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NORTHERN DISTRICT OF CALIFORNIA

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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,
14 Individually And On Behalf of All Others
Similarly Situated,

15 Plaintiff,

16 v.

17 WELLS FARGO & CO. and WELLS FARGO
18 INVESTMENTS, LLC,

19 Defendants.

CIVIL ACTION NO. _____

1962

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

JURY TRIAL DEMANDED

20
21 **INTRODUCTION**

22 1. This is a federal class action under Sections 10(b) and 20(a) of the Securities Exchange
23 Act of 1934 (the "Exchange Act") on behalf of all persons or entities who purchased and continue to
24 hold auction rate securities (also known as auction rate preferred stock, auction market preferred stock,
25 variable rate preferred securities, money market preferred securities, periodic auction rate securities and
26 auction rate bonds) offered for sale by defendants between April 14, 2003 and February 13, 2008,
27 inclusive (the "Class Period").
28

1 legal representatives, heirs, successors or assigns and any entity in which any defendant has or had a
2 controlling interest.

3 13. The members of the Class are so numerous that joinder of all members is impracticable.
4 The market for auction rate securities, while it existed, was estimated to exceed \$300 billion in the
5 United States. Wells Fargo was a significant seller of auction rate securities while the market for such
6 securities existed. While the exact number of Class members is unknown to plaintiff at this time and
7 can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of
8 members in the proposed Class. Record owners and other members of the Class may be identified from
9 records maintained by defendants and may be notified of the pendency of this action by mail, using the
10 form of notice similar to that customarily used in securities class actions.

11 14. Common questions of law and fact exist as to all members of the Class and predominate
12 over any questions solely affecting individual members of the Class. Among the questions of law and
13 fact common to the Class are:

- 14 (a) Whether the federal securities laws were violated by defendants' acts as alleged
15 herein;
- 16 (b) Whether statements made by defendants to the investing public during the Class
17 Period misrepresented or omitted material facts about the liquidity of and risks associated
18 with auction rate securities and the market for such securities; and
- 19 (c) To what extent the members of the Class have sustained damages and the proper
20 measure of damages.

21 15. Plaintiff's claims are typical of the claims of the members of the Class as all members of
22 the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is
23 complained of herein.

24 16. Plaintiff will fairly and adequately protect the interests of the members of the Class and
25 has retained counsel competent and experienced in class and securities litigation.

26 17. A class action is superior to all other available methods for the fair and efficient
27 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
28 damages suffered by individual Class members may be relatively small, the expense and burden of

1 individual litigation make it impossible for members of the Class to individually redress the wrongs
2 done to them. There will be no difficulty in the management of this action as a class action.

3 18. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P.
4 23(b)(1) and/or 23(b)(2) because: (a) the prosecution of separate actions by the individual Class
5 members would create a risk of inconsistent or varying adjudications with respect to individual Class
6 members which would establish incompatible standards of conduct for defendants; (b) the prosecution
7 of separate actions by individual Class members would create a risk of adjudications with respect to
8 them which would, as a practical matter, be dispositive of the interests of other Class members not
9 parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
10 (c) defendants have acted or refused to act on grounds generally applicable to the Class, thereby making
11 appropriate final injunctive relief with respect to the Class as a whole.

12 GENERAL ALLEGATIONS

13 Background

14 19. The term "auction rate security" typically refers to either municipal or corporate debt
15 securities or preferred stocks which pay interest at rates set at periodic "auctions." Auction rate
16 securities generally have long-term maturities, typically 30 years, and in the case of preferred stocks, no
17 maturity date.

18 20. Auction rate securities were first introduced in the 1980s. Since then, the market for
19 auction rate securities grew dramatically and the current estimated value of auction rate securities in
20 existence (prior to the collapse of the auction market) is around \$350 billion.

21 21. Investments in auction rate securities were initially limited to institutional investors, with
22 required minimums of \$250,000. In recent years, however, issuers and sellers of auction rate securities
23 have lowered the minimum amount invested to \$25,000, in an effort to market auction rate securities as
24 widely as possible to the general public.

25 22. Auction rate securities were auctioned at par value, so the return on the investment to the
26 investor and the cost of financing to the issuer were determined by the interest rate or dividend yield set
27 through the auction. The method for auctioning the securities was described in the prospectus of the
28

1 fund through which they were offered, though the formula was substantially similar for all securities
2 offered as auction rate securities.

