty, and due care, and was
19 required to use his utmost ability to control and manage Wells Fargo
20 in a fair, just, honest, and equitable manner. As a member of the
21 Finance Committee he had a duty to, *inter alia*, review, approve, and
22 oversee the financial risk management policies of the Company's
23 structured transactions policy and standards. He approved, ratified,
24 or failed to properly manage and control those officers or employees
25 who were responsible for Wells Fargo's May 2005 appeal of the IRS
26 audit and disallowance of the \$115,174,203 in tax deductions sought
27 for the sham SILO Transactions for which Wells Fargo was penalized
28 more than \$8 million under 26 U.S.C. § 6662 for accuracy-related
penalties at the partnership level for substantial understatement of tax
liability and therefore is substantially likely to be held liable for
breaching his fiduciary duties;
- iii. As member of Board of Directors and Finance Committee in 2006, he
owed Wells Fargo and its shareholders the fiduciary obligations of
good faith, trust, loyalty, and due care, and was required to use his
utmost ability to control and manage Wells Fargo in a fair, just,
honest, and equitable manner. As a member of the Finance
Committee he had a duty to, *inter alia*, review, approve, and oversee
the financial risk management policies of the Company's structured
transactions policy and standards. He approved, ratified, or failed to

1 properly manage and control those officers or employees who were
2 responsible for the filing of the September 2006 lawsuit by Wells
3 Fargo against the United States seeking a refund of the \$115,174,203
4 in tax deductions sought for the sham SILO Transactions, and refund
of penalties of more than \$8 million and therefore is substantially
likely to be held liable for breaching his fiduciary duties;

5 iv. As a member of the Board of Directors and Finance Committee in
6 2008, he owed Wells Fargo and its shareholders the fiduciary
7 obligations of good faith, trust, loyalty, and due care, and was
8 required to use his utmost ability to control and manage Wells Fargo
9 in a fair, just, honest, and equitable manner. As a member of the
10 Finance Committee he had a duty to, *inter alia*, review, approve, and
11 oversee the financial risk management polices of the Company's
12 structured transactions policy and standards. He approved, ratified,
13 or failed to properly manage and control those officers or employees
14 who were responsible for Wells Fargo's rejection of the IRS's August
15 2008 offer to accept the IRS's Appeals Settlement Guideline, the
16 initiative to settle the tax dispute concerning the sham SILO
17 Transactions, under which the IRS would not impose any penalties on
18 Wells Fargo, and Wells Fargo would also be allowed to retain 20
19 percent of the tax benefits derived from the sham SILO Transactions
20 and therefore is substantially likely to be held liable for breaching his
21 fiduciary duties;

22 v. As a member of the Board of Directors and Finance Committee in
23 2009, he owed Wells Fargo and its shareholders the fiduciary
24 obligations of good faith, trust, loyalty, and due care, and was
25 required to use his utmost ability to control and manage Wells Fargo
26 in a fair, just, honest, and equitable manner. As a member of the
27 Finance Committee he had a duty to, *inter alia*, review, approve, and
28 oversee the financial risk management polices of the Company's
structured transactions policy and standards. He approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for Wells Fargo's continuation of protracted
litigation with the United States and pursuit of a lengthy April 2009
trial that resulted in a ruling that affirmed the IRS's disallowance of
the \$115,174,203 tax deduction and upheld the penalty of more than
\$8 million and therefore is substantially likely to be held liable for
breaching his fiduciary duties;

vi. As a member of the Board of Directors and Finance Committee in
2009, he owed Wells Fargo and its shareholders the fiduciary
obligations of good faith, trust, loyalty, and due care, and was
required to use his utmost ability to control and manage Wells Fargo
in a fair, just, honest, and equitable manner. As a member of the
Finance Committee he had a duty to, *inter alia*, review, approve, and
oversee the financial risk management polices of the Company's
structured transactions policy and standards. He approved, ratified,
or failed to properly manage and control those officers or employees
who were responsible for filing Wells Fargo's October 2009 lawsuit
against the United States for a refund of \$54,652,605 and § 6662
penalties, if any, arising from the IRS's disallowance of 2003 tax
deductions sought for additional SILO Transactions, including
disputing the IRS's disallowance of these deductions, and rejecting

1 the opportunity to settle with the IRS and therefore is substantially
2 likely to be held liable for breaching his fiduciary duties.

