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9 **UNITED STATES DISTRICT COURT**

10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 EDWARD NADOLNY, individually
12 and on behalf of all others similarly
13 situated,

14 Plaintiff,

15 v.

16 WELLS FARGO & COMPANY; and
17 WELLS FARGO CLEARING
18 SERVICES, LLC d/b/a WELLS
19 FARGO ADVISORS.

20 Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

21
22
23 Plaintiff, on behalf of himself and the proposed Class and Subclass defined
24 herein, seeks redress for the harm caused by Defendants' conduct. In support of his
25 Complaint, Plaintiff alleges the following:
26
27

I. NATURE OF ACTION

1
2 1. This case concerns a simple ruse: instead of fulfilling its fiduciary
3 duties, contractual obligations, and a regulatory mandate to act only in the best
4 interests of its clients, Defendants implement a scheme whereby they use their
5 clients' cash balances to generate massive profits for themselves while
6 shortchanging their clients. In 2023 alone, Defendants generated nearly \$4 billion in
7 net interest.
8

9
10 2. Defendants' misconduct was extremely lucrative, but extremely
11 detrimental to their clients—in flagrant violation of their duties to their clients.
12

II. JURISDICTION AND VENUE

13
14 3. This Court has subject matter jurisdiction under the Class Action
15 Fairness Act, codified at 28 U.S.C. § 1332(d). Plaintiff is diverse from Defendants
16 and the amount in controversy exceeds five million dollars (\$5,000,000), exclusive
17 of interest and costs.
18

19 4. This Court has personal jurisdiction over Defendants because they
20 conduct substantial business in this district.
21

22 5. Venue is proper in this district under 28 U.S.C. § 1391.
23

III. PARTIES

A. Plaintiff

24
25 6. Plaintiff Edward Nadolny is a citizen of Hawaii who maintained a
26 retirement account that was managed on an advisory basis with Defendant Wells
27

1 Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors (“WFCS”). Mr.
2 Nadolny’s WFCS account (ending in 35) was opened in 2021 and was subsequently
3 closed.

4
5 7. For the qualified advisory account (ending in 35) that Mr. Nadolny
6 maintained, Wells Fargo was designated as an Investment Advisor. Mr. Nadolny’s
7 cash balances in his advisory account were swept into Wells Fargo’s Bank Deposit
8 Sweep Program (“BDSP”).
9

10 **B. Defendants**

11 8. Wells Fargo & Company (“WF”) is a Delaware corporation with its
12 principal place of business in San Francisco, California.
13

14 9. WF is “a leading financial services company that provides a diversified
15 set of banking, investment and mortgage products and services, [including] financial
16 planning, private banking, investment management, and fiduciary services.”¹
17

18 10. WF provides financial planning, private banking, investment
19 management, and fiduciary services through an “operating segment” titled “Wealth
20 and Investment Management.”²
21

22 11. Through its wholly owned subsidiaries, WF provides financial
23 consulting, wealth management, and advisory services to Plaintiff and other
24

25
26 ¹ Wells Fargo & Company, 2023 Annual Report (Form 10-K) at 1 (Feb. 20, 2023).

27 ² *Id.*

1 members of the proposed Class, and it substantially assisted, encouraged, directed,
2 participated in, and received the benefits of the wrongful conduct alleged herein that
3 was conducted primarily by WFCS.
4

5 12. WFCS is a Delaware limited liability company with its principal place
6 of business in St. Louis, Missouri.
7

8 13. WFCS is a registered broker-dealer and investment adviser with the
9 SEC and is a part of WF's Wealth and Investment Management operating segment.
10

11 14. WF owns 75% or more of WFCS and directs the management and
12 policies of the firm.
13

14 15. As used herein, the term "Wells Fargo" collectively refers to WF and
15 WFCS.
16

17 **IV. FACTUAL ALLEGATIONS**

18 16. Wells Fargo is a "premier financial services firm, serving investors
19 nationwide" that brings "both Wall Street vision and Main Street values to [its]
20 relationship with clients."³
21

22 17. A significant source of income for Wells Fargo is net interest income.
23 Net interest income is the difference between the amount of interest that Wells Fargo
24
25

26 ³ About Us, available at <https://www.wellsfargoadvisors.com/why-wells-fargo/about.htm>,
27 (last viewed July 24, 2024).
28

1 pays to or secures for the benefit of its brokerage and advisory clients and the amount
2 of interest that Wells Fargo and its affiliates earn on those cash balances themselves.