3 23. The number of days between each auction was set by the prospectus. Generally, the
4 auctions were held every 7, 28, or 35 days, with interest paid at the end of the auction period.

5 24. The auction itself was of the type commonly referred to as a "Dutch" auction, i.e. one
6 where the price was initially set at a presumably economically unattractive level and then made more
7 attractive to purchasers throughout the course of the auction. For auction rate securities, bids with
8 successively higher rates were offered until all of the securities at the auction were sold.

9 25. At the end of the auction, the rate at which all of the securities were sold was set
10 uniformly and was called the "clearing rate." The clearing rate was determined by finding the lowest
11 rate bid which was sufficient to cover all of the securities for sale in the auction. If several bidders had
12 bids at the clearing rate, and there were more bids than shares, the shares were divided pro-rata between
13 the clearing rate bidders. The auction agent, at the end of the auction, allocated the shares per the
14 formula. If all of the current holders decided to hold their securities, then the auction was an "all-hold"
15 auction and the rate was set at a level defined in the prospectus. This rate was generally lower than the
16 market rate.

17 26. During an auction, an investor could submit one of four different orders: (1) a Hold order
18 to keep the shares out of the auction regardless of the new interest rate; (2) a Hold at Rate order, where if
19 the clearance rate was below the bid to hold rate, then the securities were sold; (3) a Sell order, which
20 was to sell the shares at the auction regardless of the clearing rate; and (4) a Bid order, to submit a bid to
21 buy at a new position at a specified minimum interest rate. Since there was no preference in awarding
22 shares to existing holders and new buyers, there was little practical difference between a Hold at Rate
23 order and a Buy order.

24 27. If there were not enough orders to purchase all the shares being sold at the auction, a
25 failed auction occurred. In this situation, the rate was set to a "maximum rate" described by either a
26 formula or a multiplier of a reference rate, such as the Bond Market Association index. Either way, the
27 maximum rate was set out in the prospectus. If the auction failed then none of the current shareholders
28 could sell their shares, no matter what type of order they issued. The maximum rate for many auction

1 rate securities, particularly those invested in corporate debt securities or preferred stocks, was relatively
2 small, however. As a result, if the auction failed, owners unable to sell their shares would receive
3 limited interest on their illiquid investments.

4 28. The issuer of each auction rate security selected one or more broker-dealers to underwrite
5 the offerings and to manage the auction process. Investors could only submit orders through the
6 selected broker-dealers. The issuer paid an annualized fee to each broker-dealer engaged to manage an
7 auction.

8 29. Investors were required to submit an order to the broker-dealer by a deadline set by the
9 broker-dealer. This deadline was generally set early enough by the broker-dealer so that it had time to
10 process and analyze the orders before having to submit the orders to the auction agent. This gave the
11 broker-dealer enough time to determine what, if any, orders the broker-dealer wished to place for its
12 own account.

13 30. Broker-dealers would often engage in a number of practices to influence the auction
14 process, including, for example, submitting their own orders to purchase or sell shares for their own
15 accounts. In 2004, the SEC began to investigate these manipulative practices affecting the auction
16 market. In 2006, the SEC entered into a consent decree with a number of major broker-dealers which
17 required them to disclose certain practices to investors and to stop engaging in certain other practices.
18 The SEC consent decree noted that in many cases, the broker-dealers intervened in auctions for their
19 own benefit rather than to maintain liquidity, as they claimed. The consent decree did nothing to end the
20 practice of the broker-dealers submitting bids for their own accounts after receiving notice of what
21 orders their customers planned to place, so long as the broker-dealers disclosed this practice to their
22 customers.

23
24 **During the Class Period, Wells Fargo Materially Misrepresented the**
25 **Liquidity of and Risks Associated With Auction Rate Securities and**
26 **Omitted Material Facts About the Auction Market**

27 31. Auction rate securities were extremely profitable for Wells Fargo and for the Wells Fargo
28 financial advisors and brokers who sold the securities. Individual Wells Fargo financial advisors and

1 brokers had a significant financial incentive to sell auction rate securities, as they were compensated by
2 Wells Fargo for each auction rate security sold.

