

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Yvonne Becker, Christopher Nobles, and
Rosa Ramirez,

Plaintiffs,

v.

Wells Fargo & Co.; Employee Benefit
Review Committee; Wells Fargo Bank,
National Association; and Galliard Capital
Management, Inc.,

Defendants.

Case No. 0:20-cv-02016 (DWF/BRT)

**DEFENDANTS' ANSWER TO THE
CORRECTED AMENDED CLASS ACTION COMPLAINT**

Defendants Wells Fargo & Company, the Employee Benefit Review Committee (“Benefit Committee”), Wells Fargo Bank, National Association (“WFBNA”) and Galliard Capital Management, Inc. (“Galliard” and, collectively, “Defendants”) hereby answer the Corrected Amended Class Action Complaint (the “Amended Complaint”) filed by Plaintiff Yvonne Becker (“Becker”), Christopher Nobles (“Nobles”), and Rosa Ramirez (“Ramirez”) (collectively, “Plaintiffs”) and state as follows:¹

I. NATURE OF THE ACTION²

1. Defendants deny the allegations contained in Paragraph 1 of the Amended Complaint, except admit that Plaintiffs purport to bring claims individually and as a class action under Sections 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(2), 29 U.S.C. § 1132(a)(3), on behalf of all participants and beneficiaries in the Wells Fargo & Company 401(k) Plan (the “Plan”), and that Plaintiffs are participants in the Plan.

2. Defendants deny the allegations contained in the first sentence of Paragraph 2 of the Amended Complaint. The remaining allegations contained in Paragraph 2 of the

¹ In violation of Federal Rule 8(d)—which requires that each allegation in an Amended Complaint be “simple, concise, and direct[,]”—Plaintiffs’ pleading is, in many instances, laced with argument and legal conclusions. Defendants have endeavored, where possible, to parse out and respond to those portions of Plaintiffs’ allegations that state facts, but have denied those factual allegations that are unduly intertwined with arguments and legal conclusions that are denied or as to which a responsive pleading is not warranted.

² Defendants have repeated the headings used by the Amended Complaint for organizational purposes only, but deny the truth of any purported facts included in the headings.

Amended Complaint state legal conclusions to which no responsive pleading is required and, to the extent a response is required, Defendants deny them.

3. The allegations contained in the first sentence of Paragraph 3 of the Amended Complaint state legal conclusions to which no responsive pleading is required and, to the extent a response is required, Defendants deny them. Defendants deny the allegations contained in the second sentence of Paragraph 3 of the Amended Complaint.

II. JURISDICTION AND VENUE

4. Defendants deny the allegations contained in Paragraph 4 of the Amended Complaint, except admit that Plaintiffs purport to invoke this Court's jurisdiction pursuant to 29 U.S.C. § 1132(e)(1).

5. The allegations contained in Paragraph 5 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

6. The allegations contained in Paragraph 6 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that Plaintiffs purport to lay venue in this Court pursuant to 29 U.S.C. § 1132(e)(2). On September 21, 2020, the United States District Court for the Northern District of California granted Defendants' motion to transfer this action to the United States District Court for the District of Minnesota pursuant to 28 U.S.C. § 1404(a) and, in particular, the Plan's forum selection clause (the "Transfer Order"). On April 1, 2020, the Ninth Circuit denied Becker's petition for a writ of mandamus seeking review of the Transfer Order.

7. The allegations contained in Paragraph 7 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that Wells Fargo conducts business in Minnesota.

8. Defendants admit that WFBNA conducts business in Minnesota. The remaining allegations contained in Paragraph 8 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

9. Defendants admit that the Benefit Committee conducts business in Minnesota. The remaining allegations contained in Paragraph 9 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

10. Defendants admit that Galliard conducts business in Minnesota. The remaining allegations contained in Paragraph 10 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

III. PARTIES

A. Plaintiffs

11. Defendants admit that Becker was an employee of Wells Fargo during certain periods between January 11, 1987 and December 5, 2013. Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 11 of the Amended Complaint.

12. Defendants admit that Nobles was an employee of Wells Fargo from October 31, 2005 to March 26, 2020. Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 12 of the Amended Complaint.