3 18. Wells Fargo, like many financial services companies, offers “cash
4 sweep” programs to its clients. Cash sweep programs figuratively “sweep” clients’
5 cash balances into interest-bearing accounts at a network of banks.
6

7 19. Wells Fargo makes more money when its clients’ funds are invested in
8 the Wells Fargo cash sweep program rather than in similar cash options and
9 equivalents.
10

11 20. When clients are in the Wells Fargo cash sweep program, Wells Fargo
12 pays and/or secures interest rates on the client’s cash balances that are neither
13 reasonable nor in compliance with its legal duties.
14

15 **A. Wells Fargo’s Bank Deposit Sweep Program**
16

17 21. Wells Fargo has a primary cash sweep program for its brokerage and
18 advisory clients known as its “Expanded Bank Deposit Sweep.” According to Wells
19 Fargo,
20

21 The Expanded Bank Deposit Sweep is the primary Cash Sweep
22 Option for eligible clients and consists of interest-bearing deposit
23 accounts at banks both affiliated and unaffiliated with [Wells
24 Fargo] The Expanded Bank Deposit Sweep makes five
25 Program Banks available.⁴

26 ⁴ Cash Sweep Program Disclosure Statement, at p. 2, available at
27 <https://www.wellsfargoclearingservicesllc.com/bw/fccs/forms/568205.pdf> (last viewed July 25,
28 2024).

1 22. A client may elect the “Standard Bank Deposit Sweep,” where a client’s
2 cash is deposited only in banks affiliated with Wells Fargo; however, by “entering
3 into an account agreement where the Expanded Bank Deposit Sweep is offered,” a
4 client “will be treated as having approved the use of the Expanded Bank Deposit
5 Sweep”⁵

7 23. The Standard Bank Deposit Sweep and Expanded Bank Deposit Sweep
8 programs are referred to collectively herein as Wells Fargo’s “Bank Deposit Sweep
9 Program” or “BDSP.”

11 24. Wells Fargo offers a money market fund cash sweep option, but only
12 “for account types ineligible for either Bank Deposit Sweep Program.”⁶

14 25. Wells Fargo “assumes no obligation to seek or negotiate interest rates
15 in excess of any reasonable rate of interest the Affiliated Banks are willing to
16 credit,”⁷ but it does assume an obligation to secure a reasonable rate of interest for
17 its clients in its BDSP.

19 26. Wells Fargo, however, fails to pay to or secure for its clients a
20 reasonable rate of interest on the cash balances in its BDSP.
21
22
23
24

25 ⁵ *Id.*

26 ⁶ *Id.*

27 ⁷ *Id.* at p. 3.

1 27. For example, as of July 25, 2024, the interest rates Wells Fargo paid to
2 or secured for its clients in the BDSF deposits were:⁸

3	4	5	6
From	To	Annual Percentage Yield	
\$0	\$999,999	0.05%	
\$1 million	\$1,999,999	0.15%	
\$2 million	\$9,999,999	.25%	
\$10 million	and above	.50%	

7 28. The interest rates that Wells Fargo paid to or secured for its clients
8 during the period that Mr. Nadolny maintained his account with Wells Fargo were
9 not materially different from those set forth in the preceding paragraph.

10 29. The interest rates Wells Fargo pays to or secures for its clients in the
11 BDSF violate Wells Fargo's duties to its clients because the rates are not reasonable,
12 which constitutes a breach of Wells Fargo's fiduciary and contractual duties to its
13 clients and a violation of Regulation Best Interest, 17 CFR § 240.151-1 (2019)
14 (hereinafter "Reg. BI").

15 **B. Wells Fargo's Duties to Its Clients**

16 30. Wells Fargo owes varying duties to each client based on the type of
17 relationship it has with the client. For example:
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26 ⁸ Bank deposit Sweep Programs, (as of July 24, 2024), available at
27 <https://www.wellsfargoadvisors.com/financial-services/account-services/cash-sweep/rates.htm>.

- 1 a. for all retail advisory accounts, Wells Fargo is required to act as a
2 fiduciary to its clients, requiring it to only act for the benefit of its
3 clients and not its own self-interest;
4
5 b. for all retail client accounts, Wells Fargo is required to always act in the
6 “best interests” of its clients, regardless of whether the account was
7 qualified (i.e., eligible for certain tax treatment under federal law) or
8 not, or advisory or retail brokerage; and
9
10 c. for all retail retirement accounts, including traditional, Roth, and
11 Simple Individual Retirement Accounts (“IRAs”), Wells Fargo is also
12 contractually obligated to pay its clients a “reasonable rate of interest”
13 on the clients’ cash balances.
14

15 **1. Wells Fargo’s Fiduciary Duties**

16
17 31. When Wells Fargo acts as an Investment Adviser for actively managed
18 client accounts, it owes its clients a fiduciary duty. *See* Securities and Exchange
19 Commission Interpretation Regarding Standards of Conduct for Investment
20 Advisers, 84 Fed. Reg. 134, 17 CFR § 276 (July 12, 2019) (“Under federal law, an
21 investment adviser is a fiduciary.”).

