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Government of Guam Retirement Fund, and
9 Alameda County Employees’ Retirement Association*

10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA

13 GENERAL RETIREMENT SYSTEM OF
THE CITY OF DETROIT, Individually And
14 On Behalf Of All Others Similarly Situated,

15 Plaintiff,

16 v.

17 THE WELLS FARGO MORTGAGE
18 BACKED SECURITIES 2006-AR18 TRUST,
THE WELLS FARGO MORTGAGE
19 BACKED SECURITIES 2006-17 TRUST,
THE WELLS FARGO MORTGAGE
20 BACKED SECURITIES 2006-15 TRUST,
THE WELLS FARGO MORTGAGE
21 BACKED SECURITIES 2006-16 TRUST,
THE WELLS FARGO MORTGAGE
22 BACKED SECURITIES 2006-AR19 TRUST,
THE WELLS FARGO MORTGAGE
23 BACKED SECURITIES 2006-18 TRUST,
THE WELLS FARGO MORTGAGE
24 BACKED SECURITIES 2006-20 TRUST,
THE WELLS FARGO MORTGAGE
25 BACKED SECURITIES 2006-19 TRUST,
26

27 (Caption continued on next page)

Civil Action No. 09-1376-SI

CLASS ACTION-ECF

NOTICE OF MOTION, MOTION, AND
MEMORANDUM OF LAW IN SUPPORT OF
THE MOTION OF THE PUBLIC FUNDS
FOR APPOINTMENT AS LEAD
PLAINTIFFS, APPROVAL OF THEIR
SELECTION OF LEAD COUNSEL, AND
CONSOLIDATION OF RELATED ACTIONS

Date: July 10, 2009
Time: 9:00 a.m.
Courtroom: 10, 19th Floor
Judge: Hon. Susan Illston

1 THE WELLS FARGO MORTGAGE
2 BACKED SECURITIES 2007-1 TRUST,
3 THE WELLS FARGO ALTERNATIVE
4 LOAN 2007-PA1 TRUST, THE WELLS
5 FARGO MORTGAGE BACKED
6 SECURITIES 2007-2 TRUST, THE WELLS
7 FARGO MORTGAGE BACKED
8 SECURITIES 2007-AR3 TRUST, THE
9 WELLS FARGO MORTGAGE BACKED
10 SECURITIES 2007-4 TRUST, THE WELLS
11 FARGO MORTGAGE BACKED
12 SECURITIES 2007-3 TRUST, THE WELLS
13 FARGO MORTGAGE BACKED
14 SECURITIES 2007-5 TRUST, THE WELLS
15 FARGO MORTGAGE BACKED
16 SECURITIES 2007-6 TRUST, THE WELLS
17 FARGO MORTGAGE BACKED
18 SECURITIES 2007-7 TRUST, THE WELLS
19 FARGO MORTGAGE BACKED
20 SECURITIES 2007-8 TRUST, THE WELLS
21 FARGO MORTGAGE BACKED
22 SECURITIES 2007-9 TRUST, THE WELLS
23 FARGO MORTGAGE BACKED
24 SECURITIES 2007-10 TRUST, THE WELLS
25 FARGO MORTGAGE BACKED
26 SECURITIES 2007-11 TRUST, THE WELLS
27 FARGO MORTGAGE BACKED
28 SECURITIES 2007-12 TRUST, WELLS
FARGO ASSET SECURITIES
CORPORATION, WELLS FARGO BANK,
N.A., DAVID MOSKOWITZ, FRANKLIN
CODEL, THOMAS NEARY, DOUGLAS K.
JOHNSON, GOLDMAN, SACHS & CO.,
JPMORGAN CHASE, INC., *as successor-in-*
interest to BEAR, STEARNS & CO., INC.,
HSBC SECURITIES (USA), INC.,
DEUTSCHE BANK SECURITIES, INC.,
UBS SECURITIES, LLC, CITIGROUP
GLOBAL MARKETS, INC., GREENWICH
CAPITAL MARKETS, INC., BARCLAYS
CAPITAL, INC., BANC OF AMERICA
SECURITIES, LLC, BANK OF AMERICA
CORPORATION *as successor-in-interest to*
MERRILL LYNCH, PIERCE, FENNER &

(Caption continued on next page)

SMITH, INC., MOODY'S INVESTOR SERVICES, INC., THE MCGRAW-HILL COMPANIES AND FITCH RATINGS, INC.,

Defendants.

