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and SUSAN G. SWENSON

[Additional Counsel Listed At Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

J.N. FEUER, Derivatively on Behalf of
WELLS FARGO & COMPANY and its
Shareholders and "Double Derivatively" on
Behalf of WACHOVIA CORPORATION,

Plaintiff,

v.

G. KENNEDY THOMPSON; THOMAS J.
WURTZ; HERBERT SANDLER; MARION
SANDLER; JOHN T. CASTEEN, III;
JOSEPH NEUBAUER; MARYELLEN C.
HERRINGER; TIMOTHY D. PROCTOR;
VAN L. RICHEY; DONA DAVIS YOUNG;
ERNEST S. RADY; JERRY GITT; JOHN D.
BAKER, II; PETER C. BROWNING;
DONALD M. JAMES; JOHN C.
WHITTAKER, JR.; WILLIAM H.
GOODWIN, JR.; ROBERT A. INGRAM;
MACKEY J. MCDONALD; RUTH G.
SHAW; LANTY L. SMITH; JOHN S.
CHEN; LLOYD H. DEAN; SUSAN E.

No. 10-cv-00279 YGR

Action Filed: January 20, 2010

**JOINT STATEMENT REGARDING
SETTLEMENT NEGOTIATIONS;
STIPULATION AND PROPOSED
ORDER VACATING NOVEMBER 2,
2012 COMPLIANCE HEARING**

Date: Nov. 2, 2012

Time: 3:00 p.m.

Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: None

1 ENGEL; ENRIQUE HERNANDEZ, JR.;
2 RICHARD D. MCCORMICK; CYNTHIA H.
3 MULLIGAN; NICHOLAS G. MOORE;
4 PHILIP J. QUIGLEY; DONALD B. RICE;
5 JUDITH M. RUNSTAD; STEPHEN W.
6 SANGER; ROBERT K. STEEL; JOHN G.
7 STUMPF; and SUSAN G. SWENSEN,

8 Defendants,

9 and

10 WELLS FARGO & COMPANY,

11 Nominal Defendant.

12 Pursuant to the Court's Order (Dkt. No. 123), all of the parties to the above-captioned
13 cases jointly submit the following Joint Statement and Stipulation regarding the status of
14 settlement negotiations in this case and the related case, *Rogers v. Thompson et al.*, 12-cv-
15 0203 YGR:

16 The parties' Memorandum of Understanding in connection with settlement of this
17 litigation provides for confirmatory discovery. This process is underway, but has not been
18 completed. Although the parties are hopeful that any disputes about the scope and nature of
19 the documents to be produced will be resolved, it remains possible that this issue will require
20 mediation. Plaintiffs take the position that such confirmatory discovery, including an
21 interview with certain of the Wells Fargo Defendant directors, will inform them as to
22 whether they can remain advocates for the terms in the Memorandum of Understanding and
23 move forward with a Stipulation of Settlement.

24 The Memorandum of Understanding also left open the question of whether or not the
25 parties could agree on an award for plaintiffs' counsel of attorneys fees and reimbursement
26 of expenses. It provided for mediation as a means of resolving the issue. On October 23,
27 2012, Plaintiffs, Wells Fargo and the Wells Fargo Defendants' counsel mediated the issue of
28 a possible fee award with the assistance of mediator Randy Wulff. Unfortunately, they were
unable to reach agreement. Pending a subsequent agreement among the parties, they have

2 agreed that this issue will be left for resolution by the Court with the assistance of legal and
3 factual submissions by the parties.

4 Only if confirmatory discovery is complete and a Stipulation of Settlement has been
5 filed and subject to the written confidentiality agreement between these parties, Plaintiffs
6 have agreed to provide Wells Fargo and counsel for the Wells Fargo Defendants with their
7 time records in such form as will provide for reasonable and necessary protection of
8 confidentiality, including applicable work product and attorney-client privilege. This
9 disclosure will include applicable billing rates for all time recorded for these matters, along
10 with all of their expense documentation. This material will be provided sufficiently in
11 advance of any submission by the Wells Fargo Defendants to allow for review and comment
12 in the final submissions, if necessary. In the event that Defendants believe that Plaintiffs'
13 counsel's disclosures are insufficient, Defendants reserve the right to request the assistance
14 of the Court in compelling further disclosure.

15 During the next two weeks the parties will attempt to meet and confer on all remaining
16 issues and provide the Court with a schedule for all remaining matters. If settlement is
17 abandoned, the parties will provide the Court with a schedule for supplemental briefing and
18 a hearing date for the pending motions to dismiss.

19 THEREFORE, the parties, by and through their undersigned counsel of record, hereby
20 agree and stipulate to the following:

21 1. The Compliance Hearing regarding Settlement scheduled for November 2, 2012, at
22 3:00 p.m., shall be vacated;

23 2. Counsel shall file a stipulation with a proposed schedule for all remaining matters
24 before the Court no later than November 16, 2012.

25 IT IS SO STIPULATED.

26 DATED: October 26, 2012

Respectfully,

27 ARNOLD & PORTER LLP
28 GILBERT R. SEROTA
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By: /s/ Gilbert R. Serota
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DATED: October 26, 2012

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