22
23 32. “The Advisers Act establishes a federal fiduciary duty for investment
24 advisers. This fiduciary duty is based on equitable common law principles and is
25 fundamental to advisers’ relationships with their clients under the Advisers Act.” *Id.*
26
27

1 33. Under this federal duty, Wells Fargo “must, at all times, serve the best
2 interest of its client and not subordinate its client’s interest to its own. In other words,
3 the investment adviser cannot place its own interests ahead of the interests of its
4 client.” *Id.*

6 34. If there is a conflict between Wells Fargo’s interests and its client’s
7 interests, then Wells Fargo is also required to “eliminate or make full and fair
8 disclosure of all conflicts of interest which might incline an adviser—consciously or
9 unconsciously—to render advice which is not disinterested such that a client can
10 provide informed consent to the conflict.” *Id.*

13 35. Wells Fargo “must make full and fair disclosure to its clients of all
14 material facts relating to the advisory relationship.” *Id.*

16 36. Wells Fargo’s fiduciary duties also include a duty of care to carry out
17 its responsibilities in an informed and considered manner and to act as an ordinary
18 prudent person would act in the management of his or her own affairs. In addition,
19 because Wells Fargo becomes a fiduciary on the basis of representations of special
20 skills or expertise, it is under a duty to use those skills and expertise for the benefit
21 of its clients.
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1 **2. Wells Fargo’s Duties Under Regulation Best Interest**

2 37. Where Wells Fargo is not acting as an Investment Adviser and is instead
3 acting in its capacity as a broker-dealer, it is obligated to act in its clients’ best
4 interests under Reg. BI.
5

6 38. While the Investment Adviser’s fiduciary duty obligations apply to all
7 investment advisory clients, Reg. BI applies only to retail investors, defined as “a
8 natural person, or the legal representative of such person who (i) [r]eceives a
9 recommendation of any securities transaction or investment strategy” and “(ii) [u]ses
10 the recommendation primarily for personal, family, or household purposes.” 17
11 C.F.R. § 240.15l-1(b)(1).
12
13

14 39. Although there are technical differences between Reg. BI duties and an
15 Investment Adviser’s fiduciary obligations, “they generally yield substantially
16 similar results in terms of the ultimate responsibilities owed to retail investors.”⁹
17

18 40. Indeed, Reg. BI was drafted “to draw on key principles underlying
19 fiduciary obligations, including those that apply to investment advisers under the
20 Advisers Act, while providing specific requirements to address certain aspects of the
21 relationships between broker-dealers and their retail clients.” 84 Fed. Reg. 33318,
22 33320.
23
24

25
26 ⁹ See SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers
27 Care Obligations, available at www.sec.gov/tm/standards-conduct-broker-dealers-and-investment-advisers (last viewed April 23, 2024).

1 41. Under Reg. BI, regardless of whether an investor chooses a broker-
2 dealer or an investment adviser (or both), the investor “will be entitled to a
3 recommendation . . . or advice . . . that is in the best interest of the retail investors
4 and that does not place the interests of the firm or the financial professional ahead
5 of the interests of the retail investor.” 84 Fed. Reg. 33318, 33321.
6

7 42. Reg. BI consists of a “General Obligation,” which states, “When
8 making a recommendation, a broker-dealer must act in the retail customer’s best
9 interest and cannot place its own interests ahead of the customer’s interests.” 84 Fed.
10 Reg. 33318, 33320.
11

12 43. Within the General Obligation are more specific duties, including
13 disclosure duties and a duty to avoid and disclose conflicts of interest.
14

15 44. These latter duties require disclosure of “all material facts relating to
16 conflicts of interest . . . that might incline a broker-dealer to make a recommendation
17 that is not disinterested, including, for example, conflicts associated with proprietary
18 products, payments from third parties, and compensation arrangements.” 84 Fed.
19 Reg. 33318, 33321.
20

21 45. Part of a broker-dealer’s obligation under Reg. BI is to “consider
22 reasonable alternatives, if any, offered by the broker-dealer in determining whether
23 it has a reasonable basis for making the recommendation.” 84 Fed. Reg. 33318,
24 33321.
25
26
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1 46. One component of a broker-dealer’s duty to disclose conflicts of
2 interest concerns compensation. “The receipt of higher compensation for
3 recommending some products rather than others, whether received by the broker-
4 dealer, the associated person, or both, is a fundamental and powerful incentive to
5 favor one product over another.” 84 Fed. Reg. 33318, 33364.
6

7 47. Thus, under Reg. BI, Wells Fargo was and is obligated to elevate its
8 clients’ interests above its own, to avoid conflicts with clients’ interests, and to
9 disclose material facts concerning any conflicts that may exist.
10

11 **3. Wells Fargo’s Duty to Secure Reasonable Interest Rates for**
12 **Retirement Accounts**

13 48. For client cash balances maintained in retirement accounts (regardless
14 of whether the accounts are advisory or brokerage in nature), Wells Fargo may utilize
15 those cash balances for investments or loans but only if it pays the client a
16 “reasonable rate” of interest on those cash balances.
17

18 49. For example, section 4975 of the Internal Revenue Code imposes a tax
19 on “prohibited transactions” and applies when a plan sponsor for an IRA engages in
20 transactions with a “disqualified person who is a fiduciary whereby he deals with
21 the income or assets of a plan in his own interest or for his own account.” 26 U.S.C.
22 § 4975.
23

24 50. A “disqualified person” includes companies or individuals “providing
25 services to the plan.” 26 U.S.C. § 4975(e)(2)(B).
26
27
28

1 51. Notwithstanding these “prohibited transactions,” the IRS code provides
2 several safe harbors, one of which is “the investment of all or part of a plan’s assets
3 in deposits which bear a reasonable interest rate in a bank or similar financial
4 institution.” 26 U.S.C. § 4975(d)(4).