NEW ORLEANS EMPLOYEES' RETIREMENT SYSTEM, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

WELLS FARGO ASSET SECURITIES CORPORATION, WELLS FARGO BANK, N.A., DAVID MOSKOWITZ, FRANKLIN CODEL, THOMAS NEARY, DOUGLAS K. JOHNSON, GOLDMAN, SACHS & CO., MORGAN STANLEY & CO., INC., JPMORGAN CHASE, INC., as successor-in-interest to BEAR, STEARNS & CO., INC., HSBC SECURITIES (USA), INC., CREDIT SUISSE SECURITIES (USA), LLC, DEUTSCHE BANK SECURITIES, INC., UBS SECURITIES, LLC, CITIGROUP GLOBAL MARKETS, INC., GREENWICH CAPITAL MARKETS, INC., doing business as RBS Securities, Inc., BARCLAYS CAPITAL, INC., BANC OF AMERICA SECURITIES, LLC, BANK OF AMERICA CORPORATION as successor-in-interest to MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., BANK OF AMERICA CORPORATION as successor-in-interest to COUNTRYWIDE SECURITIES CORPORATION, MOODY'S INVESTORS SERVICE, INC., THE MCGRAW-HILL COMPANIES, INC., FITCH, INC., WELLS FARGO MORTGAGE BACKED SECURITIES 2006-AR1 TRUST, WELLS FARGO MORTGAGE BACKED SECURITIES 2006-3 TRUST, WELLS FARGO MORTGAGE BACKED SECURITIES 2006-AR2 TRUST, WELLS FARGO MORTGAGE BACKED SECURITIES 2006-AR3 TRUST, WELLS FARGO MORTGAGE BACKED SECURITIES 2006-2 TRUST, WELLS FARGO MORTGAGE BACKED

Civil Action No. 09-1620-SI

CLASS ACTION-ECF

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1 SECURITIES 2006-1 TRUST, WELLS
FARGO MORTGAGE BACKED
2 SECURITIES 2006-AR4 TRUST, WELLS
FARGO MORTGAGE BACKED
3 SECURITIES 2006-AR5 TRUST, WELLS
FARGO MORTGAGE BACKED
4 SECURITIES 2006-4 TRUST, WELLS
FARGO MORTGAGE BACKED
5 SECURITIES 2006-AR6 TRUST, WELLS
FARGO MORTGAGE BACKED
6 SECURITIES 2006-AR7 TRUST, WELLS
FARGO MORTGAGE BACKED
7 SECURITIES 2006-5 TRUST, WELLS
FARGO MORTGAGE BACKED
8 SECURITIES 2006-6 TRUST, WELLS
FARGO MORTGAGE BACKED
9 SECURITIES 2006-AR8 TRUST, WELLS
FARGO MORTGAGE BACKED
10 SECURITIES 2006-7 TRUST, WELLS
FARGO MORTGAGE BACKED
11 SECURITIES 2006-8 TRUST, WELLS
FARGO MORTGAGE BACKED
12 SECURITIES 2006-AR10 TRUST, WELLS
FARGO MORTGAGE BACKED
13 SECURITIES 2006-AR11 TRUST, WELLS
FARGO MORTGAGE BACKED
14 SECURITIES 2006-9 TRUST, WELLS
FARGO MORTGAGE BACKED
15 SECURITIES 2006-10 TRUST, WELLS
FARGO MORTGAGE BACKED
16 SECURITIES 2006-AR12 TRUST, WELLS
FARGO MORTGAGE BACKED
17 SECURITIES 2006-AR13 TRUST, WELLS
FARGO MORTGAGE BACKED
18 SECURITIES 2006-11 TRUST, WELLS
FARGO MORTGAGE BACKED
19 SECURITIES 2006-AR16 TRUST, WELLS
FARGO MORTGAGE BACKED
20 SECURITIES 2006-14 TRUST, WELLS
FARGO MORTGAGE BACKED
21 SECURITIES 2006-AR17 TRUST, WELLS
FARGO MORTGAGE BACKED
22 SECURITIES 2006-13 TRUST, WELLS
FARGO MORTGAGE BACKED
23 SECURITIES 2006-AR15 TRUST, WELLS
FARGO MORTGAGE BACKED
24 SECURITIES 2006-AR14 TRUST, WELLS
FARGO MORTGAGE BACKED
25 SECURITIES 2006-12 TRUST, WELLS
FARGO MORTGAGE BACKED
26 SECURITIES 2006-AR18 TRUST, WELLS