3 32. In order to perpetuate the auction market and sell as many auction rate securities as
4 possible, Wells Fargo represented to investors in its written materials and uniform sales presentations by
5 financial advisors that auction rate securities were the same as cash and were highly liquid, safe
6 investments for short-term investing. Pursuant to uniform sales materials and top-down management
7 directives, Wells Fargo financial advisors throughout the United States represented to current and
8 potential Wells Fargo clients that the auction rate securities sold by Wells Fargo were equivalent to cash
9 or money market funds and were safe, highly liquid short-term investment vehicles suitable for any
10 investor with at least \$25,000 of available cash and as little as one week in which to invest.

11 33. Wells Fargo failed to disclose to purchasers of auction rate securities material facts about
12 these securities. Wells Fargo failed to disclose that these securities were not cash alternatives, like
13 money market funds, and were instead, complex, long-term financial instruments with 30 year maturity
14 dates, or longer. Wells Fargo failed to disclose that the auction rate securities it was selling were only
15 liquid at the time of sale because broker-dealers in the auction market were artificially supporting and
16 manipulating the market to maintain the appearance of liquidity and stability. In fact, at all relevant
17 times during the Class Period, the ability of holders of auction rate securities to liquidate their positions
18 depended on the maintenance of an artificial auction market by the broker-dealers. When the broker-
19 dealers stopped artificially supporting and manipulating the auction market, the market immediately
20 collapsed and the auction rate securities sold by Wells Fargo became illiquid. Wells Fargo also failed to
21 disclose that the auction rate securities it was selling were not short-term investments, but rather long
22 term bonds or preferred stocks with maturities sometimes exceeding 30 years. Finally, Wells Fargo
23 failed to disclose that the short-term nature of the securities and the ability of investors to quickly
24 convert their auction rate securities into cash depended entirely on the perpetuation of the artificial
25 auction market being maintained by broker-dealers.

26 34. During the Class Period, Wells Fargo failed to disclose that the auctions were not
27 governed by arms-length transactions but instead suffered from systemic flaws and manipulative
28 practices, including allowing customers to place open or market orders in auctions, preventing failed

1 auctions and all-hold auctions to set the market rate, submitting or changing orders after auction
2 deadlines, not requiring customers to purchase partially-filled irrevocable orders, providing certain
3 customers with higher returns than the auction clearing rate, and providing inside information about the
4 auction process to certain customers in connection with the auction bidding.

5 **The Market for Auction Rate Securities Collapses**

6 35. In the summer of 2007, some auctions for auction rate securities backed by sub-prime
7 debt began to fail, but these securities represented only 2-6% of the entire auction rate securities market.
8 In the fall-winter of 2007, more auctions began to fail. However, Wells Fargo nevertheless continued to
9 encourage investors to purchase auction rate securities and continued to represent to investors that these
10 securities were the same as cash or money markets and were highly liquid, safe investments for short-
11 term investing, without any disclosure of the risks associated with the securities.

12 36. On February 13, 2008, 87% of all auctions of auction rate securities failed when all of the
13 major broker-dealers refused to continue to support the auctions.

14 37. On February 14, 2008, it was disclosed that UBS, the second largest underwriter of
15 auction rate securities, had decided to no longer support the auction market. Virtually every other major
16 broker-dealer, including Goldman Sachs, Lehman Brothers, Citigroup and Merrill Lynch, among others,
17 also decided around the same time to withdraw their support of the auction market. As a result of the
18 withdrawal of support by all of the major broker-dealers, the market for auction rate securities has
19 collapsed, rendering more than \$300 billion of outstanding securities illiquid.

20 38. The market for auction rate securities sold by Wells Fargo was open, well-developed and
21 efficient at all relevant times until the truth emerged and the auction market collapsed. As a result of the
22 materially false and misleading statements and failures to disclose, auction rate securities sold by Wells
23 Fargo traded at artificially inflated prices during the Class Period. Plaintiff and other members of the
24 Class purchased and continued to hold auction rate securities sold by Wells Fargo relying upon the
25 integrity of the auction market and the market price of those securities, and have been damaged thereby.

26 39. During the Class Period, defendants materially misled the investing public, thereby
27 allowing the auction market to continue and inflating the price of auction rate securities sold by Wells
28 Fargo by publicly issuing false and misleading statements and omitting to disclose material facts

1 necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements
2 and omissions were materially false and misleading in that they failed to disclose material adverse
3 information and misrepresented the truth about the auction market and the auction rate securities sold by
4 Wells Fargo, as alleged herein.