6 52. Thus, while Wells Fargo is allowed to invest all or part of a client’s cash
7 balances maintained in retirement accounts in sweep accounts, those cash balances
8 must “bear a reasonable interest rate.” 29 U.S.C. § 4975(d)(4); 26 CFR § 54.4975-
9 6. The objective of this provision is to ensure that related party transactions—i.e.,
10 transactions between a plan sponsor (Wells Fargo) and a service provider (the
11 Program Banks)—concerning retirement accounts are priced at fair market rates.

14 53. Treasury regulations extend this same obligation to situations when
15 Wells Fargo “invests plan assets in deposits in itself or its affiliates.” 26 CFR §
16 54.5975-6(b)(3)(i). When this occurs, the client’s authorization “must name” the
17 institution and “must state that [the bank] may make investments in deposits which
18 bear a reasonable rate of interest in itself (or in an affiliate).” *Id.*

21 54. Similarly, and like the IRS Code, ERISA also exempts from prohibition
22 various interested party transactions that “bear a reasonable rate of interest.” 29
23 U.S.C. § 1108(b)(1)(D).

25 55. Wells Fargo’s client contracts concerning its IRAs incorporate this
26 government-mandated “reasonable rate” minimum requirement.

1 56. For example, as part of Wells Fargo’s Traditional IRA plan, the client
2 and Wells Fargo agree that “assets of the IRA may be invested in deposits of Wells
3 Fargo Bank, N.A. (or an affiliate) that bear a reasonable rate of interest.”¹⁰
4

5 57. In sum, under the common law fiduciary standard, Reg. BI, and Wells
6 Fargo’s own contracts incorporating the federal statutory minimum requirements,
7 Wells Fargo has a duty to act in the best interests of its clients and to secure
8 reasonable interest rates for its clients’ cash balances.
9

10 **C. Wells Fargo Breaches Its Duties and Profits Thereby**

11 58. Wells Fargo breaches its duties to secure reasonable interest rates for its
12 clients’ deposits.
13

14 59. Although the term “reasonable” is not defined in Wells Fargo’s
15 contracts, according to the term’s dictionary definition, it is synonymous with “fair”
16 and “proper.”¹¹
17

18 60. IRS regulations define an “arm’s-length interest rate” as:
19 a rate of interest which was charged, or would have been charged,
20 at the time the indebtedness arose, in independent transactions
21 with or between unrelated parties under similar circumstances.
22 26 CFR § 1.482-2(a)(2).
23
24

25 _____
26 ¹⁰ Wells Fargo Traditional Individual Retirement Account Disclosure Statement and
Custodial Agreement, at p. 14.

27 ¹¹ See Reasonable, Black’s Law Dictionary (12th ed.).
28

1 61. In 2003, the Department of Labor issued an exemption to certain
2 transaction restrictions in ERISA and, in granting the exemption, provided the
3 following definition of a “reasonable” rate of interest:
4

5 A “reasonable” rate of interest means a rate of interest
6 determinable by reference to short-term rates available to other
7 clients of the bank, those offered by other banks, those available
8 from money market funds, those applicable to short-term
9 instruments such as repurchase agreements, or by reference to a
10 benchmark such as sovereign short term debt (*e.g.*, in the U.S.,
11 treasury bills), all in the jurisdiction where the rate is being
12 evaluated.

13 68 Fed. Reg. 34646, at 34648 (June 10, 2003).

14 62. Wells Fargo did not pay reasonable rates of interest to Plaintiff and
15 proposed Class members.
16

17 **1. Sweep Account Rates Paid by Other Institutions**

18 63. The rates offered by Wells Fargo through its BDSP are significantly
19 lower than sweep programs at other brokerage and advisory firms. For example, the
20 following chart compares Wells Fargo’s BDSP’s rates with those of two comparable
21 programs:
22
23
24
25
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28

Cash Balance	Wells Fargo's BDSP Rates ¹²	Vanguard Sweep Rate ¹³	InteractiveBrokers Sweep Rate ¹⁴
Less than \$1 million	0.05%	4.6%	4.83%
Between \$1 million and \$1,999,999	0.15%	4.6%	4.83%
Between \$2 million and \$9,999,999	0.25%	4.6%	4.83%
\$10 million and above	0.50%	4.6%	4.83%

64. Thus, other brokerage and advisory financial institutions that use sweep programs pay or secure significantly higher rates than Wells Fargo.

2. Money Market Fund Rates

65. Money market fund rates also provide a benchmark for determining what constitutes a “reasonable rate.”

66. Wells Fargo offers a money market fund for cash sweep, but it only offers that option to public funds and commercial clients. That option was not available to Plaintiff or the other members of the Class. The money market fund that

¹² Bank deposit Sweep Programs, (as of July 24, 2024), available at <https://www.wellsfargo.com/financial-services/account-services/cash-sweep/rates.htm>.