27 (Caption continued on next page)

1 FARGO MORTGAGE BACKED
SECURITIES 2006-17 TRUST, WELLS
2 FARGO MORTGAGE BACKED
SECURITIES 2006-15 TRUST, WELLS
3 FARGO MORTGAGE BACKED
SECURITIES 2006-16 TRUST, AND
4 WELLS FARGO MORTGAGE BACKED
SECURITIES 2006-AR19 TRUST, WELLS
5 FARGO MORTGAGE BACKED
SECURITIES 2006-18 TRUST, WELLS
6 FARGO MORTGAGE BACKED
SECURITIES 2006-19 TRUST, WELLS
7 FARGO MORTGAGE BACKED
SECURITIES 2006-20 TRUST, WELLS
8 FARGO MORTGAGE BACKED
SECURITIES 2007-1 TRUST, WELLS
9 FARGO ALTERNATIVE LOAN 2007-PA1
TRUST, WELLS FARGO MORTGAGE
10 BACKED SECURITIES 2007-2 TRUST,
WELLS FARGO MORTGAGE BACKED
11 SECURITIES 2007-AR3 TRUST, WELLS
FARGO MORTGAGE BACKED
12 SECURITIES 2007-3 TRUST, WELLS
FARGO MORTGAGE BACKED
13 SECURITIES 2007-4 TRUST, WELLS
FARGO MORTGAGE BACKED
14 SECURITIES 2007-5 TRUST, WELLS
FARGO MORTGAGE BACKED
15 SECURITIES 2007-6 TRUST, WELLS
FARGO MORTGAGE BACKED
16 SECURITIES 2007-7 TRUST, WELLS
FARGO MORTGAGE BACKED
17 SECURITIES 2007-8 TRUST, WELLS
FARGO MORTGAGE BACKED
18 SECURITIES 2007-9 TRUST, WELLS
FARGO MORTGAGE BACKED
19 SECURITIES 2007-10 TRUST, WELLS
FARGO MORTGAGE BACKED
20 SECURITIES 2007-11 TRUST, WELLS
FARGO MORTGAGE BACKED
21 SECURITIES 2007-12 TRUST, WELLS
FARGO MORTGAGE BACKED
22 SECURITIES 2007-13 TRUST, AND
WELLS FARGO MORTGAGE BACKED
23 SECURITIES 2007-AR4 TRUST,

24 Defendants.

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that the New Orleans Employees' Retirement System, the
4 Louisiana Sheriffs' Pension and Relief Fund, the Government of Guam Retirement Fund, and the
5 Alameda County Employees' Retirement Association (collectively, the "Public Funds") will hereby
6 move, on July 10, 2009, at 9:00 a.m., in Courtroom 10 of the United States Courthouse, 450 Golden
7 Gate Avenue, San Francisco, California 94102, for an order: (1) appointing the Public Funds as Lead
8 Plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 77z-1, *et seq.*;
9 (2) approving their selection of Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz")
10 as Lead Counsel for the class; and (3) consolidating all related actions.