5 40. At all relevant times, the material misrepresentations and omissions particularized in this
6 Complaint directly or proximately caused or were a substantial contributing cause of the damages
7 sustained by plaintiff and other members of the Class. As described herein, during the Class Period,
8 defendants made or caused to be made a series of materially false or misleading statements about the
9 auction market and the auction rate securities sold by Wells Fargo. These material misstatements and
10 omissions had the cause and effect of perpetuating the auction market and creating in that market an
11 unrealistically positive assessment of the auction rate securities sold by Wells Fargo, thus causing those
12 securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and
13 misleading statements during the Class Period resulted in plaintiff and other members of the Class
14 purchasing and continuing to hold auction rate securities sold by Wells Fargo at artificially inflated
15 prices, thus causing the damages complained of herein.

16 **NO SAFE HARBOR**

17 41. The statutory safe harbor provided for forward-looking statements under certain
18 circumstances does not apply to any of the allegedly false statements pleaded in this complaint. The
19 statements pleaded herein were not identified as "forward-looking statements" when made. To the
20 extent there were any forward-looking statements, there were no meaningful cautionary statements
21 identifying important factors that could cause actual results to differ materially from those in the
22 purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does
23 apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-
24 looking statements because at the time each of those forward-looking statements was made, the
25 particular speaker knew that the particular forward-looking statement was false, and/or the forward-
26 looking statement was authorized and/or approved by an executive officer of Wells Fargo who knew
27 that those statements were false when made.

1 46. During the Class Period, defendants carried out a plan, scheme and course of conduct
2 which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including
3 plaintiff and other Class members, as alleged herein; (ii) enable defendants to sell hundreds of millions
4 of dollars of auction rate securities to current and prospective Wells Fargo clients, and on which Wells
5 Fargo made substantial commissions; and (iii) cause plaintiff and other members of the Class to
6 purchase auction rate securities from Wells Fargo at artificially inflated prices. In furtherance of this
7 unlawful scheme, plan and course of conduct, defendants, jointly and individually (and each of them)
8 took the actions set forth herein.

9 47. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue
10 statements of material fact and/or omitted to state material facts necessary to make the statements not
11 misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and
12 deceit upon the purchasers of auction rate securities from Wells Fargo in an effort to maintain artificially
13 high sales and market prices for such securities in violation of Section 10(b) of the Exchange Act and
14 Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct
15 charged herein or as controlling persons as alleged below.

16 48. Defendants, individually and in concert, directly and indirectly, by the use, means or
17 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous
18 course of conduct to conceal adverse material information about the auction rate securities sold by Wells
19 Fargo, as specified herein.

20 49. These defendants employed devices, schemes and artifices to defraud, while in
21 possession of material adverse non-public information, and engaged in acts, practices, and a course of
22 conduct as alleged herein in an effort to assure investors that the auction rate securities sold by Wells
23 Fargo were the same as cash and were highly liquid, safe short-term investment vehicles suitable for
24 almost all investors, which included the making of, or the participation in the making of, untrue
25 statements of material facts and omitting to state material facts necessary in order to make the statements
26 made about the auction rate securities in the light of the circumstances under which they were made, not
27 misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of
28

1 business which operated as a fraud and deceit upon the purchasers of auction rate securities from Wells
2 Fargo during the Class Period.

3 50. The defendants had actual knowledge of the misrepresentations and omissions of material
4 facts set forth herein, or acted with deliberate disregard for the truth in that they failed to ascertain and to
5 disclose such facts. Such defendants' material misrepresentations and/or omissions were done
6 knowingly or deliberately and for the purpose and effect of concealing the truth about the liquidity of
7 and risks associated with auction rate securities from the investing public and supporting the artificially
8 inflated price and market for these securities. If defendants did not have actual knowledge of the
9 misrepresentations and omissions alleged, they were deliberate in failing to obtain such knowledge by
10 deliberately refraining from taking those steps necessary to discover whether those statements were false
11 or misleading.

12 51. As a result of the dissemination of the materially false and misleading information and
13 failure to disclose material facts, as set forth above, the market and market price of the auction rate
14 securities sold by Wells Fargo was artificially inflated during the Class Period. In ignorance of the fact
15 that the market prices of auction rate securities were artificially inflated, and relying directly or
16 indirectly on the false and misleading statements made by defendants, or upon the integrity of the
17 auction market in which the auction rate securities were traded, and/or on the absence of material
18 adverse information that was known to or deliberately disregarded by defendants but not disclosed in
19 public statements by defendants during the Class Period, plaintiff and the other members of the Class
20 acquired and continued to hold auction rate securities sold by Wells Fargo during the Class Period at
21 artificially high prices and were damaged thereby.

