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UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

SABRINA PEREZ, TANNER TOM, ARIC VICKREY, ANDREJ SIMUNAC, and LILYANA AIWAS, individually and on behalf of all others similarly situated, Plaintiffs, v. WELLS FARGO BANK, N.A., and WELLS FARGO & COMPANY, Defendants.	Case No. 2:24-cv-4077 SRM **DECLARATION OF MICHAEL J. SCIMONE IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Judge: Serena R. Murillo Dept.: Courtroom 9B, 9th Floor Complaint Filed: 11/30/2023

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I, Michael J. Scimone, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner at Outten & Golden LLP ("O&G") and one of the primary attorneys responsible for this matter.

2. I make this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. I have personal knowledge of the matters set forth herein and would so testify if called.

Outten & Golden LLP

3. Outten & Golden is a 60+ attorney firm based in New York City, with offices in San Francisco and Washington D.C., that focuses on representing plaintiffs in all types of employment matters, including complex and class action litigation. Outten & Golden is widely recognized as one of the top plaintiff-side employment law firms in the country. In addition to my own experience as a class-action litigator in employment disputes, detailed below, the attorneys in my firm working on this file also have extensive experience in employment and class action litigation.

4. O&G is nationally recognized for its expertise in litigating complex class and collective actions, including wage and hour cases like this one. *See, e.g.*, *Strauch v. Computer Science Corp.*, 322 F.R.D. 157, 181 n.15 (D. Conn. 2017) (in wage and hour litigation, finding that O&G "adequately represent[s] the interests of the putative class"), motion to decertify denied, 2017 U.S. Dist. LEXIS 172655 (D. Conn. Oct. 18, 2017); *Walsh v. CorePower Yoga LLC*, No. 16 Civ. 05610,

2017 U.S. Dist. LEXIS 20974, at *24-25 (N.D. Cal. Feb. 14, 2017) (O&G has "a proven track record in the prosecution of class actions as they have successfully litigated and tried many major class action cases"); *Long v. HSBC USA Inc.*, No. 14 Civ. 6233, 2015 U.S. Dist. LEXIS 122655, at *23 (S.D.N.Y. Sept. 11, 2015) (O&G attorneys "have appeared in many major FLSA and state labor law cases"); *Puglisi v. TD Bank, N.A.*, No. 13 Civ. 637, 2015 U.S. Dist. LEXIS 15966, at *9 (E.D.N.Y. Feb. 9, 2015) ("O&G has substantial experience prosecuting and settling nationwide wage and hour class and collective actions, and are well-versed in wage and hour law and class action law and are well-qualified to represent the interests of the class."); *Perez v. Allstate Insurance Co.*, No. 11 Civ. 1812, 2014 U.S. Dist. LEXIS 130214, at *69 (E.D.N.Y. Sept. 16, 2014) (appointing O&G as class counsel and noting that "O&G has the requisite experience in handling class actions . . . , are well versed in the applicable law, and have the resources necessary to represent the NYLL Class fairly and adequately"); *Jacob v. Duane Reade, Inc.*, 289 F.R.D. 408, 423 (S.D.N.Y. 2013) (appointing O&G as class counsel because it has "experience in handling class actions, sufficient knowledge of the pertinent law, and sufficient resources to commit to this representation"), *aff'd*, 602 F. App'x 3 (2d Cir. 2015); *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 165 (S.D.N.Y. 2008) (granting class certification and appointing O&G as class counsel); *Torres v. Gristede's Operating Corp.*, No. 04 Civ. 3316, 2006 U.S. Dist.

LEXIS 74039 (S.D.N.Y. Sept. 29. 2006) (same); *cf. Houser v. Pritzker*, 28 F. Supp. 3d 222, 248, 255 (S.D.N.Y. 2014) (appointing O&G class counsel in nationwide Title VII litigation and noting that O&G "bring[s] to the case a wealth of class action litigation experience").

5. I am a partner in Outten & Golden's Class Action Practice Group. Nearly 100% of my practice consists of representing employees in class and collective actions challenging workplace practices. I joined Outten & Golden's New York office in 2009 as an Associate. I graduated from the City University of New York School of Law in 2009, where I participated in workers' rights litigation through the Immigrant and Refugee Rights Clinic and was a member of the New York City Law Review. Prior to law school, I worked as an organizer for UNITE HERE, an international union representing garment, laundry, and industrial workers in North America. I earned my B.A. in 2001 from Vassar College.