3 175. Given the magnitude of the SILO Transactions at issue, the long
4 duration of the Company's involvement in these transactions, and Defendants'
5 past and current attempts to disregard or conceal the inherent illegality of the
6 Company's involvement in SILO Transactions the Defendants have demonstrated
7 that they were unable or unwilling to challenge the actions alleged in this
8 Complaint.

9 176. The Defendants did not, and cannot be relied upon to reach a truly
10 independent decision of whether to commence the demanded action against
11 themselves and the officers responsible for the misconduct alleged in this
12 Complaint. This is because, among other things, the principal wrongdoers and
13 beneficiaries of the wrongdoing dominate the Board. Defendants were personally
14 and directly involved in the acts of mismanagement and abuse of control alleged
15 herein and approved the actions complained of. The inability of the Board to
16 validly exercise its business judgment renders it incapable of reaching an
17 independent decision whether to accept any demand by Plaintiff to address the
18 wrongs detailed herein.

19 177. By way of example, Defendants, and each of them, failed to
20 investigate, report, and remedy the material impact that the IRS's disallowance of
21 the tax deductions, appeal, litigation and trial against the United States would have
22 on Wells Fargo's financial and goodwill. As alleged herein, because leveraged
23 lease transactions, including the SILO Transactions, involve tax exempt public
24 agencies who provide services to the taxpaying public, Defendants knew or should
25 have known that resolving the legitimacy of these transactions as tax shelters has
26 long been the subject of controversy and scrutiny by the IRS and Congress, to
27 avoid jeopardizing public financing and services. Despite the material impact that
28 the SILO Transactions as tax shelters had on Wells Fargo's financials and

1 goodwill, Defendants failed to investigate, concealed and/or did not disclose all of
2 the material facts.

3 178. Indeed, in its Form 10-Q filed with the SEC on September 30, 2005,
4 Wells Fargo indicated that the issue with the IRS concerning the tax deductions
5 the Company took for the SILO Transactions involved “the *timing* of the tax
6 benefits associated with these transactions”, not that the IRS actually disallowed
7 the *taking* of the tax deductions. Wells Fargo’s Form 10-Q did not report the
8 entire facts concerning the SILO Transactions, but stated generically, the
9 following:

10 We continuously monitor emerging accounting issues, including
11 proposed standards issued by the FASB, for any impact on our
12 financial statements. We are currently aware of a proposed FASB
13 Staff Position (FSP) that clarifies the accounting for leveraged lease
14 transactions for which there have been cash flow estimate changes
15 based on when income tax benefits are recognized. We have been
16 able to estimate the impact of this FSP, if adopted in its current
17 proposed form, as it relates to leveraged leases that have been
18 commonly referred to by the Internal Revenue Service (IRS). While
19 we have not made investments in a broad class of transactions that the
20 IRS commonly refers to as “Lease-In, Lease-Out” (LILO)
21 transactions, we have previously invested in certain leveraged lease
22 transactions that the IRS labels as “Sale-In, Lease-Out” (SILO)
23 transactions. We have paid the IRS the income tax associated with
24 our SILO transactions. However, we are continuing to vigorously
25 defend our initial filing position as to the timing of the tax benefits
26 associated with these transactions. In the meantime, because the
27 timing of the cash flows of these SILO transactions has changed due
28 to our payments to the IRS, if proposed FSP No. 13-a, *Accounting for
a Change or Projected Change in the Timing of Cash Flows Relating
to Income Taxes Generated by a Leveraged Lease Transaction*,
becomes final and effective at December 31, 2005, we believe we
would be required to record a pre-tax charge of approximately \$125
million, or \$.05 per share after tax, as a cumulative effect of change
in accounting principle. This amount would be recognized back into
income over the remaining terms of the affected leases.