22 52. At the time of said misrepresentations and omissions, plaintiff and other members of the
23 Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members
24 of the Class and the marketplace known the truth regarding the liquidity of and risks associated with the
25 auction rate securities sold by Wells Fargo, which were not disclosed by defendants, plaintiff and other
26 members of the Class would not have purchased and continued to hold their auction rate securities, or, if
27 they had acquired such securities during the Class Period, they would not have done so at the artificially
28 inflated prices which they paid.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, plaintiff prays for relief and judgment, as follows:

3 A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff
4 and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure
5 and plaintiff's counsel as Lead Counsel;

6 B. Awarding compensatory damages in favor of plaintiff and the other Class members
7 against all defendants, jointly and severally, for all damages sustained as a result of defendants'
8 wrongdoing, in an amount to be proven at trial, including interest thereon;

9 C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this
10 action, including counsel fees and expert fees;

11 D. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity
12 and the federal statutory provisions sued hereunder; and

13 E. Such other and further relief as the Court may deem just and proper.

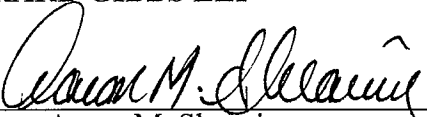
14 **JURY TRIAL DEMANDED**

15 Plaintiff hereby demands a trial by jury.

16 Dated: April 14, 2008

17 Respectfully submitted,

18 **GIRARD GIBBS LLP**

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27 Counsel for Plaintiff Lindell Van Dyke, as Trustee
28 of the Van Dyke Family Trust

**CERTIFICATION OF PROPOSED LEAD PLAINTIFF
PURSUANT TO THE FEDERAL SECURITIES LAWS**

I, Lindell Van Dyke, declare the following as to the claims asserted, or to be asserted, under the federal securities laws:

1. I am a trustee of the Van Dyke Family Trust. I have reviewed the complaint against Wells Fargo, prepared by Girard Gibbs LLP, whom I designate as counsel for the Van Dyke Family Trust in this action for all purposes.

2. The Van Dyke Family Trust did not acquire any auction rate preferred securities from Wells Fargo at the direction of Girard Gibbs LLP or in order to participate in any private action under the federal securities laws.

3. The Van Dyke Family Trust is willing to serve as a lead plaintiff either individually or as part of a group. On behalf of the Van Dyke Family Trust, I understand that a lead plaintiff is a representative party who acts on behalf of other class members in directing the litigation, and whose duties may include testifying at deposition or trial.

4. The Van Dyke Family Trust will not accept any payment for serving as a representative party beyond its pro rata share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the Court pursuant to law.

5. The Van Dyke Family Trust has not sought to serve or served as a representative party for a class in an action under the federal securities laws within the past three years.

6. On behalf of the Van Dyke Family Trust, I understand that this is not a claim form, and that the Van Dyke Family Trust's ability to share in any recovery as a class member is not affected by its decision to serve as a representative party.

7. The Van Dyke Family Trust's purchases and sales of auction rate preferred securities sold to it through Wells Fargo during the class period are attached as **Attachment A** to this document:

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of April, 2008


Lindell Van Dyke

ATTACHMENT A

**THE VAN DYKE FAMILY TRUST'S TRANSACTIONS IN AUCTION RATE
PREFERRED SECURITIES SOLD BY WELLS FARGO BETWEEN
APRIL 14, 2003 AND FEBRUARY 13, 2008,
AND HELD AS OF FEBRUARY 13, 2008**

Trade Date	Auction Rate Security	Number of Shares	Price Per Share/Unit	Buy or Sell
January 9, 2008	Blackrock Muniyield CA Fund Inc. Auction Market Preferred Series B	54	\$25,000	Bought
January 10, 2008	Blackrock Muniholdings CA Insured Fund Inc. Auction Market Preferred Series C	31	\$25,000	Bought
January 16, 2008	Nuveen CA Dividend Advantage Preferred Municipal Fund 2 Auction Rate	9	\$25,000	Bought