6. I have worked on multiple employment class action cases, including *Strauch v. Computer Sciences Corp.*, No. 14 Civ. 956, 2018 WL 4539660, at *1 (D. Conn. Sept. 21, 2018), where I was part of the trial team that obtained a jury verdict on behalf of approximately 1,000 computer support workers seeking unpaid overtime. Other representative cases I have litigated include *Perez v. Allstate Ins. Co.*, No. 11 Civ. 1812, 2019 WL 1568398, at *2 (E.D.N.Y. Mar. 29, 2019) ($3.95 million pre-trial settlement on behalf of no-fault insurance adjusters in overtime

misclassification case); *Przytula v. Bed Bath & Beyond, Inc.*, No. 17 Civ. 5124, ECF No. 123 (N.D. Ill. Jan. 29, 2019) ($8.5 million settlement on behalf of assistant managers); *Jacob v. Duane Reade, Inc.*, No. 11 Civ. 160, 2017 LEXIS 71663, at *1 (S.D.N.Y. May 5, 2017) ($13.5 million pre-trial settlement on behalf of assistant managers); *Douglin v. Greatbanc Trust Co.*, Inc., No. 14 Civ. 620 (S.D.N.Y. Apr. 24, 2017), ECF No. 103 ($4.75 million settlement in ERISA litigation alleging breach of fiduciary duty); and *Murphy v. LenderLive Network, Inc.*, No. 13 Civ. 3135 (D. Colo. Sept. 2, 2015), ECF No. 169 ($2.4 million pretrial settlement on behalf of mortgage underwriters in overtime misclassification case).

7. I have been selected as a Rising Star by Super Lawyers from 2015 through 2021, as a Super Lawyer since 2022, and as a Lawdragon 500 Leading Plaintiff Employment Lawyer since 2020. I am a member of the Sedona Conference's Working Group 1 and have participated in drafting Sedona Conference publications on electronic discovery and civil procedure. I am also an active member of the National Employment Lawyers' Association, and co-chair of its Department of Labor working group. I regularly guest lecture and teach CLE classes on class action litigation, discovery, and employment law and have authored numerous *amicus curiae* briefs in support of plaintiffs in employment law cases.

8. Three other attorneys at O&G primarily worked on this matter. Jahan

C. Sagafi is the Partner in charge of the O&G San Francisco office, where he represents employees in class actions asserting wage and hour, discrimination, and other claims. Mr. Sagafi also represents consumers challenging widespread deceptive business practices and discrimination, as well as plaintiffs in appeals of class actions in state and federal courts. Prior to joining Outten & Golden in 2013, he was a Partner at Lieff, Cabraser, Heimann & Bernstein. He graduated from Harvard College in 1994 and Harvard Law School in 2001 and clerked for the Honorable William W Schwarzer of the Northern District of California.

9. Adam Koshkin is an associate at O&G and joined the firm in 2018. He received a Juris Doctor degree from the University of California, Berkeley School of Law in 2017 and received his B.A., with honors, from Swarthmore College in 2011. Adam was admitted to the State Bar of California in 2018. He is also admitted to the bars of the U.S. District Courts for the Northern and Central Districts of California, the District of Colorado, and the U.S. Court of Appeals for the Ninth Circuit. From September 2017 to September 2018, he clerked for the Honorable Judith E. Levy of the U.S. District Court for the Eastern District of Michigan. Since joining O&G, he has been engaged primarily in prosecuting wage and hour class and collective actions and class action discrimination cases. He is a member of the California Employment Lawyers Association (CELA) and the National Employment Lawyers Association (NELA) and was named a Super

Lawyers Rising Star each year from 2023-2025.

10. Kaelyn Mahar, an Associate at O&G and a member of the firm's Class Action Practice Group, also worked on this matter. Prior to joining the firm in 2022, Ms. Mahar worked at Centro Legal de la Raza providing direct services to workers and representing employees in class action wage and hour cases. Before that, she clerked for the Honorable Christina Reiss of the United States District Court for the District of Vermont. Ms. Mahar received her B.A. from the University of Arizona in 2015, and her J.D., Order of the Coif, from the University of California, Berkeley School of Law in 2020. During law school, Ms. Mahar worked as a law clerk at Goldstein, Borgen, Dardarian & Ho and provided direct service to workers as a law clerk at Legal Aid at Work. Ms. Mahar also conducted research on the Title VII sexual harassment standard in conjunction with the National Women's Law Center's effort to provide practice guidance to pro bono practitioners. She is a member of CELA.