13. Defendants admit that Ramirez was an employee of Wells Fargo from May 26, 2015 to September 30, 2017. Defendants deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 13 of the Amended Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Amended Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Amended Complaint, except admit that: (i) the only Plan investment alternative targeted in the Amended Complaint that Becker invested in was the Wells Fargo/State Street Target Date Collective Investment Trust; (ii) the only Plan investment alternatives targeted in the Amended Complaint that Nobles invested in were the Wells Fargo/State Street Target Date Collective Investment Trusts, the Stable Value Fund and the Wells Fargo 100% Treasury Money Market Fund; and (iii) the only Plan investment alternative targeted in the Amended Complaint that Ramirez invested in was the Wells Fargo/State Street Target Date Collective Investment Trusts. Defendants deny the remaining allegations contained in Paragraph 15 of the Amended Complaint.

16. Defendants deny the allegations contained in paragraph 16 of the Amended Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Amended Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Amended Complaint.

B. Defendants

19. The allegations contained in Paragraph 19 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 19 of the Amended Complaint.

1) Defendant Wells Fargo & Co.

20. Defendants admit the allegations contained in Paragraph 20 of the Amended Complaint.

21. The allegations contained in Paragraph 21 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants state that the Plan document is the best evidence of its terms.

22. The allegations contained in Paragraph 22 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants state that the Plan document is the best evidence of its terms.

2) Employee Benefit Review Committee

23. Defendants admit the allegations contained in Paragraph 23 of the Amended Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Amended Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Amended Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Amended Complaint, except admit that the Benefit Committee has the responsibility and authority to select and monitor Plan investment alternatives.

27. Defendants deny the allegations contained in Paragraph 27 of the Amended Complaint.

28. The allegations contained in Paragraph 28 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 28 of the Amended Complaint.

29. The allegations contained in Paragraph 29 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 29 of the Amended Complaint.

3) Defendant Wells Fargo Bank, National Association

30. Defendants deny the allegations contained in Paragraph 30 of the Amended Complaint, except admit that the Plan's investment alternatives have included certain collective investment trusts established by WFBNA. The allegations contained in footnote 1 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in footnote 1 of the Amended Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of the Amended Complaint, except admit that WFBNA is the trustee for certain investment funds

established under the Wells Fargo Bank, N.A. Collective Investment Trust Funds for Employee Benefit Trusts in which the Plan was invested.

32. Defendants deny the allegations contained in Paragraph 32 of the Amended Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Amended Complaint, and state that the Wells Fargo Bank, N.A. Collective Investment Trust Funds for Employee Benefit Trusts is the best evidence of its contents.

34. The allegations contained in Paragraph 34 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 34 of the Amended Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Amended Complaint and state that the Wells Fargo Bank, N.A. Collective Investment Trust Funds for Employee Benefit Trusts is the best evidence of its contents.

36. Defendants deny the allegations contained in Paragraph 36 of the Amended Complaint and state that the Wells Fargo Bank, N.A. Collective Investment Trust Funds for Employee Benefit Trusts is the best evidence of its contents.

37. The allegations contained in Paragraph 37 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 37 of the Amended Complaint.

38. The allegations contained in Paragraph 38 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 38 of the Amended Complaint.

39. The allegations contained in Paragraph 39 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 39 of the Amended Complaint.

40. The allegations contained in Paragraph 40 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 40 of the Amended Complaint.

4) Defendant Galliard Capital Management, Inc.

41. Defendants admit that Galliard is a direct wholly-owned investment management subsidiary of Wells Fargo Asset Management Holdings, LLC, which is a wholly-owned indirect subsidiary of Wells Fargo & Company, and is a registered investment advisor.

42. Defendants deny the allegations contained in Paragraph 42 of the Amended Complaint, except admit that Galliard is the investment manager for the Stable Value Fund.

43. Defendants admit that Galliard is the investment manager for the Stable Value Fund. The remaining allegations contained in Paragraph 43 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

44. The allegations contained in Paragraph 44 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

45. Defendants admit that Galliard is the investment manager for the Stable Value Fund. The remaining allegations contained in Paragraph 45 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

IV. FACTS

A. The Plan

46. Defendants admit the allegations contained in the first sentence of Paragraph 46 of the Amended Complaint. The remaining allegations contained in Paragraph 46 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

47. In response to the allegations contained in Paragraph 47 of the Amended Complaint, Defendants state that the Plan is the best evidence of its contents.

48. In response to the allegations contained in Paragraph 48 of the Amended Complaint, Defendants state that the Plan is the best evidence of its contents.

49. In response to the allegations contained in Paragraph 49 of the Amended Complaint, Defendants state that the Plan is the best evidence of its contents.

