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 HERBERT and MARION SANDLER
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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
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11 J.N. FEUER, Derivatively on Behalf of WELLS
 FARGO & COMPANY and its Shareholders and
 “Double Derivatively” on Behalf of WACHOVIA
 12 CORPORATION,

13 Plaintiff,

14 vs.

15 G. KENNEDY THOMPSON; THOMAS J.
 WURTZ; HERBERT SANDLER; MARION
 16 SANDLER; JOHN T. CASTEEN, III; JOSEPH
 NEUBAUER; MARYELLEN C. HERRINGER;
 17 TIMOTHY D. PROCTOR; VAN L. RICHEY;
 DONA DAVIS YOUNG; ERNEST S. RADY;
 18 JERRY GITT; JOHN D. BAKER, II; PETER C.
 BROWNING; DONALD M. JAMES; JOHN C.
 19 WHITTAKER, JR.; WILLIAM H. GOODWIN,
 JR.; ROBERT A. INGRAM; MACKKEY J.
 20 MCDONALD; RUTH G. SHAW; LANTY L.
 SMITH; JOHN S. CHEN; LLOYD H. DEAN;
 21 SUSAN E. ENGEL; ENRIQUE HERNANDEZ,
 JR.; RICHARD D. MCCORMICK; CYNTHIA H.
 22 MULLIGAN; NICOLAS G. MOORE; PHILIP J.
 QUIGLEY; DONALD B. RICE; JUDITH M.
 23 RUNSTAD; STEPHEN W. SANGER; ROBERT
 K. STEEL; JOHN G. STUMPF; and SUSAN G.
 24 SWENSEN,

25 Defendants, and

26 WELLS FARGO & COMPANY,

27 Nominal Defendant.
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CASE NO. C 10-0279 PJH

**STIPULATION AND [~~PROPOSED~~]
 ORDER DISMISSING COUNTS IV,
 V, AND VI OF THE AMENDED
 COMPLAINT**

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WHEREAS, on January 21, 2010, Plaintiff filed the Complaint in this action, asserting derivative claims on behalf of Wells Fargo & Company (“Wells Fargo”) against various defendants, including claims against Herbert and Marion Sandler (“the Slanders”) for breach of contract, negligent misrepresentation, and fraud;

WHEREAS, on April 21, 2010, Plaintiff filed the Amended Complaint, realleging the same claims, including those against the Slanders in Counts IV, V, and VI;

WHEREAS, on September 8, 2010, the parties submitted a scheduling stipulation, which was entered by the Court on September 9, 2010, and which provides for (1) Defendants to respond to the Amended Complaint by October 15, 2010; (2) Plaintiff to file any opposition briefs by December 17, 2010; (3) Defendants to file any reply briefs by January 21, 2011; and (4) any motions to be heard by the Court on February 16, 2010;

WHEREAS, the Slanders believe that all claims asserted against them must be dismissed on various grounds, including on the ground that they are all time-barred because the applicable statutes of limitations had run before the original Complaint was filed;

WHEREAS, counsel for the Slanders have indicated to Plaintiff’s counsel that they intend to file a motion seeking dismissal of all claims asserted against the Sanders in the Amended Complaint as barred by applicable statutes of limitations and on other grounds;

WHEREAS, Plaintiff’s counsel believes that applicable statutes of limitations may be found by the Court to have run before the Complaint was filed and, to avoid unnecessary costs to Plaintiff and the Slanders and inconvenience to the Court and in the interest of efficient administration of justice, has decided to voluntarily dismiss all claims against the Slanders without prejudice;

WHEREAS, Plaintiff and the Slanders represent that neither Plaintiff nor his counsel has received or will receive any payment or other benefit in exchange for dismissal of claims against the Slanders and agree that each side will bear its own costs and attorneys’ fees;

WHEREAS, the purpose of court approval and notice of the settlement, dismissal or compromise of a derivative action pursuant to Fed. R. Civ. Proc. 23.1 is “to discourage the private settlement of a derivative claim under which a shareholder-plaintiff and his attorney

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2 personally profit to the exclusion of the corporation and the other shareholders" and "to prevent[]
3 any prejudice to the corporate claim that might result from a discontinuance of the suit." 7C
4 Wright & Miller, Fed. Prac. & Proc. Civ. § 1839, at 427-28.

5 WHEREAS, notice under Rule 23.1(c) is within the Court's discretion and is not
6 required here because none of the policy reasons for this rule are implicated in that Plaintiff's
7 decision to voluntarily dismiss his claims against the Sandlers is not the result of collusion, will
8 not result in any profit to Plaintiff and his counsel to the exclusion of Wells Fargo or other
9 shareholders, and is based on Plaintiff's belief that the Court could conclude that statutes of
10 limitations applicable to claims against the Sandlers ran before the Complaint was filed such that
11 no prejudice to any corporate claim will result;

12 WHEREAS, the voluntary dismissal is contingent on the Court's agreement that no
13 notice is required to shareholders;

14 WHEREAS, if the voluntary dismissal is not accepted, and the Sandlers are
15 therefore required to respond to the Amended Complaint, the parties agree that their response
16 should be due on October 22, 2010, one week later than the date currently scheduled, with the
17 opposition, reply and hearing dates remaining in place, so that the Court may consider this
18 Stipulation and [Proposed] Order Dismissing Counts IV, V, and VI of the Amended Complaint.

19 THEREFORE, Plaintiff and the Sandlers, by and through their undersigned
20 counsel for record, hereby agree and stipulate to the following, subject to Order of the Court:

21 Pursuant to Fed.R.Civ.P. §§ 23.1 and 41(a)(1), Counts IV, V, and VI of the
22 Amended Complaint are hereby dismissed without prejudice and without notice to Wells Fargo
23 shareholders.

24 IT IS SO STIPULATED.

25 Respectfully submitted by,
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2 DATED: October ____, 2010

MUNGER, TOLLES & OLSON LLP
JEROME C. ROTH
ROSEMARIE T. RING

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5 By: /s/ Rosemarie T. Ring
6 ROSEMARIE T. RING

7 Attorneys for Defendants
8 HERBERT and MARION SANDLER

9 DATED: October ____, 2010

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19
20 By: /s/ Richard D. Greenfield
RICHARD D. GREENFIELD

21 Attorneys for Plaintiff
22 J.N. FEUER

23 I, Rosemarie T. Ring, am the ECF User whose identification and password are being used
24 to file this STIPULATION AND [PROPOSED] ORDER. In compliance with General Order
25 45.X.B., I hereby attest that Richard D. Greenfield concurred in this filing.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _ October 20 _____, 2010

