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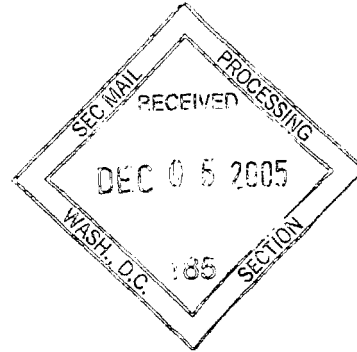
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811-09253
(Fund Trust)
Branch 20



Wells Fargo Funds Management, LLC
525 Market Street, 12th Floor
San Francisco, CA 94105

December 1, 2005
By Overnight Express

Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549



Re: Wells Fargo Funds Management, LLC

Dear Sir or Madam:

Pursuant to Section 33 of the Investment Company Act of 1940, please find enclosed one pleading that has been filed against Wells Fargo Funds Management, LLC (a registered investment adviser), Wells Fargo Funds Trust (a registered investment company) and various other affiliated and non-affiliated parties. The complaint was served on the Wells Fargo related entities on November 28, 2005.

Please call me at (415) 222-1140 if you have any questions.



05075639

Sincerely,

C. David Messman
Chief Legal Officer

Enclosure

PROCESSED

DEC 28 2005

THOMSON
FINANCIAL

ORIGINAL

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FILED

NOV - 4 2005

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CLERK, U.S. DISTRICT COURT,
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19 Attorneys for Plaintiff
20 [additional counsel on signature block]

WHA

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

C 05 4518

23 THE MCDANIEL FAMILY TRUST, Individually)
24 And On Behalf Of ALL OTHERS SIMILARLY)
25 SITUATED,)

26 Plaintiff,

) CLASS ACTION COMPLAINT FOR
) THE VIOLATION OF THE FEDERAL
) SECURITIES LAWS AND FOR
) VIOLATIONS OF INVESTMENT
) COMPANY ACT

27 vs.

28 WELLS FARGO & COMPANY, WELLS)
29 FARGO FUNDS MANAGEMENT, LLC,)
30 WELLS CAPITAL MANAGEMENT)
31 INCORPORATED, H.D. VEST INVESTMENT)
32 SERVICES, STEPHENS INC., SEI)
33 INVESTMENTS DISTRIBUTION COMPANY,)
34 WELLS FARGO FUNDS TRUST,)

JURY TRIAL DEMANDED

35 Defendants.)
36)
37)
38)

1 Plaintiff, by and through counsel, alleges the following based upon the investigation of
2 counsel, which included a review of United States Securities and Exchange Commission ("SEC")
3 filings, as well as other regulatory filings, reports, and advisories, press releases, and media reports
4 about Wells Fargo & Company and its related entities also named herein as defendants (collectively
5 "Defendants" or "Wells Fargo"). Plaintiff believes that substantial additional evidentiary support
6 will exist for the allegations set forth herein after a reasonable opportunity for discovery.

7 INTRODUCTION

8 1. This is a federal class action arising out of Defendants' failure to disclose an
9 unlawful and deceitful course of conduct they engaged in that was designed to improperly
10 financially advantage Defendants to the detriment of Plaintiff and other members of the class. This
11 claim is brought by Plaintiff against Wells Fargo on behalf of a Class (defined below) consisting of
12 all persons or entities who purchased one or more of the Wells Fargo proprietary funds (the
13 "Proprietary Funds") and/or one or more non-proprietary funds participating in Wells Fargo
14 revenue sharing and directed brokerage arrangements (collectively, the "Shelf-Space Funds")
15 through Wells Fargo, from June 30, 2000 through June 8, 2005, inclusive (the "Class Period").

16 2. Wells Fargo has stated that its goal is to "to help you achieve financial success at
17 every stage of your life." Wells Fargo, Brokerage Welcome, [http://www.wellsfargo.com/welcome/
18 brokerage_account](http://www.wellsfargo.com/welcome/brokerage_account). In truth, to the detriment of its clients, Wells Fargo participated in an insidious
19 kickback scheme referred to as selling "Shelf-Space" - whereby Wells Fargo used its broker/dealers
20 to push its clients into the Shelf-Space Funds in exchange for illegal kickback payments from those
21 Funds.

22 3. Defendants, in clear contravention of their disclosure obligations and fiduciary
23 responsibilities, failed to properly disclose that they had been aggressively pushing their brokers to
24 sell the Shelf-Space Funds that provided financial incentives and rewards to Wells Fargo and its
25 personnel based on sales and assets held. Instead of offering fair, honest and unbiased
26 recommendations to Plaintiff and other clients, the Wells Fargo brokers gave pre-determined
27 recommendations, pushing clients into a pre-selected, limited number of mutual funds so that the
28

1 brokers could reap millions of dollars in kickbacks from Shelf-Space Funds, with whom they had
2 struck secret, highly-lucrative deals to profit at shareholders' expense.

3 4. Defendants cultivated a clandestine, incentive-driven culture to sell Shelf-Space
4 Funds to the exclusion of other funds, regardless of their clients' best interests. Defendants' sales
5 practices created an insurmountable conflict of interest between Wells Fargo and its own clients by
6 providing substantial monetary incentives for its broker/dealers to sell the Shelf-Space Funds, sales
7 of which increased Defendants' overall profits. During the Class Period, Wells Fargo used its
8 nationwide network of brokers to improperly steer Plaintiff and other members of the Class into the
9 Shelf-Space Funds which generally have higher expenses. As detailed below, while Wells Fargo
10 and its defendant subsidiaries claimed to provide unbiased, objective financial planning advice and
11 objective fund recommendations in their clients' best interests, they instead made a standard
12 business practice of giving their customers self-serving and biased investment advice for the sole
13 purpose of pushing customers into the Shelf-Space Funds as part of a secret plan and scheme to
14 improperly generate fees.

15 5. To add insult to injury, the money paid to Well Fargo as part of the kickback scheme
16 originated from mutual fund fees paid in part by Wells Fargo investors who had already been
17 steered into owning the Shelf-Space Funds.

18 6. Pursuant to the secret deal between Defendants and Shelf-Space Funds, the Shelf-
19 Space Funds received a number of marketing benefits. First, Defendants' brokers had an
20 institutional mandate to direct their clients into investing in Shelf-Space and Proprietary Funds,
21 including their own Wells Fargo Funds, instead of any other funds. This manipulation was
22 achieved by brokers under the guise of providing "investment advice." Second, Wells Fargo
23 ensured that these Shelf-Space Funds, including had a higher priority in Wells Fargo's sales system
24 than non-participating funds by increasing the interaction of representatives of the Shelf-Space
25 Funds with Wells Fargo brokers and visibility of the distribution of sales literature and newsletters,
26 and by including of links, information, and lists posted regarding the Shelf-Space Funds on the
27 Defendant's internet sites.

28

1 7. Defendants' sales practices created a material insurmountable conflict of interest
2 between themselves and their clients by providing monetary incentives to Defendants' brokers to
3 sell Shelf-Space Funds, sales of which increased Defendants' overall profits, but accordingly,
4 diminished their clients' returns. Defendants also failed to disclose any of these financial incentives
5 for selling Shelf-Space Funds, knowing that, if the truth was revealed, no reasonable investor would
6 invest in the Funds based upon the advice of Wells Fargo. This conflict of interest created by
7 Defendants' failure to disclose these incentives is a clear violation of federal securities laws.

8 8. Defendants' Investment Advisers created further undisclosed material conflicts of
9 interest by entering into revenue-sharing agreements with Wells Fargo broker/dealers to push
10 investors into proprietary funds, regardless of whether such investments were in the investors' best
11 interests. Wells Fargo financed these arrangements by illegally charging excessive and improper
12 fees to the Fund that should have been invested in the underlying portfolio. In doing so, Wells
13 Fargo Investment Advisers and the Trustees (both as defined below) of the Funds that approved
14 such fees being siphoned from the funds, breached their fiduciary duties to investors under the
15 Investment Company Act and state law.

16 9. The truth about Wells Fargo was revealed on June 8, 2005 when the NASD charged
17 15 broker/dealers with Directed Brokerage violations. As detailed in the press release:

18 NASD found that the 14 retail firms, most of which sold funds offered
19 by hundreds of different mutual fund complexes, operated "preferred
20 partner" or "shelf space" programs that provided certain benefits to a
21 relatively small number of mutual fund complexes in return for
22 directed brokerage. The benefits to mutual fund complexes of these
23 quid pro quo arrangement included, in various cases, higher visibility
24 on the firms' internal web sites, increased access to the firms' sales
25 forces, participation in "top producer" or training meetings, and
26 promotion of their funds on a broader basis than was available for
27 other funds

28 * * *

1 The retail firms generally monitored the amount of directed brokerage
2 received to ensure that the fund complexes were satisfying their
3 revenue sharing obligations. The use of directed brokerage allowed
4 the fund complexes to use assets of the mutual funds instead of their
5 own money to meet their revenue sharing obligations.

6 Press Release, NASD Charges 15 Firms With Directed Brokerage Violations, Imposes Fines
7 Totaling More Than \$34 Million, (June 8, 2005), *available at* [http://www.nasd.com/web/
8 idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_014340](http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_014340) ("June 8, 2005 NASD Press
9 Release."). Among the 14 broker/dealers exposed in the NASD release both H.D. Vest and WF
10 Investments. H.D. Vest was also charged with violating the NASD's rules relating to non-cash
11 compensation and breaching NASD rules with respect to supervisory systems and procedures.

12 10. Plaintiff seeks to recover damages caused by Defendants' violations of the Securities
13 Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 (the "Exchange Act"), and the
14 Investment Company Act of 1940 (the "ICA").

15 JURISDICTION AND VENUE

16 11. This Court has jurisdiction over the subject matter of this action pursuant to Section
17 27 of the Securities Exchange Act, 15 U.S.C. § 78aa; Section 22 of the Securities Act, 15 U.S.C. §
18 77v ; and Sections 36(b) and 48(a) of the Investment Company Act, 15 U.S.C. §§ 80a-33(b), 80a-
19 35(a), 80a-35(b), 80a-43 and 80a-47(a); and 28 U.S.C. §§ 1331, 1337 and 1367(a).

20 12. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15
21 U.S.C. § 78aa) and 28 U.S.C. § 1391. Substantial acts in furtherance of the alleged fraud, including
22 the preparation and dissemination of materially false and misleading information, occurred within
23 this District. Defendant Wells Fargo is headquartered in San Francisco.

24 13. In connection with the acts alleged herein, Defendants, directly or indirectly, used
25 the means and instrumentalities of interstate commerce, including but not limited to the mails,
26 interstate telephone communications, and the facilities of the national securities markets.
27
28

1 **PARTIES**

2 **Plaintiff**

3 14. Plaintiff, McDaniel Family Trust, through its trustees Arthur McDaniel and Florence
4 McDaniel, purchased shares of the Wells Fargo Shelf-Space Funds during the Class Period and
5 were thereby damaged. As set forth in the attached certification, Plaintiff purchased 45,065 shares
6 of Franklin Income Fund through Wells Fargo on July 7, 2003; 2,393 shares of Massachusetts
7 Investors Growth Fund on September 10, 2003; 1,594 shares of MFS Board Fund through Wells
8 Fargo on December 24, 2001.

9 **The Parent Company**

10 15. Wells Fargo & Company is the ultimate parent of all Defendants named in this
11 Complaint and is incorporated in Delaware. Wells Fargo is a diversified financial services company
12 providing banking, insurance, investments, mortgage, and consumer finance. Through its
13 subsidiary, Wells Fargo also markets, sponsors, and provides investment advisory, distribution, and
14 administrative services to mutual funds, including Wells Fargo Funds. They are headquartered at
15 420 Montgomery Street, San Francisco, CA 94104. They were the ultimate beneficiary of the
16 secret plan and scheme to push Shelf-Space Funds as alleged herein.

17 **The Investment Advisers**

18 16. Defendant Wells Fargo Funds Management, LLC ("Fund Management") is a
19 Delaware corporation registered as an investment adviser under the Investment Advisers Act. Its
20 offices are located at 525 Market St., San Francisco, CA 94105. It is an indirect wholly-owned
21 subsidiary of Wells Fargo & Company. As the Investment Adviser, Fund Management is
22 responsible for implementing the investment policies and guidelines for the Funds and for
23 supervising the sub-adviser responsible for the day-to-day management of the Wells Fargo Funds,
24 including the placing of orders for the purchase and sale of portfolio securities. In return, Fund
25 Management received fees calculated as percentage of net assets under management. As of June
26 30, 2004, Fund Management managed over \$75 billion in mutual fund assets. In breach of their
27 fiduciary duties, the Investment Adviser Defendants provided self-serving information to the board
28

1 of Trustees of the funds and created a secret plan with broker/dealers to push Wells Fargo Funds
2 which resulted in the shareholder investors footing the bill.

3 17. Funds Management is also herein referred to as the Investment Adviser.