50. In response to the allegations contained in Paragraph 50 of the Amended Complaint, Defendants state that the Plan is the best evidence of its contents.

51. In response to the allegations contained in Paragraph 51 of the Amended Complaint, Defendants state that the Plan is the best evidence of its contents.

52. In response to the allegations contained in Paragraph 52 of the Amended Complaint, Defendants state that the Plan's 2019 Form 5500, which sets forth the Plan's assets as of December 31, 2019, is the best evidence of its terms.

53. Defendants deny the allegations contained in Paragraph 53 of the Amended Complaint.

B. Defendants Violated ERISA Duties Owed to Plan Participants

54. The allegations contained in Paragraph 54 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 54 of the Amended Complaint.

55. The allegations contained in Paragraph 55 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 55 of the Amended Complaint.

56. The allegations contained in Paragraph 56 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 56 of the Amended Complaint.

57. The allegations contained in Paragraph 57 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is

required, Defendants deny the allegations contained in Paragraph 57 of the Amended Complaint.

58. The allegations contained in Paragraph 58 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 58 of the Amended Complaint.

59. The allegations contained in Paragraph 59 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 59 of the Amended Complaint.

60. Defendants deny the allegations contained in Paragraph 60 of the Amended Complaint.

61. Defendants deny the allegations contained in Paragraph 61 of the Amended Complaint, except admit that the Plan's investment alternatives have included the Wells Fargo/State Street Target Date Collective Investment Trusts, the Wells Fargo Stable Value Fund and the Wells Fargo 100% Treasury Money Market Fund. In addition, the Wells Fargo/Causeway International Value Collective Investment Trust, Wells Fargo Federated Total Return Bond Fund, and the Wells Fargo Emerging Growth Fund have been sub-funds within other Plan investment alternatives.

1) **The Committee Defendants Imprudently and Disloyally Disregarded Fiduciary Norms to Add and Retain Wells Fargo Investments for the Plan.**

62. The allegations contained in Paragraph 62 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 62 of the Amended Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Amended Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Amended Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Amended Complaint.

66. Defendants deny the allegations contained in Paragraph 66 of the Amended Complaint.

a) **The Target CITs**

67. Defendants admit that the Wells Fargo/State Street Target Date Collective Investment Trusts were “exclusively designed” for the Plan and were a Plan investment alternative beginning on December 9, 2016.

68. Defendants deny the allegations contained in Paragraph 68 of the Amended Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of the Amended Complaint, and state that the Wells Fargo Bank, N.A. Collective Investment Trust Funds for Employee Benefit Trusts is the best evidence of its contents.

70. Defendants deny the allegations contained in Paragraph 70 of the Amended Complaint.

71. The allegations contained in Paragraph 71 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 71 of the Amended Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of the Amended Complaint, except admit that the Wells Fargo/State Street Target Date Collective Investment Trusts were a Plan investment alternative beginning on December 9, 2016 and utilized the same equity and fixed income underlying funds and substantially similar glidepaths as the previous target date funds offered in the Plan, the Wells Fargo Dow Jones Target Date Funds, that had been available for many years.

73. Defendants deny the allegations contained in the first sentence of Paragraph 73 of the Amended Complaint. The remaining allegations in Paragraph 73 and footnote 2 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

74. Defendants deny the allegations contained in Paragraph 74 of the Amended Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of the Amended Complaint.

76. Defendants deny the allegations contained in Paragraph 76 of the Amended Complaint, except admit that the Wells Fargo/SSGA Global Equity Index Fund and the Wells Fargo/SSGA Global Bond Index Fund were funds in which the Wells Fargo/State Street Target Date Collective Investment Trusts had invested.

77. Defendants deny the allegations contained in Paragraph 77 of the Amended Complaint, except admit that the Wells Fargo/SSGA Global Bond Index Collective Investment Trust was established as of December 9, 2016.

78. Defendants deny the allegations contained in Paragraph 78 of the Amended Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Amended Complaint, except deny knowledge and information sufficient to form a belief as to the truth of the allegations related to an unidentified State Street Global Advisors target date suite.

80. Defendants deny the allegations contained in Paragraph 80 of the Amended Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of the Amended Complaint.

82. The allegations contained in Paragraph 82 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is

required, Defendants deny the allegations contained in Paragraph 82 of the Amended Complaint.

83. The allegations contained in Paragraph 83 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants state that the Morningstar Lifetime Conservative Index was the benchmark for the Wells Fargo/State Street Target Date Collective Investment Trusts.

