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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SHAHRIAR JABBARI and KAYLEE HEFFELFINGER, on behalf of themselves and all others similarly situated, Plaintiffs, v. WELLS FARGO & COMPANY and WELLS FARGO, N.A., Defendants.	Case No: 3:15-cv-02159-VC ***CHERNAVSKY* PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES** **Date:** March 22, 2018 **Time:** 10:00 a.m. **Place:** Courtroom 4 – 17th Floor **Judge:** Honorable Vince Chhabria

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I. INTRODUCTION

On January 19, 2018, counsel for Alex Chernavsky and William Castro ("*Chernavsky* Plaintiffs"), filed a motion requesting an award of attorneys' fees based on their unique and unquestionably significant contributions made to the settlement now before this Court. (Dkt. 179).[1] The major enhancements to the settlement included: (1) Insisting that the *Jabbari* parties increase the reserve fund, a demand that in fact resulted in an increase in the reserve fund; (2) significantly extending the claims period for filing claims; (3) engendering a more transparent claim process and the removal of a court seal for the claim form; (4) dramatically modifying the claim form; (5) clarifying and narrowing the class wide release; (6) improving the online claims process; and (7) scrutinizing the role of the settlement administrator and providing for extra oversight to the administrator's decision-making.[2] In its initial application, *Chernavsky* Plaintiffs noted the factual and legal support for the motion and requested that the Court consider awarding fees as either a percentage of the fund and/or apply the lodestar/multiplier methodology.

On February 2, 2018, Shahriar Jabbari and Kaylee Heffelfinger ("*Jabbari* Plaintiffs"), opposed *Chernavsky* Plaintiffs' request for an award of fees (Dkt. 190). In light of *Jabbari* Plaintiffs' opposition, and the January 19, 2018 filings by *Jabbari* Plaintiffs and their counsel, Keller Rohrback, LLP, ("*Jabbari* Counsel") for attorney's fees, and other issues noted below, *Chernavsky* Plaintiffs' counsel, the law firm of Audet & Partners, LLP ("*Chernavsky* Counsel"), requests that the Court in fact award a reduced amount than that initially sought, and award fees in the amount of not less than $1,278,000.00 (or **0.9%** of the $142,000,000 common fund). As outlined below, the amount now sought incorporates a multiplier of less than 3 of the *Chernavsky* Counsel's total lodestar of $434,502.25. This modified reduced request is clearly fair and reasonable, and is consistent with the multiplier sought by the *Jabbari* Plaintiffs' filing. In fact, as noted below, *Chernavsky* Counsel's multiplier (~2.9) is significantly less than that sought by of the *Jabbari* Counsel's (~3.6).

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[1] Unless otherwise noted, all docket references are to the *Jabbari* Docket, No: 3:15-cv-02159-VC.

[2] **Exhibit B**, attached in the Declaration of William M. Audet In Support of *Chernavsky* Plaintiffs' Reply Brief (hereinafter "Audet Decl."), provides a timeline of events and how *Chernavsky* Plaintiffs' involvement significantly altered and improved the settlement. *See* Audet Decl. at ¶ 21.

II. DISCUSSION

A. AWARDING THE AUDET FIRM A PERCENTAGE OF THE FUND IS APPROPRIATE

As a threshold matter, *Jabbari* Parties' mistaken claim that *Chernavsky* Counsel played no role whatsoever in improving the class members' financial position within the settlement is contradicted by the facts. *See* Dkt. 190 ("*Jabbari* Opp.") at 7 ("incorrect, because it assumes that the [*Chernavsky* Counsel] firm played any role in obtaining the increase [in settlement value].") (quotations omitted). *Jabbari* Counsel willfully ignores entire parts of the record evidencing *Chernavsky* Counsel's repeated attempts to question amounts of the initial settlement and the significant addition of funds to the settlement. Throughout 2017, on March 31,[3] April 26,[4] May 4,[5] September 14,[6] and September 22,[7] *Chernavsky* Counsel questioned the *Jabbari* Parties with concerns over class size and the settlement figure.

This vigorous advocacy evidently played a role in improving the settlement and the value of the common fund for class members. *See* Dkt. 179. For example, the letters dated September 14 and 22 (Dkt. 179-1, Exhs. 11, 13) reflect *Chernavsky* Counsel *explicitly* highlighting a glaring problem

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[3] *See* March 31, 2017 letter to *Jabbari* Counsel (Dkt. 179-1, Exh. 5) (highlighting the need for "information regarding [*Jabbari* parties'] determination that the $110,000,000.00 settlement fund has a nexus to the actual damages incurred by the class."); *and* Audet Decl. Exh. B at 3.

[4] *See* April 26, 2017 letter to *Jabbari* Counsel (Dkt. 179-1, Exh. 8) (asking, amongst other questions "What is the estimate of the size of the class and how has this number been specifically determined? How did you determine the appropriate amount of the *additional* settlement fund for the extension of the class period?") (italics in original); *see also, id*. (requesting "the methodology employed to assess, determine, and accept" the settlement figures); *and* Audet Decl. Exh. B at 3.

[5] *See* May 4, 2017, Dkt. 116 at p. 10 ("*Chernavsky* Parties similarly asked the Settlement Parties to define or at least estimate the class size in order to evaluate the settlement."); *and* Audet Decl. Exh. B at 3.

[6] *See* September 14, 2017 letter to *Jabbari* parties (Dkt. 179-1, Exh. 11) ("The estimated number of class members within both settlement pools was calculated based upon a key assumption as to the number of unauthorized accounts created by Wells Fargo. Since these May 17, 2017 representations to the Court, information has come to public light that calls them into question.") (citation omitted); *and* Audet Decl. Exh. B at 6.

[7] *See* September 22, 2017 letter to Wells Fargo (Dkt. 179-1, Exh. 13) ("the potential **significant impact** the recently disclosed information regarding the class size would likely have on the **individual class member recoveries** under the settlement agreement.") (emphasis added); *and* Audet Decl. Exh. B at 6.

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with the settlement at the time: *Jabbari* Counsel's underlying assumption used in calculating the number of fake accounts (*at most* 3.5 million according to the *Jabbari* parties; *see* Dkt. 179-1, Exh. 11), a calculation previously represented to this Court in prior proceedings, could no longer be reconciled with the information then-known to *Chernavsky* Counsel. *Id*. Stated simply: the *Jabbari* Parties' math was wrong. Then, two weeks after being *again* apprised of this problem by *Chernavsky* Counsel, the *Jabbari* Parties tacitly accepted *Chernavsky* Counsel's contention and notified the Court on October 7, 2017, that "[t]he Parties have agreed that in the event the number of [fake accounts] exceeds Plaintiffs' 3.5 million estimate, Wells Fargo will proportionately **increase the $25 million reserve**…" Dkt. 172 at 3 (emphasis added); *and* Audet Decl. Exh. B at 6. This proportional *monetary* increase to the settlement, in addition to all the other benefits discussed further below, can be directly traced back to *Chernavsky* Counsel's zealous monitoring of the settlement process. *Staton v. Boeing Co.*, 327 F.3d 938, 972 (9th Cir. 2003) (award of fees from common fund appropriate where benefits traced). Any attempt to argue that *Chernavsky* Counsel's efforts were fortuitous or unconnected to the concrete improvements to the settlement (such as this and others below) strains credulity.

B. *JABBARI* COUNSEL CONCEDES THAT *CHERNAVSKY* PLAINTIFFS CONTRIBUTED TO IMPROVEMENTS IN THE SETTLEMENT

Jabbari Counsel concedes that as a ***direct*** result of the *Chernavsky* Plaintiffs' demand that "the claims period should be longer," the *Jabbari* Plaintiffs, "[i]n response,…extended the deadline for claims." *See Jabbari* Opp. at 5. Despite this admission, *Jabbari* Counsel attempts to deflect by engaging in fanciful hypotheticals and misapplying the law. *Id*.

First, *Jabbari* Counsel insinuates that the claims period would have been extended anyways, as a result the Court's request for additional scrutiny. *Id*. Not only is this an exercise in hypothetical conjecturing, but it ignores the uncontroverted facts in the record. *Chernavsky* Plaintiffs apprised the *Jabbari* parties of the 'claims period' problem on April 26, 2017 (*see* Dkt. 179-1, Exh. 8 at 2) and ***again*** on May 4, 2017 (Dkt. 116); Audet Decl. Exh. B at 3. On May 11, 2017, *Jabbari* Plaintiffs acknowledged the appropriateness of this objection and modified the settlement as a result. Dkt. 133 at p.18. *Chernavsky* Counsel confirmed this change with *Jabbari* parties via a letters on May 12 and

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16, 2017. Audet Decl. ¶¶ 22-23. The Court's request for additional scrutiny was not issued until May 24, 2017. Dkt. 155. *Jabbari* Counsel's proposed rationale strains credulity by ignoring *Chernavsky* Counsel's advocacy and construes the extension of the claims period as an act of pure serendipity.

Second, in an attempt to argue that *Chernavsky* Counsel's work was duplicative, *Jabbari* Counsel has misapplied the holding in *Rodriguez v. Disner*, 688 F.3d 645, 658–59 (9th Cir. 2012) ("Nor is it error to deny fees to objectors whose work is duplicative") (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (*WPPSS*), 19 F.3d 1291 (9th Cir. 1994)). The holding in *Rodriguez* relied on *WPPSS*, which held duplicative work by attorneys in the *same firm* does not merit an award. *WPPSS*, 19 F.3d at 1298. However, nothing in either *WPPSS* or *Rodriguez* stands for the far-reaching position that work concerning objections reinforced and subsequently approved by the Court would *also* be considered duplicative. *Id*. *Jabbari* Counsel's conflation of this principle with *Chernavsky* Counsel's successful work to significantly improve the settlement does not withstand scrutiny. *Chernavsky* Counsel has conferred a benefit on the class by advocating for a fairer and more reasonable claims period to maximize class participation. *In re Homestore.com, Inc. Sec. Litg.*, 2004 U.S. Dist. LEXIS 25234, *7 (C.D. Cal. Aug. 24, 2004) (finding a substantial benefit conferred when an objector raised timing issues with the notice program which apprised the parties of "a strong likelihood…that a substantial portion of the class would not have [effectively participated in the class settlement]").

Similarly, *Jabbari* Counsel also conceded that "[*Jabbari*] Plaintiffs responded [to *Chernavsky* Counsel's attempts to unseal the claim form] by removing the seal." *Jabbari* Opp. at 5. This was another example of a concrete benefit conferred onto the class. *In re HP Inkjet Printer Litig.*, 2011 U.S. Dist. LEXIS 65199, at *7 (N.D. Cal. June 20, 2011) (stating that in order to establish a substantial benefit an objector must "establish his or her efforts produced a concrete benefit for the class")). *Jabbari* Counsel undermines this enhancement by erroneously imputing onto *Chernavsky* Counsel an argument they never made – that this benefit, *by itself*, warrants an award of fees. *See Jabbari* Opp. at 5 (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002)). On the contrary, *Chernavsky* Counsel has consistently advocated that this issue, along with a host of others, would greatly benefit the class if adequately addressed together. *See* Dkt. 179-1, Exh. 8; Dkt. 116,

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179; *and* Audet Decl. Exh. B. The claims period extension, unsealing of the claim form, and the other enhancements discussed *infra* conferred a substantial class benefit.

C. *CHERNAVSKY* PLAINTIFFS CONTRIBUTED TO THE IMPROVED CLAIM FORMS; NARROWED RELEASE; IMPROVED ONLINE CLAIMS PROCESS; AND EXTRA SCRUTINY OF THE SETTLEMENT ADMINISTRATOR

Jabbari Counsel goes to great lengths to misconstrue *Chernavsky* Plaintiffs' contributions as *de minimus*. As discussed in the prior submission, this is not so. *See generally*, Dkt. 179.

Claim Forms Improved: Throughout the settlement process, *Chernavsky* Counsel has consistently urged the *Jabbari* parties to simplify the claim form or otherwise make it easier to understand. *See, e.g.*, Dkt. 179 (*Chernavsky* Plaintiffs raised concerns on May 7 over the "confusing, technical, and opaque" claim form); *see also*, March 31, 2017 letter (Dkt. 179-1, Exh. 5) (questioning the necessity of a claim form); April 26 letter (Dkt. 179-1, Exh. 8) (suggesting improvements to the claim form with pre-populated information and other ways to assist claimants); *and* Audet Decl. Exh. B at 3. The Court's Order on May 24, 2017, also agreed with this assessment and made the claim form more accessible. Dkt. 155 (streamlining the notice procedure and suggesting the inclusion of a "narrative" section so claimants would not be bound by any technical limitations in the claim form).

Jabbari Counsel appears to argue for two untenable positions: (1) that the Court somehow, in light of the objections and concerns over the claim form, actually made the form more rigorous or demanding; or (2) that in order for an objector to improve a settlement, the Court must adopt verbatim every proposed change from the objector. The former proposition is plainly inaccurate; the latter contrary to law. *Arnett v. Bank of Am., N.A.*, 2014 U.S. Dist. LEXIS 149679, at *14 (D. Or. Oct. 22, 2014) ("objectors raising [an] issue…[where] the court may not have known about…[or] may not have analyzed their effect" is sufficient) (citing *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948 (9th Cir. 2009)). *Chernavsky* Plaintiffs improved the claim forms.

Releases Narrowed: *Chernavsky* Counsel first raised the dangers of an overbroad release on November 1, 2016. Dkt. 179-1, Exh. 1 (warning that broad releases of claims "in any eventual release" must "protect the interest of all class and subclass members"). On November 28, *Chernavsky* Counsel again suggested that the release be narrowed. *Id.*, Exh. 3 at 2 ("If [the proposed release] does not include a release for the Privacy Subclass claims, that is fine."); *and* Audet Decl.

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Exh. B at 2. These warnings went unheeded, as *Jabbari* Plaintiffs filed a 'revised' settlement that included an unclear and over-expansive release on April 20, 2017 (Dkt. 100). On April 26 and May 4, *Chernavsky* Counsel objected to the release's scope. *See* Dkt. 179-1, Exh. 8 and Dkt. 116; *see also*, Dkt. 179 at p. 6. *Chernavsky* Counsel's May 16, 2017 letter proved prophetic, as it warned that "[t]he settlement also needs to exclude any unrelated class cases and avoid any overlap with any claims by absent class members…" The Court's May 24 Order confirmed this much needed change: "The release language must be changed to make clear that the class members are only releasing claims based on the identical factual predicate as the claims asserted in this lawsuit…" Dkt. 155; *compare with* Dkt. 116 at p. 9 (release needed to be tailored to claims "related to the underlying litigation"); *see also*, *Hesse v. Sprint Corp.*, 598 F.3d 581, 590-92 (9th Cir. 2010). *Chernavsky* Counsel's objection and other efforts played a critical part in narrowing the release.

Improved Online Experience for Those Concerned with Settlement: *Chernavsky* Counsel was the only objector to raise issues with the objection and opt-out process associated with online claims. *See* Dkt. 116 at p. 7-8; *compare with*, Dkt. 113, 114, 117, 118, 119. Indeed, the objection clearly targeted "the settlement website" as failing to "provide information" sufficient enough in order to assist "claimants in determining whether or not to make a claim." Dkt. 116 at p. 7; *and* Audet Decl. Exh. B at 3-4. Common sense dictates that if a claimant determines ***not*** to make a claim, then an avenue should be provided to effectuate that desire (*i.e.*, online portal or method to not participate or voice displeasure). To undermine this clear connection between *Chernavsky* Counsel's objection, and what the Court ultimately ordered the *Jabbari* parties to do (*see* Dkt. 155 at 2 ("There should be a mechanism for online objections and opt-outs")), *Jabbari* Counsel engages in semantics about what "an objection website" means. This facile argument only highlights the fact that, while the Court understood *Chernavsky* Counsel's objection, *Jabbari* Counsel apparently did not. *See Jabbari* Opp. at 4 ("[*Chernavsky* Counsel's] intention was not clear to Plaintiffs").

Settlement Administrator Scrutiny: *Jabbari* Counsel's final contention also misconstrues the objections *Chernavsky* Counsel previously asserted. *Chernavsky* Counsel continuously advocated that in earlier versions, the Settlement Administrator was vested with too much authority and lacked oversight. *See* Dkt. 116 at p. 7 (raising concerns that no one would "advocate for the claimants" in

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front of the Administrator); Dkt. 179-1, Exh. 8 at 2 (questioning the "Settlement Administrator's unilateral and sole" decision-making power); *and* Audet Decl. Exh. B at 3. The Court's insertion of itself into this process (Dkt. 155 at 1 ("structur[ing] to allow the Court, before final approval, to scrutinize" the settlement administrator)) quells the primary concern raised by *Chernavsky* Counsel—that judgement was to be entered "based ***solely*** on the [Administrator]'s lone determination." Dkt. 179 at p. 11. The Court's review process now safeguards against this threat.

D. THE *CHERNAVSKY* PLAINTIFFS' MODIFIED REDUCED FEE REQUEST IS CONSISTENT WITH NINTH CIRCUIT LAW AND CLASS COUNSEL'S REQUEST

After reviewing the *Jabbari* Plaintiffs' Motion for Final Approval of Settlement (Dkt. 180), Motion for Attorneys' Fees (Dkt. 185), and the documents filed in support thereof, the *Chernavsky* Plaintiffs, by way of this filing, respectfully modify and reduce their original fee request. The *Chernavsky* Plaintiffs originally requested no more than 3% of the overall common fund, *i.e.*, $4,260,000.00, or alternatively no less than 10% of the $32 million increased amount in the settlement potentially attributable to the *Chernavsky* Plaintiffs' efforts to improve the settlement, *i.e.*, $3,200,000.00. After receipt and consideration of the filings by parties and other objectors (and other factors), *Chernavsky* Counsel hereby reduces the initial fee request to a multiplier less than the multiplier sought by *Jabbari* Counsel. This request is not only consistent with applicable law, but is more equitable to all parties and the class. Accordingly, the *Chernavsky* Plaintiffs hereby request that the Court award their counsel, Audet & Partners, LLP, no less than **$1,278,000.00**.

E. THE MODIFIED REDUCED FEE REQUEST IS WARRANTED BY THE CONTRIBUTIONS OF AUDET & PARTNERS, LLP

1. The Modified Fee Request is in Line with Comparable Awards

As detailed in the concurrently-filed Declaration of William M. Audet In Support of *Chernavsky* Plaintiffs' Reply Brief, Audet & Partners, LLP, without dispute, skillfully performed a variety of tasks during the critical phase of the litigation. Audet Decl. at ¶¶ 5-9. Those efforts provided tangible benefits to the terms and conditions of the settlement and the settlement class itself, including but not limited to: a significantly extended claim and notice period, a drastically narrowed and more clear class-wide release, and vast improvements to the class notice, claims process, opt-out, and objection procedures. *See, generally*, Dkt. 179. When viewed in light of those efforts and the

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ultimate benefit to the class from the modifications to the settlement, an award of less than 1% of the overall settlement fund, or $1,278,000.00, is commensurate with those efforts. *See, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1046 (N.D. Cal. 2008) (noting use of the percentage of the fund method in this District). Where, as here, counsel seeks a percentage of the fund that is astronomically lower than 25%, courts have noted that in fact, no lodestar cross-check is expressly required to determine reasonableness of the fees. *Ebarle v. Lifelock, Inc.*, 2016 U.S. Dist. LEXIS 128279, at *33 (N.D. Cal. Sept. 20, 2016) ("The Court declines to conduct a lodestar cross-check in this case, given that under the percentage-of-the-fund method the fee request was significantly below the 25% benchmark."). Nonetheless, *Chernavsky* Counsel's lodestar confirms that the modified award is an appropriate award of fees.

2. The Modified Reduced Request is Supported by Audet & Partners' Lodestar

The lodestar multiplier approach provides this Court with an objective basis to determine the appropriate amount of a fee award to *Chernavsky* Counsel. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *see also, Pacificans For A Scenic Coast v. Cal. DOT*, No. 15-cv-02090-VC, 2017 U.S. Dist. LEXIS 199145, at *4-5 (N.D. Cal. Nov. 22, 2017). Multiplying the numbers of hours counsel worked by a reasonable hourly rate establishes the base lodestar. *Id*. *Chernavsky* Counsel expended a total of 787.55 attorney and paralegal hours on the instant matter. Audet Decl. at ¶ 23 and Exh. E. This produced a total lodestar figure of $434,502.25 and a blended billing rate of $551.71. *Id*. (lower than the blending billing rate of $585.41 submitted by the *Jabbari* Counsel. Dkt. 185, at p. 10.)

a. Audet & Partners' Hourly Rates and Hours Worked is Reasonable

The hourly rates that the *Chernavsky* Plaintiffs seek for their counsel are fair and reasonable. In assessing the reasonableness of an attorney's hourly rate, courts should consider the prevailing market rate in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895-96 (1984). Courts also look to the forum in which the District is located to determine the hourly rates that should apply. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) ("[a]ffidavits of the Plaintiff' attorney[s] and other attorneys regarding prevailing fees in the community, and rate determinations in other cases are satisfactory evidence").

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The attorneys of Audet & Partners, LLP, are highly regarded members of the bar and experienced in the area of consumer class actions and complex litigation. Audet Decl., ¶¶ 4-6, Exh. A. *Chernavsky* Counsel's customary rates, which were used for purposes of calculating lodestar here, are essentially based on prevailing fees in this District and similar rates have been approved by other Courts. Audet Decl., ¶ 14. The rates billed by Audet & Partners are also in line with the rates billed by *Jabbari* Counsel. Dkt. 185, at p. 11. Rates similar to this have been approved in this District for comparable counsel. *In re NCAA Ath. Grant-In-Aid Cap. Antitrust Litig.*, 2017 U.S. Dist. LEXIS 201108 at *20 (N.D. Cal. Dec. 6, 2017) (approving rates as high as $1,035 for partners and $635 for associates, and also noting that rates within the range of $200 to $1,080 were "well within the range" of rates charged by reputable attorneys in California.); *and Rainbow Bus. Sols. v. MBF Leasing, LLC*, 2017 U.S. Dist. LEXIS 200188 at *5-6 (N.D. Cal. Dec. 5, 2017) (approving rates between $275 and $950 per hour.) The hourly rates charged here: $925 for partners, and $525-$295 for associates, fit comfortably within this respectable range.

The number of hours that *Chernavsky* Counsel claims is also reasonable as what they did in service of the settlement and the class was meaningful without question. Audet Decl., ¶¶ 5-10. As detailed in *Chernavsky* Plaintiffs' original submission, *Chernavsky* Counsel doggedly insisted on improvements to the settlement to obtain the best possible result for the settlement class. Dkt. 179. Not only were the hours put into this case reasonable in light of the efforts and ultimate results,[8] but the work also served the class and public good in a number of ways, as detailed in the initial application and *supra*. The hours reported by *Chernavsky* Counsel are reasonable and not reasonably disputable, thus, the *Chernavsky* Plaintiffs respectfully submit that this Court should find that all of the hours *Chernavsky* Counsel spent in this action were reasonably incurred.

b. A Modest Multiplier is Warranted

As noted, *supra*, the requested fee of $1,278,000 represents a multiplier of approximately 2.9 on Audet & Partners, LLP,'s lodestar. Audet Decl., ¶¶ 15-16. After examining the time and labor

[8] It is well-established that counsel need not record "how each minute of his time was expended." *Hensley v. Eckerhart*, 461 U.S. 424, 437 n.12 (1983). Instead, counsel needs to "identify the general subject matter of his time expenditures." *Id.* (citations omitted).

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required, the Court generally will apply a multiplier to the lodestar in light of certain factors, as detailed in the initial fee application. *See, generally, Kerr v. Screen Extras Guild, Inc* 526 F.2d 67, 70 (9th Cir. 1975); *Hanlon v. Chrysler Group,* 150 F.3d 1011, 1029 (9th Cir. 1998) (a lodestar figure "may be adjusted upward or downward to account for several factors including the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment").

Most of these factors have largely been discussed at some length in the previous submission by *Chernavsky* Plaintiffs in this Court. *See* Dkt. 179. The case presented many issues for the undersigned counsel, including the amount of risk involved, the resources available to the Defendants at all times, and the unique and important nature of the *Chernavsky* Plaintiffs' participation in the settlement. Audet Decl. at ¶¶ 5-10, 15-19. Participation in this matter by *Chernavsky* Counsel was done entirely on a contingent basis, and precluded counsel from accepting other work during the time working on this matter. Audet Decl. at ¶¶ 15-19. *Chernavsky* Counsel is a well-regarded plaintiffs' firm with a sterling reputation in the community, and decades of experience in complex plaintiff-side class actions such as this. Audet Decl. at ¶¶ 3-4, Exh. A.

The requested 2.9 multiplier is in line with others approved in this Circuit in cases such as this.[9] Thus it is clear that the requested multiplier is appropriate and supported by similar cases.

III. CONCLUSION

For the foregoing reasons, the *Chernavsky* Plaintiffs' Motion (Dkt. 179) should be granted.

Dated: March 16, 2018

Respectfully submitted,

By: /s/ William Audet

William M. Audet
AUDET & PARTNERS, LLP

Counsel for Movants Alex Chernavsky and William Castro, on behalf of themselves and all others similarly situated

[9] *See, e.g., Lazarin v. Pro Unlimited, Inc.*, 2013 U.S. Dist. LEXIS 97213 (N.D. Cal. July 11, 2013) (approving multiplier of 3.36); *In re Cadence Design Sys., Inc. Sec. & Derivative Litig.*, 2012 U.S. Dist. LEXIS 56785 (N.D. Cal. Apr. 23, 2012) (2.88); *In re Veritas Software Corp. Sec. Litig.*, 2005 U.S. Dist. LEXIS 30880 (N.D. Cal. Nov. 15, 2005) (multiplier of 4); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051(9th Cir. 2002) (3.65 appropriate).

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SHAHRIAR JABBARI and KAYLEE HEFFELFINGER, on behalf of themselves and all others similarly situated, Plaintiffs, v. WELLS FARGO & COMPANY and WELLS FARGO, N.A., Defendants.	Case No: 3:15-cv-02159-VC **DECLARATION OF WILLIAM M. AUDET IN SUPPORT OF *CHERNAVSKY* PLAINTIFFS' REPLY BRIEF** Date: March 22, 2018 Time: 10:00 a.m. Place: Courtroom 4 – 17th Floor Judge: Honorable Vince Chhabria

I, William M. Audet, hereby declare as follows:

1. I am an attorney at law, the founding partner for the law firm AUDET & PARTNERS, LLP, and a member in good standing with both the State Bars of California and Wisconsin. I serve as counsel for plaintiffs Alex Chernavsky and William Castro ("*Chernavsky* Plaintiffs") in the related action, *Chernavsky, et al. v. Wells Fargo Bank, N.A.*, 3:16-cv-06326-VC ("*Chernavsky* Action"). I have personal knowledge of the matters stated below, and if called as a witness, I could and would testify competently thereto under oath.

2. I respectfully submit this Declaration in support of the concurrently filed *Chernavsky* Plaintiffs' Reply Brief In Support Of Motion For An Award of Attorneys' Fees (hereafter, "Reply").

3. I have extensive class action experience and have been a practicing attorney since 1984. As noted in my curriculum vitae (*infra*, Exhibit A), I have a J.D. and LL.M. (from the University of Wisconsin). After receiving my LL.M., I clerked for two federal Court judges, as well as clerking at the Ninth Circuit Court of Appeals. I also was awarded a LL.D. (hc) for my pro bono work and contributions to the legal community from Golden Gate University School of Law. I have been licensed as an attorney for over 30 years and have practiced almost exclusively in complex plaintiff-side class action. In addition to the work performed by me, I personally supervised the work of attorneys and staff at my firm. *See* Dkt. 179-1, Exh. 15 (AUDET & PARTNERS, LLP's firm resume).

4. My oversight extended to every facet of my firm's involvement in this case. I was in constant communication with the attorneys working on this matter and held meetings and calls on an as needed basis and involved discussions related to all aspects of the legal strategy, procedural progression, and management of resources, including motion work and communications with the *Jabbari* Parties. These communications and managerial input, guided by my decades of experience in class action settlements, ensured that our participation ultimately led to a progression and improvement of the settlement in certain concrete areas and were being handled with little to no wasteful duplication of effort.

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CRITICAL MEMBERS OF AUDET & PARTNERS, LLP'S LITIGATION TEAM

5. Three attorneys and one paralegal at AUDET & PARTNERS, LLP accounted for over 95% of the time spent on this matter. The three attorneys were myself, William M. Audet, and S. Clinton Woods and "David" Ling Y. Kuang (the "Principal Attorneys"). All three Principal Attorneys played critical roles towards highlighting the manners and opportunities to improve the various iterations of the proposed settlements.

6. As discussed, *supra*, and in my curriculum vitae, I am the founding and managing partner of AUDET & PARTNERS, LLP with over 30 years of experience. To date, I have worked over 290 hours on this matter, including:

- Overseeing all litigation efforts on behalf of the *Chernavsky* Plaintiffs.
- Communicating with counsel for the *Jabbari* Plaintiffs and the Defendants and other plaintiffs' counsel with related cases filed in this and other Courts.
- Researching and analyzing the facts of the case and the structure of the settlement, as well as ways to improve the settlement.
- Attending multiple hearings on behalf of the *Chernavsky* Plaintiffs, including hearings before the JPML panel.
- Drafting, editing, and finalizing pleadings related to the underlying *Chernavsky* Complaint.
- Drafting, editing, and finalizing pleadings related to the settlement, motions for preliminary and final approval, and the related objections thereto.

7. S. Clinton Woods is a senior associate with over 11 years of experience. He has worked over 175 hours on this matter, including:

- Drafting correspondences to counsel for the *Jabbari* Plaintiffs and Defendants outlining settlement strategies and deficiencies.
- Conducting research and analysis regarding the underlying factual issues surrounding the *Chernavsky* Complaint, including development of legal theories behind potential subclasses.
- Drafting, reviewing, and filing pleadings related to the underlying *Chernavsky* Complaint.

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- Research and analysis on the settlement and related notice and claim procedures with an eye towards improving them for the settlement class.
- Drafting, editing, and finalizing pleadings related to the settlement, motions for preliminary and final approval, and the related objections thereto.
- Attending multiple hearings on behalf of the *Chernavsky* Plaintiffs.
- Reviewing and analyzing the extensive pleadings filed in the *Jabbari* matter, as well as other cases related to the underlying factual predicate.

8. "David" Ling Y. Kuang is an associate with over 3 years of experience. He has worked over 149 hours on this matter, including:

- Strategizing over ways to safeguard the rights of *Chernavsky* Plaintiffs and other members of the class.
- Performing factual research on the scope and extent of the Wells Fargo fraudulent account scheme.
- Conducting legal research regarding certain provisions of the settlements provided to this Court and their potential impact upon the Settlement Class.
- Drafting and editing correspondences to the *Jabbari* Parties and other attorneys.
- Preparing, editing, and otherwise working on pleadings filed in both the *Chernavsky* and *Jabbari* matters.
- Reviewing materials filed by the *Jabbari* Parties in this case, including the various iterations of the settlements and their supporting documents.
- Analyzing the mathematical impact of additional 'fake accounts' upon the settlement terms, vis-à-vis the settlement revisions.

9. The Principal Attorneys, and other attorneys and staff at AUDET & PARTNERS, LLP contributed to the significant and noticeable improvements to the settlement now before this Court.

AUDET & PARTNERS, LLP'S LODESTAR

10. Throughout the entire course of the settlement process, AUDET & PARTNERS, LLP ("*Chernavsky* Counsel") expended significant time, effort and resources towards understanding the terms of the proposed settlements, highlighting potential areas of improvement and otherwise providing an adversarial viewpoint in the process. As a result of the underlying litigation and settlement efforts, AUDET & PARTNERS, LLP's attorneys have devoted hundreds of hours and

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substantial resources towards scrutinizing the underlying terms, researching the applicable law, and advocating for the interests and benefit of the Settlement Class.

11. My firm and I spent numerous hours reviewing and researching the facts of this case, conferring with *Jabbari* Parties and the *Chernavsky* Plaintiffs, as well as counsel for numerous other cases with similar issues filed in this and other courts, researching the applicable law, drafting pleadings, reviewing and analyzing settlement documents, and providing input and objections regarding the initial and modified settlement agreements presented to this Court. The entirety of this work was performed on a pure contingent basis without any guarantee of success or payment. Neither my firm, nor I, have received compensation for our efforts during the course of this litigation. Throughout the litigation, I coordinated with members of my firm to divide up work in an efficient and cost-effective manner, thereby ensuring that all work was performed without unnecessary duplication.

12. All attorneys, paralegals, law clerks and support staff at my firm are instructed to maintain contemporaneous time records reflecting the time spent on this and other matters. According to the time records, AUDET & PARTNERS, LLP has spent a total of approximately 787 hours on this matter through the end of December 2017, for a cumulative lodestar figure of approximately $434,500.00. The summary lodestar and exact figures are reported in Exhibit E (*infra*), attached hereto. *Chernavsky* Counsel is not seeking reimbursement of expenses.

13. The lodestar does not reflect any time and costs incurred after December 31, 2017, which includes notable attorney and paralegal time spent preparing the prior submissions and current filings. Nor does the lodestar include any time and costs spent preparing for and attending the final approval hearing, responding to any further inquiries or filings from the *Jabbari* Parties, or any of the other significant amount of work I anticipate will be necessary to conclude our work in this case.

14. All of the services provided by myself and other attorneys at my firm were reasonable and necessary given my firm's involvement in this matter. My firms' attorneys and staff exercised reasonable billing judgment; any time that might be considered excessive, redundant, or otherwise unnecessary has not been claimed. The rates, which were used for purposes of calculating lodestar

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here, are essentially based on prevailing fees in this District and similar hourly rates have been approved by other Courts.

15. Furthermore, even though a higher than 3x multiplier would be appropriate in this case due to the excellent results achieved by *Chernavsky* Counsel, I am requesting a multiplier that is less than that sought by Class Counsel.

16. Given the length of my firm's direct involvement in the case and 'adversarial' history of the settlement process and the results achieved, the attorneys' fees sought is reasonable, particularly, in light of the fact that I am only requesting a reasonable multiplier that is in fact less than the one requested by Class Counsel.

17. The time spent on this litigation was time that could not be spent on other matters. *Chernavsky* Counsel have become involved in this case wholly on a contingency basis, and they did so at great risk of never receiving any compensation whatsoever, due to the risky nature of point out flaws in class action settlements and the low likelihood of seeing recompense for these efforts.

18. *Chernavsky* Counsel's efforts made on behalf of the Settlement Class in this matter forced *Chernavsky* Counsel to forego other cases they would have otherwise pursued that would have been potentially more lucrative.

19. Finally, the attorneys and staff at AUDET & PARTNERS, LLP have dedicated their time, money, and energy into litigating this case on behalf of the Settlement Class – all without any guarantee of payment for their time nor reimbursement of their expenses. This work has occupied a substantial amount of my firm's time and resources which could have been dedicated to then-existing cases as well.

EXHIBITS

20. Attached hereto as **Exhibit A** is a true and correct copy of my curriculum vitae. A copy of the firm's resume was previously submitted to this Court.

21. Attached hereto as **Exhibit B** is a true and correct timeline graphic and approximation of significant events pertaining to the settlement process, as well as *Chernavsky* Plaintiffs' and Counsel's actions during this timeframe which conferred to the class significant benefits through improvements to the settlement.

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22. Attached hereto as **Exhibit C** is a true and correct copy of a letter sent by *Chernavsky* Plaintiffs to counsel for *Jabbari* Plaintiffs via email on May 12, 2017.

23. Attached hereto as **Exhibit D** is a true and correct copy of a letter sent by *Chernavsky* Plaintiffs to the *Jabbari* Parties via email on May 16, 2017.

24. Attached hereto as **Exhibit E** is a true and correct copy of AUDET & PARTNERS, LLP's summary lodestar.

25. For the reasons set forth in this Declaration, as well as the related documents filed in support of the *Chernavsky* request for a fee award, *Chernavsky* Counsel respectfully requests that the Court enter an order granting an award of attorneys' fees.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in California, on Friday, March 16, 2018.

/s/ William Audet

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Counsel for Movants Alex Chernavsky and William Castro, on behalf of themselves and all others similarly situated

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Exhibit A

Attorney William M. Audet

Attorney William M. Audet, J.D., LL.M., LL.D (honorary), is the founding partner of Audet & Partners, llp, a plaintiffs only law firm recognized for its aggressive prosecution of class action and complex litigation cases representing individual, families and small businesses in fraud, defective pharmaceutical drugs and devices, product defects, privacy rights, construction defects, toxic torts, employment, business & insurance, shareholder rights, construction defect and antitrust claims. The partners and associates at Mr. Audet's firm have collectively filed and prosecuted hundreds of individual, personal injury, commercial business and class action cases. For over thirty (30) year, as a plaintiff's attorney, Mr. Audet has dedicated himself to justice for individuals and small businesses, and has obtained multimillion dollar settlements and millions of dollars for his clients and class members.

Education, Clerkships and Degrees: Mr. Audet is somewhat unique, as he currently has been awarded three legal 'degrees' and has served as a law clerk to two different federal court judges. Since graduating from U.C. Davis, Mr. Audet graduated (with highest honors) and earned a Juris Doctor (J.D.) from Golden Gate University School of Law in 1984, where he was the Editor of the *Golden Gate University Law Review*. In 1987, Mr.Audet obtained a Masters of Law (LL.M.) from the University Of Wisconsin School Of Law in 1987. In 2013, Mr. Audet was formally awarded a Doctor of Law (honorary degree) from the Golden Gate University School of Law for his significant contributions to the legal community and the law school. While obtaining his Masters Degree in Law at the University of Wisconsin, Mr. Audet served as a clinical instructor at the University of Wisconsin School of Law. In 1987, Mr. Audet served as a staff attorney at the Ninth Circuit Court of Appeals. In 1988, Mr. Audet served as a Law Clerk to the Honorable Fern M. Smith (Judge of the United States District Court for the Northern District of California), and in 1989, as a Law Clerk to the Honorable Alfonso J. Zirpoli (Judge of the United States District Court for the Northern District of California In 1990, Mr. Audet joined, as a senior associate at Lieff, Cabraser, Heimann & Bernstein (becoming a partner in 1996). Years later, Mr. Audet established his own firm, Audet & Partners, LLP, as part of his effort to expand his firm's practice to a nationwide law firm.

Appointments and Recognitions: Mr. Audet, along with the attorneys at Audet & Partners, llp, have collectively recovered millions of dollars for individual and class clients, and the firm is recognized as a top tier plaintiffs only law firm, with co-counsel in almost every state in the United States. Mr. Audet has been appointed to leadership roles in dozens of class action and mass tort cases in state and federal court, including, but not limited to: *In re Baycol Products Liability Litigation,* D. Minn., MDL No. 1431 (Executive Committee); *In re PRK/Lasik Consumer Litigation,* Santa Clara Superior Court, Master File No. CV772894 (Lead Counsel); *In re Ancure/Guidant Litigation,* N.D. Cal. (San Jose), Master File No. 09-02797-JF (Lead Counsel); *In re Zyprexa Product Liability Litigation*, E.D.N.Y., MDL No. 1596 (Lead Counsel); *In re Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation,* N.D. Cal. (San Francisco), MDL No. 1699 (Executive Committee).

Mr. Audet served as lead counsel in the groundbreaking case involving an oil spill in the San Francisco Bay Area waters, entitled *Cosco Oil Spill Case*, N.D. Cal. (San Francisco), Master File No. 7-5800 (the firm represented hundreds of impacted fisheries/crews relating to the November 2007 Cosco oil spill; and as part of its work, obtained a court order seizing the M/V Cosco Busan and obtaining another court order to prevent a waiver of claims by fishermen and class members in the OPA process). Mr. Audet was one of the Co-Lead Counsel in the *Menu Foods* MDL No. 1850 (a record $25 million dollar recovery for pet owners). Mr.Audet has been appointed to serve as colead counsel in a number of privacy class actions, as well as serve on a number of Executive Committee positions in various construction and product defect cases pending in different state and federal courts throughout the United States. Mr. Audet recently resolved, after 3 plus years of litigation, claims asserted by dentist regarding an alleged

defective implant, on a class wide basis, with the claimants obtaining potentially 100% of any out of pocket costs for the implant, and a case involving an alleged defective plumbing product (in excess of 2 million units) in residential and nonresidential properties that covers repair or replacement costs. Mr.Audet and his firm, recently filed in Mexico one of the first class action cases in Mexico City relating to claims of thousands of fisherman in Mexico.

Mr. Audet has spoken at numerous conferences on issues relating to mass torts and class actions, and he has sponsored and/or served on the panel of a number of Plaintiff "attorney-only" tutorial conferences relating to class actions and mass torts, as well as defective pharmaceutical drugs and devices. Mr. Audet is a coauthor of a book on federal discovery: *Handling Federal Discovery,* Audet & Fanady (James Publishing) (now in its 12th edition), as well as a 'judicial brochure' for use by judges and attorneys in Mexico relating to the recent passage of the class action bill in Mexico.

In 2005, Mr. Audet was named as the "Champion of Justice" by the San Francisco Bar Association (Legal Foundation) for his longstanding contribution to the legal community and his *pro bono* activities. Mr. Audet serves on the Bar Area of San Francisco's legal foundations judicial review committee, among other work. Over the past twenty years, Mr. Audet has made significant financial contributions to various regional and national legal aid organizations and clinics, as well as sponsored many fund raising activities of in need legal clinics. In addition, the firm serves as the founder and sole financial sponsor of a program that provides, on an annual date every year, shoes and food to needy children and families (mostly single mothers) in Baja, Mexico ("Little Shoes of Light").

For the past 5 plus years, Mr. Audet has also been named and featured as a "Super Lawyer" and "Top Attorney" for the Northern District of California for class action/mass torts. In 2013, Golden Gate University School of Law awarded Mr. Audet an honorary degree, a "Doctorate of Law" for his significant legal contributions, scholarly work, pro bono activities, Mr. Audet's financial contributions to underfunded legal clinics and his commitment to Golden Gate University School of Law.

Mr. Audet has been frequently quoted in regional and national legal and general press, and has appeared on CNN and other news stations regarding his cases.

Exhibit B

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TIMELINE OF RELEVANT EVENTS

September 13, 2016
Dkt. 72
SETTLEMENT ANNOUCED:
Jabbari Plaintiffs and Wells Fargo stipulated to dismiss an appeal due to an apparent settlement before the Circuit mediator

November 1, 2016
Dkt. 179-1, Exh. 1
Chernavsky letter to *Jabbari* Plaintiffs re: filing of complaint

November 2, 2016
Dkt. 1 (*Chernavsky* Matter)
Chernavsky Plaintiffs filed their complaint

November 8, 2016
Dkt. 179-1, Exh. 2
Chernavsky letter to Wells Fargo Defendant re: cases being related

November 14, 2016
Dkt. 11 (*Chernavsky* Matter)
Chernavsky Plaintiffs amended their complaint, specifically including a privacy subclass defined as members of the putative class who had external accounts opened without authorization

November 15, 2016
Dkt. 81
Case management conference was held where this Court set a deadline of ***December 9, 2016*** for *Jabbari* Plaintiffs to file their motion for preliminary approval

November 28, 2016
Dkt. 179-1, Exh. 3
Chernavsky letter to *Jabbari* Plaintiffs re: privacy subclass, need for narrow release, and adequate value in any settlement

December 8, 2016
Dkt. 83-85
One day before the deadline to file the motion for preliminary approval, *Jabbari* Plaintiffs and Wells Fargo stipulated to extend the deadline for filing the motion for preliminary approval to ***December 30, 2016***

December 12, 2016
Dkt. 179-1, Exh. 4
Chernavsky letter to Wells Fargo Defendant re: high value of privacy subclass

December 28, 2016
Dkt. 86, 88
Two days before the deadline to file the motion for preliminary approval, the *Jabbari* Settlement Parties once again stipulated to extend the deadline to file to ***January 30, 2017***

January 10, 2017
Dkt. 116 at p.3
Second case management conference was held where the *Jabbari* Plaintiffs represented that they intended to file a motion for preliminary approval by the new ***January 30, 2017*** deadline (but was not filed)

February 14, 2017
Dkt. 94
Third case management conference held where the *Jabbari* Parties indicated that they were still working towards a settlement

March 28, 2017
Dkt. 96
FIRST SETTLEMENT:
Jabbari Parties filed a notice of settlement containing no terms other than the overall amount of settlement ($110M) and that it would dispose of all claims, presumably including the privacy class claims (in *Chernavsky* complaint)

March 30, 2017
Dkt. 116-1, Exh. 1 at p. 18
At JPML Hearing, Jabbari Plaintiffs specifically said intervention would be agreed to (but later reneged): "**JUDGE VANCE:** So would all these other parties be able to intervene in the Northern District of California to be heard on the settlement? **MR. LOESER:** Absolutely, Your Honor."

March 31, 2017
Dkt. 179-1, Exh. 5
Chernavsky letter to *Jabbari* Plaintiffs re: notice of first settlement, request for terms of settlement, allowing intervention, and other information for class members

April 5, 2017
Dkt. 179-1, Exh. 6
Chernavsky Plaintiffs' email to *Jabbari* Plaintiffs re: request for reply to March 31, 2017 letter

April 7, 2017
Dkt. 179-1, Exh. 6
Chernavsky Plaintiffs' email exchanges with *Jabbari* Plaintiffs re: settlement details and *Jabbari*'s denial of intervention despite March 30, 2017 JPML statement otherwise

April 11, 2017
Dkt. 179-1, Exh. 7
Chernavsky Plaintiffs' email and phone call with *Jabbari* Plaintiffs raising issues re: continued delay in intervention, settlement terms, and limited discovery

April 20, 2017
Dkt. 100
SECOND SETTLEMENT:
Jabbari Plaintiffs moved to preliminarily approve a second settlement that extended the class period back to 2002 (thereby adding several hundred thousand class members) and increased the recovery amount from the previously reported $110M figure to $142M

April 26, 2017
Dkt. 179-1, Exh. 8
Chernavsky letter to *Jabbari* Plaintiffs re: host of problems in the Second Settlement and request to address the concerns

May 2, 2017
Dkt. 179-1, Exhs. 9-10
Letters b/t *Chernavsky* and *Jabbari* Plaintiffs re: lack of substantive responses to *Chernavsky* April 26, 2017 letter; continued non-response from Jabbari has now exhausted all informal attempts to address shortcomings in second settlement

May 4, 2017
Dkt. 116
OBJECTION: Exhausting all informal measures, *Chernavsky* Plaintiffs objected to the Second Settlement and urged this Court to deny preliminary approval and order the parties, with appropriate and informed subclass counsel, back to the negotiating table

May 11, 2017
Dkt. 133
Jabbari reply in support of Second Settlement. The Settlement Parties specifically ***agreed*** with the *Chernavsky* Plaintiffs' suggestion to extend the claims period to 210 days after preliminary approval and 30 days after final approval; as noted by *Jabbari* Plaintiffs themselves: "The *Chernavsky* Objectors say that the deadline to submit a claim comes too early.…In light of this objection, Plaintiffs propose that the deadline to submit claim forms fall 210 days after a preliminary approval order and 30 days after final approval." (Dkt. No. 133 p. 18.)

May 16, 2017
Dkt. 141
Court requesting further briefing and posing questions over certain issues in the Second Settlement

May 17, 2017
Dkt. 142-143
Supplemental briefs by *Jabbari* Settlement Parties addressing Court request for further briefing on issues raised (specifically noting that 3.5 million accounts as the ceiling or high estimate of fake accounts)

May 17, 2017
Dkt. 144
Court raising further questions and issues in Second Settlement to be discussed at the hearing tomorrow

May 18, 2017
Dkt. 152
Preliminary Approval Hearing with *Jabbari* Settlement Parties and *Chernavsky* Plaintiffs' Counsel

May 24, 2017
Dkt. 155
Court Order re: Second Settlement and additional changes needed (confirming many issues raised by *Chernavsky* Objection)

June 13, 2017

Dkt. 160
The Settlement Parties stated they intend to make the *Chernavsky* Plaintiffs' and the Court's suggested changes, vastly simplifying the notice procedure and the notices themselves

Dkt. 160 at p. 4-5, ¶¶ 12.1, 12.6: The final settlement will make the changes requested by *Chernavsky* Plaintiffs for an online process for class members to object to or opt-out of the settlement

Dkt. 160 at p. 2-3: *Jabbari* Settlement Parties will further make changes addressing *Chernavsky* Plaintiffs concerns with the lack of oversight or guidance given to the settlement administrator and the proposed finality of the settlement administrator's judgment

June 14, 2017

Dkt. 162
THIRD SETTLEMENT

Dkt. 162-4, 162-5: The Settlement Parties removed the court seal after the *Chernavsky* Objection specifically raised concerns over having a claim form containing the Court 'seal' (may "have the effect of scaring off potential claimants who are unfamiliar with legal documents.") (Dkt. 116, **OBJECTION** at p. 7)

August 4, 2017
Dkt. 179-1, Exh. 11 at p. 1
Wells Fargo SEC filing alluded to the fact there was an incorrect number of fake accounts

August 22, 2017
Dkt. 179-1, Exh. 11 p. 2
Wells Fargo press release re: "significant" increase in fake accounts

September 14, 2017
Dkt. 179-1, Exh. 11
Chernavsky letter explicitly making the connection between the Wells Fargo announcements and *Jabbari* Parties prior under-estimate of fake accounts given to this Court on May 17, 2017

September 19, 2017
Dkt. 179-1, Exh. 12
Wells Fargo avoiding issues raised in September 14, 2017 *Chernavsky* letter

September 22, 2017
Dkt. 179-1, Exh. 13
Chernavsky letter to Wells Fargo re: importance of answers to the questions raised in September 14, 2017 letter

September 28, 2017
Dkt. 179-1, Exh. 14
Chernavsky Plaintiffs' continuing efforts to monitor the settlement status

October 7, 2017
Dkt. 172
Jabbari Settlement Parties joint request to increase the settlement reserve in light of possibly more fake accounts and class members

October 20, 2017
Dkt. 176
Court Order approving of the change in the joint request on October 7, 2017

March 6, 2018
Dkt. 202
Joint Stipulation by *Jabbari* Settlement Parties to further increase the claims timeline in light of notice issues (reinforcing *Chernavsky* Plaintiffs earlier OBJECTION on need for streamlined claims and notice process)

Exhibit C

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May 12, 2017

Via E-Mail & Fax

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Re: Preliminary Approval
Jabbari v. Wells Fargo & Co., Case No. 3:15-cv-02159-VC (N.D. Cal.)

Dear Counsel,

Without waiving any and all of the positions we have outlined in our opposition brief filed with the Court, we are requesting that you consider postponing the preliminary approval hearing for approximately a seven day time period. This time period would allow my firm and others now before the Court with objections to see what, if any, modifications that you would consider and that would best serve the class you seek to settle. I cannot speak for any other firms or plaintiffs, but I believe this process will benefit the class and the Court. Indeed, the end result may be that certain objections are withdrawn, in whole or in part. I cannot imagine that the Court would not appreciate this effort by all the parties at this point.

Please let me know if this is at all amiable to you.

Very truly yours,

William M. Audet
AUDET & PARTNERS, LLP

cc: Ling (David) Kuang;
Clint Woods
(via electronic mail only)

Exhibit D

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Via Electronic Mail May 16, 2017

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Re: Preliminary Approval
Jabbari v. Wells Fargo & Co., Case No. 3:15-cv-02159-VC (N.D. Cal.)

Dear Counsel,

In addition to providing clarifications on the settlement agreement, we have considered the reply *Jabbari* Plaintiffs have submitted in support of the motion for preliminary approval (Dkt. 133-134). Based upon the information and indications in the reply brief, it appears that *Jabbari* Plaintiffs' counsel believe that at least some of our suggestions are worthy of consideration, and thus, we are submitting this letter for your consideration. Without waiving any issues we have raised for our clients and for the proposed Settlement Class, we remain focused on seeking certain changes to the settlement that we think are workable and will only benefit all the parties involved.

Claim Period

We note that in response to our objection that the claims period was too short, given the amount of time the Settlement provides for the consultants to identify potential claimants, the *Jabbari* plaintiffs appear to have no objection to extending the deadline to submit a claim form from 120 days after preliminary approval to 210 days after preliminary approval and 30 days after final approval. (*See* Plaintiffs' Reply at p. 18.)

Notice(s)

We understand that the notice may be one that can be subject to some improvement and essentially made more readable. We can provide you with language for your consideration consistent with the Federal Judicial Center guidelines.

Release Language

We request that the Settlement Parties revise the release language to limit the release to the issues in the case, including definitions for the terms "products" and "services". We suggest the following edits:

1. Add the definitions of "Accounts", "Products", and "Services", as suggested in the *Jabbari* reply memorandum (p. 20), so that the Settlement Class (Dkt. 100 ¶ 2.51) adequately informs the class of the scope of the settlement and release.
2. Remove the language in ¶ 2.55 under "Unknown Claims" which expands the settlement to all claims "which if known by him, her or it might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to object to this Settlement or not exclude himself, herself or itself from the Settlement Class". This is simply too broad in light of the current definitions.
3. The settlement also needs to exclude any unrelated class cases and avoid any overlap with any claims by absent class members of the various pending class action cases unrelated to the claims in the *Jabbari* case.

We propose that we jointly ask the Court to allow the parties a short window of time to consider and/or implement these suggestions prior to any notices being sent to the Settlement Class. I believe that the above changes to the settlement and other proposals will avoid objections down the road at final approval. I am happy to discuss any questions you may have on these proposed changes.

Very truly yours,

William M. Audet
AUDET & PARTNERS, LLP

cc: Ling (David) Kuang;
Clint Woods
(via electronic mail)

A&P
AUDET & PARTNERS LLP

Exhibit E

A&P | AUDET & PARTNERS LLP

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Jabbari, et al. v. Wells Fargo & Co., et al
Lodestar (through 12/31/2017)

Attorney:	**Hours**	**Rate**	**Common Lodestar**
William M. Audet (P)	293.00	$925.00	$271,025.00
Clint Woods (A)	176.05	$525.00	$92,426.25
Elvin Vu (A)	9.30	$350.00	$3,255.00
Ling (David) Kuang (A)	149.05	$295.00	$43,969.75
			Total: $410,676.00
Paralegal / Legal Assistant			
Patricia Alvarez (LA)	7.85	$125.00	$981.25
Harold Darling (PL)	152.30	$150.00	$22,845.00
			Total: $23,826.25
		Total Common Lodestar:	**$434,502.25**

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S. Clinton Woods (SBN 246054)
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Counsel for Movants Alex Chernavsky and William Castro, on behalf of themselves and all others similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SHAHRIAR JABBARI and KAYLEE HEFFELFINGER, on behalf of themselves and all others similarly situated, Plaintiffs, v. WELLS FARGO & COMPANY and WELLS FARGO, N.A., Defendants.	Case No: 3:15-cv-02159-VC **PLAINTIFFS' SUPPLEMENTAL EXHIBIT IN FURTHER SUPPORT OF THE *CHERNAVSKY* PLAINTIFFS' REPLY BRIEF** Date: March 22, 2018 Time: 10:00 a.m. Place: Courtroom 4 – 17th Floor Judge: Honorable Vince Chhabria

Attached hereto is a true and correct copy of the *Chernavsky* Plaintiffs' Timeline of Relevant Events.

/s/ William Audet

William M. Audet
AUDET & PARTNERS, LLP

Counsel for Movants Alex Chernavsky and William Castro, on behalf of themselves and all others similarly situated

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TIMELINE OF RELEVANT EVENTS

September 13, 2016
Dkt. 72
SETTLEMENT ANNOUCED:
Jabbari Plaintiffs and Wells Fargo stipulated to dismiss an appeal due to an apparent settlement before the Circuit mediator

November 1, 2016
Dkt. 179-1, Exh. 1
Chernavsky letter to *Jabbari* Plaintiffs re: filing of complaint

November 2, 2016
Dkt. 1 (*Chernavsky* Matter)
Chernavsky Plaintiffs filed their complaint

November 8, 2016
Dkt. 179-1, Exh. 2
Chernavsky letter to Wells Fargo Defendant re: cases being related

November 14, 2016
Dkt. 11 (*Chernavsky* Matter)
Chernavsky Plaintiffs amended their complaint, specifically including a privacy subclass defined as members of the putative class who had external accounts opened without authorization

November 15, 2016
Dkt. 81
Case management conference was held where this Court set a deadline of ***December 9, 2016*** for *Jabbari* Plaintiffs to file their motion for preliminary approval

November 28, 2016
Dkt. 179-1, Exh. 3
Chernavsky letter to *Jabbari* Plaintiffs re: privacy subclass, need for narrow release, and adequate value in any settlement

December 8, 2016
Dkt. 83-85
One day before the deadline to file the motion for preliminary approval, *Jabbari* Plaintiffs and Wells Fargo stipulated to extend the deadline for filing the motion for preliminary approval to ***December 30, 2016***

December 12, 2016
Dkt. 179-1, Exh. 4
Chernavsky letter to Wells Fargo Defendant re: high value of privacy subclass

December 28, 2016
Dkt. 86, 88
Two days before the deadline to file the motion for preliminary approval, the *Jabbari* Settlement Parties once again stipulated to extend the deadline to file to ***January 30, 2017***

January 10, 2017
Dkt. 116 at p.3
Second case management conference was held where the *Jabbari* Plaintiffs represented that they intended to file a motion for preliminary approval by the new ***January 30, 2017*** deadline (but was not filed)

February 14, 2017
Dkt. 94
Third case management conference held where the *Jabbari* Parties indicated that they were still working towards a settlement

March 28, 2017
Dkt. 96
FIRST SETTLEMENT:
Jabbari Parties filed a notice of settlement containing no terms other than the overall amount of settlement ($110M) and that it would dispose of all claims, presumably including the privacy class claims (in *Chernavsky* complaint)

March 30, 2017
Dkt. 116-1, Exh. 1 at p. 18
At JPML Hearing, Jabbari Plaintiffs specifically said intervention would be agreed to (but later reneged): "**JUDGE VANCE:** So would all these other parties be able to intervene in the Northern District of California to be heard on the settlement? **MR. LOESER:** Absolutely, Your Honor."

March 31, 2017
Dkt. 179-1, Exh. 5
Chernavsky letter to *Jabbari* Plaintiffs re: notice of first settlement, request for terms of settlement, allowing intervention, and other information for class members

April 5, 2017
Dkt. 179-1, Exh. 6
Chernavsky Plaintiffs' email to *Jabbari* Plaintiffs re: request for reply to March 31, 2017 letter

April 7, 2017
Dkt. 179-1, Exh. 6
Chernavsky Plaintiffs' email exchanges with *Jabbari* Plaintiffs re: settlement details and *Jabbari*'s denial of intervention despite March 30, 2017 JPML statement otherwise

April 11, 2017
Dkt. 179-1, Exh. 7
Chernavsky Plaintiffs' email and phone call with *Jabbari* Plaintiffs raising issues re: continued delay in intervention, settlement terms, and limited discovery

April 20, 2017
Dkt. 100
SECOND SETTLEMENT: *Jabbari* Plaintiffs moved to preliminarily approve a second settlement that extended the class period back to 2002 (thereby adding several hundred thousand class members) and increased the recovery amount from the previously reported $110M figure to $142M

April 26, 2017
Dkt. 179-1, Exh. 8
Chernavsky letter to *Jabbari* Plaintiffs re: host of problems in the Second Settlement and request to address the concerns

May 2, 2017
Dkt. 179-1, Exhs. 9-10
Letters b/t *Chernavsky* and *Jabbari* Plaintiffs re: lack of substantive responses to *Chernavsky* April 26, 2017 letter; continued non-response from Jabbari has now exhausted all informal attempts to address shortcomings in second settlement

May 4, 2017
Dkt. 116
OBJECTION: Exhausting all informal measures, *Chernavsky* Plaintiffs objected to the Second Settlement and urged this Court to deny preliminary approval and order the parties, with appropriate and informed subclass counsel, back to the negotiating table

May 11, 2017
Dkt. 133
Jabbari reply in support of Second Settlement. The Settlement Parties specifically ***agreed*** with the *Chernavsky* Plaintiffs' suggestion to extend the claims period to 210 days after preliminary approval and 30 days after final approval; as noted by *Jabbari* Plaintiffs themselves: "The *Chernavsky* Objectors say that the deadline to submit a claim comes too early.…In light of this objection, Plaintiffs propose that the deadline to submit claim forms fall 210 days after a preliminary approval order and 30 days after final approval." (Dkt. No. 133 p. 18.)

May 16, 2017
Dkt. 141
Court requesting further briefing and posing questions over certain issues in the Second Settlement

May 17, 2017
Dkt. 142-143
Supplemental briefs by *Jabbari* Settlement Parties addressing Court request for further briefing on issues raised (specifically noting that 3.5 million accounts as the ceiling or high estimate of fake accounts)

May 17, 2017
Dkt. 144
Court raising further questions and issues in Second Settlement to be discussed at the hearing tomorrow

May 18, 2017
Dkt. 152
Preliminary Approval Hearing with *Jabbari* Settlement Parties and *Chernavsky* Plaintiffs' Counsel

May 24, 2017
Dkt. 155
Court Order re: Second Settlement and additional changes needed (confirming many issues raised by *Chernavsky* Objection)

June 13, 2017

Dkt. 160
The Settlement Parties stated they intend to make the *Chernavsky* Plaintiffs' and the Court's suggested changes, vastly simplifying the notice procedure and the notices themselves

Dkt. 160 at p. 4-5, ¶¶ 12.1, 12.6: The final settlement will make the changes requested by *Chernavsky* Plaintiffs for an online process for class members to object to or opt-out of the settlement

Dkt. 160 at p. 2-3: *Jabbari* Settlement Parties will further make changes addressing *Chernavsky* Plaintiffs concerns with the lack of oversight or guidance given to the settlement administrator and the proposed finality of the settlement administrator's judgment

June 14, 2017

Dkt. 162
THIRD SETTLEMENT

Dkt. 162-4, 162-5: The Settlement Parties removed the court seal after the *Chernavsky* Objection specifically raised concerns over having a claim form containing the Court 'seal' (may "have the effect of scaring off potential claimants who are unfamiliar with legal documents.") (Dkt. 116, **OBJECTION** at p. 7)

August 4, 2017
Dkt. 179-1, Exh. 11 at p. 1
Wells Fargo SEC filing alluded to the fact there was an incorrect number of fake accounts

August 22, 2017
Dkt. 179-1, Exh. 11 p. 2
Wells Fargo press release re: "significant" increase in fake accounts

September 14, 2017
Dkt. 179-1, Exh. 11
Chernavsky letter explicitly making the connection between the Wells Fargo announcements and *Jabbari* Parties prior under-estimate of fake accounts given to this Court on May 17, 2017

September 19, 2017
Dkt. 179-1, Exh. 12
Wells Fargo avoiding issues raised in September 14, 2017 *Chernavsky* letter

September 22, 2017
Dkt. 179-1, Exh. 13
Chernavsky letter to Wells Fargo re: importance of answers to the questions raised in September 14, 2017 letter

September 28, 2017
Dkt. 179-1, Exh. 14
Chernavsky Plaintiffs' continuing efforts to monitor the settlement status

October 7, 2017
Dkt. 172
Jabbari Settlement Parties joint request to increase the settlement reserve in light of possibly more fake accounts and class members

October 20, 2017
Dkt. 176
Court Order approving of the change in the joint request on October 7, 2017

March 6, 2018
Dkt. 202
Joint Stipulation by *Jabbari* Settlement Parties to further increase the claims timeline in light of notice issues (reinforcing *Chernavsky* Plaintiffs earlier OBJECTION on need for streamlined claims and notice process)