Wells Fargo & Company Form 10-Q (September 30, 2005). The same was
reported in the Company’s Form 10-K for the fiscal year ended December 31,
2005. Now we know the rest of the story.

179. By the time Wells Fargo filed the September 30, 2005 Form 10-Q, it
had already been notified by the IRS in April 2005 that more than \$115 million in

1 SILO deductions for the taxable year ending December 31, 2002 were disallowed
2 and that it had been hit with penalties of over \$8 million for substantially under
3 reporting tax liabilities, Wells Fargo had already formally appealed the
4 disallowance in May 2005 and, in fact, had already filed suit against the United
5 States on September 7, 2006, seeking refunds of the disallowed taxes and the
6 penalties.

7 180. Defendants simply turned a blind eye on the SILO Transactions. In
8 its Form 10-K for the fiscal year ended December 31, 2006, Wells Fargo repeated
9 the same message. Its vigorous defense of its “initial filing position as to the
10 timing of the tax benefits associated with these transactions.” The Company
11 added, however, that Wells Fargo had:

12 “adopted FSP 13-2 on January 1, 2007, as required, and recorded a
13 cumulative effect adjustment to reduce the 2007 beginning balance of
14 retained earnings by approximately \$71 million after tax (\$115
15 million pre-tax) in stockholder’s equity. This amount will be
16 recognized back into income over the remaining terms of the affected
17 leases.”

18 Wells Fargo & Company, Form 10-K (December 31, 2006)

19 181. Defendants disregarded their duties to investigate, manage, or control
20 the executives and employees responsible for the SILO Transactions and events
21 including: the IRS disallowed significant tax deductions for the SILO
22 Transactions and imposed penalties under 26 U.S.C. § 6662, that it was
23 challenging the IRS’s disallowance of the tax deductions (*e.g.*, 2002 and 2003),
24 that its SILO tax deductions were being audited by the IRS (*e.g.*, 2004 and 2005),
25 and that it had filed two lawsuit against the United States seeking refunds of the
26 disallowed tax deductions (*e.g.*, the 2006 and 2009 Tax Refund Suits for taxable
27 years ending December 31, 2002 and 2003, respectively). This information was
28 material because it involved millions, if not hundreds of millions of dollars each
taxable year, and cost Wells Fargo hundreds of thousands, if not millions of
dollars in attorney’s fees, consultants fees, and other costs and expenses for,

1 among other things, legal opinions to justify the SILO Transactions, the intricate
2 documentation for each SILO Transaction, preparing the tax deductions for each
3 SILO Transactions, appealing the disallowed tax deductions for the SILO
4 Transactions, significant tax penalties under 26 U.S.C. § 6662, and preparing,
5 litigating, and going to trial in the lawsuits against the United States.

6 182. It was not until Wells Fargo filed its Form 10-K for the fiscal year
7 ended December 31, 2008, that the potential significance of the impact of the
8 SILO Transactions on Wells Fargo's financials (and goodwill), was revealed.
9 Nonetheless, Wells Fargo down-played the potential impact by noting that:

10 We are routinely examined by tax authorities in various
11 jurisdictions. The Internal Revenue Service (IRS) is currently
12 examining Wachovia Corporation and its Subsidiaries for tax years
13 2003 through 2005 and certain non-consolidated Wachovia
14 subsidiaries for tax years 2001 through 2006. In addition, Wachovia
15 is appealing various issues relating to their 2000 through 2002 tax
16 years. Wachovia is also currently subject to examination by various
17 state, local and foreign taxing authorities. While it is possible that
18 one or more of these examinations may be resolved within the next
19 twelve months, **we do not anticipate that there will be a significant
20 impact to the unrecognized tax benefits as a result of these
21 examinations.** In October of 2008, Wachovia submitted a
22 nonbinding acceptance to participate in the IRS resolution offer
23 related to sale-in, lease-out (SILO) transactions. We are awaiting
24 further information from the IRS to evaluate the full impact of the
25 resolution offer on our financial statements. Acceptance of the
26 resolution offer could significantly impact our unrecognized tax
27 benefits.