84. Defendants deny the allegations contained in Paragraph 84 of the Amended Complaint.

85. Defendants deny the allegations contained in Paragraph 85 of the Amended Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of the Amended Complaint.

b) Wells Fargo/Causeway International Value Fund

87. Defendants deny the allegations contained in Paragraph 87 of the Amended Complaint, except admit that the Plan's investment alternatives include, among others, the International Equity Fund, which is a multimanager investment fund.

88. Defendants deny the allegations contained in Paragraph 88 of the Amended Complaint, except admit that the International Equity Fund is a multimanager investment fund and one of the managed funds within the International Equity Fund was the Wells Fargo/Causeway International Value Collective Investment Trust.

89. Defendants deny the allegations contained in Paragraph 89 of the Amended Complaint, except admit that the Benefit Committee has the responsibility and authority to select the Plan's investments.

90. Defendants deny the allegations contained in Paragraph 90 of the Amended Complaint.

91. Defendants deny the allegations contained in Paragraph 91 of the Amended Complaint, except admit that the Wells Fargo/Causeway International Value Collective Investment Trust is a collective investment trust, and state that the Wells Fargo Bank, N.A. Collective Investment Trust Funds for Employee Benefit Trusts is the best evidence of its contents.

92. The allegations contained in Paragraph 92 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 92 of the Amended Complaint.

93. Defendants deny the allegations contained in Paragraph 93 of the Amended Complaint, except admit that Causeway International became a sub-advisor to the Wells Fargo/Causeway International Value Collective Investment Trust in September 2014.

94. Defendants deny the allegations contained in Paragraph 94 of the Amended Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of the Amended Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of the Amended Complaint.

97. The allegations contained in Paragraph 97 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 97 of the Amended Complaint.

98. Defendants deny the allegations contained in Paragraph 98 of the Amended Complaint.

99. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Amended Complaint, and therefore deny the allegations contained in Paragraph 99 of the Amended Complaint.

100. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Amended Complaint, and therefore deny the allegations contained in Paragraph 100 of the Amended Complaint.

101. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101, and therefore deny the allegations contained in Paragraph 101 of the Amended Complaint.

102. Defendants deny the allegations contained in Paragraph 102 of the Amended Complaint, except admit that the expense ratio for the Wells Fargo/Causeway International Value Collective Investment Trust was .56% in 2017.

103. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103, and therefore deny the allegations contained in Paragraph 103 of the Amended Complaint.

104. Defendants deny the allegations contained in Paragraph 104 of the Amended Complaint.

105. Defendants deny the allegations contained in Paragraph 105 of the Amended Complaint.

106. The allegations contained in the first sentence of Paragraph 106 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in the first sentence of Paragraph 106, except admit that the MSCI EAFE Index was the benchmark for the Wells Fargo/Causeway International Value Collective Investment Trust. Defendants deny the remaining allegations contained in Paragraph 106 of the Amended Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations related to the Causeway International Separate Account, and therefore deny those allegations as well.

107. Defendants deny the allegations contained in Paragraph 107 of the Amended Complaint.

108. Defendants deny the allegations contained in Paragraph 108 of the Amended Complaint.

109. Defendants deny the allegations contained in Paragraph 109 of the Amended Complaint.

c) **Wells Fargo Treasury Money Market Fund**

110. Defendants deny the allegations contained in Paragraph 110 of the Amended Complaint in that it suggests that money market funds have no purpose other than that stated in Paragraph 110 of the Amended Complaint.

111. Defendants deny the allegations contained in Paragraph 111 of the Amended Complaint, except admit that one of the Plan's investment alternatives has been the Wells Fargo 100% Treasury Money Market Fund.

112. The allegations contained in Paragraph 112 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in in the first sentence of Paragraph 112, except admit that the FTSE 3-month Treasury Bill index was the benchmark for the Wells Fargo 100% Treasury Money Market Fund.

113. Defendants deny the allegations contained in Paragraph 113 of the Amended Complaint.

114. Defendants deny the allegations contained in Paragraph 114 of the Amended Complaint.

115. Defendants deny the allegations contained in Paragraph 115 of the Amended Complaint, except deny knowledge or information to form a belief as to the truth of the allegations concerning Plaintiffs' unsupported statistics regarding the inflation rate.

116. Defendants deny the allegations contained in Paragraph 116 and footnote 3 of the Amended Complaint, except admit that the 2016 ICI Study is the best evidence of its contents.