¹³ See Vanguard Cash Plus Account, available at <https://investor.vanguard.com/accounts-plans/vanguard-cash-plus-account> (last viewed July 25, 2024).

¹⁴ See Safeguard Your Assets with Our Insured Bank Deposit Sweep Program, <https://www.interactivebrokers.com/en/accounts/sweep-program.php> (last viewed June 20, 2024); Interest Rates, available at <https://www.interactivebrokers.com/en/accounts/fees/pricing-interest-rates.php>, (last viewed July 25, 2024).

1 Wells Fargo offers to public funds and commercial clients pays significantly higher
2 rates than Wells Fargo's BDSF.

3 67. Some of Wells Fargo's competitors automatically sweep any uninvested
4 cash deposited into its clients' brokerage accounts into money market funds that earn
5 comparably high rates of interest. For example, by default, Fidelity sweeps
6 uninvested cash in its clients' brokerage accounts into a money market fund currently
7 earning approximately 5%.¹⁵
8
9

10 68. The unreasonableness of the rates Wells Fargo pays to or secures for its
11 clients' cash balances is particularly evident in light of the management fees that
12 Wells Fargo charges its clients to "manage" the client cash swept into its BDSF. For
13 example, as noted above, for client cash balances, Wells Fargo secures tiered stages
14 of interest rates that start at 0.05% for all balances under \$1 million and never exceed
15 .50%.
16
17

18 69. In stark contrast, a typical annual management fee that Wells Fargo and
19 its advisors charge on the value of the advisory accounts, which includes the cash
20 balances, would be equal to approximately 1.0%. In this scenario, an investor who
21 maintains up to \$999,999 in her sweep account, would only earn 0.05% on her
22
23
24
25

26 ¹⁵ See Help your cash work harder, available at [https://www.fidelity.com/go/manage-cash-
28 rising-costs](https://www.fidelity.com/go/manage-cash-
27 rising-costs), (last viewed July 25, 2024).

1 investment, while her investment advisor takes a 1.0% fee for “managing” that
2 investment.

3 70. Wells Fargo has devised a scheme in which Wells Fargo makes
4 significant profits using advisory clients’ cash balances, while the advisory clients,
5 to whom a fiduciary duty is owed, *actually lose money on their cash balances*.
6

7 **D. Wells Fargo Benefits from Its Misconduct**

8 71. In general, Wells Fargo earns interest revenue on non-trading assets that
9 it holds for its clients; this includes cash deposits and other capital that is not
10 deployed for trading purposes.
11

12 72. Wells Fargo “benefit[s] financially from cash balances held in the Bank
13 Deposit Sweep Programs through the ‘spread’” banks affiliated with Wells Fargo
14 earn on deposits.¹⁶
15

16 73. The Program Banks’ profitability is significantly impacted “by the
17 difference or ‘spread’ between the interest they pay on deposits, and the interest” the
18 Program Banks earn.¹⁷
19

20 74. Wells Fargo receives payments from the Program Banks that are
21 calculated as a percentage of the cash deposited in the BDSF.¹⁸
22
23
24

25 ¹⁶ Cash Sweep Program Disclosure Statement, at p. 4.

26 ¹⁷ *Id.*

27 ¹⁸ *Id.*

1 75. Wells Fargo, however, only pays its clients that have deposited cash
2 with the company the negligible yield reflected in its BDSP. The difference between
3 what Wells Fargo earns on the deposits in the BDSP and what it pays its clients is
4 the company's net interest income.
5

6 76. From Program Banks affiliated with Wells Fargo, Wells Fargo can earn
7 interest at a rate up to the Federal Funds Effective Rate plus 30 basis points (0.30%).
8

9 77. The Federal Funds 30-day average effective rate has been over 4.12%
10 since January 1, 2023—and as of July 24, 2024 was 5.33%.¹⁹
11

12 78. In other words, Wells Fargo can receive up to as much as 5.63% interest
13 on its clients' cash in the BDSP, whereas the clients to whom it owes fiduciary duties
14 receive only .05% for holdings up to a \$1 million, and at most .5% for accounts
15 holding more than \$10 million.²⁰
16

17 79. Much of Wells Fargo's net interest income is generated by its Wealth
18 and Investment Management operating segment—the business unit that provides
19
20
21
22

23 ¹⁹ Effective Federal Funds Rate, Federal Reserve Bank of New York, available at
24 <https://www.newyorkfed.org/markets/reference-rates/effr>, (accessed July 25, 2024).

25 ²⁰ Wells Fargo's payments from unaffiliated Program Banks may differ depending on whether
26 the account is a retirement account; non-retirement accounts are limited to the same Federal Funds
27 Effective Rate plus 30 basis points (0.30%), but unaffiliated Program Banks holding cash in
28 retirement accounts pays Wells Fargo a uniform fee up to 79% of the Federal Funds Effective Rate.
Cash Sweep Program Disclosure Statement, at p. 4.