28 The IRS is examining the 2005 and 2006 consolidated federal
income tax returns of Wells Fargo & Company and its Subsidiaries.
We anticipate the audit phase of this examination will be completed
in 2009. We are also litigating or appealing various issues related to
our prior IRS examinations for the periods 1997-2004. We have paid
the IRS te contested income tax associated with these issues and
refund claims have been filed for the respective years. We are also
under examination in numerous other taxing jurisdictions. While it is
possible that one or more of these examinations may be resolved
within 12 months, **we do not anticipate that these examinations
will significantly impact our uncertain tax positions.** We are
estimating that our unrecognized tax benefits could decrease by
between \$350 million and \$3.5 billion during the next 12 months
primarily related to the potential resolution of the Wachovia SILO
transactions, statute expirations and settlements.

Wells Fargo & Company, Form 10-K (December 31, 2008) (emphasis added).

1 183. The demand is also refused because a majority of the directors
2 received personal and financial benefits while they caused or permitted the
3 Company to engage in the extensive misconduct detailed in this Complaint. The
4 Defendants have pocketed cash and stock, for each year of their service to the on
5 the Board, in addition to whatever other perquisites and emoluments of office they
6 received.

7 184. In addition, Defendants and others related to Defendants involved
8 with Wells Fargo, have interests adverse to the Company, or conflicts of interest,
9 that would further prevent them from agreeing to commence any action against the
10 Defendants, any officers, or interested parties. Several Defendants have close
11 personal and business ties with Wells Fargo and are, consequently, interested
12 parties who cannot in good faith exercise independent business judgment to
13 determine whether to bring this action against themselves or any other Board
14 member.

15 185. By way of example, Defendant Enrique Hernandez, Jr., as well as
16 serving on the Board of Directors and the Audit and Examination Committee for
17 Wells Fargo & Company, is also chairman, president, chief executive officer, and
18 a director of Inter-Con Security Systems, Inc. ("Inter-Con"), in which he owns a
19 25.99% interest. In 2005, Wells Fargo entered into an agreement with Inter-Con
20 for guard services. In 2008 Inter-Con received approximately \$3.3 million, in
21 2007 approximately \$2.9 million, and in 2006 approximately \$2.3 million from
22 Wells Fargo for services under the agreement. Defendant Cynthia H. Milligan's
23 brother, James A. Hardin, has been employed by Wells Fargo Bank as a private
24 client advisor since 2004. In 2008, Mr. Hardin received approximately \$203,913;
25 in 2007 approximately \$206,321; and in 2006 approximately \$177,107 in
26 compensation from Wells Fargo Bank. Defendant Philip J. Quigley's son, Scott P.
27 Quigley, has been employed by Wells Fargo Foothill, LLC ("Wells Fargo
28 Foothill"), a lending subsidiary of Wells Fargo Bank, N.A., since 2006 and is

1 currently employed as an institutional relationship manager. In 2008, Scott P.
2 Quigley received approximately \$829,405 and in 2007 approximately \$276,808 in
3 compensation from Wells Fargo Foothill.