11. In addition the attorneys who worked on this matter, two experienced data scientists from O&G performed damages analyses: Mona Birjandi is the Principal Economist and Director of Data Analytics for O&G, and oversees an Economics and Data Analytics team of five people to perform litigation and discovery support in cases that involve large datasets. Ms. Birjandi has extensive experience leading data analysis through my prior roles as a Senior Economist at

Data for Decisions, LLC, as a Principal Economist and Data Scientist at Petco Health and Wellness Company, Inc., and as an Associate at Analysis Group. She holds a Ph.D. from Yale University in Economics; a Master's in Law and Diplomacy from The Fletcher School of Law and Diplomacy at Tufts University; and B.S. in Engineering.

12. Steven Singer is a Data Analyst who performs litigation support in cases that involve large datasets. He holds a degree in Mathematics from Northwestern University, and his work experience includes working as a senior data analyst, economic consultant, and researcher to develop quantitative analyses and models for legal matters and research reports.

Overview of Litigation and Settlement Negotiations

13. On November 30, 2023, Plaintiffs filed the Complaint, on February 4, 2024 a First Amended Complaint, on March 27, 2024 a Second Amended Complaint, and on September 4, 2025 a Third Amended Complaint to add Plaintiff Lilyana Aiwas and her Private Attorneys' General Act ("PAGA") claim.

14. The Parties litigated a motion to transfer between January and May 2024, a motion to amend between July and October 2024, and a motion for notice pursuant to 29 U.S.C. § 216(b) between March and November 2024.

15. The Parties engaged in substantial discovery during the early stages of this case, serving interrogatories and requests for production of documents. This

led to a robust exchange of documents despite the early procedural stage.

16. On November 5, 2024, the Court granted Plaintiffs' motion for notice pursuant to 29 U.S.C. § 216(b) and was prepared to send notice to all SPBs employed in the relevant period, including those who signed arbitration agreements, when the Parties entered into settlement agreements.

17. The Parties agreed to mediate with experienced wage and hour mediation Jeffrey A. Ross.

18. The Parties mediated on December 17, 2024 with Mr. Ross. These negotiations continued for several weeks after the date of the mediation, leading to a mediator's proposal, which both Parties accepted on January 31, 2025. The Parties negotiated a detailed term sheet, which they executed on March 14, 2025. The Parties finalized and fully executed the Settlement Agreement on September 4, 2025.

19. At all times, settlement negotiations were conducted on an arm's-length basis.

<u>Class Certification Requirements</u>

20. The proposed Classes are coextensive with the Classes proposed in the Second Amended and operative Third Amended Complaint.

21. Based on data provided by Wells Fargo, Plaintiffs estimate there are approximately 1,269 California Class Members and 190 Colorado Class Members.

22. Plaintiffs are adequate class representatives because they share a common interest with the Eligible SPBs they seek to represent, allege the same type of injury, and share an interest in vigorous prosecution. Plaintiffs have vigorously represented the interests of their fellow Class Members and devoted substantial time to the prosecution of this action.

Settlement Amount

23. Based on the terms of this settlement, each of the estimated 4,229 Eligible SPBs stand to recover a gross award of approximately $11,468.43 (or $104.68 gross per workweek based on 463,336 workweeks) and an estimated $7,137.28 net recovery (or $65.14 net per workweek).

Service Awards

24. Plaintiffs Perez, Simunac, Vickrey, and Tom request class representative Service Awards of up to $25,000 each. Plaintiff Aiwas requests a class representative Service Award of up to $10,000. Plaintiffs Gatti and Huang request Service Awards of up to $5,000. I believe that these proposed awards are reasonable based on the relevant factors.

25. Plaintiffs spent significant time providing information to assist Plaintiffs' Counsel with pre-suit investigation, providing Plaintiffs' Counsel with information throughout the litigation, submitting initial disclosures and declarations in support of the motion for court-authorized notice, responding to

discovery, and staying apprised of developments in the case.

26. Plaintiffs assumed considerable reputational risks with respect to their current and future employers by putting their names on a wage and hour complaint. Plaintiffs' names are prominently visible in public records. For example, a Google search of "Perez Wells Fargo" or "Simunac Wells Fargo" yields results on the first page describing this litigation.