1 investment-related advice and services for customer funds and serves as a broker-
2 dealer for Wells Fargo clients.²¹

3 80. Wells Fargo's net revenue is heavily impacted by its net interest income.
4
5 In the first quarter of 2024 alone, Wells Fargo's Wealth and Investment Management
6 business earned \$869 million in net interest income, and in 2023 Wells Fargo earned
7 \$3.966 billion in net interest income.²²

8
9 81. According to Wells Fargo's own analysis, a change in interest rates may
10 cause significant change in the company's net interest income. For example, the table
11 below reflects Wells Fargo's estimated impact in 2024 under different scenarios with
12 a 100 basis points (1.0%) shift.²³

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24 _____
25 ²¹ Wells Fargo & Company, Form 10-Q, at p. 10, (Mar. 31, 2024) available at
<https://www.wellsfargo.com/assets/pdf/about/investor-relations/sec-filings/2024/first-quarter-10q.pdf>; Annual Report, at p. 21.

26 ²² Form 10-Q, at p. 19.

27 ²³ *Id.* at p. 38.

Table 24: Net Interest Income Sensitivity Over the Next 12 Months Using Instantaneous Movements

(\$ in billions)	Mar 31, 2024	Dec 31, 2023
Parallel shift:		
+100 bps shift in interest rates	\$ 1.5	1.8
-100 bps shift in interest rates	(1.9)	(2.0)
Steeper yield curve:		
+100 bps shift in long-term interest rates	1.2	1.1
-100 bps shift in short-term interest rates	(0.7)	(1.0)
Flatter yield curve:		
+100 bps shift in short-term interest rates	0.3	0.7
-100 bps shift in long-term interest rates	(1.2)	(1.1)

82. Thus, under Wells Fargo’s own analysis, an interest rate increase of 100 basis points or decrease in 100 basis points means a difference of over one billion dollars of net interest income.

83. Changes in interest rates also mean that Wells Fargo’s clients may decrease their cash deposits. As Wells Fargo has reported, its net interest income decreased in the first quarter of 2024 versus the first quarter of 2023, as a result of lower deposit balances by its clients.²⁴

84. Thus, Wells Fargo has a significant financial interest in (1) not paying clients a reasonable interest rate and keeping as much of the “spread” as it can, and simultaneously (2) not disclosing to its clients the unreasonable interest rates it pays

²⁴ *Id.* at p. 19.

1 (as well as the company's inherent conflict of interests), lest the clients pursue
2 accounts with reasonable rates at other institutions.

3 **E. Wells Fargo Increased the Rates It Pays to or Secures for Its**
4 **Clients, But Only After the SEC Began an Investigation into Its**
5 **Practices**

6 85. On September 31, 2023, the SEC disclosed that it began to investigate
7 Wells Fargo over the cash sweep options provided to its advisory clients.²⁵

8
9 86. On July 12, 2024, Wells Fargo publicized on an earnings call that it was
10 raising the rates in its BDSP held by advisory brokerage customers and stated that it
11 anticipates that change will reduce its earnings by roughly \$350 million.²⁶

12 **V. CLASS ACTION ALLEGATIONS**

13
14 87. Plaintiff re-alleges and incorporates by reference the allegations set
15 forth above.

16
17 88. Plaintiff brings this class action and seeks certification of the following
18 Class:

19 **Retail clients of Wells Fargo who had cash deposits or**
20 **balances in Wells Fargo's BDSP.**

21
22 ²⁵ Wells Fargo Faces SEC Investigation Over Cash Sweep Programs, Advisor Hub (Nov. 1,
23 2023), available at <https://www.advisorhub.com/wells-fargo-faces-sec-investigation-over-cash-sweep-programs/>.

24 ²⁶ Brokerages Boost Cash Sweep Account Rates to Quiet Outflows, Lawsuits, Financial
25 Advisor (July 24, 2024), available at <https://www.fa-mag.com/news/brokerages-up-cash-sweep-account-rates-to-quiet-outflows--lawsuits-78914.html?print>; Wells Fargo to Lose \$350 Million in
26 Revenue as It Raises Rates on Client Cash, Advisor Hub (July 12, 2024), available at
27 <https://www.advisorhub.com/wells-fargo-to-lose-350-million-in-revenue-as-it-raises-rates-on-client-cash/>.

1 89. Plaintiff also brings this class action and seeks certification of the
2 following Sub-Class (the “IRA Subclass”):

3 **Retail clients of Wells Fargo with Traditional IRA or Roth**
4 **IRA accounts who had cash deposits or balances in Wells**
5 **Fargo’s BDSP.**

6 90. Plaintiff reserves the right to amend the Class and IRA Subclass
7 definitions if further investigation and discovery indicates that the Class and IRA
8 Subclass definitions should be narrowed, expanded, or otherwise modified.

9
10 91. Excluded from the Class are governmental entities, institutional and
11 other non-retail investors; Wells Fargo and any of its affiliates, legal representatives,
12 employs, or officers; the judicial officer(s) and any judicial staff overseeing this
13 litigation; and counsel for Plaintiff and the proposed Class, including other attorneys
14 and staff at each respective firm.