4 **Investment Sub-Adviser**

5 18. Defendants Wells Capital Management Incorporated ("Wells Capital Management")
6 is an affiliate of Funds Management and a sub-adviser for each of the Funds. It is responsible for
7 the day-to-day investment management activities of the Funds. Wells Capital Management is
8 compensated for its services by Funds Management for its services as adviser. It is located at 525
9 Market St., San Francisco, CA 94105.

10 **The Broker/dealers**

11 19. Defendant H.D. Vest Investment Services, LLC ("H.D. Vest") is a broker/dealer
12 incorporated in Texas. H.D. Vest is an affiliated non-bank subsidiary of Wells Fargo & Company
13 H.D. Vest entered into "shelf-space" arrangements during the Class Period, steering clients into the
14 Shelf-Space Funds, in exchange for financial gain. Its address is 6333 North State Highway 161,
15 4th Floor, Irving, TX 75038-2200.

16 20. Defendants Wells Fargo Investments, LLC ("WF Investments") is a broker/dealer.
17 WF Investments also entered into "shelf-space" arrangements during the Class Period steering
18 clients into The Shelf-Space Funds, in exchange for financial gain. The firm's address is 420
19 Montgomery St., San Francisco, CA 94104.

20 21. Herein, Defendants WF Investments and H.D. Vest will be referred to as
21 broker/dealer Defendants.

22 **The Distributors**

23 22. Defendant Stephens Inc. has served as the Distributor of the Wells Fargo Funds since
24 July 26, 2004. Stephens Inc. is located at 111 Center Street, Little Rock, Arkansas 72201.

25 23. Defendant SEI Investments Distribution Company, prior to July 26, 2004, served as
26 the Distributor to the Wells Fargo Funds.
27
28

1 become financially successful." Wells Fargo Customer Service, [http://www.wellsfargo.com/
2 invest_relations/vision_values/7?display=print](http://www.wellsfargo.com/invest_relations/vision_values/7?display=print) (last visited Nov. 2, 2005).

3 28. Wells Fargo states on its website that among its core values are that its employees
4 "[v]alue and reward open, honest, two-way communication...[a]void any actual or perceived
5 conflict of interest...[and] [c]omply with the letter and the spirit of the law." Wells Fargo What Are
6 Our Values?, http://www.wellsfargo.com/invest_relations/vision_values/11?display=print (last
7 visited Nov. 2, 2005). Indeed, the Wells Fargo Team Members Code of Ethics and Business
8 Conduct states that team members must avoid conflicts of interest or the appearance of conflicts of
9 interest and also notes that it is unlawful for team members to accept anything of value from any
10 person, intending to be influenced or rewarded in connection with any business or transaction of
11 Wells Fargo. Wells Fargo Team Members Code of Ethics and Business Conduct, at V.A. and L.
12 (June 1, 2004), [http://a248.e.akamai.net/7/248/1856/f2442122130f3d/www.wellsfargo.com/
13 pages/about/corporate/ethics/team_member_code_of_ethics_2004.pdf](http://a248.e.akamai.net/7/248/1856/f2442122130f3d/www.wellsfargo.com/pages/about/corporate/ethics/team_member_code_of_ethics_2004.pdf). These internally published
14 prohibitions on conflicts of interest are, of course, in addition to the matrix of market regulation
15 governing the broker/dealers and prohibiting such conduct.

16 29. Wells Fargo's broker/dealers, in fact, carefully created an institutional revenue-
17 sharing scheme wherein the broker/dealers received secret payments from the Shelf-Space Funds in
18 exchange for recommending such funds regardless of their suitability to clients of Wells Fargo. The
19 conflicts of interest in which the broker/dealer Defendants put themselves were even more
20 egregious in light of the fact that the kickback payments received were the result of illegal fees
21 charged on the funds into which Wells Fargo pushed its clients.

22 30. One method by which Wells-Fargo broker/dealers received kickbacks under their
23 revenue-sharing scheme was to receive directed brokerage commissions. As discussed above,
24 directed brokerage refers to the excess commissions resulting from mutual funds directing trades in
25 their underlying portfolio of the securities to a broker/dealer in exchange for the broker/dealer's
26 commitment to feature or promote the sale of the Fund's shares. This practice is prohibited by,
27 among others, the NASD.

28

1 31. These illegal practices by Wells Fargo's broker/dealers are particularly heinous
2 given the nature the clients they defrauded. The typical mutual fund investor is a married, middle-
3 class individual in his or her forties with a median household income of \$55,000. Nearly all mutual
4 fund investors consider their investments to be long-term savings. Approximately 98% of mutual
5 fund shareholders say their investments constitute long-term savings and about 77% cite retirement
6 savings as their primary financial goal. David J. Carter, *Mutual Fund Board and Shareholder*
7 *Action*, 3 Vill. J. & Investment Management at 8.

8 **Wells Fargo Broker/dealers Received Incentives to Push the Proprietary Funds**

9 32. WF Investments and H.D. Vest pushed the Proprietary Funds on unsuspecting
10 clients. As a result, investors in the Proprietary Funds footed the bill for the financial incentives
11 given to the retail broker/dealers as kickbacks.

12 33. WF Investments received revenue from its affiliate, Funds Management for pushing
13 Wells Fargo Funds based on customer assets held by the Proprietary Funds. *See* Wells Fargo
14 Investments, LLC, *An Investor Guide to Mutual Funds*, at 6 (June 2005) [http://a248.e.akamai.net/71](http://a248.e.akamai.net/71248/1856/e41295a45abb78/www.wellsfargo.com/pdf/online_brokerage/mf_disc.pdf)
15 [248/1856/e41295a45abb78/www.wellsfargo.com/pdf/online_brokerage/mf_disc.pdf](http://a248.e.akamai.net/71248/1856/e41295a45abb78/www.wellsfargo.com/pdf/online_brokerage/mf_disc.pdf).

16 34. H.D. Vest also received revenue for pushing Wells Fargo Funds. *See* Important
17 Information About Mutual Funds. *Available at* <http://hdvest.com/investor-mutualfunds.html>.

18 35. These arrangements were never adequately disclosed to investors in the Proprietary
19 Funds by either broker/dealer.

20 **Specific Programs Were Designed By WF Investments to Create Shelf-Space Arrangements**

21 36. WF Investments implemented and managed a revenue-sharing program entitled "the
22 Wells Fargo Platform Participants Revenue Sharing Program" with the Shelf-Space Funds. The
23 program required fund families to pay WF Investments in order for brokers to promote their Funds
24 to investors.

25 37. While promoting the Shelf-Space Funds to its clients, WF Investments represented
26 the program Funds as being better for its clients than other funds available. Wells Fargo clients
27 were led to believe that Wells Fargo brokers were recommending the Shelf-Space Funds based on
28

1 objective analysis which indicated that such Funds would perform better than offerings from other
2 fund companies. Only 18 mutual fund families out of the 325 fund families with which Wells
3 Fargo had distribution agreements were ranked by Wells Fargo as "Platform Participants." Wells
4 Fargo Investments, LLC, An Investor Guide to Mutual Funds, at 7 (June 2005).

5 38. WF Investment received the following revenue sharing payments from its Shelf-
6 Space Funds, or "Platform Participants":

- 7 • A minimum of \$50,000 from each fund family annually;
- 8 • A 35 basis point ("bp") charge (0.35%) on the sales of shares; and
- 9 • Annual fees of 125 bp for holding equity mutual fund assets; 75 bp for
10 holding fixed income mutual fund assets; and higher rates for money market
11 mutual fund assets.

12
13 39. On top of the sales load and the commissions or concessions charged in connection
14 with the mutual Fund's offering, Defendants also received revenue through reimbursement for
15 expenses incurred by broker/dealers during educational and training conference seminars.
16 Defendant's broker/dealers also were able to share certain administrative costs such as record
17 keeping with the fund families. Wells Fargo Investments, LLC, An Investor Guide to Mutual
18 Funds, at 6 (June 2005).

19 40. The Platform Participants List of Shelf-Space Funds for WF Investments included
20 the following mutual fund families:

21 Franklin Templeton Investments
22 Putnam Investments
23 MFS Investment Management
24 Fidelity Investments
25 Evergreen Investments
26 Alliance Bernstein Investment Research and Management
27 Van Kampen Investments
28 AIM Distributors, Inc.

1 Oppenheimer Funds, Inc.
2 Eaton Vance Managed Investments
3 ING Funds Distributors, LLC
4 Allianz Global Investors Distributors , LLC
5 Federated
6 The Hartford Mutual Funds
7 Dreyfus Service Corporation
8 Delaware Investments
9 Pioneer Investment Management, Inc.
10 Scudder Investments

11 Wells Fargo Investments, LLC, An Investor Guide to Mutual Funds, at 7 (June 2005).

12 **Specific Programs Were Designed By H.D. Vest to Create Shelf-Space Arrangements**

13 41. Defendant H.D. Vest also entered into “shelf-space” arrangements with certain of the
14 Shelf-Space Funds. In exchange for the kickbacks received from the Shelf-Space Funds, H.D. Vest
15 provided the fund’s investment advisers with enhanced access to the H.D. Vest broker/dealer sales
16 force, and heightened visibility in the firm.

17 42. Part of H.D.Vest’s “shelf-space” program was to reward brokers that sold a certain
18 amount of Shelf-Space Funds. For example, H.D. Vest brokers that were big sellers of Shelf-Space
19 Funds would be eligible for free trips to the company’s conferences or free conference registration.

20 Karen Damato, *Questions on Conflicts Can Extend to Planners --- U.S. Regulators Examine*
21 *Financial Advisers’ Ties To Mutual-Fund Families*, Karen Damato, The Wall St. J. Europe, June
22 17, 2005, at M1.

23 43. H.D. Vest received the following amounts in revenue sharing payments:

- 24 • A 10 to 25 bp charge on sales of shares;
25 • Annual fees of 5 to 15 bp for holding mutual fund assets;
26 • Lump sum payments which can be significant; and
27 • Cost sharing of educational, training, record-keeping and other sales costs.
28

1 44. The following Shelf-Space Funds paid for training and support, account
2 administration or record-keeping services during the past year:

3 Oppenheimer Funds

4 Putnam Investments

5 Scudder Investments

6 MFS Investment Management

7 Van Kampen Investments

8 Lincoln Financial Distributors

9 AIM Investments

10 Phoenix Investment Partners

11 John Hancock Funds

12 Wells Fargo Funds

13 American Funds

14 Franklin Templeton Investments

15
16 **Brokers Received Benefits for Pushing the Shelf-Space Funds**

17 45. To ensure the dominance of Shelf-Space Funds, Defendants instituted a sales system
18 wherein the individual employee broker/dealers also received benefits based on their sale of Shelf-
19 Space Funds. For example, H.D. Vest reimbursed brokers' expenses incurred in connection with
20 certain firm training and education conferences based, in part, on the brokers' sales of funds that
21 participated in its preferred partner program - instead of giving equal weight to the sales of all
22 mutual funds, as required by NASD rules. June 8, 2005 NASD Press Release.

23 **Wells Fargo Promoted A Culture That Increased The Sales Of Shelf-Space Funds**

24 46. Defendants cultivated a clandestine, incentive-driven culture among Wells Fargo's
25 brokerage arm to sell Shelf-Space Funds, regardless of the comparative value of the funds.

26 47. Defendants' evaluation of the Shelf-Space Funds was neither objective nor
27 performance-based. Instead, unbeknownst to Plaintiff and the Class, Defendants blatantly solicited
28 the sponsorship of the Shelf-Space Funds' distributors and investment advisers for company events,

1 office parties, training and educational meetings and conferences in exchange for the inclusion of
2 their funds in the "Platform Participants" Preferred Fund list. Shelf-Space Funds significantly
3 benefited: their products were favorably perceived as having achieved a higher, "preferred" status
4 based on their performance, while representatives from these Funds were given greater access to
5 branch offices and were invited to corporate training and marketing events. Consequently,
6 representatives from the Shelf-Space Funds were given increased opportunities to interact with
7 Wells Fargo's brokers to promote the sale of their mutual funds.

8 48. Investment Advisers and Distributors from other mutual fund companies were forced
9 to engage in this "pay to play" arrangement with Wells Fargo because Defendants condoned and
10 even promoted this practice as a required course of conduct with Wells Fargo. In other words, if
11 funds and their advisers did not pay Wells Fargo's broker/dealers kickbacks, then Wells Fargo
12 would not sell their funds.

13 **Wells Fargo Investments Charged Investors For Biased Financial**
14 **Plans Which Were Utilized to Steer into Preferred Funds**
14 **Through Its Various Financial Management Accounts**

15 49. During the Class Period, Wells Fargo Investments Defendants, provided financial
16 planning services to a substantial percentage of its clients. These financial plans included fee-based
17 account programs such as Full Service Brokerage Accounts, Wells Asset Management accounts,
18 WellsChoice account and WellsSelect account. Wells Fargo has 1200 brokers who on average have
19 452 accounts each.

20 50. Although Wells Fargo has stated that they "want to be advocates" for their customers
21 and "to put them at the center of everything," [http://www.wellsfargo.com/invest_relations](http://www.wellsfargo.com/invest_relations/vision_values/9)
22 [/vision_values/9](http://www.wellsfargo.com/invest_relations/vision_values/9), they fail to properly disclose how investors may pay more with asset-based
23 programs than when purchasing the mutual fund separately. Wells Fargo Customer Service (last
24 visited Nov. 2, 2005). Instead, they vaguely note in a website statement to investors who are
25 purchasing this financial guidance, "Please ask us questions to make sure you understand your
26 rights and our obligations to you, including the extent of our obligations to disclose conflicts of
27 interest and to act in your best interest. We are paid both by you and sometimes, by people who
28

1 compensate us based on what you buy." Wells Fargo, Wells Choice Account, <http://www.wellsfargo.com/investing/styles/fc/accts/wellschoice> (last visited Nov. 2, 2005).

3 51. Furthermore, there were improper incentives on both the firm and financial advisor
4 level to push asset-based programs. The percentage of brokerage revenues that Financial Advisors
5 received in asset-based programs was higher than the percentage of Firm Revenues they received on
6 most other products and services.

7 **The Shelf-Space Funds Paid Excessive Commissions through Directed Brokerage**

8 52. In connection with running the funds, the Shelf-Space Funds regularly traded
9 securities of issuers held in the Fund's portfolio and paid commissions on such trades to WF
10 Investments and H.D. Vest, among others. In return for the efforts of Defendant broker/dealers to
11 steer its clients into the Shelf-Space Funds, the Funds paid Wells Fargo directed brokerage
12 commissions that were in excess of what they would have paid under an agreement reached with
13 broker/dealers through arm's-length bargaining. The investment advisers would use these excessive
14 commissions to meet their revenue sharing commitments.

15 **Defendants Wells Fargo Investments and H.D. Vest Have Been Subject**
16 **to NASD Charges and Fines For the Alleged Conduct**

17 53. Wells Fargo's broker/dealers subsidiaries, WF Investments and H.D. Vest, have both
18 been charged and had fines placed on them for the exact conduct alleged in this complaint.

19 54. The NASD found that the broker/dealers firms operated "shelf-space" programs that
20 provided certain benefits to a relatively small number of mutual fund complexes in return for
21 directed brokerage. According to the NASD, the broker/dealer Defendants generally monitored the
22 amount of directed brokerage received to ensure that the fund complexes were satisfying their
23 revenue sharing obligations. June 8, 2005 NASD Press Release.

24 55. The NASD alleged that six fund companies directed trades to WF Investments to be
25 in its "preferred partner" program. They received "enhanced exposure," such as access to Wells
26 Fargo salespeople and the right to send prospecting letters to Wells Fargo's customers. Walter
27 Hamilton, *Brokerages Settle Fund-Sale Cases; Fifteen Firms Will Pay \$34 Million to Resolve*
28 *Charges of Promoting Mutual Funds Based on the Fees They Paid*, L.A. Times, June 9, 2005 at C4.

1 56. As a result, WF Investments was fined \$2,970,000 by the NASD for engaging in
2 revenue sharing and directed brokerage arrangements with different fund families. June 8, 2005
3 NASD Press Release.

4 57. Well Fargo's other broker/dealer subsidiary, H.D. Vest, was also found to have
5 received payments to operate a preferred partner program. The fine imposed on H.D. Vest also
6 included charges related to violations of NASD rules relating to non-cash compensation. For
7 example, H.D. Vest would reimburse brokers' expenses incurred in connection with certain firm
8 training and education conferences based, in part, on the brokers' sales of funds that participated in
9 its preferred partner program - instead of giving equal weight to the sales of all mutual funds, as
10 required by NASD rules. *Id.*

11 58. As a result of these arrangements, H.D. Vest was fined \$4,015,000 by the NASD.
12 Neither WF Investments nor H.D. Vest had in place adequate procedures or policies to determine
13 whether fund families had authority to make directed brokerage and revenue sharing arrangements.
14 *Id.*

15 **Defendants Failed To Disclose Their Fraudulent Practices**

16 59. The revenue-sharing and kickback activities engaged in by the Defendants described
17 above created conflicts of interest with respect to broker/dealers' management of client accounts.
18 These conflicts of interest were not disclosed to Plaintiff and the Class, and were actively concealed
19 from clients. Disclosure of these sales incentives and compensation structures were necessary for
20 Wells Fargo's clients to make informed investment decisions. Through a constant barrage of
21 financial incentives and programs, pressure was exerted on the WF Investment and H.D. Vest firms
22 and their brokers to sell Shelf-Space Funds in order to receive additional compensation.

23 60. As described above, in return for the Defendant broker/dealers' efforts to steer their
24 clients into the Shelf-Space Funds, the Funds paid the Wells Fargo broker/dealers kickbacks. Given
25 that the kickbacks were paid out of Fund assets, other investors in the Shelf-Space Funds were
26 paying for this "Shelf-Space" at Wells Fargo, but were not informed that their fees were being used
27 for this purpose. At the time these arrangements were instituted, Wells Fargo anticipated receiving
28 millions of dollars in revenue under it.

1 61. Wells Fargo disclosed information to its customers concerning mutual fund
2 purchases primarily through supplying customers with the prospectuses and if requested, the
3 statements of additional information (“SAIs”) issued by the mutual funds.

4 62. Prior to investing in any of the Shelf-Space Funds, Plaintiff and each member of the
5 Class were entitled to receive the appropriate prospectuses. The prospectuses and registration
6 statements were deceptive and misleading as they failed to disclose Defendants’ practice of steering
7 investors to Shelf-Space Funds.

8 **Defendants’ Fraudulent Course Of Conduct**

9 63. The practice of aggressively selling Shelf-Space Funds to investors, without
10 disclosing Defendants’ strong financial interest in recommending such Funds over other investment
11 choices, coupled with Defendants’ undisclosed practice of paying excessive commissions to Wells
12 Fargo for steering investors their way, is a clear violation of Defendants’ fiduciary obligations of
13 loyalty and care to their clients and operated as a fraud and deceit against them. As a result of the
14 undisclosed scheme, Plaintiff and other members of the Class sustained damages.

15 64. Defendants are liable for (i) making false statements, and/or for failing to disclose
16 material adverse facts while selling shares of the Shelf-Space Funds, and/or (ii) participating in a
17 scheme to defraud and/or a course of conduct that operated as a fraud or deceit on purchasers of the
18 Shelf-Space Funds shares during the Class Period. The wrongful conduct alleged herein enabled
19 Defendants to profit at the expense of Plaintiff and other Class members.

20 65. As alleged herein, Defendants acted with scienter in that Defendants knew that the
21 public documents and statements issued or disseminated in the name of the Shelf-Space Funds were
22 materially false and misleading, knew that such statements and documents would be issued or
23 disseminated to the investing public, and knowingly and substantially participated or acquiesced in
24 the issuance or dissemination of such statements or documents as primary violations of the federal
25 securities laws. As set forth herein in detail, Defendants, by virtue of their receipt of information
26 reflecting the true facts regarding Shelf-Space Funds, their control over, and/or receipt and/or
27 modification of Shelf-Space Funds’ allegedly materially misleading misstatements and/or their
28 associations with the Shelf-Space Funds which made them privy to confidential information

1 concerning the Shelf-Space Funds, culpably participated in the fraudulent course of conduct alleged
2 herein.

3 66. Defendants were highly motivated to allow and facilitate the conduct alleged herein
4 and participated in and/or had actual knowledge of the fraudulent conduct alleged herein. In
5 exchange for allowing the unlawful practices alleged herein, the Investment Advisers, inter alia,
6 received increased management fees which inured to their benefit and the benefit of Wells Fargo.
7 In addition, Wells Fargo broker/dealers were highly motivated to engage in the wrongdoing alleged
8 herein because it incurred lower costs when selling the Shelf-Space Funds, thereby increasing their
9 profitability. Furthermore, Wells Fargo profited through the receipt of excessive commissions from
10 the Proprietary Funds.

11 **THE PROSPECTUSES, THEIR SAI AND PUBLIC STATEMENTS WERE**
12 **MATERIALLY FALSE AND MISLEADING**

13 67. Plaintiff and other members of the Class were entitled to receive one or more
14 Prospectuses pursuant to which the Shelf-Space Funds shares were offered. The SAI is not
15 distributed to investors, but available to them on request.

16 68. Prospectuses and their SAI are required to disclose all material facts in order to
17 provide investors with information that will assist them in making an informed decision about
18 whether to invest in a mutual fund. The law requires that such disclosures be in straightforward and
19 easy to understand language such that it is readily comprehensible to the average investor.

20 69. Each of the Shelf-Space Funds Prospectuses and their SAIs issued during the Class
21 Period failed to adequately disclose to investors material information about the mutual funds and
22 the fees and costs associated with them. As seen below, each of the Prospectuses and their SAIs
23 contained the same materially false and misleading statements and omissions regarding directed
24 brokerage, 12b-1 fees and soft dollars.

25 70. Each of the Prospectuses and their SAIs issued during the Class Period contained
26 substantially the same materially false and misleading omissions of key information regarding the
27 Funds' directed brokerage and 12b-1 fees that were required to be disclosed in "easy to understand
28

1 language” such that a reasonable investor could make an informed decision whether or not to invest
2 in the Funds.

3 71. The Wells Fargo Funds Trust SAI, dated July 26, 2004, which is similar in substance
4 to the other SAIs for, states:

5 The Board has concluded that the Plan is reasonably likely to benefit
6 the Funds and their shareholders because the Plan authorizes the
7 relationship with selling agents, including Wells Fargo Bank and
8 Funds Management, that have previously developed distribution
9 channels and relationships with the retail customers that the Funds are
10 designed to serve. The Trustees believe that these relationships and
11 distribution channels provide potential for increased Fund assets and
12 ultimately corresponding economic efficiencies (i.e., lower per-share
13 transaction costs and fixed expenses) that are generated by increased
14 assets under management. In addition to payments received from the
15 Funds, selling or servicing agents may receive significant additional
16 payments directly from the Adviser, the Distributor, or their affiliates
17 in connection with the sale of Fund shares.

18 *Id.*

19 72. However, these arrangements did the opposite. These arrangements increased
20 expenses to investors’ detriment. The SAI fails to disclose that these increased expenses benefit
21 Advisers and Distributors’ profit while decreasing investors’ returns.

22 **Material Omissions Regarding Directed Brokerage**

23 73. The Hartford mutual fund family - one of the Shelf-Space Funds identified in Exhibit
24 B attached hereto - is just one example of a fund complex engaged in making Shelf-Space payments
25 to Wells Fargo broker/dealer firms. However, the Hartford Funds’ Prospectuses and their SAIs are
26 substantially similar to the Prospectuses and SAIs for all Shelf-Space Funds during the Class
27 Period. For example, the March 1, 2003 SAI for the Hartford Mutual Funds, Inc. is essentially
28

1 identical in substance to all other Shelf-Space Fund SAI issued during the Class Period in that it
2 states under the heading PORTFOLIO TRANSACTIONS AND BROKERAGE the following:

3 74. The Companies have no obligation to deal with any dealer or group of dealers in the
4 execution of transactions in portfolio securities. Subject to any policy established by each
5 Company's board of directors and HIFSCO, HIMCO and Wellington Management, as applicable,
6 are primarily responsible for the investment decisions of each Fund and the placing of its portfolio
7 transactions. In placing orders, it is the policy of each Fund to obtain the most favorable net results,
8 taking into account various factors, including price, dealer spread or commission, if any, size of the
9 transaction and difficulty of execution. While HIMCO and Wellington Management generally seek
10 reasonably competitive spreads or commissions, the Funds do not necessarily pay the lowest
11 possible spread or commission. Upon instructions from HIFSCO, Wellington Management may
12 direct certain brokerage transactions to broker/dealers who also sell shares of funds in the fund
13 complex. Upon instructions from HIFSCO, Wellington Management may also direct certain
14 brokerage transactions to broker/dealers that pay for certain other services used by the Funds.

15 75. This statement is false and misleading, as are all of the Shelf-Space Fund
16 Prospectuses and their SAIs, in that it fails to disclose that it directed brokerage commissions to
17 Wells Fargo brokerages to satisfy pre-determined, negotiated arrangements for specific amounts of
18 brokerage commissions with Wells Fargo broker/dealers. Additionally, the above statement is
19 materially false and misleading for the following reasons:

- 20 (a) that investor assets were used to pay Wells Fargo's brokerage to satisfy
21 bilateral arrangements between the Shelf-Space Funds and Broker/dealer
22 Defendants whereby the broker steered clients into the Shelf-Space Funds;
- 23 (b) that brokerage commissions over and above those allowed by Rule 12b-1
24 were used to pay for the "shelf-space programs";
- 25 (c) that brokerage payments were directed to Wells Fargo brokerages to satisfy
26 the "shelf-space" arrangements and that this directed brokerage was a form of
27 marketing that was not disclosed in or authorized by the Shelf-Space Funds
28 Rule 12b-1 Plan; and

1 (d) that such revenue sharing payment created undisclosed conflicts of interest.

2 **Material Omissions Regarding 12b-1 Fees**

3 76. With respect to statements regarding 12b-1 fees, the March 1, 2003 SAI Information
4 for the Hartford Mutual Funds, Inc. is identical in substance to all Shelf-Space Fund Statements of
5 Additional Information issued during the Class Period in that it states the following with respect to
6 12b-1 fees:

7 General Distribution fees paid to HIFSCO may be spent on any
8 activities or expenses primarily intended to result in the sale of the
9 applicable Company's shares including: (a) payment of initial and
10 ongoing commissions and other compensation payments to brokers,
11 dealers, financial institutions or others who sell each Fund's shares,
12 (b) compensation to employees of HIFSCO, (c) compensation to and
13 expenses, including overhead such as communications and telephone,
14 training, supplies, photocopying and similar types of expenses, of
15 HIFSCO incurred in the printing and mailing or other dissemination
16 of all prospectuses and statements of additional information, (d) the
17 costs of preparation, printing and mailing of reports used for sales
18 literature and related expenses, i.e., advertisements and sales
19 literature, and (e) other distribution-related expenses and for the
20 provision of personal service and/or the maintenance of shareholder
21 accounts. These plans are considered compensation type plans which
22 means that the Funds pay HIFSCO the entire fee regardless of
23 HIFSCO's expenditures.

24
25 The above statement is materially false and misleading in that it fails to state that Hartford used
26 12b-1 fees to participate in "shelf-space programs" at Wells Fargo brokerages to provide kickbacks
27 to Wells Fargo retail broker/dealers for directing their clients into Shelf-Space Funds. Additionally,
28 the above statement is materially false and misleading for the following reasons:

- 1 (a) that investor assets were used to pay Wells Fargo to satisfy bilateral
2 arrangements between the Shelf-Space Funds and Wells Fargo, such as the
3 Platform Participants programs whereby the broker steered clients into the
4 Shelf-Space Funds;
- 5 (b) that brokerage commissions over and above those allowed by Rule 12b-1
6 were used to pay for the Platform Participants program;
- 7 (c) that brokerage payments were directed to Wells Fargo to satisfy the “shelf-
8 space” arrangements and that this directed brokerage was a form of
9 marketing that was not disclosed in or authorized by the Defendants’ Rule
10 12b-1 Plan; and
- 11 (d) that such revenue sharing payment created undisclosed conflicts of interest.

12 **Defendants Were Misleading in Their Public Statements Regarding Brokers’ Compensation**

13 77. Both WF Investments and H.D. Vest’s statements regarding revenue sharing
14 arrangements and brokers’ compensation were misleading. The website of both retail
15 broker/dealers state that brokers do not receive “any portion of, or any additional compensation as a
16 result of these payments or compensation arrangements.” *See* Important Information About Mutual
17 Funds, available at <http://www.hdvest.com/investor-mutualfunds.html>; and Wells Fargo
18 Investments, LLC, An Investor Guide to Mutual Funds, June 2005, available at
19 [http://a248.e.akamai.net/7/248/1856/e41295a45abb78/www.wellsfargo.com/pdf/online_brokerage/
20 mf_disc.pdf](http://a248.e.akamai.net/7/248/1856/e41295a45abb78/www.wellsfargo.com/pdf/online_brokerage/mf_disc.pdf).

21 78. However, the NASD explicitly imposed a directed brokerage fine on H.D. Vest for
22 reimbursing “brokers’ expenses incurred in connection with certain firm training and educational
23 conferences based, in part, on the brokers’ sales of funds that participated in its preferred partner
24 program -- instead of giving equal weight to the sales of all mutual funds, as required.” *See* June 8,
25 2005 NASD Press Release.

1 **Additional Scienter Allegations**

2 79. As alleged herein, Defendants acted with scienter in that Defendants knew that the
3 public statements issued or disseminated in the name of Shelf-Space Funds were materially false
4 and misleading, knew that such statements would be issued or disseminated to the investing public,
5 and knowingly and substantially participated or acquiesced in the issuance or dissemination of such
6 statements as primary violations of the federal securities laws. As set forth elsewhere herein in
7 detail, Defendants, by virtue of their knowledge of the true facts regarding the kickback scheme and
8 improper influence exerted to push the Shelf-Space Funds on Wells Fargo clients, and their control
9 over, and/or receipt and/or modification of Shelf-Space Funds' materially misleading omissions and
10 misstatements and/or their associations with Wells Fargo which made them privy to confidential
11 proprietary information concerning the Wells Fargo incentive scheme, culpably participated in the
12 fraudulent scheme alleged herein. Defendants were highly motivated to allow and facilitate the
13 wrongful conduct alleged herein and participated in and/or had actual knowledge of the fraudulent
14 conduct alleged herein.

15 **Plaintiff And Other Members Of The Class Have Suffered**
16 **Damages As A Result Of Defendant's Illegal And Improper Actions**

17 80. As a result of Defendants' conduct alleged above, Plaintiff and the other members of
18 the Class have suffered damages. The damages suffered by Plaintiff and the other members of the
19 Class were a foreseeable consequence of Defendants' omissions and conduct, particularly in light of
20 the fact that the net returns on the Shelf-Space Funds were diminished as a result of the improper
21 kickbacks Wells Fargo broker/dealers took from the Shelf-Space Funds. Plaintiff and other
22 members of the Class would not have purchased the Shelf-Space Funds, and paid the related
23 commissions and fees associated with the Shelf-Space Funds, had they known of the illegal and
24 improper practices the Defendants used to direct Plaintiff into the Shelf-Space Funds as alleged
25 above. By investing in the Shelf-Space Funds, Plaintiff and other members of the Class received a
26 return on their investment that was substantially less than the return on an investment they would
27 have received had they invested the same dollars in a comparable fund. Alternatively, investors
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1 could have invested fewer dollars in a non-Shelf-Space Fund to obtain a rate of return equal to or
2 greater than that obtained at a higher price from the comparable Shelf-Space Fund.

3 81. Additionally, Plaintiff was deceived into buying shares of the Shelf-Space Funds at
4 an artificially inflated value. Plaintiff accepted, as an integral aspect of a purchase of shares of the
5 Shelf-Space Funds, that they would be required to pay fees and expenses against their ownership
6 interests in the Shelf-Space Funds with the understanding that those charges were legitimate outlays
7 for services that would benefit the mutual Fund and contribute positively to its value. In truth, a
8 significant portion of those expenses was not being used to provide the services promised, but rather
9 to increase the profits of Wells Fargo and its affiliates by financing the programs challenged in this
10 lawsuit. As a result, the values of the Shelf-Space Funds were less than they appeared to be to the
11 Plaintiff. Plaintiff and the other members of the Class have also suffered damages through
12 commissions paid by Plaintiff and the other members of the Class for their purchase of shares of the
13 Shelf-Space Funds. Had Plaintiff and the other members of the Class knew about the practices
14 alleged above, Plaintiff and the other members of the Class would not have paid such commissions.
15 Plaintiff's and the other members of the Class' damages as a result of the commissions they paid for
16 shares of the Shelf-Space Funds were a foreseeable consequence of Defendants' failure to disclose.

17 **THE WELLS FARGO FUNDS' INVESTMENT ADVISERS**
18 **ENGAGED IN IMPROPER CONDUCT**

19 **Defendants Breached Their Duties By Charging**
20 **Excessive Fees And Failing To Disclose These Practices**

21 82. The fees charged to mutual fund investors should reflect the equivalent of fees that
22 would have been within the bounds of arm's-length bargaining. Trustees are charged with the
23 responsibility of negotiating the fees charged to the fund on behalf of the investors who,
24 individually, are unable to negotiate such fees. At the same time, investment advisers and their
25 affiliates have a fiduciary duty with respect to the fees that are charged to investors in that such fees
26 must be reasonably related to the services provided and conflicts of interest must be disclosed.

27 83. Congress and the Supreme Court have recognized the potential conflicts of interest
28 that exist in the mutual fund industry and created safeguards to protect investors. Congress adopted

1 Section 15(c) of the ICA which imposes upon Investment Advisers a duty to furnish shareholders
2 with any information necessary to evaluate advisory contracts. Since it is difficult for investment
3 advisers to be completely impartial toward clients, given their profitability goals, investment
4 advisers are under a duty to disclose to clients all material information "which might incline an
5 investment adviser – consciously or unconsciously – to render advice which is not disinterested."
6 *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963). The Investment
7 Adviser Defendants failed to adequately disclose to shareholders that fees were actually being used
8 for the payment of kickbacks to brokers solely to benefit the Investment Adviser Defendants and the
9 other Defendants, and that investors themselves did not receive any benefit therefrom. In fact, the
10 inflated fees that the Investment Adviser Defendants charged the Funds and their investors were not
11 reasonably related to services rendered and were therefore excessive.

12 84. Distributors, as affiliates of the investment advisers, also owe a fiduciary duty to
13 investors with respect to the fees investors pay. Furthermore, the NASD has implemented
14 additional regulations to prevent registered distributor broker/dealers (such as the Distributor
15 Defendant here) from offering gifts or making directed brokerage payments to brokers on the
16 condition of increasing sales of a mutual fund. In violation of the foregoing, the Distributor
17 Defendant was the conduit for arrangement of the revenue sharing payments to brokers. For
18 example, according to disclosures by Morgan Stanley, gross payments, asset payments and
19 recordkeeping payments were made to brokers by the Distributor Defendant on behalf of the Wells
20 Fargo Fund family in exchange for Shelf-Space. In exchange for sharing costs, Shelf-Space Funds
21 receive enhanced access to WF Investments' sales force, and may interact with its broker/dealers
22 during training events, conference calls and meetings. They also receive heightened visibility
23 through the distribution of sales literature and newsletters, and by means of links, information and
24 lists posted on WF Investments' intranet pages. See Wells Fargo Investments, LLC, An Investor
25 Guide to Mutual Funds, June 2005. Available at [http://a248.e.akamai.net/7/248/1856/
26 e41295a45abb78/www.wellsfargo.com/pdf/online_brokerage/mf_disc.pdf](http://a248.e.akamai.net/7/248/1856/e41295a45abb78/www.wellsfargo.com/pdf/online_brokerage/mf_disc.pdf).

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1 **The Excessive Fees At Issue**

2 85. The fees at issue in this case include, without limitation, the investment adviser fees
3 (including administrative fees), Rule 12b-1 fees (including service fees), and directors' fees paid by
4 the Proprietary Funds. Investment adviser fees are calculated as a percentage of assets under
5 management. As the fund assets increase, the dollar amount of such fees parallel this growth Rule
6 12b 1 permits a fund to pay "12b-1" distribution fees out of fund assets only if the fund has adopted
7 a 12b-1 plan authorizing their payment. Distribution fees include fees paid for marketing and
8 selling fund shares, such as compensation for brokers and others who sell fund shares, and
9 payments for advertising, the printing and mailing of prospectuses to new investors and the printing
10 and mailing of sales literature. The NASD has placed a 1% cap on the amount of 12b-1 fees that
11 may be charged to a fund, and the Wells Fargo Defendants have often charged the maximum
12 amount (1%) permissible. In this case, Defendants inflated the 12b-1 fees charged to investors so
13 that they could use these excessive payments under the guise of 12b-1 fees as payments to brokers
14 to push Wells Fargo Funds over other funds offered by the brokers.

15 86. Service fees are fees paid to persons to respond to investor inquiries and provide
16 investors with information about their investments. Unlike distribution fees, a fund may pay
17 shareholder service fees without adopting a 12b-1 plan. The NASD imposes an annual .25% cap on
18 shareholder service fees (regardless of whether these fees are authorized as part of a 12b-1 plan).

19 87. "Soft Dollar" practices are arrangements under which products or services other than
20 execution of securities transactions are obtained by an adviser from or through a broker/dealer in
21 exchange for the direction by the adviser of client brokerage transactions to the broker/dealer. In
22 other words, "commissions" payments may include payments for not only purchase and sales
23 execution, but also for other specified services. The SEC has defined permissible payments to
24 include payments for, "any service that provides lawful and appropriate assistance to the money
25 manager in the performance of his investment decision-making responsibilities." 15 U.S.C. §78bb.

26 88. Soft Dollars are a way for mutual funds to get services without having to pay for
27 them directly with cash. For example, with Soft Dollars, the mutual fund will pay in-kind (i.e., with
28 Soft Dollars) by, inter alia, passing on business to the brokerage. With Soft Dollars, the expenses

1 are hidden in the trading costs. Wells Fargo's Soft Dollar payments at issue here were excessive
2 because they were payments with no corresponding benefit (i.e., something for nothing). The
3 payments were only made to help finance Wells Fargo's Shelf-Space agreements alleged herein,
4 with no additional benefits accruing to the investors. As a result, there was a disproportionate
5 relationship between the payments made and the services rendered.

6 89. Directed brokerage is the practice whereby investment advisers direct underlying
7 portfolio securities transactions to broker/dealers that sell shares of the fund to remunerate brokers
8 for pushing their funds instead of other fund companies' funds. This practice directly harms
9 investors, especially where, as here, the fund is alleged to be "paying up," or trading securities at
10 commission rates higher than the fund would otherwise pay if it were not indirectly paying for
11 distribution through directing brokerage. Directed brokerage creates a material conflict of interest
12 because the investment adviser has a strong incentive to use brokerage commissions to increase the
13 size of its funds (thereby increasing management/advisory fees) and to avoid paying brokers out of
14 its own assets. Directed brokerage may also be used to circumvent NASD rules on sales charges,
15 undermining the protection afforded to investors under §22(b) of the ICA, which states that

16 the price at which such security is offered or sold to the public shall
17 not include an excessive sales load but shall allow for reasonable
18 compensation for sales personnel, broker/dealers, and underwriters,
19 and for reasonable sales loads to investors...

20 *Id.*

21 90. Revenue sharing occurs when the investment adviser or its affiliate makes cash
22 payments to a broker/dealer in exchange for the broker/dealer pushing shares of that fund. Revenue
23 sharing arrangements are problematic, *inter alia*, because plan providers cannot uphold their
24 fiduciary responsibilities when they choose to include or exclude funds based solely on the fund's
25 participation in a revenue sharing arrangement rather than based on the benefit to the participant.
26 The SEC has stated that "[r]evenue sharing arrangements not only pose potential conflicts of
27 interest, but also may have the indirect effect of reducing investors' returns by increasing the
28 distribution-related costs incurred by funds. Even though revenue sharing is paid to broker/dealers

1 directly by fund investment advisers, rather than out of fund assets, it is possible that some advisers
2 may seek to increase the advisory fees that they charge the fund to finance those distribution
3 activities... Moreover, revenue sharing arrangements may prevent some advisers from reducing
4 their current advisory fees." 69 Fed. Reg. 6438, 6411 n. 21 (February 10, 2004).

5 91. The Investment Adviser Defendants (along with the Distributor Defendant) secretly
6 siphoned monies from the Funds and their investors in various forms, as described above and
7 discussed further below, in order to pay for Shelf-Space at brokerage houses. The Wells Fargo
8 Funds grew as a result and so did the management and 12b-1 asset-based fees paid to the
9 Investment Adviser and Distributor Defendants. But the services being performed by the
10 Investment Adviser and Distributor Defendants did not change, and economies of scale were not
11 passed on to investors, resulting in the receipt of excessive fees from investors.

12 **The Fees Charged Were Excessive and Not Related to the Services Provided**

13 92. Defendants charged the Funds excessive investment adviser fees and 12b-1 fees that
14 were not reasonably related to the services being provided. When examining the source of
15 excessive fees, the legislative history of Section 36(b) states:

16 It is noted ... that problems arise due to the economies of scale
17 attributable to the dramatic growth of the mutual fund industry. In
18 some instances these economies of scale have not been shared with
19 investors. Recently there has been a desirable tendency of the part of
20 some fund managers to reduce their effective charges as the fund
21 grows in size. Accordingly, the best industry practice will provide a
22 guide.

23 S. Rep. No. 91-184, at 5-6 (1969), reprinted in 1970 U.S. Code Cong. & Ad. News, at 4901-02.

24 93. The profitability of a fund to an adviser-manager is a function of revenues minus the
25 costs of providing services. Defendants' incremental costs of providing advisory services to the
26 Funds were nominal. The additional fees received by Defendants were disproportionate given that
27 the nature, quality and level of the services remained the same. On a per share basis, it does not
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1 cost more to manage additional assets in a growing fund because economies of scale occur on both
2 the fund complex and portfolio level for various costs incurred. For example, many of the costs,
3 such as the costs of research for a particular investment, remain fixed regardless of the amount of
4 assets in a given fund devoted to that investment.

5 94. During the relevant time frame, the Proprietary Funds' assets managed by the
6 Investment Adviser Defendant have grown dramatically, resulting in greatly increased advisory,
7 12b-1 and administrative fees. That immense growth of assets under management has also
8 generated substantial economies of scale to the great benefit of the Investment Adviser and
9 Distributor Defendants, which have not been passed on to the Proprietary Funds through lower fees.
10 As has been noted, the mutual fund industry is a business in which economies of scale are present
11 and are statistically significant. William Baunol, *The Economics of Mutual Fund Markets:
12 Competition Versus Regulation*, 186, 190, Boston: Kluwer Academic (1990).

13 95. The economies of scale enjoyed by Defendants have not been shared with the
14 Proprietary Funds or their investors. The Investment Adviser Defendant and Distributor Defendant,
15 in charging fees to the Funds, failed to pass on the economies of scale they were realizing as the
16 Funds grew. The Director Defendants ignored this failure and allowed the Investment Adviser and
17 Distributor Defendants to continue to charge the Proprietary Funds excessive fees. As the SEC has
18 made clear, "[i]f the fund or fund family is experiencing economies of scale, fund directors have an
19 obligation to ensure that fund shareholders share in the benefits of the reduced costs by, for
20 example, requiring that the adviser's fees be lowered, breakpoints be included in the adviser's fees,
21 or that the adviser provide additional services under the advisory contract... If the fund or fund
22 family is not experiencing economies of scale, then the directors may seek to determine from the
23 adviser how the adviser might operate more efficiently in order to produce economies of scale as
24 fund assets grow." SEC, *Division of Investment Management: Report on Mutual Fund Fees and
25 Expenses*, at B1 (Dec. 2000) ("SEC Report on Mutual Fund Fees"), available at
26 <http://www.sec.gov/news/studies/feestudy.htm>.

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1 **Excessive Investment Adviser Fees Were Improperly Used To Pay For Revenue Sharing**

2 96. Defendants charged the Proprietary Funds and their investors inflated advisory fees
3 to pay part of Defendants' revenue sharing agreements. These fees force Investment Advisory
4 Defendants to keep fees high to pay for revenue sharing arrangements. The fees were not related to
5 any services provided to investors, but solely to Investment Adviser Defendants. Furthermore,
6 these fees should have been subject to Rule 12b-1 since they dealt with distribution. Advisory fees
7 paid to an investment adviser with the intent of allocating a certain amount towards distribution
8 practices, such as revenue sharing, where the investment adviser and its affiliates claim to make
9 payments from their own profits, are regulated under Rule 12b-1 and Section 36(b). As the SEC
10 explained, "Rule 12b-1 could apply . . . in certain cases in which the adviser makes distribution
11 related payments out of its own resources.... 'if *any allowance* were made in the investment
12 adviser's fee to provide money to finance distribution.'" *Investment Company Act of 1940 Rule*
13 *12b-1, 1998 SEC No-Act. Lexis 976, at *16 (citing Payment of Asset-Based Sales Loads By*
14 *Registered Open-Ended Management Investment Companies, Investment Company Act Release*
15 *No. 16431, 1988 SEC LEXIS 1206 (June 13, 1988)) (emphasis added). Defendants paid for part of*
16 *these revenue sharing arrangements through advisory fees to circumvent sales limits placed on*
17 *distribution.*

18 **The Investment Adviser Defendants Used Rule 12b-1 Marketing Fees For Improper Purposes**

19 97. Rule 12b-1, promulgated by the SEC pursuant to the Investment Company Act,
20 prohibits mutual funds from directly or indirectly distributing or marketing their own shares unless
21 certain enumerated conditions set forth in Rule 12b-1 are met. The Rule 12b-1 conditions, among
22 others, are that payments for marketing must be made pursuant to a written plan "describing all
23 material aspects of the proposed financing of distribution;" all agreements with any person relating
24 to implementation of the plan must be in writing; the plan and any related agreements must be
25 approved by a vote of the majority of the board of Trustees; and the board of Trustees must review,
26 at least quarterly, "a written report of the amounts so expended and the purposes for which such
27 expenditures were made." Additionally, the Trustees "have a duty to request and evaluate, and any
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1 person who is a party to any agreement with such company relating to such plan shall have a duty to
2 furnish, such information as may reasonably be necessary to an informed determination of whether
3 the plan should be implemented or continued.” The Trustees may continue the plan if the board of
4 “directors who vote to approve such implementation or continuation conclude, in the exercise of
5 reasonable business judgment and in light of their fiduciary duties under state law and sections
6 36(a) and (b) [15 U.S.C. § 80a-35(a) and (b)] of the Act, that there is a reasonable likelihood that
7 the plan will benefit the company and its shareholders.” [Emphasis added.]

8 98. The exceptions to the Section 12b-1 prohibition on mutual fund marketing were
9 enacted in 1980 under the theory that the marketing of mutual funds, all things being equal, should
10 be encouraged because increased investment in mutual funds would presumably result in economies
11 of scale, the benefits of which would be shifted from fund managers to investors. During the Class
12 Period, the Investment Adviser Defendants and Distributor Defendants collected, millions of dollars
13 in purported Rule 12b-1 marketing and distribution fees.

14 99. However, the purported Rule 12b-1 fees charged to the Funds’ investors were highly
15 improper because the conditions of Rule 12b-1 were not met. There was no “reasonable likelihood”
16 that the plan would benefit the company and its shareholders. On the contrary, as the Funds were
17 marketed and the number of Fund investors increased, any potential economies of scale were not
18 passed on to the Proprietary Funds’ investors.

19 100. As fund assets increase, certain fixed costs remain the same, thereby reducing the
20 overall costs per investor. Despite this fact, Defendants failed to impose 12b-1 breakpoints – i.e.,
21 reductions in 12b-1 fees – for payments that should not have increased as the size of the Fund assets
22 increased.

23 101. This increase and/or constancy in fees while the net asset value plummeted, and the
24 failure of the Investment Adviser to grant any 12b-1 breakpoints, illustrate that the distribution fees
25 were excessive. The Wells Fargo Funds’ marketing efforts were creating diminishing marginal
26 returns under circumstances where increased Fund size correlated with reduced liquidity and Fund
27 performance. Defendants failed to terminate the plans and the payments made pursuant to the Rule
28 12b-1 Plan, even though such payments not only harmed existing Wells Fargo Fund investors, but

1 also were improperly used to induce brokers to breach their duties of loyalty to their prospective
2 Proprietary Fund investors.

3 102. As discussed throughout this Complaint, in violation of Rule 12b-1, Defendants
4 made and received additional undisclosed payments to their brokers in the form of excessive
5 commissions that were not disclosed or authorized by the Funds' Rule 12b-1 Plan. Defendants
6 wrongfully inflated advisory fees by shifting to the Funds or investors expenses which were the
7 responsibility of the Adviser Defendants without any corresponding reduction in the advisory fees.
8 This resulted in inflated advisory fees. As also summarized by the same Wells Fargo SAI:

9 The Distributor may enter into selling agreements with one or more
10 selling agents ... under which such agents may receive compensation
11 for distribution-related services from the Distributor, including, but
12 not limited to, commissions or other payments to such agents based
13 on the average daily net assets of Fund shares attributable to their
14 customers. The Distributor may retain any portion of the total
15 distribution fee payable thereunder to compensate it for distribution-
16 related services provided by it or to reimburse it for other distribution-
17 related expenses.

18 *Id.*

19 103. The SAI states wrongful conduct, including their willful disregard of the
20 opportunities for the Funds paid to the affiliated brokers, constitutes a breach of fiduciary duty to
21 Wells Fargo Funds' investors.

22 **Improper Use of Soft Dollars**

23 104. Investment Advisers routinely pay broker commissions on the purchase and sale of
24 fund securities, and such commissions may, under certain circumstances, properly be used to
25 purchase certain other services from brokers as well. Specifically, the Section 28(e) "safe harbor"
26 provision of the Securities Exchange Act carves out an exception to the rule that requires
27 investment management companies to obtain the best possible execution price for their trades.
28 Section 28(e) provides that a fund manager shall not be deemed to have breached his fiduciary

1 duties “solely by reason of his having caused the account to pay a . . . broker . . . in excess of the
2 amount of commission another . . . broker . . . would have charged for effecting that transaction, if
3 such person determined in good faith that such amount of commission was reasonable in relation to
4 the value of the brokerage and research services provided.” 15 U.S.C. §78bb(e)(1) (Emphasis
5 added). In other words, funds are allowed to include in “commissions” payment for not only
6 purchase and sales execution, but also for specified services, which the SEC has defined to include
7 any service that “provides lawful and appropriate assistance to [the] money manager in performance
8 of his investment decision making responsibilities.” The commission amounts charged by
9 brokerages to investment advisers in excess of the purchase and sale charges are known within the
10 industry as “soft dollars.”

11 105. The Investment Adviser Defendants went far beyond what is permitted by the
12 Section 28(e) safe harbor by routinely using soft dollars as excessive commissions to pay brokers to
13 push clients into the Shelf-Space Funds. The Investment Adviser Defendants used soft dollars to
14 pay for these excessive commissions that served as kickbacks to brokers, thus charging the Wells
15 Fargo Fund investors for costs not covered by the Section 28(e) safe harbor and that were in
16 violation of the Investment Advisers’ fiduciary duties.

17 106. As a result, the amounts paid for so-called “research” were expenses that were
18 unnecessary for management of the Wells Fargo Funds’ investments because the real purpose of
19 such payments was to improperly increase sales of shares of the Wells Fargo Funds. Alternatively,
20 if such fees were necessary, the Investment Advisers were improperly inflating their management
21 fees for “research” that had already been conducted and was not effective.

22 **The Improper Use of Excessive Commissions and Directed Brokerage Business**

23 107. The Investment Adviser Defendants and Distributor Defendants used excessive
24 commissions and directed brokerage business to compensate broker/dealers who steered their
25 clients into Wells Fargo Funds as part of quid pro quo Shelf-Space arrangements between Wells
26 Fargo and various brokerages. Such payments and directed brokerage payments were used to fund
27 sales contests and other undisclosed financial incentives to further push Wells Fargo Funds. These
28 incentives created an undisclosed conflict of interest and caused brokers to steer clients into Wells

1 Fargo Funds regardless of the Funds' investment quality relative to other investment alternatives
2 and to thereby breach their duties of loyalty.

3 108. In addition to corroding the broker-investor relationship, Defendants' misuse of
4 directed brokerage commissions to pay for the Shelf-Space arrangements decreased the
5 transparency of the Fund costs to advisers. Monies spent through directed brokerage do not show
6 up as expenses, but are merely reflected as a decrease in investors' returns. The opaqueness of this
7 form of payment also allowed the Investment Adviser and Distributor Defendants a way to
8 circumvent 12b-1 fee limits placed by the NASD.

9 109. By paying the excessive commissions and directing brokerage business to participate
10 in Shelf Space programs, the Investment Adviser Defendants and Distributor Defendant violated
11 Section 12 of the Investment Company Act, because such payments were not made pursuant to a
12 valid Rule 12b-1 plan.

13 **Actions Against Other Mutual Fund Advisers/Distributors/Affiliates**

14 110. In actions to date involving Massachusetts Financial Services, Co., Franklin
15 Templeton Distributors, Inc., Putnam Investment Management, LLC, American Funds Distributors,
16 Inc., OppenheimerFunds, Inc. and OppenheimerFunds Distributor, Inc., as well as PIMCO Funds'
17 PA Fund Management LLC, PEA Capital LLC and PA Distributors LLC, the SEC (along with other
18 regulators) has condemned the revenue sharing and directed brokerage practices at issue in this
19 Complaint, stating that they create insurmountable, undisclosed conflicts of interest in violation of
20 the securities laws.

21 111. As established in a recent Administrative Proceeding against Massachusetts
22 Financial Services, Inc. ("MFS") for similar practices complained of herein:

23 **MFS Did Not Adequately Disclose to MFS Shareholders that it**
24 **Allocated Fund Brokerage Commissions to Satisfy Strategic**
25 **Alliances.**

26 * * *

27 Specifically, Item 16(c) of the Form N-1A requires a description in
28 the SAI of "how the Fund will select brokers to effect securities

1 transactions for the Fund” and requires that “[i]f the Fund will
2 consider the receipt of products or services other than brokerage or
3 research services in selecting brokers, [the Fund should] specify those
4 products or services.”

5 * * *

6 **The SAIs did not adequately disclose to shareholders that MFS**
7 **had entered into bilateral arrangements in which it agreed to**
8 **allocate specific negotiated amounts of fund brokerage**
9 **commissions, subject to best execution, to broker/dealers for**
10 **“shelf space” or heightened visibility within their distribution**
11 **systems.**

12 See March 31, 2004 SEC Order Instituting Administrative and Cease-and-Desist Proceedings,
13 Making Findings and Imposing Remedial Sanctions against MFS, File No. 3-11450, *available at*
14 <http://www.sec.gov/litigation/admin/ia-2224.htm>. (Emphasis added.)

15 112. On September 15, 2004, mutual fund advisor PIMCO and its affiliates entered into a
16 settlement with the SEC. Similar to the allegations in this Complaint against Fidelity, the SEC
17 charged PIMCO entities with failing to disclose their use of directed brokerage to pay for “shelf
18 space” at brokerage firms. The SEC press release stated:

19 The Securities and Exchange Commission announced today a settled
20 enforcement action against the investment adviser, sub-adviser, and
21 principal underwriter and distributor for the PIMCO Funds Multi-
22 Manager Series funds (the PIMCO MMS Funds). The suit charges the
23 entities with **failing to disclose to the PIMCO MMS Funds’ Board**
24 **of Trustees and shareholders material facts and conflicts of**
25 **interest that arose from their use of directed brokerage on the**
26 **PIMCO MMS Funds’ portfolio transactions to pay for “shelf**
27 **space” arrangements with selected broker/dealers.**

28 * * *

1 Stephen M. Cutler, Director of the SEC's Division of Enforcement,
2 stated, "An investment adviser's undisclosed use of mutual fund
3 assets to defray the adviser's, or an affiliated distributor's, own
4 marketing expenses is a breach of the adviser's duty. Our action today
5 — like the action brought by the Commission against Massachusetts
6 Financial Services Company some six months ago — demonstrates
7 the Commission's resolve to ensure that mutual fund shareholders
8 know how their money is being spent."

9 See Press Release, U.S. Securities and Exchange Commission, SEC Charges PIMCO Entities with
10 Failing to Disclose Their Use of Directed Brokerage to Pay for Shelf Space at Brokerage Firms
11 (Sept. 15, 2004) (on file with author), *available at* <http://www.sec.gov/news/press/2004-130.htm>
12 (emphasis added).

13 113. On December 13, 2004, the SEC announced a settlement of charges against mutual
14 fund investment adviser Franklin Advisers, Inc. and Franklin Templeton Distributors (collectively
15 "Franklin") "alleging that Franklin, without proper disclosure, used fund assets to compensate
16 brokerage firms for recommending the Franklin Templeton mutual funds over others to their
17 clients." The SEC press release continued:

18 This practice is known as compensating brokerage firms for "shelf
19 space." As part of the settlement, Franklin agreed to pay \$1 in
20 disgorgement and a \$20 million penalty as well as undergo certain
21 compliance reforms.

22 * * *

23 The use of brokerage commissions to compensate brokerage firms for
24 marketing created a conflict of interest between FA and the funds
25 because FA benefited from the increased management fees resulting
26 from increased fund sales. Mutual funds that follow this practice of
27 using brokerage commissions for marketing have an incentive to do
28 their fund portfolio trading through brokerage firms that might not be

1 the best choice for fund shareholders. FA was required, but failed, to
2 disclose adequately the arrangements to the boards so they could
3 approve this use of fund assets, and to shareholders so they could be
4 informed when making investment decisions.

5 See Press Release, U.S. Securities and Exchange Commission, Franklin Advisers and Franklin
6 Templeton Distributors to Pay \$20 Million to Settle Charges Related to Use of Brokerage
7 Commissions to Pay for Shelf Space (Dec. 13, 2004) (on file with author), *available at*
8 <http://www.sec.gov/news/press/2004-168.htm>.

9 114. Further illustrating that the NASD views directed brokerage payments as improper, a
10 February 16, 2005 press release regarding the NASD's filing of a complaint against American
11 Funds Distributors states:

12 American Funds Distributors, Inc. [] violat[ed] NASD's Anti-
13 Reciprocal Rule by directing approximately \$100 million in
14 brokerage commissions over a three-year period to about 50
15 brokerage firms that were the top sellers of American Funds.

16 * * *

17 The commissions were payments for executing trades for the
18 American Funds' portfolio that were directed to the brokerage firms
19 as additional compensation for past sales of American Funds, and to
20 ensure that American Funds would continue to receive preferential
21 treatment at those firms.

22 * * *

23 "Prior cases in this area have focused on retail firms that received
24 directed brokerage payments from mutual fund companies in
25 exchange for giving preferential treatment to their funds," said NASD
26 Vice Chairman Mary L. Schapiro. *"Today's action makes clear that*
27 *it is just as impermissible to offer and make such payments as it is to*
28 *receive them."*

1 See News Release, NASD Press Room, NASD Charges American Fund Distributors, Inc. With
2 Arranging \$100 Million in Directed Brokerage Commissions for Top Sellers of American Funds
3 (Feb. 16, 2005) (on file with author), *available at* [http://www.nasd.com/web/idcplg?IdcService=](http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_013358)
4 [SS_GET_PAGE&ssDocName=NASDW_013358](http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_013358) (emphasis added).

5 115. In the September 14, 2005 settlement with the SEC of charges against mutual fund
6 investment adviser OppenheimerFunds, Inc. (“OFI”) and OppenheimerFunds Distributor, Inc.
7 (“OFDI”) (collectively, “Oppenheimer”), which alleged that Oppenheimer used brokerage
8 commissions on trades executed for Oppenheimer funds to reduce the revenue sharing obligations it
9 had with certain broker/dealers, the SEC noted that:

10 By using Fund assets in the form of brokerage commissions, OFI and
11 OFDI avoided having to expend their own assets to meet revenue
12 sharing obligations ... [Oppenheimer] failed to inform the Funds’
13 shareholders in the Funds’ prospectuses or Statements of Additional
14 Information (“SAIs”) that OFI and OFDI used the Funds’ assets to
15 reduce OFDI’s revenue sharing obligations.

16 * * *

17 OFI, as a fiduciary, had a duty to disclose conflicts of interest to the
18 Fund Boards and to disclose material information that would expose
19 the actual and potential conflicts of interest it faced relating to the use
20 of Fund assets in connection with revenue sharing arrangements.

21 See September 14, 2005 SEC Order Instituting Cease-and-Desist Proceedings, Making Findings,
22 and Imposing Remedial Sanctions against Oppenheimer Funds Inc., File No. 3-12038
23 (“Oppenheimer SEC Order”), *available at* <http://www.sec.gov/litigation/admin/34-52420.pdf>
24 (emphasis added).

25 116. The actions of the Wells Fargo Defendants described herein are no different from
26 those already condemned by the SEC and others.
27
28

1 Defendants' Wrongdoing Directly Impacted Plaintiff and the Class

2 117. A mutual fund company is very different from a traditional corporation, in that a
3 mutual fund is:

4 a "mere shell," a pool of assets consisting mostly of portfolio
5 securities that belongs to the individual investors holding shares in
6 the fund. The management of this asset pool is largely in the hands of
7 an investment adviser, an independent entity which generally
8 organizes the fund and provides it with investment advice,
9 management services, and office space and staff....

10 *Moses v. Black*, No. 78-1913, 1981 U.S. Dist. LEXIS 10870, at *8 (S.D.N.Y. Feb. 3, 1981)
11 (emphasis added).

12 118. Unlike the situation in regard to a traditional corporation, if those in charge of a
13 mutual fund engage in wrongful activities negatively impacting the mutual fund, investors are
14 directly impacted because a mutual fund is nothing more than a collection of the investors' money.
15 When a cost is imposed on a traditional corporation, that cost impacts the NAV of the corporation,
16 but it does not necessarily impact the market price of the corporation's shares. Thus, there is no
17 direct impact of those costs on the shareholder. In contrast, costs imposed on a mutual fund directly
18 reduce the price at which the fund's shares are bought and sold, and do directly and immediately
19 impact fund shareholders.

20 119. Unlike a traditional corporation, mutual fund shares do not trade at a price set by a
21 public market. Rather, they are bought from the fund and sold back to the fund at NAV of the fund
22 per share. Open-end mutual funds such as the Wells Fargo Funds are required to issue "redeemable
23 securities," which are defined as "any security . . . under the terms of which the holder, upon its
24 presentation to the issuer . . . is entitled . . . to receive approximately his proportionate share of the
25 issuer's current net assets, or the cash equivalent thereof." 15 U.S.C. § 80a-2(a)(32). The value of
26 an investor's mutual fund is determined by subtracting a fund's liabilities from its assets to arrive at
27 the fund's NAV. The excessive fees and charges at issue here immediately reduced the Funds'
28

1 NAV per share, decreasing the amount at which each shareholder is entitled to redeem his or her
2 shares. This has a direct impact on shareholders.

3 120. The SEC has also acknowledged that the improper use of 12b-1 fees, directed
4 brokerage and revenue sharing harms fund shareholders directly, noting that:

5 Foregoing an opportunity to seek lower commission rates, to use
6 brokerage to pay custodial, transfer agency and other fund expenses,
7 or to obtain any available cash rebates, *is a real and meaningful cost*
8 *to fund shareholders.*

9 * * *

10 We believe that the way brokerage has been used to pay for
11 distribution involves unmanageable conflicts of interest that may
12 harm funds and fund shareholders.

13 Prohibition on the Use of Brokerage Commissions to Finance Distribution, SEC Release No. IC-
14 26356, 2004 SEC LEXIS 418, at *20-21 (Feb. 24, 2004) (emphasis added).

15 **The Excessive Fees Charged Are Material**

16 121. Although the various fees charged mutual fund investors may seem small per each
17 individual investor, mutual funds are long-term investment vehicles, whose compounded expenses
18 can have a significant impact on returns. Approximately 98% of mutual fund shareholders say their
19 investments constitute long-term savings and about 77% cite retirement savings as their primary
20 financial goal. David J. Carter, *Mutual Fund Board and Shareholder Action, Villanova Journal of*
21 *Law and Investment Management*, Vol. 3, No.1, pg. 8.