Plaintiffs' Counsel's Exposure Analysis

27. Plaintiffs' Counsel, with the assistance of Ms. Birjandi and Mr. Singer, used Wells Fargo's payroll records to calculate actual damages for each Eligible SPB through August 30, 2024, the date of the data exchange for the December 2024 mediation, extrapolating through the date of mediation. Wells Fargo provided an updated headcount and number of workweeks to Plaintiffs' Counsel prior to filing this Motion. Using that data, Ms. Birjandi and Mr. Singer updated the damages to reflect the additional time covered by the Settlement. That analysis leads to the following estimated exposure for each claim:

28. ***Unpaid Overtime and Interest.*** Plaintiffs' Counsel estimate overtime damages based on 4 hours of unpaid overtime per Eligible Member, assuming they worked overtime in 77% of workweeks (to account for periods of vacations, leave, and other days off). Wells Fargo did not maintain records of Eligible SPBs' work hours or breaks, so Plaintiffs estimated the average overtime hours based on

interviews with Plaintiffs. Using these assumptions leads to a total exposure of approximately $114,998,438.07 in unpaid overtime wages plus interest.

29. ***FLSA Liquidated Damages and Colorado Penalties.*** Plaintiffs estimate that Putative Collective Members could have recovered $109,006,267.20 in liquidated damages (an amount equal to the unpaid wages for the workweeks in the relevant period) if Plaintiffs succeeded in rebutting Wells Fargo's good faith defense, that California Class Members could have recovered approximately $8,466,444.03 as minimum wage liquidated damages, and that Colorado Class Members could have recovered $9,598,008.55 in penalties or $14,398,262.08 if Plaintiffs succeeded in proving willfulness.

30. ***Meal and Rest Period Penalties.*** Labor Code § 226.7 and 512 provide a penalty of one hour of pay per missed break. Plaintiffs' Counsel estimate that SPBs missed one meal break per week and three rest breaks. Based on this estimate we estimate exposure for these claims at $23,572,942.77 (together with unpaid wages and interest, "compensatory damages" are $ $17,679,707.08 (the Settlement (minus the PAGA fund) represents 33.6% of compensatory damages $46,560,000 / $138,571,380.84 = 0.336)).

31. ***Waiting Time Penalties.*** Labor Code § 203 provides a penalty in the amount of thirty days' pay where an employer willfully fails to pay an employee all owed wages at the time of separation. Using an average 8-hour day, and the 30-

day penalty, Plaintiffs' Counsel estimate waiting time penalties as approximately $5,382,820.18.

32. In sum, the maximum total exposure for Eligible SPBs' wage and hour claims, excluding PAGA claims, is approximately $275,825,174.33. The Total Settlement Amount (minus the $1,940,000.00 PAGA Fund) thus represents a 16.8% ($46,560,000.00 / $275,825,174.33 = .168) recovery of the total maximum exposure.

33. The allocation formula, which awards 1.9 points per workweek to California Class Members who are currently employed or were terminated before March 27, 2021, 2 points per workweek to California Class Members who were terminated after March 27, 2021 (to account for their claims for late payment of wages upon termination), 2.5 points per workweek to Colorado Class Members, and 1 point per workweek to Putative Collective Members, reasonably reflects the available penalties based on state law.

<u>Plaintiffs' Counsel's Risk Analysis</u>

34. This litigation presented a number of risks in litigation, which are further described below.

35. ***Arbitration Agreements.*** More than 51% of Wells Fargo SPBs who are eligible to participate in this case are subject to individual arbitration agreements that foreclose participating in a class or collective action. Without a

settlement, these agreements, if enforced, would require each of them to file and litigate a time-consuming and potentially expensive individual claim against their employer. Each individual SPB compelled to arbitration would have to undertake document production, deposition testimony, and testifying at an arbitration hearing to recover on a claim with a relatively small dollar value.

36. In spite of this challenge, Plaintiffs obtained an order from the court that directed notice to these SPBs. Wells Fargo sought to appeal that order. At the time, courts' ability to direct notice to arbitration-bound workers was at issue was before the Ninth Circuit in *Harrington v. Cracker Barrel Old Country Store, Inc.*, 142 F.4th 678 (9th Cir. 2025) and there was a serious risk that *Harrington* would have required the Court to reconsider that aspect of its order. This would have resulted in more than 51% of Putative Collective Members never receiving notice of this action, meaning their claims would likely have expired. And even after *Harrington*, it is likely that half the Collective Members who might have opted in to the case would be compelled to arbitration instead. This would have offered Wells Fargo the opportunity to litigate those cases individually, swamping Plaintiffs with duplicative litigation and allowing Wells Fargo to argue that any difference in outcomes weighed against maintaining collective and class certification.