4 186. Further examples of potential conflicts include: Defendant Carrie L.
5 Tolstedt's spouse was employed in 2005 by Wells Fargo Bank's merchant services
6 business as a national sales manager. In 2005, he received approximately
7 \$234,000 in compensation from Wells Fargo Bank. Director Susan Engel, as well
8 as serving on the Board of Directors for Wells Fargo & Company, also served
9 until January 2007 as chairwoman and chief executive officer of Lenox Group
10 Inc., which in 2006 had a revolving credit loan agreement with various financial
11 institutions including Wells Fargo Foothill. As of December 31, 2006, Wells
12 Fargo Foothill had a principal amount outstanding under its commitments
13 regarding the agreement of approximately \$11.8 million. Director Donald B.
14 Rice's son, Joseph J. Rice, has been employed by Wells Fargo Bank since 1992
15 and is currently employed as a senior lending manager. In 2008, Joseph J. Rice
16 received approximately \$497,350; in 2007 approximately \$467,294; and in 2006
17 approximately \$407,984 in compensation, including perquisites and benefits, from
18 Wells Fargo Bank. Senior Executive Vice President, Home and Consumer
19 Finance Mark C. Oman's brother-in-law, Ty S. Fuerhoff, has been employed by
20 Wells Fargo Financial, Inc. as a technology manager since 1998. In 2008, Mr.
21 Fuerhoff received approximately \$192,977; in 2007 approximately \$192,014; in
22 2006 approximately \$163,309; and in 2005 approximately \$145,000 in
23 compensation from Wells Fargo Financial, Inc. Director Michael W. Wright's
24 daughter, Molly W. Reppenhagen, has been employed by Wells Fargo as a
25 part-time attorney since 2000. In 2008, she received approximately \$100,821 in
26 compensation from Wells Fargo.

27 187. Prior to joining the Board of Directors and the Audit and Examination
28 Committee for Wells Fargo & Company, Defendant Susan G. Swenson held

1 various operating positions with Pacific Telesis Group from 1979 to 1994,
2 including Vice President and General manager of Pacific Bell's San Francisco Bay
3 Area operating unit for one year and President and Chief Operating Officer of
4 PacTell Cellular for two and one-half years. Prior to joining the Board of
5 Directors and the Audit and Examination Committee for Wells Fargo & Company,
6 Defendant Philip J. Quigley was the President, Chief Executive Officer, and
7 Chairman at Pacific Telesis Group, from April 1994 until December 1997.

8 **VI. CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **BREACH OF FIDUCIARY DUTY**

11 **(Against All Defendants)**

12 188. Plaintiff incorporates by reference the allegations set forth above as
13 though fully restated herein.

14 189. By reason of their positions as executive officers and/or directors of
15 Wells Fargo and because of their ability to control the business and corporate
16 affairs of the Corporation, Defendants, and each of them, named herein owe Wells
17 Fargo and its shareholders the fiduciary obligations of good faith, trust, loyalty,
18 and due care, and were and are required to use their utmost ability to control and
19 manage Wells Fargo in a fair, just, honest, and equitable manner. Defendants, and
20 each of them, were and are required to act in furtherance of the best interests of
21 Wells Fargo and its shareholders equally and not in furtherance of theirs or other
22 fiduciaries' personal interests or benefit. Each officer and director owes to the
23 Company and its shareholders the fiduciary duty to exercise good faith and
24 diligence in the administration of the Company and in the use and preservation of
25 its property and assets, and the highest obligations of fair dealing.

26 190. Defendants, and each of them, violated and breached these fiduciary
27 duties by their actions described herein. In gross breach of their duties and
28 obligations to Wells Fargo, Defendants, and each of them, as members of the

1 Board of Directors and various committees, including the Audit Committee,
2 knowingly approved, authorized, and ratified conduct by Wells Fargo including,
3 but not limited to, the following: Wells Fargo's payment of hundreds of thousands
4 of dollars for faulty or bogus opinions supporting the SILO Transactions; Wells
5 Fargo's participation in the sham SILO Transactions; Wells Fargo's filing of the
6 Federal income tax for the taxable year December 31, 2002, seeking \$115,174,203
7 in tax deductions for the sham SILO Transactions; Wells Fargo's May 2005
8 challenge to the IRS audit and disallowance of the \$115,174,203 in tax deductions
9 sought for the sham SILO Transactions for which Wells Fargo was penalized more
10 than \$8 million under 26 U.S.C. § 6662; Wells Fargo's September 2006 lawsuit
11 against the United States seeking a refund of the \$115,174,203 in tax deductions
12 sought for the sham SILO Transactions, and refund of the penalty of more than \$8
13 million; Wells Fargo's rejection of the IRS's August 2008 offer to the settle tax
14 dispute concerning the sham SILO Transactions, under which the IRS would not
15 impose any penalties on Wells Fargo, and Wells Fargo would also be allowed to
16 retain 20 percent of the tax benefits derived from the sham SILO Transactions;
17 Wells Fargo's continuation of protracted litigation with the United States and
18 pursuit of a lengthy trial that resulted in a ruling that affirmed the IRS's
19 disallowance of the \$115,174,203 tax deduction and upheld the penalty of more
20 than \$8 million against Wells Fargo; Wells Fargo's October 2009 lawsuit against
21 the United States for a refund of \$54,652,605 and any penalties arising from 2003
22 tax deductions disallowed for additional SILO Transactions, including disputing
23 the IRS's disallowance of these deductions, and rejecting the opportunity to settle
24 with the IRS; and Wells Fargo's exploitation of the SILO Transactions to avoid
25 taxes and to inflate profits to pay exorbitant bonuses, to the detriment of its
26 shareholders.