15
16
17 92. This action has been brought and may be maintained as a class action
18 under Federal Rule of Civil Procedure 23.

19 **Numerosity**
20 **Rule 23(a)(1)**

21 93. Class members are so numerous that their individual joinder is
22 impracticable. The precise number of Class members and their identities are
23 unknown to Plaintiff at this time. However, Wells Fargo’s wealth management
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25
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1 services provide financial planning and advisory services “nationwide,”²⁷ managing
2 billions of dollars in client assets. Accordingly, Plaintiff and the Class satisfy the
3 numerosity requirement of Rule 23. Class members may be notified of the pendency
4 of this action by mail, published notice, or other appropriate methods.
5

6 **Existence and Predominance of Common Questions of Law and Fact**
7 **Rule 23(a)(2), 23(b)(3)**

8 94. Common questions of law and fact exist as to all Class members and
9 predominate over questions affecting only individual Class members. These
10 common legal and factual questions, each of which may also be certified under Rule
11 23(c)(4), include the following:
12

- 13 a. whether Wells Fargo’s interest rates are “reasonable”;
14
15 b. whether Wells Fargo owed a fiduciary duty to the Class, and whether
16 Wells Fargo violated that duty;
17
18 c. whether Wells Fargo owed a duty to the Class pursuant to Reg. BI, and
19 whether Wells Fargo violated that duty;
20
21 d. whether Wells Fargo owed a duty to the Class related to its IRA
22 programs offered to retail clients (including Wells Fargo’s
23 contractually-agreed-to duty), and whether Wells Fargo violated that
24 duty;
25

26 ²⁷ Wells Fargo Advisors: A Premier Investment Firm, Wells Fargo, available at
27 <https://www.wellsfargoadvisors.com/about/firm.htm> (last visited July 25, 2024).

- 1 e. whether Wells Fargo breached the contractual terms of its IRA
2 programs;
- 3 f. whether Wells Fargo was unjustly enriched by its wrongful conduct;
4
- 5 g. whether and to what extent Class members are entitled to damages and
6 other monetary relief; and
- 7 h. whether and to what extent Class members are entitled to attorneys' fees
8 and costs.
9

10 **Typicality**
11 **Rule 23(a)(3)**

12 95. Plaintiff's claims are typical of the Class's claims because they were
13 retail account holders with Wells Fargo who were paid an unreasonable interest rate.
14 Thus, Plaintiff's claims are typical of other Class members' claims as they arise from
15 the same course of conduct by Defendants, and the relief sought is common to Class
16 members.
17

18 **Adequacy of Representation**
19 **Rule 23(a)(4)**

20 96. Plaintiff will fairly and adequately protect the interests of Class
21 members. Plaintiff has retained counsel competent and experienced in complex class
22 action litigation, and Plaintiff will prosecute this action vigorously. Plaintiff has no
23 interests adverse or antagonistic to those of the Class.
24
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**Superiority
Rule 23(b)(3)**

1
2
3 97. A class action is superior to all other available means for the fair and
4 efficient adjudication of this controversy. The damages or other financial detriment
5 suffered by individual Class members are small compared with the burden and
6 expense required for each Class member to individually litigate their claims against
7 Defendants. It would thus be virtually impossible for Class members, on an
8 individual basis, to obtain effective redress for the wrongs done to them.
9

10
11 98. Even if Class members could afford individualized litigation, the court
12 system could not. Individualized litigation would create the danger of inconsistent
13 or contradictory judgments arising from the same set of facts. Individualized
14 litigation would also increase the delay and expense to all parties and the court
15 system from the issues raised by this action. By contrast, the class action device
16 provides the benefits of adjudication of these issues in a single proceeding,
17 economies of scale, and comprehensive supervision by a single court, and presents
18 no unusual management difficulties under the circumstances here.
19
20

21 99. Superiority is particularly satisfied in these circumstances, where the
22 law of a single state will apply to all state law claims. Under the uniform contract
23 terms with Wells Fargo, the law of New York will apply to each Class member's
24 state law claims, allowing the Court to adjudicate the claims of all Class members
25 under a single state analysis.
26
27

1 100. Additionally, the Class may be certified under Rule 23(b)(1) and/or
2 (b)(2) because:

- 3 a. The prosecution of separate actions by individual Class members would
4 create a risk of inconsistent or varying adjudications with respect to
5 individual Class members that would establish incompatible standards
6 of conduct for Defendants;
7
8 b. The prosecution of separate actions by individual Class members would
9 create a risk of adjudications with respect to them which would, as a
10 practical matter, be dispositive of the interests of other Class members
11 not parties to the adjudications, or substantially impair or impede their
12 ability to protect their interests; and/or
13
14 c. Defendants have acted or refused to act on grounds generally applicable
15 to the Class, thereby making appropriate final and injunctive relief with
16 respect to the Class members as a whole.
17
18