37. ***Trial.*** Had this case proceeded to trial on the merits, Plaintiffs would

face significant risks on liability and damages. Wells Fargo would likely have asserted that SPBs are administratively exempt citing the financial service industry regulation. See 29 C.F.R. § 541.203(b). Plaintiffs' Counsel's research resulted in decisions favoring and disfavoring Plaintiffs' position. Proving that SPBs are uniformly non-exempt would be further complicated by the fact that nearly 30% of SPBs earned more than the threshold necessary to qualify as a highly compensated employee. *See* 29 C.F.R. § 541.601.

38. ***Damages.*** Whether at trial or in prior motion practice – likely through expert testimony and data analysis – Wells Fargo would presumably dispute the number of hours SPBs worked. Without contemporaneous records (which Wells Fargo did not maintain), Plaintiffs would have to find a way to establish a "just and reasonable inference" about the hours worked by over 4,000 workers located in branches across the country – a daunting task – and defend that inference against Wells Fargo's attempts to rebut the damages inference or show that the damages issues were simply too individualized to warrant class treatment.

39. Based on their extensive experience, Plaintiffs' Counsel believe that the Settlement is fair, reasonable, and adequate.

<u>Extent of Discovery</u>

40. Plaintiffs engaged in settlement discussions only after formal and informal pre-mediation discovery, as described in paragraph 15 above.

41. Wells Fargo's data production included nearly 6,500 pages of documents, including relevant internal policies governing SPBs' work, job descriptions, job postings, performance evaluation metrics, training materials, software guides, compensation plans, commission structures, and robust payroll data. Wells Fargo also produced each of the named plaintiffs' personnel files.

42. Plaintiffs' Counsel met and conferred with Wells Fargo's counsel about deficiencies in its production and scheduled a deposition of Wells Fargo's corporate witness under Federal Rule of Civil Procedure 30(b)(6).

43. Plaintiffs also made a significant document production consisting of emails, text messages, and other relevant documents. These corroborated their testimony about the merits of their misclassification claims

<u>Settlement Administrator</u>

44. The Parties have selected Rust Consulting ("Rust") to serve as the Settlement Administrator following a competitive bidding process. Plaintiffs sought bids from three settlement administrators before selecting Rust, an administrator with significant expertise, skill and experience.

45. Plaintiffs' Counsel chose Rust because it was one of the lower-priced quotes and because Plaintiffs' Counsel has had positive experiences with them in previous cases.

46. I am confident that Rust's experience with large class action

settlements allowed them to make reasonable assumptions about the settlement to minimize the chances of unrealistically underbidding. My firm and I personally have extensive experience litigating and settling large class and collective actions similar to this one. Thus, I am in a good position to assess the reliability of Rust's bid and competency.

47. Rust estimates that their costs and expenses will not exceed $41,000, absent unforeseen circumstances. This estimate is consistent with similar work performed by settlement administrators on similar matters and amounts to just 0.084% of the Total Settlement Amount.

48. Because the method of notice is delineated in the Settlement Agreement, no new methods were proposed by the solicited administrators, allowing for an apples-to-apples comparison of which proposed settlement administrators were equipped to handle the notice and claims process as negotiated by the parties.

Plaintiffs' Counsel's Costs

49. O&G's costs to date are approximately $38,794.77. These costs represent legal research costs, costs associated with travel to and from court hearings, mediation fees, and the costs incurred by Rust Consulting, Inc. associated with preparing to send notice after the Court granted Plaintiffs' motion to send notice.

Exhibits

50. Attached as **Exhibit 1** is a true and correct copy of the Parties' Settlement Agreement and accompanying exhibits.

51. Attached as **Exhibit 2** is a true and correct copy of the Declaration of Sabrina Perez in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

52. Attached as **Exhibit 3** is a true and correct copy of the Declaration of Aric Vickrey in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

53. Attached as **Exhibit 4** is a true and correct copy of the Declaration of Tanner Tom in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

54. Attached as **Exhibit 5** is a true and correct copy of the Declaration of Andrej Simunac in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

55. Attached as **Exhibit 6** is a true and correct copy of the Declaration of Dawn Gatti in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

56. Attached as **Exhibit 7** is a true and correct copy of the Declaration of Yitao Huang in Support of Plaintiffs' Unopposed Motion for Preliminary Approval

of Class Action Settlement.

57. Attached as **Exhibit 8** is a true and correct copy of the proposed order granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

58. Attached as **Exhibit 9** is a true and correct copy of Rust Consulting, Inc.'s bid for the Settlement's administration.

59. Attached as **Exhibit 10** is a true and correct copy of the Declaration of Lilyana Aiwas in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

* * *

I declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct.

Dated: September 4, 2025

Respectfully submitted,

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