27 191. Defendants knew or should have known since at least 1996, that the
28 IRS considered the types of leveraged lease transactions at issue here to be

1 dubious tax shelters. Regulations largely eliminating the tax benefits for LILO
2 transactions became effective in 1999, and tax deductions were formally
3 disallowed in 2002. At the same time, regulators were investigating the legality of
4 SILOs. Defendants were clearly on notice, and had a duty to investigate and
5 monitor developments concerning the tax implications of these leveraged
6 transactions and to monitor the actions of the Company's officers and employers.
7 SILOs were formally deemed illegal tax shelters in 2005, and Wells Fargo's tax
8 deduction for the SILO Transactions were disallowed going back at least 2002.

9 192. Defendants, and each of them, should have had cause for suspicion
10 that Wells Fargo's tax deductions for the SILO Transactions in its Franchise
11 income taxes were not allowed or legitimate, and should have exercised their duty
12 to identify and remedy the wrongdoing. Defendants, and each of them, knew or
13 should have known that the SILO Transactions and Wells Fargo's attempt to take
14 tax deductions for them were unlawful violations of IRS regulations, but took no
15 steps in a good faith effort to prevent or remedy the situation.

16 193. Instead, Defendants, and each of them approved and/or ratified
17 conduct by Wells Fargo which was not in the best interests of the Company or
18 shareholders, including: participating in the sham SILO transactions; filing
19 Franchise income taxes seeking millions of dollars in SILO tax deductions;
20 appealing IRS rulings that disallowed the SILO tax deductions; rejecting IRS
21 offers to accept penalty-free settlements and 20% of the SILO tax deductions
22 sought; and suing the United States for refunds of disallowed tax deductions and
23 penalties. Defendants engaged in sustained and systematic failure to exercise
24 reasonable oversight.

25 194. Despite these duties, Defendants, and each of them, negligently,
26 recklessly, and/or intentionally caused or allowed, by their actions or inactions, the
27 Company's participation in sham SILO transactions, the filing of Federal income
28 tax returns for deductions that were disallowed, appeals of IRS rulings, the filing

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1. Awarding damages against all Defendants, jointly and severally, in an amount to be proven at trial;
2. Awarding special damages in an amount to be proven at trial;
3. Awarding punitive damages in an amount to be proven at trial;
4. Awarding appropriate equitable relief, including that Defendants be jointly and severally liable for any future judgments, tax liabilities, or tax penalties for which Wells Fargo may be liable, including reasonable attorneys' fees and costs;
5. Awarding pre-judgment interest, as well as reasonable attorneys' fees and other costs; and
6. Awarding such other relief as this Court may deem just and proper.

Dated: January 21, 2010

COTCHETT, PITRE & McCARTHY

By: 
NANCIE E. NISHIMURA

*Attorneys for Plaintiff Robert Marshall,
derivatively on behalf of Wells Fargo &
Company*

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VIII. JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all of the claims asserted in this Complaint so triable.

Dated: January 21, 2010

COTCHETT, PITRE & McCARTHY

By: 
NANCI E. NISHIMURA

*Attorneys for Plaintiff Robert Marshall,
derivatively on behalf of Wells Fargo &
Company*