19 **VI. CLAIMS FOR RELIEF**

20 **FIRST CLAIM FOR RELIEF**

21 **Breach of Fiduciary Duty**

22 **Brought on behalf of the Class against All Defendants**

23 101. Plaintiff, on behalf of himself and the Class, hereby re-alleges the
24 paragraphs above as if fully set forth herein.
25
26
27
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1 102. Under the Investment Advisers Act and at common law, Wells Fargo
2 owed fiduciary duties to Class members who maintained managed accounts within
3 the purview of the Investment Advisers Act.
4

5 103. Under Reg. BI, Wells Fargo owed duties to Class members who
6 maintained non-managed accounts (including IRAs), and those duties are
7 tantamount to fiduciary obligations for the purposes of this litigation.
8

9 104. Wells Fargo's duties include, but are not limited to:

- 10 a. a duty of undivided loyalty;
11 b. a duty to act in the best interests of its clients;
12 c. a duty of care;
13 d. a duty not to place Wells Fargo's interests above those of its clients;
14 e. a duty to avoid conflicts of interest; and
15 f. a duty to disclose any conflicts of interest.
16
17

18 105. Wells Fargo violated each of the foregoing duties when it (1) failed to
19 pay the Class a reasonable rate of interest; (2) failed to act in the clients' best interests
20 by not providing a reasonable default for cash balances that paid its clients a
21 reasonable rate of interest on cash balances; (3) placed its own interests in realizing
22 financial gain from net interest income ahead of the Class's interest in obtaining a
23 reasonable rate of interest; (4) maintained and failed to reasonably disclose its
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1 conflict of interest in securing increased net interest income at the expense of its
2 clients.

3 106. Wells Fargo's conduct damaged Plaintiff and the Class.

4
5 107. Plaintiff, individually and on behalf of the Class, seeks all damages
6 permitted by law.

7
8 **SECOND CLAIM FOR RELIEF**
9 **Unjust Enrichment**
10 **Brought on behalf of the Class against All Defendants**

11 108. Plaintiff, on behalf of himself and the Class, hereby re-alleges the
12 paragraphs above as if fully set forth herein.

13 109. As a result of Wells Fargo's wrongful conduct, Plaintiff and the Class
14 received lower interest payments on their cash and other deposits than they would
15 have in a reasonable and fair market.

16
17 110. As a result of Wells Fargo's wrongful conduct, Wells Fargo was
18 unjustly enriched and Plaintiff and the Class conferred a benefit upon Wells Fargo
19 because it received significantly greater net interest income than it would have but
20 for its wrongful conduct.

21
22 111. Wells Fargo appreciated, knowingly accepted, and retained the non-
23 gratuitous benefits conferred by Plaintiff and the Class.

24
25 112. It would be inequitable and unjust for Wells Fargo to retain these
26 wrongfully obtained profits.

1 113. Wells Fargo’s retention of this wrongfully-obtained net interest income
2 would violate the fundamental principles of justice, equity, and good conscience.

3 114. Plaintiff and the Class are entitled to restitution and disgorgement of
4 the profits unjustly obtained, plus interest.
5

6 **THIRD CLAIM FOR RELIEF**
7 **Breach of Contract—Express Provisions**
8 **Brought on behalf of the IRA Subclass against All Defendants**

9 115. Plaintiff, on behalf of himself and the IRA Subclass, hereby re-alleges
10 the paragraphs above as if fully set forth herein.

11 116. Wells Fargo’s governing documents related to its IRAs constitute a
12 valid and binding agreement between Wells Fargo and its IRA accountholders.
13

14 117. The governing documents require Wells Fargo to pay a “reasonable rate
15 of interest” on cash deposits or balances maintained in the IRAs.
16

17 118. Wells Fargo failed to pay a “reasonable rate of interest” on those
18 deposits; therefore, Wells Fargo breached its contracts with Plaintiff.

19 119. Wells Fargo’s conduct damaged Plaintiff and the IRA Subclass.

20 120. Plaintiff, individually and on behalf of the IRA Subclass, seeks all
21 damages permitted by law.
22

23 **VII. DEMAND FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of himself and the Class (including the
25 IRA Subclass), demands judgment and relief as follows:
26
27

- 1 1. For an order certifying the proposed Class and IRA Subclass, and
2 appointing Plaintiff and his counsel to represent the proposed Class;
- 3 2. For an order awarding Plaintiff and Class members damages in an
4 amount to be proven at trial, together with pre-trial and post-trial
5 interest thereon;
- 6 3. For an order awarding Plaintiff and Class members restitution,
7 disgorgement, or such other and further relief as the Court deems
8 proper; and
- 9 4. For an order awarding Plaintiff and the Class reasonable attorneys' fees
10 and costs of suit, including expert witness fees.

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14 **VIII. JURY TRIAL DEMAND**

15 Plaintiff, on behalf of himself and the Class (including the IRA Subclass),
16 demand a trial by jury on all issues so triable.
17

18
19
20
21 DATED: July 31, 2024

22 /s/ Deborah Rosenthal

23 Deborah Rosenthal (SBN 184241)

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