117. Defendants deny the allegations contained in Paragraph 117 of the Amended Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations related to the Federated Investors separate account referenced in Paragraph 117 of the Amended Complaint, and therefore deny those allegations as well.

118. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations related to the Fidelity Money Market Treasury Portfolio referenced in Paragraph 118 of the Amended Complaint, and therefore deny those allegations.

119. The allegations contained in Paragraph 119 of the Amended Complaint concerning the reasons why “Plan fiduciaries” selected the benchmark for the Money Market Fund state legal conclusions to which no responsive pleading is required. Defendants deny the remaining allegations contained in Paragraph 119 of the Amended Complaint, except admit that the Money Market Fund has been a Plan investment alternative and state that the 2016 Form 5500 for the Plan states the Plan had assets of \$501,546,607 invested in the Money Market Fund.

120. Defendants deny the allegations contained in Paragraph 120 of the Amended Complaint.

d) Wells Fargo Emerging Growth Fund

121. Defendants deny the allegations contained in Paragraph 121 of the Amended Complaint, except admit that the Plan's investment alternatives included the Small Cap Fund, a multimanager investment fund, and that one of the managed funds in the Small Cap Fund is the Wells Fargo Emerging Growth Fund.

122. Defendants deny the allegations contained in Paragraph 122 of the Amended Complaint, except admit that the Small Cap Fund is a multimanager investment fund and that one of the managed funds is the Wells Fargo Emerging Growth Fund.

123. Defendants deny the allegations contained in Paragraph 123 of the Amended Complaint, except admit that the Benefit Committee has the responsibility and authority to select the Plan's investments.

124. Defendants deny the allegations contained in Paragraph 124 of the Amended Complaint, except admit that the Small Cap Fund is a multimanager investment fund and that one of the managed funds is the Wells Fargo Emerging Growth Fund.

125. Defendants deny the allegations contained in Paragraph 125 of the Amended Complaint, except admit that the Small Cap Fund is a multimanager investment fund consisting of five managed funds.

126. Defendants deny the allegations contained in Paragraph 126 of the Amended Complaint, except admit that the Wells Fargo Emerging Growth Fund and the

Wellington Small Cap Growth Fund both employ investment strategies focused on small-capitalization companies.

127. Defendants deny the allegations contained in Paragraph 127 of the Amended Complaint, except admit that the Wells Fargo Emerging Growth Fund and the Wellington Small Cap Growth Fund both employ investment strategies focused on small-capitalization companies.

128. Defendants deny the allegations contained in Paragraph 128 of the Amended Complaint.

129. Defendants deny the allegations contained in Paragraph 129 of the Amended Complaint.

130. Defendants deny the allegations contained in Paragraph 130 of the Amended Complaint.

131. Defendants deny the allegations contained in Paragraph 131 of the Amended Complaint.

132. Defendants deny the allegations contained in Paragraph 132 of the Amended Complaint.

133. Defendants deny the allegations contained in Paragraph 133 of the Amended Complaint, except state that the 2016 ICI Study is the best evidence of its contents.

134. Defendants deny the allegations contained in Paragraph 134 of the Amended Complaint.

135. Defendants deny the allegations contained in Paragraph 135 of the Amended Complaint, except deny knowledge and information sufficient to form a belief as to the allegations related to the T. Rowe Price Institutional Small-Cap Stock Fund, the Triton Fund and the Vanguard Explorer Fund and therefore deny those allegations as well.

136. Defendants deny the allegations contained in Paragraph 136 of the Amended Complaint.

137. Defendants deny the allegations contained in Paragraph 137 of the Amended Complaint.

138. Defendants deny the allegations contained in Paragraph 138 of the Amended Complaint.

2) Defendants Engaged in Self-Dealing and Caused Many Prohibited Transactions in Violation of ERISA

139. The allegations contained in Paragraph 139 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 139 of the Amended Complaint.

140. The allegations contained in Paragraph 140 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 140 of the Amended Complaint.

141. The allegations contained in Paragraph 141 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 141 of the Amended Complaint.

a) **Wells Fargo Subsidiaries Take Fees from the Plan's Assets Held in the Target CITs and the WF Stable Value Fund**

142. Defendants deny the allegations contained in Paragraph 142 of the Amended Complaint, except admit that the Plan provides the Benefit Committee with the responsibility for selecting and removing investment funds, and the Plan investment alternatives have included the Wells Fargo Stable Value Fund and the Wells Fargo 100% Treasury Money Market Fund. In addition, through the International Equity Fund, the Plan invested in the Wells Fargo/Causeway International Value Collective Investment Trust; through the Global Bond Fund, the Plan invested in the Wells Fargo Federated Total Return Bond Fund; and through the Small Cap Fund, the Plan invested in the Emerging Growth Fund.

