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1 GILBERT R. SEROTA (No. 75305)
 Email: gserota@howardrice.com
 2 CHRISTINE HUBBARD (No. 220105)
 Email: chubbard@howardrice.com
 3 JEREMY T. KAMRAS (No. 237377)
 Email: jkamras@howardrice.com
 4
 5 HOWARD RICE NEMEROVSKI CANADY
 FALK & RABKIN
 A Professional Corporation
 6 Three Embarcadero Center, 7th Floor
 San Francisco, California 94111-4024
 7 Telephone: 415/434-1600
 Facsimile: 415/677-6262
 8
 9 Attorneys for Defendants
 WELLS FARGO & COMPANY, WELLS
 FARGO FUNDS MANAGEMENT, LLC, AND
 10 WELLS FARGO FUNDS TRUST

11 [Additional counsel listed on signature page.]

HOWARD
 RICE
 NEMEROVSKI
 CANADY
 FALK
 & RABKIN
 A Professional Corporation

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

17 EDWARD LEE, EDWARD ARSENAULT,
 EMIL DE BACCO, RICHARD HINTON,
 18 ARNOLD KREEK, and MARGRET
 MACHT,

19 Plaintiffs,

20 v.

21 WELLS FARGO & COMPANY, WELLS
 22 FARGO FUNDS MANAGEMENT, LLC,
 and WELLS FARGO FUNDS TRUST,

23 Defendants.

No. 08-CV-1830 RS

Action Filed: April 4, 2008

STIPULATION AND ~~PROPOSED~~
 ORDER RE SCHEDULING AND
 RESOLVING PLAINTIFFS' MOTION
 TO STAY DISCOVERY

Date: May 27, 2010
 Time: 1:30 p.m.
 Judge: Hon. Richard Seeborg
 Dept: Courtroom 3, 17th Floor

1 WHEREAS on August 20, 2009, the Honorable William H. Alsup granted in part and
2 denied in part Defendants' motion to dismiss, and in so doing, dismissed without leave to
3 amend all class action allegations in the above-captioned matter (Dkt. 86);

4 WHEREAS on October 16, 2009, Judge Alsup entered a case management order
5 setting forth a discovery and trial schedule (Dkt. 94);

6 WHEREAS on November 4, 2009, Judge Alsup referred the parties to Magistrate
7 Judge Joseph C. Spero for mediation or settlement (Dkt. 96);

8 WHEREAS on January 27, 2009, the parties had a telephonic conference call with
9 Judge Spero wherein they agreed to exchange certain information in anticipation of
10 settlement discussions (*see* Dkt. 99), and therefore entered into a stipulation by which the
11 parties were to exchange that information and discuss settlement by April 9, 2010 (Dkt.
12 100);

13 WHEREAS on March 19, 2010, this matter was reassigned to the Honorable Richard
14 Seeborg (Dkt. 101);

15 WHEREAS the exchange of settlement information was unproductive, and therefore,
16 facing approaching discovery deadlines, Defendants sought to move forward with discovery
17 by requesting dates on which to depose Plaintiffs;

18 WHEREAS in dismissing the class allegations, Judge Alsup relied in part on *In re*
19 *American Funds Securities Litigation*, 556 F. Supp. 2d 1100 (C.D. Cal. 2008), which is
20 presently on appeal to the Ninth Circuit Court of Appeals;

21 WHEREAS Plaintiffs contend that the decision in *In re American Funds* will likely
22 bear on Judge Alsup's ruling and, therefore, on April 23, 2010, Plaintiffs sought a stay of
23 discovery pending the Ninth Circuit's decision in *In re American Funds* (Dkt. 104);

24 WHEREAS the Ninth Circuit stayed its ruling in *In re American Funds* until the
25 Supreme Court issued a decision in *Merck & Co., Inc. v. Reynolds*;

