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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 CAMPIDOGLIO LLC, et al.,

7 Plaintiffs,

8 v.

9 WELLS FARGO BANK, N.A., et al.,

10 Defendants.

C12-949 TSZ

MINUTE ORDER

11 The following Minute Order is made by direction of the Court, the Honorable  
12 Thomas S. Zilly, United States District Judge:

13 (1) The deferred portion of plaintiffs' motion for Rule 37(b) relief, docket  
14 no. 129, is DENIED. The Court is satisfied that, contrary to plaintiffs' contention,  
15 defendant Wells Fargo Bank, N.A. ("Wells Fargo") has not invoked the attorney-client  
16 privilege too broadly.<sup>1</sup> The Court DECLINES to award attorney fees or costs to Wells  
17 Fargo.<sup>2</sup>

18 <sup>1</sup> With respect to the e-mail from attorney Shawn Sax (ADI000018346), as to which Wells Fargo  
19 has withdrawn its assertion of the bank examination privilege, see Minute Order at n.1 (docket  
20 no. 236 at 2), both sides have clarified that Wells Fargo continues to invoke the attorney-client  
21 privilege. Having reviewed the document again *in camera*, the Court is persuaded that it was  
22 properly withheld. With regard to the attachments to e-mails identified in the previous Minute  
23 Order (ADI000028439, 84166, 28988, 84505, 85341, and 84422), Wells Fargo has explained  
that some of these materials were produced and other documents were not disclosed as either not  
responsive to the discovery requests at issue or protected by attorney-client privilege, as reflected  
in a separate privilege log entry. The Court is satisfied that Wells Fargo has complied with its  
discovery obligations.

<sup>2</sup> Wells Fargo has acknowledged that, in response to plaintiffs' motion for Rule 37(b) relief, it  
undertook a review of its privilege assertions and, as a result, produced additional documents to  
plaintiffs. See Supp. Resp. at 2 (docket no. 247). Thus, although plaintiffs did not prevail on the  
motion, see Minute Orders (docket nos. 185 & 236), the Court is of the opinion that an award of  
expenses in opposing the motion would be "unjust." See Fed. R. Civ. P. 37(a)(5)(B)&(b)(2)(C).

1 (2) Plaintiffs' unopposed motion for extension, docket no. 239, is GRANTED  
as follows. The deadline set forth in the Minute Order entered March 11, 2014, docket  
2 no. 236, for plaintiffs to file a supplemental response to defendants' motion for summary  
judgment is extended to July 11, 2014. Defendants' supplemental reply is due on July  
3 18, 2014.

4 (3) Defendants' motion for summary judgment, docket no. 72, is RENOTED to  
July 18, 2014. Plaintiffs' motion to certify class, docket no. 37, and defendants'  
5 alternative motion to dismiss, docket no. 220, are also RENOTED to July 18, 2014. Both  
of these motions, however, will be decided after the Court rules on defendants' motion  
6 for summary judgment.

7 (4) Plaintiffs' motion for summary judgment, docket no. 210, is STRICKEN  
without prejudice as prematurely filed. *See Hartley v. Suburban Radiologic Consultants,*  
8 *Ltd.*, 295 F.R.D. 357, 367-69 (D. Minn. 2013); *see also Weir v. Joly*, 2011 WL 6043024  
(D. Ore. Dec. 2, 2011); *Gomez v. Rossi Concrete Inc.*, 2011 WL 666888 (S.D. Cal. Feb.  
9 17, 2011). If the Court grants the pending motion to certify class, plaintiffs may refile  
their motion for summary judgment after notice has been given and the period for class  
10 members to exclude themselves has expired.

11 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of  
record.

12 Dated this 11th day of June, 2014.

13 William M. McCool  
14 Clerk

15 s/Claudia Hawney  
16 Deputy Clerk