143. Defendants deny the allegations contained in Paragraph 143 of the Amended Complaint.

144. Defendants deny the allegations contained in Paragraph 144 of the Amended Complaint, except admit that the Stable Value Fund, which is a separate account managed by Galliard, has been a Plan investment alternative.

145. Defendants deny the allegations contained in Paragraph 145 of the Amended Complaint.

146. Defendants deny the allegations contained in Paragraph 146 of the Amended Complaint.

b) Wells Fargo Takes Impermissible Fees from Plan Assets Through the WF STIFs

147. The allegations contained in Paragraph 147 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 147 of the Amended Complaint.

148. Defendants deny the allegations contained in Paragraph 148 of the Amended Complaint, except state that the Wells Fargo Bank, N.A. Collective Investment Trust Funds for Employee Benefit Trusts is the best evidence of its contents.

149. Defendants deny the allegations contained in Paragraph 149 of the Amended Complaint, except state that the Wells Fargo Bank, N.A. Collective Investment Trust Funds for Employee Benefit Trusts is the best evidence of its contents.

150. Defendants deny the allegations contained in Paragraph 150 of the Amended Complaint.

151. Defendants deny the allegations contained in Paragraph 151 of the Amended Complaint.

152. The allegations contained in Paragraph 152 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that the Stable Value Fund is a Plan investment

alternative and otherwise deny the allegations contained in Paragraph 152 of the Amended Complaint.

153. Defendants deny the allegations contained in Paragraph 153 of the Amended Complaint, except admit that the Stable Value Fund has utilized the Stable Return Fund and the Blackrock Short Term Investment Fund as underlying investment contracts.

154. Defendants deny the allegations contained in Paragraph 154 of the Amended Complaint, except state that the Investment Management Agreement between Galliard and Wells Fargo, which explains Galliard's authority to make investment decisions for the separately managed Stable Value Fund, is the best evidence of its contents.

155. The allegations contained in Paragraph 155 of the Amended Complaint state legal conclusions to which no responsive pleading is required.

156. Defendants deny the allegations contained in Paragraph 156 of the Amended Complaint.

c) Wells Fargo Retains Float Income Earned on Plan Assets Held in the WF STIFs

157. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 157 of the Amended Complaint as to whether there is a universal definition of "float."

158. Defendants deny the allegations contained in Paragraph 158 of the Amended Complaint.

159. Defendants deny the allegations contained in Paragraph 159 of the Amended Complaint.

V. CLASS ALLEGATIONS

160. The allegations contained in Paragraph 160 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 160 of the Amended Complaint.

161. The allegations contained in Paragraph 161 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 161 of the Amended Complaint.

162. The allegations contained in Paragraph 162 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants admit that the Plan had a total of 340,353 participants at the beginning of Plan year 2019.

163. The allegations contained in Paragraphs 163 and 163(a) – (e) of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 163 and 163(a) – (e) of the Amended Complaint.

164. The allegations contained in Paragraph 164 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a

response is required, Defendants deny the allegations contained in Paragraph 164 of the Amended Complaint.

165. The allegations contained in Paragraph 165 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 165 of the Amended Complaint.

166. The allegations contained in Paragraph 166 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 166 of the Amended Complaint.

167. The allegations contained in Paragraph 167 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 167 of the Amended Complaint.

168. The allegations contained in Paragraph 168 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 168 of the Amended Complaint.

169. The allegations contained in Paragraphs 169 and 169(A)–(C) of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 169 and 169(A)–(C) of the Amended Complaint.

VI. CAUSES OF ACTION

Count I

Breach of Fiduciary Duties for Failing to Prudently and Loyal Select and Monitor Investments for the Plan in Violation of ERISA § 404, 29 U.S.C. § 1104 (Against Committee Defendants)

170. Defendants restate and incorporate their answers to paragraphs 1-169 as though fully set forth herein.

171. The allegations contained in Paragraph 171 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 171 of the Amended Complaint.

172. The allegations contained in Paragraph 172 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 172 of the Amended Complaint.

173. The allegations contained in Paragraph 173 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 173 of the Amended Complaint.