26 WHEREAS on April 27, 2010, the Supreme Court issued a decision in *Merck*;

27 WHEREAS on May 3, 2010, the Ninth Circuit issued an order requiring the parties in
28 *In re American Funds* to brief the import of *Merck* by June 2, 2010;

1 WHEREAS should the Ninth Circuit reverse *In re American Funds*, briefing will likely
2 be required to assess its impact, if any, on this matter;

3 WHEREAS the parties agree that in light of the fact that the Supreme Court issued a
4 decision in *Merck* and therefore anticipate a decision in *In re American Funds* relatively
5 soon, an open-ended stay of discovery is not warranted; but,

6 WHEREAS the parties further agree that given that they have engaged in limited
7 discovery to date and given the continued potential for uncertainty regarding the impact, if
8 any, of *In re American Funds*, a modification of the present discovery and trial schedule is
9 warranted;

10 NOW THEREFORE, subject to this Court’s approval, the undersigned parties hereby
11 stipulate to the following schedule intended to permit resolution of the issues raised above:

12 1. Non-expert fact discovery shall be completed by July 1, 2011.

13 2. Each party shall serve a list of issues on which it will offer any expert testimony
14 in its case-in-chief by July 1, 2011.

15 3. The last date for designation of expert testimony and disclosure of full expert
16 reports under Rule 26(a)(2) as to any issue on which a party has the burden of proof
17 (“opening reports”) shall be August 1, 2011.

18 4. All other parties must disclose any expert reports on the same issue (“opposition
19 reports”) by August 31, 2011.

20 5. The party with the burden of proof must disclose any reply reports rebutting
21 specific material in opposition reports by September 20, 2011.

22 6. If the party with the burden of proof neglects to make a timely disclosure, the
23 other side, if it wishes to put in expert evidence on the same issue anyway, must still disclose
24 its expert report by August 31, 2011. In that event, the party with the burden of proof on the
25 issue may then file a reply expert report by September 20, 2011, subject to possible
26 exclusion for “sandbagging” and, at all events, any such reply material may be presented at
27 trial only after, if at all, the other side actually presents expert testimony to which the reply is
28 responsive.

- 1 7. Expert discovery shall be completed by October 4, 2011.
2 8. The last date to file dispositive motions shall be October 25, 2011.
3 9. A jury trial shall begin on or after February 28, 2012.
4 10. Plaintiffs hereby withdraw their pending Motion to Stay Discovery (Dkt. 104).

5
6 DATED: May 6, 2010.

GILBERT R. SEROTA
CHRISTINE HUBBARD
JEREMY T. KAMRAS
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation

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10 By: /s/ Gilbert R. Serota
GILBERT R. SEROTA

11 Attorneys for Defendants WELLS FARGO &
12 COMPANY, WELLS FARGO FUNDS
MANAGEMENT, LLC, and WELLS FARGO
FUNDS TRUST

13 DATED: May 6, 2010.

REESE RICHMAN LLP
MICHAEL R. REESE
230 Park Avenue, 10th Floor
New York, NY 10169

15 WHATLEY DRAKE & KALLAS, LLC
16 DEBORAH CLARK WEINTRAUB
ELIZABETH ROSENBERG
17 1540 Broadway, 37th Floor
New York, NY 10036

18
19 By: /s/ Deborah Clark Weintraub
DEBORAH CLARK WEINTRAUB

20 Attorneys for Plaintiffs EDWARD LEE, EDWARD
ARSENAULT, EMIL DE BACCO, RICHARD
21 HINTON, ARNOLD KREEK and MARGRET
MACHT

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DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, GILBERT R. SEROTA, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from each of the other signatories listed above.

I declare under penalty of perjury that the foregoing declaration is true and correct.
Executed on May 6, 2010, at San Francisco, California.

/s/ Gilbert R. Serota

GILBERT R. SEROTA

IT IS SO ORDERED.

DATED: 5/7, 2010



THE HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation