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9

10 **UNITED STATES DISTRICT COURT**

11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 LINDELL VAN DYKE, AS TRUSTEE FOR )  
13 THE VAN DYKE FAMILY TRUST, and )  
14 SANDRA OLSEN, Individually And On Behalf )  
of All Others Similarly Situated, )

15 Plaintiff, )

16 v. )

17 WELLS FARGO & CO., WELLS FARGO )  
18 INVESTMENTS, LLC, WELLS FARGO )  
19 INSTITUTIONAL SECURITIES, LLC, WELLS )  
FARGO SERVICES, LLC, and WELLS )  
20 FARGO BANK, N.A., )

21 Defendants. )  
22

**CIVIL ACTION NO. 08-cv-1962 (JSW)**

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF  
FEDERAL SECURITIES LAWS**

**JURY TRIAL DEMANDED**

23 1. Lead Plaintiffs Lindell Van Dyke and Sandra Olsen, by their counsel allege the following  
24 based upon personal knowledge as to their own acts and upon the investigation of by their counsel,  
25 which includes, among other things, a review of: (a) public statements, sales presentations and  
26 marketing materials by Wells Fargo & Co., Wells Fargo Investments, LLC, Wells Fargo Institutional  
27 Securities, LLC, Wells Fargo Brokerage Services, LLC, and Wells Fargo Bank, N.A. (collectively  
28 "Wells Fargo" or "Defendants"), and their affiliates, agents and employees; (b) Securities and Exchange

1 Commission (“SEC”) filings made by Wells Fargo and other brokerages, financial services firms and  
2 investment companies; (c) public filings and statements in court proceedings and civil government and  
3 regulatory investigations involving Wells Fargo and other brokerages, financial services firms and  
4 investment companies; (d) documents believed to be authentic copies of internal emails and other  
5 business records of various brokerages, financial services firms and investment companies obtained  
6 from public record sources; (e) securities analysts’ reports, press releases and media reports; (f)  
7 interviews with purchasers of auction rate securities and other knowledgeable individuals; and (g)  
8 discussions with consultants.

9 **INTRODUCTION**

10 2. This is a class action under Sections 10(b) and 20(a) of the Securities Exchange Act of  
11 1934 (“Exchange Act”) on behalf of all persons or entities who purchased auction rate securities from  
12 Wells Fargo between April 14, 2003 and February 13, 2008, inclusive (“Class Period”), and who were  
13 damaged thereby.

14 3. Auction rate securities are bonds or preferred stocks that pay interest or dividends at rates  
15 set at periodic auctions. During the Class Period, Wells Fargo sold auction rate securities to investors as  
16 highly liquid investments and appropriate short-term investments.

17 4. During the Class Period, Wells Fargo engaged in a scheme to defraud purchasers of  
18 auction rate securities by making omissions and misrepresentations of material fact about the risks,  
19 value and liquidity of those securities. The scheme allowed Wells Fargo to reap millions of dollars in  
20 sales commissions, underwriting fees and auction management fees at the expense of investors who  
21 purchased auction rate securities at overvalued prices.

22 5. Wells Fargo pushed nearly four billion dollars of auction rate securities onto investors,  
23 including its own inventory of auction rate securities, in order to avoid being stuck with them on its own  
24 balance sheet.

25 6. Wells Fargo knowingly or recklessly failed to disclose material facts relating to the  
26 liquidity and risk characteristics of auction rate securities and to the scope and extent to which broker-  
27 dealers intervened in the auctions for auction rate securities.



1 broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the New York Stock  
2 Exchange (“NYSE”) and the Financial Industry Regulatory Authority (“FINRA”). Wells Fargo & Co. is  
3 the ultimate parent of WFI. WFI has retail offices located in the central and western regions of the  
4 United States. During the Class Period, WFI sold auction rate securities to Class members.

5 16. Defendant Wells Fargo Institutional Securities, LLC (“WFIS”) is incorporated in  
6 Delaware and maintains its principal executive offices in Minneapolis, Minnesota. Wells Fargo & Co. is  
7 the ultimate parent of WFIS. WFIS is registered with the SEC as a broker-dealer pursuant to Section  
8 15(b) of the Exchange Act. WFIS’s accounts are carried by Wells Fargo Brokerage Services, LLC.  
9 During the Class Period, WFIS sold auction rate securities to Class members.

10 17. Defendant Wells Fargo Brokerage Services, LLC (“WFBS”) is incorporated in Delaware  
11 and maintains its principal executive offices in Minneapolis, Minnesota. Wells Fargo & Co. is the  
12 ultimate parent of WFBS. WFBS’s primary activities are institutional securities brokerage, fixed  
13 income trading and underwriting. WFBS is registered with the SEC as a broker-dealer pursuant to  
14 Section 15(b) of the Exchange Act. WFBS clears transactions for WFIS. During the Class Period,  
15 WFBS and WFIS worked in tandem with each other and shared resources and personnel with respect to  
16 their activities and transactions in their auction rate securities market. During the Class Period, WFBS  
17 sold auction rate securities to Class members.

18 18. Defendant Wells Fargo Bank, N.A. (“Wells Fargo Bank”) is a national association that  
19 maintains its principal executive offices in San Francisco, California. Wells Fargo Bank, a wholly  
20 owned subsidiary of Wells Fargo & Co., is a provider of banking services. During the Class Period,  
21 Wells Fargo Bank served as the auction agent for numerous auction rate securities and steered clients to  
22 WFI, WFIS and WFBS in order to sell auction rate securities.

23 19. Unless specifically noted, “Wells Fargo” or “Defendants” refers collectively to  
24 defendants Wells Fargo & Co., WFI, WFIS, WFBS, and Wells Fargo Bank.

25 20. Unless specifically noted, “Control Person Defendants” refers collectively to defendants  
26 Wells Fargo & Co. and Wells Fargo Bank.

**PLAINTIFFS' CLASS ACTION ALLEGATIONS**

1  
2 21. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure  
3 23(a), 23(b)(1), (b)(2) and/or (b)(3), and 23(c)(4) on behalf of a Class consisting of all persons and  
4 entities that purchased auction rate securities from Wells Fargo between April 14, 2003 and February  
5 13, 2008, inclusive, and were damaged thereby (the "Class").

6 22. Excluded from the Class are Defendants; the subsidiaries and affiliates of any Defendant;  
7 any person or entity who is a partner, officer, director, employee or controlling person of any Defendant;  
8 members of Defendants' immediate families and their legal representatives, heirs, successors or assigns;  
9 and any entity in which any Defendant has or had a controlling interest.

10 23. The members of the Class are so numerous that joinder of all members is impracticable.  
11 The market for auction rate securities, while it existed, was estimated to exceed \$300 billion in the  
12 United States.

13 24. Wells Fargo was a substantial seller of auction rate securities while the market for such  
14 securities existed. During the Class Period, Wells Fargo's clients held as much as \$3.9 billion of auction  
15 rate securities they purchased from Wells Fargo.

16 25. During the Class Period, Wells Fargo sold auction rate securities to approximately 6,000  
17 customers. While the exact number of Class members is unknown to Plaintiffs at this time and can only  
18 be ascertained through appropriate discovery, Plaintiffs believe that there are thousands of members of  
19 the proposed Class.

20 26. Record owners and other members of the Class may be identified from records  
21 maintained by Defendants and other brokerage firms and may be notified of the pendency of this action  
22 by mail, using the form of notice similar to that customarily used in securities class actions.

23 27. Common questions of law and fact exist as to all members of the Class and predominate  
24 over any questions solely affecting individual members of the Class. Among the questions of law and  
25 fact common to the Class are:

- 26 a. Whether the federal securities laws were violated by Defendants' acts as alleged  
27 herein;
- 28 b. Whether Defendants made omissions or misrepresentations of material fact about the  
risks, value and liquidity of auction rate securities and the market for such securities;

- 1 c. Whether Defendants failed to disclose that broker-dealers artificially supported and  
2 manipulated the market for auction rate securities to maintain the appearance of  
liquidity and stability, and if so, whether the omitted facts are material; and
- 3 d. Whether Class members have sustained damages and the proper measure of damages.

4 28. Plaintiffs' claims are typical of the claims of the members of the Class as all members of  
5 the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is  
6 complained of herein.

7 29. Plaintiffs will fairly and adequately protect the interests of the members of the Class and  
8 have retained counsel competent and experienced in class and securities litigation.

9 30. A class action is superior to all other available methods for the fair and efficient  
10 adjudication of Plaintiffs' claims. The damages suffered by individual Class members are relatively  
11 small given the burden and expense of individual prosecution of the complex litigation necessitated by  
12 Defendants' conduct. It would be virtually impossible for members of the Class to individually redress  
13 the wrongs done to them.

14 31. Furthermore, even if Class members could afford such individualized litigation, the court  
15 system could not. Individualized litigation would create the danger of inconsistent or contradictory  
16 judgments and increase the delay and expense to all parties and the court system. By contrast, the class  
17 action device presents far fewer management difficulties, is in fact manageable, and provides the  
18 benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.  
19 The benefits of adjudicating this controversy as a class action far outweigh any difficulties in managing  
20 the Class.

21 32. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P.  
22 23(b)(1), 23(b)(2) and/or 23(c)(4) because:

- 23 a. The prosecution of separate actions by the individual Class members would create a  
24 risk of inconsistent or varying adjudications with respect to individual Class members  
25 which would establish incompatible standards of conduct for Defendants;
- 26 b. The prosecution of separate actions by individual Class members would create a risk  
27 of adjudications with respect to them which would, as a practical matter, be  
28 dispositive of the interests of other Class members not parties to the adjudications, or  
substantially impair or impede their ability to protect their interests;

- 1 c. Defendants have acted or refused to act on grounds generally applicable to the Class,  
2 thereby making appropriate final injunctive relief with respect to the Class as a  
3 whole; and  
4 d. The claims of Class members are comprised of common issues that are appropriate  
5 for certification under Rule 23(c)(4).

### **FACTUAL ALLEGATIONS**

#### **A. Background: Auction Rate Securities**

6  
7 33. Auction rate securities are long-term or perpetual variable-rate equity or debt instruments  
8 that pay interest or dividends at rates set at periodic “auctions.”

9 34. Auction rate securities are issued by closed-end preferred funds (“auction rate preferreds”  
10 or “ARPS”); states, state agencies, municipalities, or other governmental authorities (“municipal auction  
11 rate securities”); public or private student loan originators and lenders (“SLARS”); and other  
12 corporations and entities.

13 35. Auction rate securities were an attractive financing vehicle while the market for those  
14 securities existed, because they allowed issuers to obtain long-term capital at short-term rates.

15 36. The market for auction rate securities experienced dramatic growth since the securities  
16 were first introduced in 1984.

17 37. By February 2008, approximately \$330 billion of auction rate securities were  
18 outstanding.

19 38. Investments in auction rate securities when they were first marketed in the 1980s were  
20 limited to highly sophisticated institutional investors, with required minimums of \$250,000 or more.

21 39. Prior to the beginning of the Class Period, issuers and underwriters lowered the minimum  
22 investment to \$25,000.

23 40. The reduced minimum investment enabled sellers to market auction rate securities to  
24 retail investors including individuals, charities and small businesses.

#### **B. The Auction Process**

25  
26 41. Prior to February 2008, auction rate securities typically traded at par value through  
27 periodic auctions.  
28

1 42. The rates of interest or dividends paid on auction rate securities were determined at the  
2 periodic auctions, which were conducted as “Dutch” auctions.

3 43. Although the amount of time between each auction varied between individual securities,  
4 in general auctions were held every 7, 28, 35 or 49 days, with interest paid at the end of the auction  
5 period.

6 44. Auction rate securities were sold to investors by broker-dealers that had entered into  
7 agreements to manage auctions and accept orders for the purchase and sale of those securities, or by  
8 other designated brokerages, often referred to as “remarketing agents” or “distributing firms.”

9 45. In theory, before an auction took place, broker-dealers surveyed investor interest and  
10 gave guidance to potential investors, providing a range of rates within which the broker-dealers believed  
11 the auction would clear. This conduct was referred to as “price talk.”

12 46. Price talk enabled broker-dealers to influence the clearing rate for the auctions they  
13 managed. Among other things, if investors placed bids well above the price talk, the broker-dealers  
14 were able to and did place sufficient bids to clear the auctions at lower interest rates.

15 47. According to typical auction procedures, each prospective buyer submitted a bid for a  
16 specific amount of securities and a specified minimum interest or dividend rate. Broker-dealers  
17 submitted buy and sell bids to an auction agent that administered the auction. The auction agent  
18 determined which sell orders were filled beginning with bids at the lowest rate and continuing with bids  
19 at progressively higher rates, until all securities available for sale were sold. The interest or dividend  
20 rate bid at which the last of the securities were sold was the “clearing rate.” The clearing rate, as  
21 calculated by the auction agent, was then applied to all securities sold in the auction.

22 48. Auction procedures typically provided for the following types of orders:

- 23 a. Hold: The holder kept the securities regardless of the clearing rate;
- 24 b. Hold at Rate: The prospective seller kept the securities only if the clearing rate was at  
25 least as much as the rate that the person specified; if the clearing rate was less than  
26 the rate specified, then the person sold his or her securities;
- 27 c. Sell: The prospective seller sold the securities regardless of the clearing rate; and
- 28 d. Buy: The prospective buyer submitted a bid to purchase securities at a specified  
minimum interest or dividend rate.

1           49. Auctions could end in one of three ways: as a successful auction, an “all-hold” auction,  
2 or a failed auction.

3           50. In a successful auction, the number of shares bid for purchase was equal to or greater  
4 than the number of shares offered for sale. All shares for sale were purchased, and the clearing rate  
5 applied to all securities sold until the next auction. If several bidders had bids at the clearing rate, and  
6 there were more bids than shares offered for sale, the shares were divided pro-rata between the clearing  
7 rate bidders.

8           51. As an example of a successful auction, assume an auction took place in which \$1,000,000  
9 of securities were for sale, and the auction received four bids: Bid A was for \$500,000 at 3.2 percent;  
10 Bid B was for \$500,000 at 3.3 percent; Bid C was for \$500,000 at 3.3 percent; and Bid D was for  
11 \$250,000 at 3.4 percent. In this example, the clearing rate would be 3.3 percent, which would be paid as  
12 interest or dividends on all securities in the auction until the next auction. Bid A would be allocated  
13 \$500,000, Bids B and C would receive pro-rata allocations of \$250,000 each, and Bid D would not  
14 receive any allocation.

15           52. If all investors decided to hold and not sell their securities, then the auction was an all-  
16 hold auction. No securities changed hands, and a formula specified in the offering documents set the  
17 interest or dividend rate for all securities until the next auction.

18           53. The all-hold rate was generally lower than the market rate. Thus, if investors failed to bid  
19 their auction rate securities at rate, the interest or dividend rate on those securities would be reduced.

20           54. An auction failed if the number of shares offered for sale exceeded the number of shares  
21 bid for purchase. If the auction failed, then none of the current shareholders could sell their shares, no  
22 matter what type of order they issued. An interest or dividend rate called the “penalty rate” or  
23 “maximum rate” (hereafter referred to as the “maximum rate”) would then apply until the next auction.  
24 The maximum rate was specified in the offering documents as either a formula or a multiplier of a  
25 reference rate, such as a specified index rate.

26           55. The maximum rate on an auction rate security was intended to ensure that the security  
27 remained liquid if the auction failed, by attracting new buyers or prompting the issuer to refinance. If  
28 the maximum rate was insufficient to attract liquidity in the event of an auction failure, however, the risk

1 characteristics of an auction rate security were fundamentally altered. An auction rate security that  
2 carried a low penalty rate was dependent on the broker-dealers' pervasive intervention and "support" for  
3 the periodic auctions to ensure liquidity, and in the absence of the broker-dealer's support, any auction  
4 failure would render the security illiquid.

5 56. Auction rate securities have no "put" feature guaranteeing that an investor could either  
6 sell the securities back to the broker-dealer on demand at par value or force the issuer to redeem the  
7 securities if the auctions failed. Holders of auction rate securities depended on the integrity of the  
8 broker-dealers and the auctions to ensure that the securities remained liquid.

9 **C. Broker-Dealers Manipulated The Market For Auction Rate Securities**

10 **i. Broker-Dealers Routinely Intervened In The Auctions To Create The Appearance**  
11 **Of Stability And Liquidity**

12 57. During the Class Period, financial firms underwrote billions of dollars of auction rate  
13 securities that carried insufficient maximum rates to ensure the liquidity of those securities if the  
14 auctions failed. Broker-dealers and other distributing firms, including Wells Fargo, sold these auction  
15 rate securities to investors during the Class Period.

16 58. As a general matter, financial firms did not object to underwriting auction rate securities  
17 where the maximum rate was insufficient to ensure liquidity. Rather, underwriters encouraged issuers to  
18 establish low maximum rates in order to obtain AAA ratings from credit rating agencies, thus creating  
19 the appearance of quality and safety. Broker-dealers and other distributing firms, including Wells  
20 Fargo, touted AAA ratings as a selling point.

21 59. Unbeknownst to investors, however, the same maximum rates that enabled auction rate  
22 securities to have AAA ratings also limited the liquidity of those securities, and ensured that, once an  
23 auction failed, investors would receive interest rates that were below market value and insufficient to  
24 compensate for the lack of liquidity.

25 60. To mask the inherent lack of liquidity of auction rate securities, broker-dealers engaged  
26 in a wide range of tactics to conceal the liquidity characteristics of those securities while protecting  
27 themselves from the consequences of intervening in auctions to prevent failures.

1 61. Throughout the Class Period, broker-dealers intervened in the auctions by placing  
2 “support bids” to purchase auction rate securities for their own account when the auctions otherwise  
3 would have failed due to lack of sufficient demand.

4 62. Between January 1, 2006 and February 28, 2008, broker-dealer UBS placed support bids  
5 in more than 30,000 auctions of its municipal and student loan auction rate securities which prevented  
6 more than 85 percent of those auctions from failing. During the same time period, UBS placed support  
7 bids in more than 27,000 auctions of its auction rate preferred securities which prevented more than 50  
8 percent of those auctions from failing. Between January 3, 2006 and May 27, 2008, broker-dealer  
9 Merrill Lynch placed support bids that prevented more than 5,800 auctions for auction rate securities  
10 from failing.

11 63. Broker-dealers were able to place support bids and prevent auctions from failing, because  
12 they were aware of the other bids in the auctions and could place their own bids after the bidding  
13 deadline for other investors.

14 64. The extensive and sustained interventions by broker-dealers to prevent auction failures  
15 created the outward appearance that auction rate securities were readily liquid investments.

16 65. By intervening to prevent auction failures, broker-dealers masked the liquidity risks  
17 inherent to auction rate securities. Due to the lack of transparency in the auction market, investors had  
18 no way of knowing the extent to which broker-dealers’ interventions were needed to sustain the auction  
19 rate market and ensure that auctions continued to clear.

20 66. Had broker-dealers not supported these auctions, or had the extent of their interventions  
21 been apparent, widespread auction failures would have alerted the public to the risk characteristics of the  
22 auction rate securities.

23  
24 **ii. Broker-Dealers Routinely Intervened In Auctions to Set the Rates of Interest Paid  
on Auction Rate Securities**

25 67. Unlike fixed rate bonds, commercial paper or money market funds, auction rate securities  
26 are designed with the understanding that the holder will actively “trade” the securities by monitoring the  
27 relative rates of return paid on auction rate securities in relation to other short term investment options  
28 available to the holder, and “hold at rate,” (an instruction to sell unless the rate paid on the security is

1 equal to or greater than a specified rate of interest) or sell the security outright if the rate of return the  
2 holder anticipates receiving on the auction rate security is inferior to other alternatives.

3 68. In the absence of active trading by holders, auction rate securities became increasingly  
4 vulnerable to intervention by broker-dealers to influence interest and dividend rates.

5 69. As a result of insufficient investor participation in the auctions, broker-dealers were able  
6 to assert control over the rates of interest paid on the auction rate securities for which they managed  
7 auctions.

8 70. Broker-dealers set the clearing rate for the auctions that would have failed but for their  
9 support bids throughout the Class Period.

10 71. Broker-dealers did not base their pricing decisions on a hypothetical market rate or fair  
11 value. Instead, when setting the clearing rate, broker-dealers did so in a manner that placed their own  
12 interests ahead of investors.

13 72. Throughout the Class Period, broker-dealers set interest rates in such a manner as to  
14 allow continued sales of auction rate securities to the public without letting clearing rates become or stay  
15 so high as to alienate the issuer clients on whom they depended for continuing business and attendant  
16 underwriting commissions and auction management fees.

17 73. While at times during the Class Period broker-dealers increased rates to draw buyers,  
18 they generally caused interest rates to decrease once they had sold sufficient auction rate securities to  
19 reduce their own inventory.

20 74. The interest rates on auction rate securities failed to compensate holders for the risk of  
21 illiquidity and in general were below the interest rates for comparable, but more liquid, securities such as  
22 variable-rate debt obligations and commercial paper.

23 **iii. The Viability of the Auction Market Depended Upon Broker-Dealer Interventions**

24 75. The continued viability of the auction rate securities market depended upon concerted  
25 efforts by all broker-dealers. If one broker-dealer permitted widespread auction failures, a “run on the  
26 bank” would ensue, with panic selling by investors, and the broker-dealer being forced to choose  
27 between attempting to sustain the auction rate securities market by buying all securities offered at  
28 auction and allowing the auctions to fail *en masse*.

1 76. As a result, all broker-dealers had a common interest in suppressing auction failures. In  
2 furtherance of their common interests, and with a tacit or express understanding that other broker-  
3 dealers would similarly act to suppress auction failures, broker-dealers continued to intervene to prevent  
4 auction failures even after they anticipated the ultimate demise of the auction rate securities market.

5 **iv. The Auction Rate Securities Market Begins To Unravel**

6 77. By intervening to support otherwise failing auctions, broker-dealers increased the amount  
7 of auction rate securities in their proprietary accounts.

8 78. Broker-dealers pressured their sales personnel and remarketing agents including Wells  
9 Fargo to sell auction rate securities in order to decrease their inventories of those securities in 2007 and  
10 2008.

11 79. Broker-dealers including UBS, Lehman Brothers, Merrill Lynch and Deutsche Bank  
12 limited their exposure to increased inventories of auction rate securities by allowing some auctions to  
13 fail between August 2007 and early February 2008. These securities represented a small fraction of the  
14 entire auction rate securities market, however, and the failures were not widely known to the market or  
15 investors in auction rate securities.

16 80. Wells Fargo knew about the auction failures that began in August 2007. Wells Fargo  
17 served as the auction agent for at least five auction rate securities that failed when broker-dealer Merrill  
18 Lynch refused to place support bids. In addition, some of Wells Fargo's clients had invested in auction  
19 rate securities that failed beginning in August 2007. Wells Fargo did not notify its other clients about  
20 these auction failures, however.

21 81. The only known prior failures in the 23-year history of the auction rate securities market  
22 were isolated instances involving either the insolvency of a single broker-dealer or the credit downgrade  
23 of a single issuer. By contrast, the auction failures that began in August 2007 were the first failures in  
24 the history of the auction rate securities market that occurred because several broker-dealers refused to  
25 continue to support the auctions. By virtue of its participation in the auction rate securities market  
26 including its role as an auction agent for several of the failed auctions, Wells Fargo knew or was  
27 reckless in not knowing that the auction failures that began in August 2007 were an indication of  
28 increased turmoil in the auction rate securities market.

1 82. Following the August 2007 auction failures, broker-dealers engaged in an aggressive  
2 campaign to increase sales of auction rate securities by having their sales personnel and their  
3 remarketing agents including Wells Fargo describe the securities as safe, highly liquid, cash equivalent  
4 investments. Broker-dealers and remarketing agents including Wells Fargo did not disclose the risks  
5 associated with those securities, the fact that several auctions had failed, and the likelihood that the  
6 broker-dealers would abandon the auction market leaving investors with illiquid securities.

7 83. Broker-dealers and their remarketing agents including Wells Fargo continued to  
8 encourage investors to purchase auction rate securities through the first half of February 2008, despite  
9 knowing about increasing turmoil in the auction rate securities market.

10 84. In November 2007, a Wells Fargo employee prepared a document entitled “Fixed Income  
11 Update: Failed Auction Risk in the Auction Rate Preferred Market.” That document recommended that  
12 Wells Fargo customers not purchase auction rate securities because of the increased risk of auction  
13 failures. Despite receiving and discussing the document in or around November 7, 2008, Wells Fargo’s  
14 auction trading desk disregarded its warnings, and continued to instruct its sales force to sell auction rate  
15 securities as safe, liquid investments.

16 85. Wells Fargo knew that the auction rate securities market became even less stable during  
17 the last week of January 2008 and the first week of February 2008, when broker-dealers including  
18 Lehman Brothers, Piper Jaffray, Stifel Nicolaus and Goldman Sachs refused to support the auctions and  
19 allowed them to fail.

20 86. On or around February 13, 2008, all major broker-dealers of auction rate securities  
21 refused to continue to support the auctions. As a result, 87% of all auctions of auction rate securities  
22 failed.

23 87. Broker-dealers did not notify investors or publicly announce that they would allow the  
24 auctions to fail before February 13, 2008.

25 88. As a result of the withdrawal of support by the major broker-dealers, the market for  
26 auction rate securities collapsed, rendering more than \$300 billion of securities illiquid.

27 89. Wells Fargo benefited from the collapse of the auction rate securities market by offering  
28 to make margin loans to its investor clients using their auction rate securities as collateral—in effect,

1 loaning Class members back their own cash at a profit. Wells Fargo offered loans in amounts between  
2 50 percent and 90 percent of its clients' ARPS holdings, but in general refused to offer loans to clients  
3 for their SLARS holdings until nearly one year after the collapse of the auction rate securities market.

4 **D. Wells Fargo Actively Participated In The Auction Rate Securities Market**

5 90. Wells Fargo was actively involved in the auction rate securities market throughout the  
6 Class Period.

7 91. Wells Fargo acted as a remarketing agent for auction rate securities, selling  
8 approximately \$3.9 billion in auction rate securities to its clients through its brokerage subsidiaries,  
9 WFI, WFIS and WFBS throughout the Class Period. WFI sold approximately \$2.9 billion in auction  
10 rate securities to its clients, who are primarily private banking customers of Wells Fargo Bank. WFIS  
11 and WFBS sold slightly less than \$1 billion in auction rate securities to their clients, who are primarily  
12 commercial banking customers and high net worth retail customers of Wells Fargo Bank.

13 92. Wells Fargo Bank steered its banking customers to WFI, WFIS and/or WFBS in order to  
14 sell auction rate securities to them instead of money market accounts or short term certificates of deposit  
15 ("CDs"). The sales representatives for WFI, WFIS and/or WFBS generally worked inside the same  
16 branch offices as the Wells Fargo Bank employees. Wells Fargo took these internal referrals into  
17 consideration in setting its bonus structure for Wells Fargo Bank employees. The majority of Wells  
18 Fargo's auction rate securities sales came from banking referrals.

19 93. During the Class Period, Wells Fargo also served as an underwriter of and broker-dealer  
20 for auction rate securities. Wells Fargo placed support bids in auctions of the securities for which it  
21 served as the broker-dealer. Had Wells Fargo not submitted those support bids, the auctions for those  
22 securities would have failed.

23 94. During the Class Period, Wells Fargo also served as an auction agent for numerous  
24 auction rate securities including at least five auction rate securities that failed beginning in August 2007.  
25 In its capacity as an auction agent, Wells Fargo had intimate and exclusive knowledge of the bidding  
26 process for each auction, and knew when broker-dealers sought to intervene in auctions, manage  
27 clearing rates, and prevent auction failures. By allowing broker-dealers to submit support bids that set  
28

1 clearing rates and prevented auction failures, Wells Fargo artificially perpetuated the market for auction  
2 rate securities.

3 95. By virtue of its substantial participation in the auction rate securities market as a  
4 remarketing agent, underwriter, broker-dealer, and auction agent, Wells Fargo was intimately acquainted  
5 with the liquidity features and risk characteristics of those securities.

6 96. Among other things, Wells Fargo knew that auction rate securities were not liquid cash  
7 equivalents, but were long-term equity or debt securities; that the auction market operated without  
8 transparency, leaving it prone to manipulation by broker-dealers; that broker-dealers routinely  
9 intervened in auctions to maintain the appearance of liquidity and stability of the market; and that rates  
10 of return were not set at competitive Dutch auctions, but rather were managed by broker-dealers acting  
11 with knowledge of the bids of other market participants.

12 **E. During The Class Period, Wells Fargo Misrepresented And Omitted Material Facts About**  
13 **The Auction Market And The Liquidity Of And Risks Associated With Auction Rate**  
14 **Securities**

15 97. In order to perpetuate the auction rate securities market and earn lucrative commissions  
16 and fees for selling, underwriting, and managing auctions for auction rate securities, Wells Fargo  
17 directed its brokers throughout the United States to represent to investors in its written materials and  
18 uniform sales presentations that auction rate securities were equivalent to cash and were safe, highly  
19 liquid short-term investment vehicles suitable for any investor with at least \$25,000 of available cash  
20 and as little as one week in which to invest.

21 98. Wells Fargo knew that auction rate securities were not equivalent to cash, however.  
22 Since at least March 2005, the “Big-4” accounting firms, the Financial Accounting Standards Board  
23 (“FASB”) and the SEC have adopted the position that auction rate securities do not qualify as “cash  
24 equivalents.” According to the SEC, “because the auction rate securities have long-term maturity dates  
25 and there is no guarantee the holder will be able to liquidate its holdings, these securities do not meet the  
26 definition of cash equivalents in paragraphs 8 and 9 of FASB Statement No. 95, *Statement of Cash*  
27 *Flows.*”  
28

1 99. Nonetheless, Wells Fargo's brokers sold auction rate securities as cash equivalent  
2 pursuant to management directives without disclosing the following material facts about those securities  
3 before or at the time of sale:

- 4 a. Auction rate securities were not cash alternatives, but were long-term financial  
5 instruments with maturity dates of 30 years or longer, or no maturity whatsoever;
- 6 b. With the exception of some municipal auction rate securities that had maximum rates  
7 high enough to attract liquidity or cause the issuer to refinance, auction rate securities  
8 lacked features designed to ensure the holder's ability to sell the security, and in the  
9 event of an auction failure, the purchaser would be required to hold the security to  
10 maturity or indefinitely;
- 11 c. Many auction rate securities were subject to interest rate caps, which if triggered,  
12 would reset their interest rates to levels well below market rates for comparable  
13 securities, often as low as zero, and render those securities unmarketable;
- 14 d. Auction rate securities appeared readily liquid at the time of purchase and sale  
15 because broker-dealers were artificially supporting and manipulating the auction  
16 market to maintain the appearance of liquidity and stability;
- 17 e. The short-term nature of auction rate securities and the ability of investors to liquidate  
18 their auction rate securities at par depended on the perpetuation of the artificial  
19 auction market by broker-dealers and auction agents;
- 20 f. The periodic auctions at which the rates of interest or dividends on auction rate  
21 securities were set required that investors actively bid their securities to maximize the  
22 rate of return on their investments and minimize the impact of manipulative conduct  
23 by the broker-dealers and others, and in the absence of the investor's active  
24 participation in the time consuming and highly specialized process of monitoring  
25 "price talk" and the bidding process, investors were likely to earn interest or  
26 dividends at reduced rates; and
- 27 g. In the event of persistent auction failures, auction rate securities would be only be  
28 saleable at a substantial discount from their purchase price.

100. Wells Fargo's brokers also sold auction rate securities pursuant to management directives  
without disclosing the following material facts about the auction market in which those securities were  
traded before or at the time of sale:

- a. The auction market operated without transparency to investors, thus enabling  
manipulation by broker-dealers;
- b. The "auctions" for auction rate securities were not true Dutch auctions, as broker-  
dealers submitted "support" bids and engaged in other manipulative practices for their  
own accounts in auctions that would have otherwise failed during the Class Period,  
did so with knowledge of the other bids in the auctions, and often did so after the  
bidding deadline imposed on other investors;
- c. Broker-dealers routinely intervened in auctions during the Class Period for their own  
benefit, to set rates and prevent all-hold auctions and failed auctions;

- 1 d. Broker-dealers directly or indirectly set the clearing rate in most of the auctions in  
2 which they submitted bids during the Class Period;
- 3 e. Broker-dealers managed the interest rates for auction rate securities to ensure that  
4 rates of interest or dividends paid were at levels sufficiently low to attract continued  
5 interest from their issuer clients in future auction rate securities issuances, while  
6 paying sufficient interest to make auction rate securities saleable to retail investors;
- 7 f. By manipulating the auctions for auction rate securities, broker-dealers prevented  
8 investors from learning the true risk, value and liquidity features of auction rate  
9 securities;
- 10 g. Broker-dealers intended to continue to market auction rate securities as cash  
11 equivalent and highly liquid, safe investments, even if they determined that they were  
12 likely to stop supporting and manipulating the auctions; and
- 13 h. Purchasers of auction rate securities were expected to monitor the auctions at all  
14 times to protect their interests, as broker-dealers considered themselves free to  
15 “manage” auction outcomes and withdraw its support for the auctions at any time.

16 101. Wells Fargo’s brokers failed to disclose the information in paragraphs 99-100 above to  
17 investors, because they had not been provided with that information by Wells Fargo during the Class  
18 Period.

19 102. During the Class Period, Wells Fargo failed to provide mandatory instruction or  
20 compliance training about auction rate securities to its brokers, even though Wells Fargo required its  
21 brokers to be complete training before selling other complex investment products such as variable  
22 annuities or derivatives.

23 103. As a result, Wells Fargo’s brokers lacked a rudimentary understanding about auction rate  
24 securities and how the auction rate securities market functioned during the Class Period.

25 104. Wells Fargo’s general practice was not to deliver a prospectus to Class members who  
26 purchased auction rate securities at periodic auctions, as it treated such purchases as “secondary market  
27 sales” exempt from the prospectus delivery requirement.

28 **F. Securities Regulators Charge Wells Fargo With Fraud In Connection With Its Sale Of  
Auction Rate Securities**

105. On November 20, 2008, the State of Washington Department of Financial Institutions,  
Securities Division (“DFI”) filed a Statement Of Charges And Notice Of Intent To Enter Order To  
Cease And Desist, Offer Restitution, Impose Fines, Recover Costs, And Suspend Registrations

1 (“Statement Of Charges”) as to Defendants WFI, WFIS and WFBS in connection with their marketing  
2 and sale of auction rate securities.

3 106. The DFI charged Defendants WFI, WFIS and WFBS with, among other things, making  
4 misrepresentations and omissions of material fact in the offer and sale of auction rate securities, by  
5 describing auction rate securities as safe, short-term, liquid investments similar to money market funds  
6 when they were not. The DFI also accused these Wells Fargo entities of failing to disclose: the risks of  
7 auction rate securities including the risk of illiquidity; the manner in which the auction market operated;  
8 that the auction market depending upon support bids from broker-dealers; that the auctions could fail  
9 and had failed in the recent past; that, in the event of auction failures, interest rates would be reset to  
10 default rates; how the default rates were set; the risks associated with the single broker-dealer auction  
11 structure; that Wells Fargo salespersons had not reviewed prospectuses, disclosure documents or other  
12 information about auction rate securities before selling those securities; and that Wells Fargo had not  
13 provided its salespersons with prospectuses, disclosure documents or other information about auction  
14 rate securities.

15 107. According to the DFI, Wells Fargo’s conduct “operated as a fraud or deceit” on auction  
16 rate securities investors.

17 **G. Plaintiff’s Experience**

18 **(a) Lindell Van Dyke**

19 108. Lead Plaintiff Lindell Van Dyke serves as a trustee of the Van Dyke Family Trust, and  
20 brings his claim in this capacity.

21 109. As identified on Attachment A, Mr. Van Dyke purchased auction rate securities from  
22 Wells Fargo.

23 110. Mr. Van Dyke has been a customer of Wells Fargo Bank for a number of years. Mr. Van  
24 Dyke’s primary contacts at Wells Fargo were Rebecca Schaefer and Judy Keng, both of whom worked  
25 in Wells Fargo’s Los Altos, California office. Ms. Schaefer was Mr. Van Dyke’s personal banker. Ms.  
26 Keng, who had been Mr. Van Dyke’s previous personal banker, had become a broker for WFI.

27 111. In or around June 1, 2007, Mr. Van Dyke visited the Wells Fargo branch office in Los  
28 Altos. At that time, Ms. Schaefer recommended that Mr. Van Dyke place cash that he had assembled in

1 his checking account into one of Wells Fargo's other cash management products in order to obtain  
2 slightly better rates of interest than were payable on the checking account funds. Mr. Van Dyke had not  
3 inquired about the availability of such products. He explained to Ms. Schaefer that he needed the funds  
4 to be liquid almost immediately and was comfortable leaving them in his checking account.

5 112. Nonetheless, Ms. Schaefer continued to offer alternative cash management products to  
6 Mr. Van Dyke. After Mr. Van Dyke rejected products with one month and one year terms, Ms. Schaefer  
7 recommended that he place the funds in cash management products that provided liquidity on seven  
8 days notice. Ms. Schaefer assured Mr. Van Dyke that the seven day instruments were safe, could  
9 provide the liquidity he required, and had a better interest rate than other Wells Fargo cash management  
10 options.

11 113. Based upon Ms. Schaefer's representations, Mr. Van Dyke agreed to invest in the seven  
12 day instruments. Wells Fargo invested the funds in auction rate securities on or around June 1-5, 2007  
13 for Mr. Van Dyke's trust account.

14 114. Mr. Van Dyke sold the securities approximately one month later in order to purchase real  
15 estate. When the transaction fell through, Mr. Van Dyke returned the funds to the trust checking  
16 account at Wells Fargo, after which the funds were again placed in auction rate securities. Mr. Van  
17 Dyke liquidated the securities on or around July 20-26, 2007.

18 115. In early January 2008, Mr. Van Dyke visited the Wells Fargo branch office in Los Altos  
19 to deposit a check into his checking account. At that time, Ms. Schaefer again recommended that he  
20 consider placing his checking account funds into a cash management product that carried a higher rate of  
21 return than a checking account.

22 116. Mr. Van Dyke explained to Ms. Schaefer that any product would have to allow him ready  
23 liquidity, as he anticipated needing access to the funds on short notice. Ms. Schaefer recommended that  
24 Mr. Van Dyke place the funds in instruments that provided liquidity on seven days notice, and said that  
25 the instruments were safe and liquid but had a better interest rate than other Wells Fargo cash  
26 management products.

27 117. Based on Ms. Schaefer representations, Mr. Van Dyke agreed to invest in the seven day  
28 instruments. Ms. Schaefer indicated that she would have Ms. Keng process the transaction.

1 118. On or around January 9-16, 2008, Wells Fargo purchased auction rate securities for Mr.  
2 Van Dyke's trust account.

3 119. Ms. Schaefer, Ms. Keng, nor any other Wells Fargo employee explained to Mr. Van  
4 Dyke how auction rate securities were traded or priced, that Mr. Van Dyke could seek to influence  
5 interest rates by bidding in the auctions, or the extent to which the auction rate securities market was  
6 being supported by broker-dealers.

7 120. Ms. Schaefer, Ms. Keng, nor any other Wells Fargo employee informed Mr. Van Dyke of  
8 the information in paragraphs 99-100 before his purchases of auction rate securities through Wells  
9 Fargo.

10 121. Had Mr. Van Dyke known about the information in paragraphs 99-100, he would not  
11 have purchased auction rate securities or would not have done so at the prices he paid.

12 **(b) Sandra Olsen**

13 122. As identified on Attachment A, Lead Plaintiff Sandra Olsen purchased auction rate  
14 securities from Wells Fargo in May 2007.

15 123. Ms. Olsen's primary contact at Wells Fargo was Donald A. Duarte, a Wells Fargo  
16 financial consultant located in Wells Fargo's Newport Beach, California office. Prior to 2007, Ms.  
17 Olsen maintained a bank account at Wells Fargo, but not a brokerage account. In April 2007, Ms. Olsen  
18 discussed with Mr. Duarte the possibility of opening a brokerage account at Wells Fargo as a temporary  
19 place to park money that was to be used for real estate investment purposes and to pay anticipated taxes.

20 124. Ms. Olsen explained to Mr. Duarte that the funds to be invested were then in a short-term  
21 CD and that she was looking for a conservative short-term bond as a safe place to park the funds  
22 because she anticipated a large tax bill coming due. Mr. Duarte stated that a Wells Fargo bond trader  
23 would identify suitable bonds that were sufficiently liquid to meet Ms. Olsen's investment criteria, and  
24 that he would consult with Ms. Olsen again when the funds were ready to be invested.

25 125. On May 2, 2007, Ms. Olsen's funds were transferred in to a non-discretionary Wells  
26 Fargo brokerage account. On May 10, 2007, Wells Fargo invested virtually all of these funds in auction  
27 rate securities. Ms. Olsen was informed that the securities purchased were bonds and that she could  
28 liquidate the investments at any time on one week's notice.

1 126. Neither Mr. Duarte nor any other Wells Fargo employee provided Ms. Olsen with a  
2 prospectus for the auction rate securities purchased for her account, a written description of Wells  
3 Fargo's auction rate securities practices and procedures, or any written materials concerning auction rate  
4 securities before, at the time, or after any of Ms. Olsen's purchases of those securities.

5 127. Neither Mr. Duarte nor any other Wells Fargo employee explained to Ms. Olsen how  
6 auction rate securities were traded or priced, that Ms. Olsen could seek to influence interest rates by  
7 bidding in the auctions, or the extent to which the auction rate securities market was being supported by  
8 broker-dealers.

9 128. Neither Mr. Duarte nor any other Wells Fargo employee informed Ms. Olsen of the  
10 information in paragraphs 99-100 before her purchases of auction rate securities through Wells Fargo.

11 129. Had Ms. Olsen known about the information in paragraphs 99-100, she would not have  
12 purchased auction rate securities or would not have done so at the prices she paid.

13 **ADDITIONAL SCIENTER ALLEGATIONS**

14 130. Auction rate securities were highly profitable for Wells Fargo.

15 131. As an underwriter, broker-dealer, and auction agent for auction rate securities during the  
16 Class Period, Wells Fargo earned substantial fees for its services from the issuers of those securities.

17 132. To compensate Wells Fargo for its underwriting services, issuers paid Wells Fargo as  
18 much as 80 basis points on the outstanding amount of securities it had underwritten.

19 133. Pursuant to agreements with the issuers and/or auction agents, Wells Fargo served as a  
20 broker-dealer for certain auction rate securities it had underwritten and was paid annualized broker-  
21 dealer fees for managing those auctions. Typically, issuers paid auction management fees of at least 25  
22 basis points per year on outstanding auction rate securities.

23 134. Wells Fargo was motivated to make false and misleading omissions and statements of  
24 material fact about auction rate securities in order to perpetuate its interests as a remarketing agent for  
25 those securities. As a remarketing agent, Wells Fargo was typically paid at least 15 basis points in fees  
26 and commissions for the auction rate securities it sold.

27 135. Wells Fargo was further motivated to make false and misleading omissions and  
28 statements of material fact about auction rate securities in order to perpetuate its growing interests as an

1 auction agent. Wells Fargo received fees for serving as an auction agent during the Class Period and  
2 continued to do so even after the auction rate securities market collapsed.

3 136. The fees paid to Wells Fargo for underwriting issuances of auction rate securities,  
4 managing auctions, and remarketing auction rate securities were particularly attractive to Wells Fargo as  
5 they allowed Wells Fargo to profit from its clients' short-term, cash management investments. These  
6 investments would ordinarily have been committed to other cash management vehicles such as money  
7 market funds, from which Wells Fargo would stand to earn little or no additional revenue.

8 **NO SAFE HARBOR**

9 137. The statutory safe harbor provided for forward-looking statements under certain  
10 circumstances does not apply to any of the allegedly false statements pleaded in this complaint.

11 138. The statements pleaded herein were not identified as "forward-looking statements" when  
12 made.

13 139. To the extent there were any forward-looking statements, there were no meaningful  
14 cautionary statements identifying important factors that could cause actual results to differ materially  
15 from those in the purportedly forward-looking statements.

16 140. Alternatively, to the extent that the statutory safe harbor applies to any forward-looking  
17 statements pleaded herein, Defendants are liable for those false forward-looking statements because at  
18 the time each of those forward-looking statements was made, the particular speaker knew that the  
19 particular forward-looking statement was false, and/or the forward-looking statement was authorized  
20 and/or approved by a director or an executive officer of Wells Fargo who knew that those statements  
21 were false when made.

22 **LOSS CAUSATION/ECONOMIC LOSS**

23 141. As alleged above, during the Class Period, Defendants engaged in a scheme and course of  
24 conduct to create, prop up and perpetuate for their own benefit an artificial market for auction rate  
25 securities, to inflate the perceived value of those securities, and to generate underwriting fees, auction  
26 management fees, auction agent fees, and sales commissions to the detriment of Plaintiffs and Class  
27 members.

1           142. This scheme and course of conduct operated as a fraud or deceit on Plaintiffs and Class  
2 members by, among other things, omitting to disclose material foreseeable risks concerning the market  
3 for auction rate securities and the value, safety and liquidity risks of those investments.

4           143. The materialization of the risks concealed by Defendants was foreseeable to Defendants  
5 throughout the Class Period.

6           144. Those risks materialized when most of the auctions failed on or about February 13, 2008,  
7 because broker-dealers refused to continue serving as buyers of last resort.

8           145. Materialization of those risks and subsequent disclosures of those risks directly and/or  
9 proximately caused the damages sustained by Plaintiffs and Class members.

10           146. Only through the persistent conduct of broker-dealers in artificially supporting,  
11 maintaining and intervening in the auctions and acting as buyers of last resort was the market for auction  
12 rate securities able to exist during the Class Period.

13           147. Defendants failed to disclose to Plaintiffs and Class members that the auction rate  
14 securities market depended on the voluntary, pervasive and ongoing participation of broker-dealers in  
15 the auctions.

16           148. It was also materially deceptive for Defendants to represent to Plaintiffs and Class  
17 members that auction rate securities were cash equivalents or highly liquid investments.

18           149. When the auctions failed on or around February 13, 2008, the concealed risks that auction  
19 rate securities would stop trading as cash equivalents materialized.

20           150. Because of Defendants' failure to disclose these and other material risks, Plaintiffs and  
21 Class members were damaged when broker-dealers withdrew their support for the auction market.

22           151. If not for Defendants' omissions and false and misleading statements of material fact  
23 about auction rate securities and the auction market in which those securities were traded, Plaintiffs and  
24 Class members would not have purchased auction rate securities or would not have purchased them for  
25 the prices and/or at the interest rates at which they did.

26           152. Among other things, Defendants' deceptive conduct caused the interest and dividend  
27 rates on auction rate securities both before and after the collapse of the auction market to be  
28

1 considerably lower than the rates that the market would have placed on them had the investing public  
2 been aware of the true characteristics and risks of auction rate securities and the auction market.

3 153. Accordingly, Defendants' wrongdoing directly or proximately caused economic losses to  
4 Plaintiffs and Class members by rendering their auction rate securities illiquid and by limiting the  
5 interest and dividends that they would have otherwise received. Plaintiffs and Class members remain  
6 unable to sell their auction rate securities and continue to receive interest and/or dividends on those  
7 securities at below market rates that are insufficient to compensate for the lack of liquidity features  
8 inherent in the securities.

9 154. Given the higher interest and dividend rates both before and after the collapse of the  
10 auction market that would have resulted from full disclosure, Plaintiffs and Class members would have  
11 been able to acquire a lower face amount of auction rate securities while still obtaining the same dollar  
12 amount of interest or dividends they received on the auction rate securities actually purchased.

13 155. As a result of the materialization of the concealed risks, the perceived values of auction  
14 rate securities have declined substantially. Nearly \$3 billion in auction rate securities that Wells Fargo  
15 sold to Class members remain illiquid and are unable to be sold at any price. A recently developed  
16 secondary market values illiquid auction rate securities at steep discounts to par value. Investors who  
17 sold their auction rate securities on this secondary market realized substantial losses. Finally, following  
18 the collapse of the auction rate securities market, Plaintiffs and Class members received interest on their  
19 auction rate securities at below-market rates that are insufficient to compensate for the lack of liquidity  
20 features that are inherent in the securities.

21 **TRANSACTION CAUSATION:**

22 **APPLICABILITY OF THE PRESUMPTION OF RELIANCE**

23 **A. Reliance on Material Omissions**

24 156. To the extent required, a presumption of reliance is applicable here due to Wells Fargo's  
25 use of standardized sales pitches which omitted on a uniform basis the material facts described in  
26 paragraphs 99-100 regarding auction rate securities and the auction market in which those securities  
27 were traded.

1 157. The facts described in paragraphs 99-100, which Wells Fargo failed to disclose, were  
2 material in that there is a substantial likelihood that the disclosure of these facts would have been viewed  
3 by a reasonable investor as having significantly altered the total mix of information about auction rate  
4 securities made available.

5 158. Wells Fargo's brokers were required to and did use uniform, standardized and materially  
6 identical sales pitches created and/or approved by Wells Fargo's senior management to market and sell  
7 auction rate securities to Plaintiffs and Class members. The sales pitch did not vary appreciably, if at  
8 all.

9 159. In light of Defendants' knowledge that their sales force routinely represented to investors  
10 that auction rate securities were safe, highly liquid investments with interest rates established by  
11 periodic auctions, it was materially misleading for Defendants to fail to correct the record and state  
12 expressly that auction rate securities were, among other things, neither safe nor liquid investments  
13 and/or had interest rates managed by broker-dealers.

14 160. Plaintiffs and Class members would not have invested in auction rate securities, or  
15 alternatively, would not have purchased those securities on the terms at which they did, had Defendants'  
16 omissions of material fact not concealed the true nature of those securities and the auction market in  
17 which those securities were traded.

18 161. Plaintiffs' and Class members' fraud-based claims stem primarily, if not exclusively,  
19 from these omissions of material fact for which reliance may be presumed.

20 **B. Fraud on the Market**

21 162. In the alternative, and to the extent required, a presumption of reliance is applicable here  
22 because the auction rate securities market was well-developed and efficient throughout the Class Period.

23 163. The presumption of reliance, based on the fraud-on-the-market doctrine, is applicable  
24 here, because among other things:

- 25 a. Defendants made false and misleading omissions and misrepresentations of fact  
26 concerning auction rate securities during the Class Period;
- 27 b. The omissions and misrepresentations were material in that there is a substantial  
28 likelihood that the disclosure of these facts would have been viewed by a reasonable  
investor as having significantly altered the total mix of available information about  
auction rate securities;

- 1 c. The omissions and misrepresentations alleged would tend to induce a reasonable  
2 investor to misjudge, among other things, the value of the securities at issue; and
- 3 d. Plaintiffs and Class members purchased auction rate securities after Defendants made  
4 these omissions and misrepresentation, and did so without knowledge of the omitted  
and misrepresented facts.

5 164. Auction rate securities and the auction market have existed since 1984, and have  
6 developed rapidly since that time.

7 165. Throughout the Class Period, the auction market digested current information regarding  
8 auction rate securities and reflected that information in the prices of those securities.

9 166. Material news concerning auction rate securities had a prompt and immediate effect on  
10 the market price of those securities, as evidenced by, among other things, the rapid decline in the market  
11 price occurring after the collapse of the auction market in February 2008.

12 167. Under these circumstances, all purchasers of auction rate securities suffered similar injury  
13 due to the fact that those securities were overvalued throughout the Class Period.

14 168. When Plaintiffs and Class members purchased auction rate securities, they did not know  
15 about, and could not reasonably have discovered, Defendants' wrongful conduct alleged in this  
16 Complaint.

17 169. Plaintiffs and Class members would not have purchased auction rate securities from  
18 Defendants, or alternatively, would not have purchased those securities on the terms at which they did,  
19 but for Defendants' misconduct.

20 **COUNT I**

21 **Violation Of Section 10(b) Of The Exchange Act**  
22 **And Rule 10b-5(b) Promulgated Thereto**  
23 **Against WFI, WFIS and WFBS By Plaintiffs And The Class**

24 170. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above  
25 as if fully set forth herein. Plaintiffs bring this cause of action on behalf of themselves and the Class  
26 against Defendants WFI, WFIS and WFBS.

27 171. During the Class Period, Defendants WFI, WFIS and WFBS employed manipulative or  
28 deceptive devices or contrivances, in contravention of Rule 10b-5(b) promulgated by the SEC, which  
was intended to and, throughout the Class Period, did: (i) deceive the investing public, including

1 Plaintiffs and Class members; (ii) enable Defendants to sell approximately \$3.9 billion of auction rate  
2 securities to investors, and on which Defendants made substantial fees and commissions; and (iii) cause  
3 Plaintiffs and Class members to purchase overvalued auction rate securities from Defendants.

4 172. Defendants WFI, WFIS and WFBS, jointly and individually (and each of them), engaged  
5 in a scheme to defraud and made untrue statements of material fact and/or omitted to state material facts  
6 necessary to make the statements made, in light of the circumstances under which they were made, not  
7 misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b).

8 173. These Defendants are sued as primary participants in the wrongful and illegal conduct  
9 charged herein.

10 174. Defendants WFI, WFIS and WFBS, individually and in concert, directly and indirectly,  
11 by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and  
12 participated in a comprehensive scheme to defraud and a continuous course of conduct to conceal  
13 adverse material information about auction rate securities, as specified herein including in particular the  
14 information specified in paragraphs 99-100 above.

15 175. The information that Defendants WFI, WFIS and WFBS failed to disclose to Plaintiffs  
16 and Class members was material in that there is a substantial likelihood that the disclosure of the omitted  
17 information would have been viewed by a reasonable investor as having significantly altered the total  
18 mix of information about auction rate securities made available.

19 176. Defendants WFI, WFIS and WFBS employed manipulative or deceptive devices or  
20 contrivances, while in possession of material adverse non-public information, and engaged in acts,  
21 practices, and a course of conduct as alleged herein in an effort to assure Plaintiffs and Class members  
22 that auction rate securities were the same as cash and were highly liquid, safe short-term investment  
23 vehicles suitable for almost all investors.

24 177. Defendants WFI, WFIS and WFBS had actual knowledge of the misrepresentations and  
25 omissions of material facts set forth herein, or acted with deliberate disregard for the truth in that they  
26 failed to ascertain and to disclose such facts.

27 178. Defendants WFI, WFIS and WFBS made the material misrepresentations and/or  
28 omissions described herein knowingly or deliberately and for the purpose and effect of (a) concealing

1 the truth about the value, liquidity and risks of auction rate securities from Plaintiffs, Class members and  
2 the investing public, and (b) supporting the overvalued price and market for auction rate securities.

3 179. If Defendants WFI, WFIS and WFBS did not have actual knowledge of the  
4 misrepresentations and omissions alleged herein, they were grossly reckless in not obtaining such  
5 knowledge and refraining from taking those steps necessary to discover whether those statements were  
6 false or misleading.

7 180. As a result of the dissemination of the materially false and misleading information and  
8 failure to disclose material facts, as set forth above, the market price of auction rate securities sold by  
9 Wells Fargo was artificially inflated during the Class Period.

10 181. In ignorance of the fact that the market prices of auction rate securities were artificially  
11 inflated, and relying directly or indirectly on the false and misleading statements or omissions of  
12 material fact made by Defendants WFI, WFIS and WFBS, and/or on the absence of material information  
13 that was known to or deliberately disregarded by Defendants but not disclosed in public statements by  
14 Defendants during the Class Period, and/or on the integrity of the auction market in which auction rate  
15 securities traded, Plaintiffs and Class members acquired overvalued auction rate securities from  
16 Defendants during the Class Period and were damaged thereby.

17 182. At the time of said misrepresentations and omissions, Plaintiffs and Class members were  
18 ignorant of their falsity, and believed them to be true.

19 183. Plaintiffs and Class members acted with due diligence, did not act with recklessness, and  
20 could not have discovered the true facts that Defendants WFI, WFIS and WFBS misstated and/or failed  
21 to disclose.

22 184. Had Plaintiffs, Class members and the marketplace known the truth regarding the value,  
23 liquidity and risks of auction rate securities, which were not disclosed by Defendants, Plaintiffs and  
24 Class members would not have purchased auction rate securities from Defendants, or, if they had  
25 acquired such securities during the Class Period, they would not have done so at the overvalued prices  
26 which they paid.

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

1 186. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and Class  
2 members suffered damages in connection with their respective purchases of auction rate securities from  
3 Defendants during the Class Period.

4 **COUNT II**

5 **Violation Of Section 20(a) Of The Exchange Act**  
6 **Against The Control Person Defendants By Lead Plaintiff And The Class**

7 187. Plaintiffs repeat and reallege each and every allegation set forth in the paragraphs above  
8 as if fully set forth herein. Plaintiffs bring this cause of action on behalf of themselves and the Class  
9 against the Control Person Defendants.

10 188. The Control Person Defendants acted as a controlling person of WFI, WFIS and WFBS  
11 within the meaning of Section 20(a) of the Exchange Act for the reasons alleged in this Complaint.

12 189. By virtue of their operational and management control of Defendants WFI's, WFIS's and  
13 WFBS's business and systematic involvement in the fraudulent scheme alleged in this Complaint, the  
14 Control Person Defendants had the power to influence and control and did influence and control,  
15 directly or indirectly, the decision-making and actions of Defendants WFI, WFIS and WFBS, including  
16 the content and dissemination of the various statements and omissions of material fact which Plaintiffs  
17 contend are false and misleading.

18 190. The Control Person Defendants had the ability to prevent the issuance of the statements  
19 and omissions of material facts described in this Complaint.

20 191. The Control Person Defendants had direct and supervisory involvement in the operations  
21 of Defendants WFI, WFIS and WFBS, and therefore, are presumed to have had and exercised the power  
22 to control or influence the particular conduct giving rise to the securities violations alleged in this  
23 Complaint.

24 192. As set forth above Defendants WFI, WFIS and WFBS violated Section 10(b) of the  
25 Exchange Act and Rule 10b-5(b) promulgated thereunder by their acts and omissions as alleged in this  
26 Complaint.

27 193. By virtue of their positions as controlling persons, the Control Person Defendants are  
28 liable pursuant to Section 20(a) of the Exchange Act.

1 194. As a direct and proximate result of the wrongful conduct of Defendants WFI, WFIS and  
2 WFBS, Plaintiffs and Class members suffered damages in connection with their purchase of auction rate  
3 securities from Wells Fargo during the Class Period.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs pray for relief and judgment, as follows:

6 A. Determining that this action is a proper class action, certifying Plaintiffs as  
7 representatives of the Class under Rule 23 of the Federal Rules of Civil Procedure and appointing  
8 Plaintiffs' Lead Counsel as counsel for the Class;

9 B. Awarding damages, including but not limited to rescission, other compensatory damages,  
10 consequential damages, restitution and disgorgement of ill-gotten gains in favor of Plaintiffs and Class  
11 members against all Defendants, jointly and severally, for all damages sustained as a result of  
12 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

13 C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this  
14 action, including counsel fees and expert fees;

15 D. Awarding Plaintiffs and the Class pre-judgment and post-judgment interest;

16 E. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity  
17 and the federal statutory provisions sued hereunder; and

18 F. Granting such other and further relief as the Court may deem just and proper.  
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**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: February 10, 2009

Respectfully submitted,

**GIRARD GIBBS LLP**

By:  /s/ Aaron M. Sheanin

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**Plaintiffs' Lead Counsel**

**ATTACHMENT A****LEAD PLAINTIFFS' TRANSACTIONS IN  
AUCTION RATE SECURITIES SOLD BY WELLS FARGO  
BETWEEN APRIL 14, 2003 AND FEBRUARY 13, 2008****LINDELL VAN DYKE, AS TRUSTEE FOR THE VAN DYKE FAMILY TRUST**

<b>TRADE DATE</b>	<b>AUCTION RATE SECURITY</b>	<b>NUMBER OF SHARES</b>	<b>PRICE PER SHARE/UNIT</b>	<b>BUY OR SELL</b>
6/1/2007	BlackRock Muniholdings CA Insured Fund Inc.	23	\$25,000	Bought
6/1/2007	BlackRock Muniholdings CA Insured Fund Inc.	16	\$25,000	Bought
6/4/2007	Morgan Stanley Trusts CA Quality Municipal Securities	20	\$50,000	Bought
6/4/2007	Nuveen CA Premium Inc. Municipal Fund Municipal Auction Rate Preferred	1	\$25,000	Bought
6/5/2007	BlackRock Muniholdings CA Insured Fund Inc. Auction	16	\$25,000	Bought
6/26/2007	BlackRock Muniholdings CA Insured Fund Inc. Auction	16	\$25,000	Sold
6/29/2007	Blackrock Muniholdings CA Insured Fund Inc.	39	\$25,000	Sold
7/2/2007	Morgan Stanley Trusts CA Quality Municipal Securities	20	\$50,000	Sold
7/2/2007	Nuveen CA Premium Inc. Municipal Fund Municipal Auction Rate Preferred	1	\$25,000	Sold
7/5/2007	BlackRock California Municipal Income Trust Municipal Auction Rate	40	\$25,000	Bought
7/5/2007	PIMCO CA Municipal Income Fund III Auction Rate	10	\$25,000	Bought
7/6/2007	Morgan Stanley Preferred CA Insured Municipal Income Trust	20	\$50,000	Bought

7/20/2007	Morgan Stanley Preferred CA Insured Municipal Income Trust	20	\$50,000	Sold
7/26/2007	BlackRock California Municipal Income Trust Muniapl Auction Rate	40	\$25,000	Sold
7/26/2007	PIMCO CA Municipal Income Fund III Auction Rate	10	\$25,000	Sold
1/9/2008	BlackRock Muniyield CA Fund Inc. Auction Market Preferred Series B	54	\$25,000	Bought
1/10/2008	BlackRock Muniholdings CA Insured Fund Inc. Auction Market Preferred Series C	31	\$25,000	Bought
1/16/2008	Nuveen CA Dividend Advantage Preferred Municipal Fund 2 Auction Rate	9	\$25,000	Bought

**SANDRA OLSEN**

<b>TRADE DATE</b>	<b>AUCTION RATE SECURITY</b>	<b>NUMBER OF SHARES</b>	<b>PRICE PER SHARE/UNIT</b>	<b>BUY OR SELL</b>
5/10/2007	BlackRock Muniyield CA Insured Fund Inc., Series E	22	\$25,000	Bought
5/10/2007	Colonial California Insured Muni Fund	40	\$25,000	Bought
5/10/2007	Nuveen California Premium Inc. Municipal Fund 2, Series TH	4	\$25,000	Bought
5/10/2007	Nuveen California Dividend Advantage Municipal Fund 3, Series TH	40	\$25,000	Bought
5/10/2007	PIMCO California Muni Fund II, Series A	20	\$25,000	Bought
5/10/2007	PIMCO California Municipal Inc. Fund III, Series B	40	\$25,000	Bought