174. The allegations contained in Paragraph 174 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 174 of the Amended Complaint.

175. Defendants deny the allegations contained in Paragraphs 175 and 175(a)–(c) of the Amended Complaint.

176. Defendants deny the allegations contained in Paragraph 176 of the Amended Complaint.

177. The allegations contained in Paragraph 177 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 177 of the Amended Complaint.

178. The allegations contained in Paragraph 178 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 178 of the Amended Complaint.

179. The allegations contained in Paragraph 179 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 179 of the Amended Complaint.

180. The allegations contained in Paragraph 180 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 180 of the Amended Complaint.

181. The allegations contained in Paragraph 181 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a

response is required, Defendants deny the allegations contained in Paragraph 181 of the Amended Complaint.

Count II
Violations of ERISA § 406(a), 29 U.S.C. § 1106(a) for Engaging in Prohibited Transactions
(Against Committee Defendants, Wells Fargo Bank and Galliard)

182. Defendants restate and incorporate their answers to paragraphs 1-181 as though fully set forth herein.

183. The allegations contained in Paragraph 183 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 183 of the Amended Complaint.

184. Defendants deny the allegations contained in Paragraph 184 of the Amended Complaint.

185. Defendants deny the allegations contained in Paragraph 185 of the Amended Complaint.

186. Defendants deny the allegations contained in Paragraph 186 of the Amended Complaint.

187. The allegations contained in Paragraph 187 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 187 of the Amended Complaint.

188. Defendants deny the allegations contained in Paragraph 188 of the Amended Complaint.

189. The allegations contained in Paragraph 189 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 189 of the Amended Complaint.

190. The allegations contained in Paragraph 190 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 190 of the Amended Complaint.

191. The allegations contained in Paragraph 191 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 191 of the Amended Complaint.

192. The allegations contained in Paragraph 192 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 192 of the Amended Complaint.

193. The allegations contained in Paragraph 193 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 193 of the Amended Complaint.

Count III
Violations of ERISA § 406(b), 29 U.S.C. § 1106(b)
(Against Committee Defendants, Wells Fargo Bank and Galliard)

194. The allegations contained in Paragraph 194 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 194 of the Amended Complaint.

195. The allegations contained in Paragraph 195 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 195 of the Amended Complaint.

196. Defendants deny the allegations contained in Paragraph 196 of the Amended Complaint.

197. Defendants deny the allegations contained in Paragraph 197 of the Amended Complaint.

198. Defendants deny the allegations contained in Paragraph 198 of the Amended Complaint.

199. Defendants deny the allegations contained in Paragraph 199 of the Amended Complaint.

200. The allegations contained in Paragraph 200 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 200 of the Amended Complaint.

201. The allegations contained in Paragraph 201 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 201 of the Amended Complaint.

202. The allegations contained in Paragraph 202 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 202 of the Amended Complaint.

203. The allegations contained in Paragraph 203 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 203 of the Amended Complaint.

204. The allegations contained in Paragraph 204 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 204 of the Amended Complaint.

Count IV
Violations of ERISA § 406(a), 29 U.S.C. § 1106(a) for Engaging in Prohibited Transactions
(Against Defendant Wells Fargo & Co.)

205. Defendants restate and incorporate their answers to paragraphs 1-204 as though fully set forth herein.

206. The allegations contained in Paragraph 206 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 206 of the Amended Complaint.

207. The allegations contained in Paragraph 207 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 207 of the Amended Complaint.

208. Defendants deny the allegations contained in Paragraph 208 of the Amended Complaint.

209. Defendants deny the allegations contained in Paragraph 209 of the Amended Complaint.

210. Defendants deny the allegations contained in Paragraph 210 of the Amended Complaint.

211. Defendants deny the allegations contained in Paragraph 211 of the Amended Complaint.

212. Defendants deny the allegations contained in Paragraph 212 of the Amended Complaint.

213. Defendants deny the allegations contained in Paragraph 213 of the Amended Complaint.

214. Defendants deny the allegations contained in Paragraph 214 of the Amended Complaint.

215. Defendants deny the allegations contained in Paragraph 215 of the Amended Complaint.

216. Defendants deny the allegations contained in Paragraph 216 of the Amended Complaint.

217. The allegations contained in Paragraph 217 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 217 of the Amended Complaint.

218. The allegations contained in Paragraph 218 of the Amended Complaint state legal conclusions to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 218 of the Amended Complaint.