22 122. Arthur Levitt, past Chairman of the SEC, has observed this and is critical of what he
23 calls the "tyranny of compounding high costs":

24 Instinct tells me that many investors would be shocked to know how
25 seemingly small fees can, over time, create such drastic erosion in
26 returns ... In the years ahead, what will mutual fund investors say if
27
28

1 they realize too late their returns have fallen hard under the weight of
2 compounding fees?

3 Arthur Levitt, Jr., Inaugural address: Costs Paid with Other People's Money, Address at Fordham
4 University School of Law (Nov. 3, 2000), in 6 Fordham J. Corp. & Fin. L. 261, 267 (2000).

5 123. As noted by Representative Richard Baker (R-La.), the chairman of the House
6 subcommittee on capital markets, "The majority of investors work 40 to 60 hours a week, check off
7 a box and send their money into a black hole ... With more unsophisticated people involved in this
8 market than ever, we need better disclosure." Neil Weinberg and Emily Lambert, The Great Fund
9 Failure, Forbes.com, September 15, 2003, [http://www.forbes.com/personalfinance/retirement/
10 forbes/2003/0915/176.html](http://www.forbes.com/personalfinance/retirement/forbes/2003/0915/176.html). The fees will differ among investors because the Fund offers multiple
11 classes of shares. Each Class represents a pro rata interest in the Fund but is subject to different
12 expenses. The fees essentially get passed through to the investor in varying amounts depending on
13 which class of share he or she is invested in.

14 **CLASS ACTION ALLEGATIONS**

15 124. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
16 Procedure 23(a) and (b)(3) on behalf of a class of all persons or entities who held shares or like
17 interests in any of the Shelf-Space Funds between June 30, 2000 and June 8, 2005, inclusive, and
18 who were damaged thereby. Excluded from the class are Defendants, members of their immediate
19 families and their legal representatives, heirs, successors, or assigns and any entity in which
20 Defendants have or had a controlling interest (the "Class").

21 125. The Class is divided into the following subclasses:

22
23 The Purchasers Subclass: This Class includes all persons or entities
24 who purchased shares or like interests of any of the Shelf-Space
25 Funds at any time during the Class Period (the "Purchasers
26 Subclass").

1 The Holders Subclass: This subclass includes all persons or entities
2 who held shares or like interests of any of the Wells Fargo Funds at
3 any time during the Class Period (the "Holders Subclass").

4 126. The members of the Class are so numerous that joinder of all members is
5 impracticable. While the exact number of the Class members is unknown to Plaintiff at this time
6 and can only be ascertained through appropriate discovery, Plaintiff believes that there are
7 thousands of members in the proposed class. Record owners and other members of the Class may
8 be identified from records maintained by the Shelf-Space Funds and may be notified of the
9 pendency of this action by mail, using a form of notice similar to that customarily used in securities
10 class actions. Plaintiff's claims are typical of the claims of the members of the Class as all members
11 of the Class are similarly affected by Defendants' wrongful conduct in violation of federal securities
12 laws that is complained of herein.

13 127. Common questions of law and fact exist as to all members of the Class and
14 predominate over any questions solely affecting individual members of the Class. Among the
15 questions of law and fact common to the Class are:

16 128. Whether the federal securities laws were violated by Defendants' acts as alleged
17 herein; and

18 129. To what extent the members of the Class have sustained damages and the proper
19 measure of such damages.

20 130. A class action is superior to all other available methods for the fair and efficient
21 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
22 damages suffered by individual Class members may be relatively small, the expense and burden of
23 individual litigation make it virtually impossible for members of the Class to individually redress
24 the wrongs done to them. There will be no difficulty in the management of this action as a class
25 action.

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- (a) that the Investment Advisers to the Shelf-Space Funds authorized the payment from fund assets of excessive commissions to broker/dealers in exchange for preferential marketing services and that such payments were in breach of their fiduciary duties, in violation of Section 12(b) of the Investment Company Act, and unprotected by any "safe harbor";
- (b) that the Investment Advisers to the Shelf-Space Funds directed brokerage payments to firms that favored the Shelf-Space Funds, which was a form of marketing that was not disclosed in or authorized by the Funds Rule 12b-1 plans;
- (c) that the Shelf-Space Funds' Rule 12b-1 plans were not in compliance with Rule 12b-1, and that payments made pursuant to the plans were in violation of Section 12 of the Investment Company Act because, among other reasons, the plans were not properly evaluated by the Shelf-Space Funds' directors and trustees and there was not a reasonable likelihood that the plans would benefit the company and its shareholders;
- (d) that by paying brokers to aggressively steer their clients to the Shelf-Space Funds, the Investment Advisers to the Shelf-Space Funds were knowingly aiding and abetting a breaches of fiduciary duty, and profiting from the brokers' improper conduct;
- (e) that any economies of scale achieved by marketing of the Shelf-Space Funds to new investors were not passed on to the Shelf-Space Funds investors; on the contrary, as the Shelf-Space Funds grew, fees charged to the Shelf-Space Funds investors continued to increase; and
- (f) that the Investment Advisers to the Shelf-Space Funds improperly used soft dollars and excessive commissions, paid from the Shelf-Space Funds assets, to pay for overhead expenses the cost of which should have been borne by the Investment Advisers to the Shelf-Space Funds and not the Shelf-Space Funds investors.

1 (g) Members of the Purchasers Subclass have sustained damages due to Wells
2 Fargo's violations.

3 136. At the time they purchased the Shelf-Space Funds shares traceable to the defective
4 Prospectuses, members of the Purchasers Subclass were without knowledge of the facts concerning
5 the material omissions alleged herein and could not reasonably have possessed such knowledge.
6 This claim was brought within the applicable statute of limitations.

7 **COUNT II**

8 **AGAINST ADVISER DEFENDANTS AND TRUSTEE DEFENDANTS**
9 **FOR VIOLATIONS OF SECTION 15 OF THE SECURITIES ACT**

10 137. Plaintiff repeat and reallege each and every allegation contained above, except that
11 for purposes of this claim, Plaintiff expressly excludes and disclaims any allegation that could be
12 construed as alleging fraud or intentional or reckless misconduct.

13 138. This claim is brought pursuant to Section 15 of the Securities Act against Wells
14 Fargo as control persons of the Shelf-Space Funds. It is appropriate to treat these Defendants as a
15 group for pleading purposes and to presume that the false, misleading, and incomplete information
16 conveyed in the prospectuses, public filings, press releases and other publications are the collective
17 actions of Wells Fargo.

18 139. Each of the Adviser is liable under Section 15 of the Securities Act as set forth
19 herein.

20 140. Each of Defendants was a "control person" of the Adviser Defendants within the
21 meaning of Section 15 of the Securities Act, by virtue of its position of operational control and/or
22 authority over the Wells Fargo Shelf-Space Funds. They, directly and indirectly, had and exercised
23 the power and authority to cause the Wells Fargo Advisor to engage in the wrongful conduct
24 complained of herein. Wells Fargo Investment Advisers and Trustees issued, caused to be issued,
25 and participated in the issuance of materially false and misleading statements in the prospectuses.

26 141. Pursuant to Section 15 of the Securities Act, by reason of the foregoing, Defendants
27 are liable to Plaintiff to the same extent as are the Adviser and Trustee Defendants for their primary
28 violations of Section 15 of the Securities Act.

1 securities. Under the circumstances, all purchasers of the Shelf-Space Funds during the Class
2 Period suffered similar injury through their purchase or acquisition of the Shelf-Space Funds at a
3 value that did not reflect the risks and costs of the continuing course of conduct alleged herein, and
4 a presumption of reliance applies.

5 **COUNT IV**

6 **AGAINST ALL DEFENDANTS FOR VIOLATION OF SECTION 10(b)**
7 **OF THE EXCHANGE ACT AND RULE 10B-5 PROMULGATED THEREUNDER**

8 145. Plaintiff repeats and realleges each and every allegation contained above as if fully
9 set forth herein except for claims brought pursuant to the Securities Act.

10 146. During the Class Period, each of the Defendants carried out a plan, scheme and
11 course of conduct which was intended to and, throughout the Class Period, did deceive the investing
12 public, including Plaintiff and other Class members, as alleged herein and caused Plaintiff and other
13 members of the Class to purchase Shelf-Space Funds at distorted prices and to otherwise suffer
14 damages. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each
15 of them, took the actions set forth herein.

16 147. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
17 statements of material fact and/or omitted to state material facts necessary to make the statements
18 not misleading; and (iii) engaged in acts, practices, and a course of conduct which operated as a
19 fraud and deceit upon the purchasers of the Shelf-Space Funds, including Plaintiff and other
20 members of the Class, in an effort to enrich themselves through undisclosed manipulative tactics by
21 which they wrongfully distorted the pricing of their securities in violation of Section 10(b) of the
22 Exchange Act and Rule 10b-5. All Defendants are sued as primary participants in the wrongful and
23 illegal conduct and scheme charged herein.

24 148. Defendants, individually and in concert, directly and indirectly, by the use, means or
25 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
26 continuous course of conduct to conceal adverse material information about the Shelf-Space Funds'
27 operations, as specified herein.

28

1 149. Defendants employed devices and artifices to defraud and engaged in a course of
2 conduct and scheme as alleged herein to unlawfully manipulate and profit from excess fees and
3 commissions paid to them as a result of its undisclosed competitions to peddle the Shelf-Space
4 Funds and thereby engaged in transactions, practices and a course of conduct which operated as a
5 fraud and deceit upon Plaintiff and members of the Class.

6 150. Defendants had actual knowledge of the misrepresentations and omissions of
7 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
8 ascertain and to disclose such facts, even though such facts were available to them. Defendants'
9 material misrepresentations and/or omissions were done knowingly or recklessly and for the
10 purpose and effect of concealing the truth.

11 151. As a result of the dissemination of the materially false and misleading information
12 and failure to disclose material facts, as set forth above, the market prices of the Shelf-Space Funds
13 were distorted during the Class Period such that they did not reflect the risks and costs of the
14 continuing course of conduct alleged herein. In ignorance of the fact that market prices of the
15 shares were distorted, and relying directly or indirectly on the false and misleading statements made
16 by Defendants, or upon the integrity of the market in which the securities trade, and/or on the
17 absence of material adverse information that was known to or recklessly disregarded by Defendants
18 but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other
19 members of the Class acquired the shares or interest in the Shelf-Space Funds during the Class
20 Period at distorted prices and were damaged thereby.

21 152. At the time of said misrepresentations and omissions, Plaintiff and other members of
22 the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and other
23 members of the Class known the truth concerning the Shelf-Space Funds' operations, which
24 Defendants did not disclose, Plaintiff and other members of the Class would not have purchased or
25 otherwise acquired their shares or, if they had acquired such shares during the Class Period, they
26 would not have done so at the distorted prices which they paid.

27 153. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange
28 Act and Rule 10b-5 promulgated thereunder.

1 above and thereby engaged in transactions, practices and a course of conduct which operated as a
2 fraud and deceit upon members of the Purchasers Subclass.

3 160. The members of the Purchasers Subclass reasonably relied upon the integrity of the
4 market in which the Shelf-Space Funds traded.

5 161. Members of the Purchasers Subclass were ignorant of Wells Fargo's fraudulent
6 scheme. Had members of the Purchasers Subclass known of Wells Fargo' unlawful scheme, they
7 would not have purchased or otherwise acquired shares of the Shelf-Space Funds or if they had,
8 they would not have purchased or otherwise acquired them at the artificial prices they paid for such
9 securities.

10 162. Members of the Purchasers Subclass were injured because the risks that materialized
11 were risks of which they were unaware, which resulted from Wells Fargo' scheme to defraud as
12 alleged herein. Absent Wells Fargo' wrongful conduct, members of the Purchasers Subclass would
13 not have been injured.

14 163. By virtue of the foregoing, Wells Fargo violated Section 10(b) of the Exchange Act
15 and Rule 10b-5(a) and (c) promulgated thereunder.

16 164. As a direct and proximate result of Wells Fargo' wrongful conduct, members of the
17 Purchasers Subclass suffered damages in connection with their purchases and acquisitions of the
18 Shelf-Space Funds during the Class Period.

19 **COUNT VI**

20 **AGAINST ALL DEFENDANTS FOR VIOLATIONS OF**
21 **SECTION 20(a) OF THE EXCHANGE ACT**

22 165. Plaintiff repeats and realleges each and every allegation contained above as if fully
23 set forth herein except for claims brought pursuant to the Securities Act.

24 166. This claim is brought pursuant to Section 20(a) of the Exchange Act against
25 Defendants.

26 167. Each of Defendants acted as a controlling person of the Shelf-Space Funds within the
27 meaning of Section 20(a) of the Exchange Act for the reasons alleged herein. By virtue of their
28 operational and management control of the Shelf-Space Funds' respective businesses and

1 systematic involvement in the fraudulent scheme alleged herein, Defendants each had the power to
2 influence and control and did influence and control, directly or indirectly, the decision-making and
3 actions of the Shelf-Space Funds, including the content and dissemination of the various statements
4 which Plaintiff contends are false and misleading. Defendants had the ability to prevent the
5 issuance of the statements alleged to be false and misleading or could have caused such statements
6 to be corrected.

7 168. In particular, each of Defendants had direct and supervisory involvement in the
8 operations of the Shelf-Space Funds and, therefore, is presumed to have had the power to control or
9 influence the particular transaction giving rise to the securities violations as alleged herein, and to
10 have exercised same.

11 169. As set forth above, Defendants and the Shelf-Space Funds each violated Section
12 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
13 positions as controlling persons, Defendants are liable pursuant to Section 20(a) of the Exchange
14 Act. As a direct and proximate result of the Defendants' wrongful conduct, Plaintiff and other
15 members of the Class suffered damages in connection with their purchases of Shelf-Space Funds
16 securities during the Class Period.

17 **ICA CLAIMS**

18 **COUNT VII**

19 **AGAINST THE INVESTMENT ADVISER DEFENDANTS,
20 DISTRIBUTOR DEFENDANTS AND TRUSTEE DEFENDANTS
21 PURSUANT TO SECTION 36(B) OF THE ICA
22 DERIVATIVELY ON BEHALF THE PROPRIETARY FUNDS**

23 170. Plaintiff repeats and realleges each and every allegation contained above and
24 otherwise incorporates the allegations contained above.

25 171. This Count is brought by the Class against the Distributor Defendant and the
26 Investment Adviser Defendants for breach of their fiduciary duties as defined by Section 36(b) of
27 the Investment Company Act.

28 172. The Distributor Defendant and the Investment Adviser Defendants had a fiduciary
duty to the Funds and the Class with respect to the receipt of compensation for services and of

1 payments of a material nature made by and to the Distributor Defendant, the Investment Adviser
2 Defendants, and the Trustee/Officer Defendants.

3 173. The Distributor Defendant and the Investment Adviser Defendants violated Section
4 36(b) by improperly charging investors in the Funds purported Rule 12b-1 marketing fees.
5 Furthermore, these Defendants improperly failed to disclose to investors the conflicts of interest
6 regarding fee arrangements, which harmed Plaintiff. These Defendants caused the Funds and their
7 investors to pay inflated commissions (including soft dollar payments) and recouped from the Funds
8 and their investors, through management and other fees, the cost of any revenue sharing payments
9 purportedly made from adviser or distributor assets. These Defendants also charged excessive
10 advisory fees under 36(b) because they improperly inflated management fees and shifted expenses
11 from the Investment Advisers to the Funds investors without a corresponding reduction in their
12 management fees to reflect that shift in expense.

13 174. By reason of the conduct described above, the Distributor Defendants and the
14 Investment Adviser Defendants violated Section 36(b) of the Investment Company Act.

15 **COUNT VIII**

16 **ON BEHALF OF THE HOLDERS SUBCLASS AGAINST WELLS FARGO**
17 **(AS CONTROL PERSON OF THE DISTRIBUTOR DEFENDANT) AND THE**
18 **INVESTMENT ADVISER DEFENDANTS AND WELLS FARGO-AG (AS A CONTROL**
19 **PERSON OF THE INVESTMENT ADVISER DEFENDANTS) FOR VIOLATION OF**
20 **SECTION 48(A) OF THE ICA ON BEHALF OF THE HOLDERS SUBCLASS**

21 175. Plaintiff repeats and realleges each and every allegation contained above as if fully
22 set forth herein.

23 176. This Count is brought pursuant to Section 48(a) of the Investment Company Act
24 against Wells Fargo as control person of the Distributor Defendant and the Investment Adviser
25 Defendants as a control person of the Investment Adviser Defendants, who caused the Distributor
26 Defendant and the Investment Adviser Defendants to commit the violations of the Investment
27 Company Act alleged herein.

28 177. The Distributor Defendant and Investment Adviser Defendants are liable under
Section 36(b) of the Investment Company Act to the Funds as set forth herein.

1 178. Wells Fargo was a "control person" of the Distributor Defendant and the Investment
2 Adviser Defendants and caused the violations complained of herein. Princeton Services was a
3 "control person" of the Investment Adviser Defendants and caused the violations complained of
4 herein. By virtue of their positions of operational control and/or authority over the Investment
5 Adviser Defendants and/or Distributor Defendant – Wells Fargo, directly and indirectly, had the
6 power and authority, and exercised the same, to cause the Distributor Defendant and/or the
7 Investment Adviser Defendants to engage in the wrongful conduct complained of herein.

8 179. Pursuant to Section 48(a) of the Investment Company Act, by reason of the
9 foregoing, Wells Fargo is liable to Plaintiff to the same extent as are the Distributor Defendant and
10 the Investment Adviser Defendants for their primary violations of Section 36(b) of the Investment
11 Company Act.

12 180. By virtue of the foregoing, the Funds, Plaintiff and other Class members are entitled
13 to damages against Wells Fargo.

14 **COUNT IX**

15 **ON BEHALF OF THE HOLDERS SUBCLASS AGAINST THE INVESTMENT**
16 **ADVISER DEFENDANTS FOR BREACH OF FIDUCIARY DUTY**

17 181. Members of the Holders Subclass repeat and reallege each of the preceding
18 allegations as though fully set forth herein.

19 182. As Advisers to the Wells Fargo Funds, the Investment Adviser Defendants were
20 fiduciaries to members of the Holders Subclass and were required to act with the highest obligations
21 of good faith, loyalty, fair dealing, due care and candor.

22 183. As set forth above, the Investment Adviser Defendants breached their fiduciary
23 duties to members of the Holders Subclass.

24 184. Members of the Holders Subclass have been injured as a direct, proximate and
25 foreseeable result of such breach on the part of the Investment Adviser Defendants and have
26 suffered substantial damages.

1 185. Because the Investment Adviser Defendants acted with reckless and willful disregard
2 for the rights of members of the Holders Subclass, the Investment Adviser Defendants are liable for
3 punitive damages in an amount to be determined by the jury.

4 **COUNT X**

5 **CLAIM OF UNJUST ENRICHMENT AGAINST WELLS FARGO**
6 **ON BEHALF OF THE HOLDER SUBCLASS**

7 186. Plaintiff repeats and realleges each and every allegation contained above as if fully
8 set forth herein, except that Plaintiff does not repeat and reallege in this Count any allegations of
9 deception by Defendants. The wrongdoing complained of in this Count is limited to the wrongful
10 payment of excessive fees and commissions, without regard to any deception.

11 187. Defendants have encouraged members of the Holders Subclass to hold shares in the
12 Shelf-Space Funds based on its own bad faith, conflicts of interest and personal interests rather than
13 in furtherance of its fiduciary duties owed to members of the Holders Subclass. By receiving and
14 retaining the secret kickbacks alleged herein, Defendants have unjustly profited from their conflicts
15 of interest. Defendants may not in good conscience and equity retain the benefits from their
16 wrongful conduct and those profits belong instead to members of the Holders Subclass.
17 Accordingly, Wells Fargo must disgorge all amounts so wrongfully and unjustly obtained.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff pray for relief and judgment as follows:

20 (a) Determining that this action is a proper class action and appointing plaintiff
21 as Lead Plaintiff and his counsel as Lead Counsel for the Class and certifying him as Class
22 representative under Rule 23 of the Federal Rules of Civil Procedure;

23 (b) Awarding compensatory damages in favor of Plaintiff and the other Class
24 members against all Defendants, jointly and severally, for all damages sustained as a result of
25 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

26 (c) Awarding Plaintiff and other members of the Class rescission of their
27 contracts with the Advisers, including recovery of all fees which would otherwise apply and
28 recovery of all fees paid to the Advisers pursuant to such agreements;

1 (d) Awarding Plaintiff and the Class their reasonable costs and expenses incurred
2 in this action, including counsel fees and expert fees; and

3 (e) Such other and further relief as the Court may deem just and proper.

4 **JURY TRIAL DEMANDED**

5 Plaintiff hereby demands a trial by jury.

6
7 DATED: November 5, 2005

GUTRIDE SAFIER LLP

8 By: 

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Seth A. Safier (197427)

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13 Facsimile: (415) 876-4345

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14 **MILBERG WEISS BERSHAD & SCHULMAN
LLP**

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19 One Pennsylvania Plaza
20 New York, NY 10119-0165
21 Telephone: (212) 594-5300
22 Facsimile: (212) 868-1229

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24 Mark Levine
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26 New York, New York 10017
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28 Facsimile: (212) 490-2022

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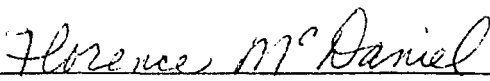
PLAINTIFF'S CERTIFICATION - Wells Fargo Mutual Fund Securities Litigation

McDaniel Family Trust dated 12/11/90 ("Plaintiff") declares under penalty of perjury, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the complaint and authorized its filing.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary, and Plaintiff is willing to serve as a lead plaintiff either individually or as part of a group, a lead plaintiff being a representative party who acts on behalf of other class members in directing the action. Plaintiff's transactions during the Class Period (June 30, 2000-June 8, 2005) are as set forth on the attached Schedule of Transactions.
4. Plaintiff's transactions during the Class Period (June 30, 2000-June 8, 2005) are as set forth on the attached Schedule of Transactions.
5. During the three years prior to the date of this Certification, Plaintiff has not sought to serve or served as a representative party for a class under the federal securities laws.
6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court. Plaintiff understands that this is not a claim form, and that Plaintiff's ability to share in any recovery as a member of the class is unaffected by Plaintiff's decision to serve as a representative party.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of October 2005.


Arthur McDaniel, Trustee


Florence McDaniel, Trustee

Schedule A

**Arthur & Florence McDaniel TTEES McDaniel Family Trust Transaction(s) in
Wells Fargo MUTUAL FUNDS**

Ticker		Purchase(s):		
		<u>Date</u>	<u>Shares</u>	<u>Price</u>
FKINX	Franklin Income Fund Class A	07/08/03	45,065.217	2.3000
MIGBX	Massachusetts Investstors Growth Fund Class B	10/03/00	2,393.490	20.8900
MIGBX	Massachusetts Investstors Growth Fund Class B	12/18/00	604.577	16.1400
MIGBX	Massachusetts Investstors Growth Fund Class B	09/10/03	519.174	14.2300
MFBBX	MFS BD Fund Class B	12/24/01	1,594.639	12.3100
MFBBX	MFS BD Fund Class B	01/03/02	1.823	12.3500
MFBBX	MFS BD Fund Class B	02/04/02	7.063	12.3600
MFBBX	MFS BD Fund Class B	03/04/02	7.292	12.4000
MFBBX	MFS BD Fund Class B	04/02/02	7.560	12.1000
MFBBX	MFS BD Fund Class B	05/02/02	7.544	12.2300
MFBBX	MFS BD Fund Class B	06/04/02	7.655	12.2700
MFBBX	MFS BD Fund Class B	07/02/02	7.785	12.1600
MFBBX	MFS BD Fund Class B	08/02/02	7.838	12.1000
MFBBX	MFS BD Fund Class B	09/04/02	7.752	12.2900
MFBBX	MFS BD Fund Class B	10/02/02	7.712	12.4400
MFBBX	MFS BD Fund Class B	11/04/02	7.736	12.2200
MFBBX	MFS BD Fund Class B	12/03/02	7.681	12.3400
MFBBX	MFS BD Fund Class B	01/03/03	7.413	12.6000
MFBBX	MFS BD Fund Class B	02/04/03	7.308	12.5900
MFBBX	MFS BD Fund Class B	03/04/03	7.100	12.7700
MFBBX	MFS BD Fund Class B	04/02/03	7.122	12.7600
MFBBX	MFS BD Fund Class B	05/02/03	7.024	12.9900
MFBBX	MFS BD Fund Class B	06/03/03	6.897	13.2600
MFBBX	MFS BD Fund Class B	07/02/03	6.782	13.2200

Ticker		Sales(s):		
		<u>Date</u>	<u>Shares</u>	<u>Price</u>
MIGBX	Massachusetts Investstors Growth Fund Class B	12/24/01	1,969.900	11.9600
MIGBX	Massachusetts Investstors Growth Fund Class B	12/24/01	1,969.900	11.9600
MIGBX	Massachusetts Investstors Growth Fund Class B	12/24/01	1,641.304	11.9600
MIGBX	Massachusetts Investstors Growth Fund Class B	03/07/05	517.908	11.2100
MIGBX	Massachusetts Investstors Growth Fund Class B	03/07/05	517.000	11.2100
MFBBX	MFS BD Fund Class B	09/08/03	576.000	12.7900
MFBBX	MFS BD Fund Class B	09/08/03	576.000	12.7900
MFBBX	MFS BD Fund Class B	09/08/03	577.626	12.7900

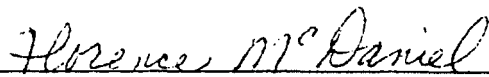
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VIA FAX

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MFBBX	MFS BD Fund Class B	11/04/02	7.736	12.2200
MFBBX	MFS BD Fund Class B	12/03/02	7.581	12.3400
MFBBX	MFS BD Fund Class B	01/03/03	7.413	12.6000
MFBBX	MFS BD Fund Class B	02/04/03	7.308	12.5900
MFBBX	MFS BD Fund Class B	03/04/03	7.100	12.7700
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