VII. PRAYER FOR RELIEF

Defendants deny the allegations set forth in the unnumbered “Prayer for Relief” paragraph in the Amended Complaint and Paragraphs (a) – (l) thereunder.

DEFENSES

1. The Amended Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs lack constitutional and/or statutory standing to bring some or all of their claims.
3. Plaintiffs’ claims are barred in whole or in part by the applicable statute of limitations and repose, including, but not limited to, ERISA § 413, 29 U.S.C. § 1113.

4. To the extent any action by Defendants otherwise could constitute a prohibited transaction under ERISA § 406, 29 U.S.C. § 1106, that action falls within the scope of one or more exemptions to ERISA § 406, including, but not limited to, the exemptions provided in and/or authorized by ERISA §§ 408(b)(2) and (b)(8), 29 U.S.C. §§ 1108(b)(2) and (b)(8), and Prohibited Transaction Exemption 77-3.

5. Plaintiffs' claims are barred in whole or in part by the Plan's contractual limitations period.

6. Plaintiffs have failed to exhaust the administrative remedies available under the Plan.

7. Plaintiffs' claims are barred by the doctrine of laches, waiver and/or estoppel.

8. The claims of Plaintiffs and/or any other members of the putative class who have executed a waiver or release of claims against any or all Defendants may be barred by that waiver or release of claims.

9. One or more of the Defendants are not, or were not, acting as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1102(21)(A), with respect to certain purported misconduct alleged by Plaintiffs.

10. To the extent any Defendant acted as a fiduciary with respect to the allegations in the Amended Complaint, each Defendant reasonably construed the terms of the Plan and acted consistently with the Plan and ERISA.

11. Any loss that Plaintiffs allege was not directly or proximately caused by the fault or wrongdoing of the Defendants or persons and entities over which they had responsibility or control.

12. Plaintiffs and Plan participants exercised independent control over their investment elections in the Plan, including over their selection of the funds at issue, and thus Plaintiffs' claims are barred under Section 404(c) of ERISA.

13. Plaintiffs' claims are barred, in whole or in part, because the Amended Complaint seeks relief that cannot be obtained under ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109 and 1132(a)(2), and seeks relief that is not "other appropriate equitable relief" available under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

14. Plaintiffs have failed to allege facts sufficient to entitle them to an award of attorneys' fees.

15. Plaintiffs' claims are barred in whole or in part because Plaintiffs' alleged injuries, if any, were the result of the conduct of persons and entities other than Defendants and for whom Defendants are not responsible and do not control.

16. Plaintiffs' claims are barred in so far as Defendants did not abuse their discretion in selecting and retaining the challenged investments.

Defendants reserve the right to modify their Answer and/or assert additional affirmative and other defenses should they become aware of additional defenses during the course of discovery, as set forth in Rule 8 of the Federal Rules of Civil Procedure.

WHEREFORE, having fully answered, Defendants pray that (i) the Amended Complaint be dismissed in its entirety, with prejudice; (ii) that judgment herein be rendered against Plaintiffs and in favor of Defendants; and (iii) that pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), all costs be assessed against Plaintiffs and attorneys' fees awarded to Defendants.

Dated: June 25, 2021

Respectfully submitted,

PROSKAUER ROSE LLP

By: /s/ Russell L. Hirschhorn

Russell L. Hirschhorn (admitted *pro hac vice*)

Myron D. Rumeld (admitted *pro hac vice*)

Joseph Clark (admitted *pro hac vice*)

Eleven Times Square

New York, New York 10036

Telephone: (212) 969-3286

rhirschhorn@proskauer.com

Tulio D. Chirinos (admitted *pro hac vice*)

PROSKAUER ROSE LLP

2255 Glades Road

Suite 421 Atrium

Boca Raton, FL 33431-7360

Telephone: (561) 995-4737

tchirinos@proskauer.com

Kyle Hansen (admitted *pro hac vice*)

PROSKAUER ROSE LLP

650 Poydras St, Suite 1800

New Orleans, LA 70130

Telephone: 504.310.4090

khansen@proskauer.com

Stephen P. Lucke
Kirsten Schubert
Nicholas J. Bullard
Andrew J. Holly
DORSEY & WHITNEY LLP
50 South 6th Street, Suite 1500
Minneapolis, Minnesota 55402
Telephone: (612) 343-7947
lucke.steve@dorsey.com
schubert.kirsten@dorsey.com
bullard.nick@dorsey.com
holly.andrew@dorsey.com

Counsel for Defendants