11 This Motion is made on the grounds that the Public Funds timely filed this Motion, and are
12 the "most adequate plaintiff[s]" by virtue of possessing the largest financial interest of all purchasers
13 of Wells Fargo Asset Securities Corporation ("Wells Fargo") mortgage pass-through or asset-backed
14 certificates. The Public Funds also meet the requirements of Rule 23 of the Federal Rules of Civil
15 Procedure because their claims are typical of the claims of other purchasers of Wells Fargo mortgage
16 pass-through certificates and the Public Funds will fairly and adequately represent the interests of the
17 other purchasers of Wells Fargo certificates.

18 Further, the Public Funds have selected and retained Bernstein Litowitz, a preeminent
19 securities class action law firm, having been appointed sole or co-lead counsel in numerous complex
20 securities class actions in this District and around the country. The Public Funds thus seeks this
21 Court's approval of their selection of Bernstein Litowitz as Lead Counsel pursuant to 15 U.S.C.
22 § 77z-1(a)(3)(B)(v).

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The New Orleans Employees' Retirement System, the Louisiana Sheriffs' Pension and Relief
3 Fund, the Government of Guam Retirement Fund, and the Alameda County Employees' Retirement
4 Association (collectively, the "Public Funds") respectfully submit this memorandum in support of
5 their motion (1) to be appointed as Lead Plaintiffs, pursuant to Section 27(a)(3)(B) of the Securities
6 Act of 1933 (the "Securities Act"), 15 U.S.C. § 77z-1(a)(3)(B), as amended by the Private Securities
7 Litigation Reform Act of 1995 (the "PSLRA"); (2) for approval of their selection of the law firm of
8 Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") as Lead Counsel for the class;
9 and (3) consolidation of all related actions.

10 I. **PRELIMINARY STATEMENT**

11 The pending litigation involves claims under the Securities Act on behalf of persons or
12 entities who acquired certain mortgage pass-through certificates or asset-backed certificates issued
13 pursuant and/or traceable to false and misleading registration statements, prospectuses and prospectus
14 supplements filed with the Securities and Exchange Commission ("SEC") by Wells Fargo Asset
15 Securities Corporation ("Wells Fargo"). On March 27, 2009, the General Retirement System of The
16 City of Detroit (the "City of Detroit") filed a complaint alleging violations of the federal securities
17 laws against Wells Fargo and other defendants on behalf of all purchasers of Wells Fargo mortgage
18 pass-through certificates issued pursuant to Wells Fargo's September 27, 2006 Registration
19 Statement, as amended on October 11, 2006 and August 15, 2007 (the September 2006 Registration
20 Statement"). On March 31, 2009, the City of Detroit published notice of its action to investors,
21 which provided a deadline to seek Lead Plaintiff status by June 1, 2009.¹

22 On April 13, 2009, Plaintiff New Orleans Employees' Retirement System ("New Orleans")
23 filed a related action in this District alleging violations of Sections 11, 12(a)(2), and 15 of the
24 Securities Act on behalf of acquirers of Wells Fargo mortgage pass-through certificates issued

25
26 ¹ A copy of the City of Detroit's notice is attached as Exhibit A to the Declaration of David R.
27 Stickney in Support of the Motion of the Public Funds for Appointment as Lead Plaintiff and
Approval of Their Selection of Lead Counsel ("Stickney Decl.").

1 pursuant and/or traceable to a July 29, 2005 Registration Statement, as amended on August 31, 2005
2 (the “July 2005 Registration Statement”), an October 20, 2005 Registration Statement, as amended on
3 December 21, 2005, January 24, 2006, January 31, 2006, and March 17, 2006 (the “October 2005
4 Registration Statement”), and the September 2006 Registration Statement, along with their
5 accompanying prospectuses and prospectus supplements (collectively, the “Offering Documents”).
6 *See New Orleans Employees’ Retirement System v. Wells Fargo Asset Securities Corp., et al.*, 09-CV-
7 1620 (SI). On April 14, 2009, New Orleans published notice of its action, and informed investors of
8 the June 1, 2009 deadline to file a motion for Lead Plaintiff in the action filed by the City of Detroit.²
9 Then, on May 15, 2009, the City of Detroit filed an administrative motion to consider whether the
10 action filed by New Orleans should be deemed related to the action filed by the City of Detroit given
11 that both cases concern substantially the same parties, property, transactions and/or events and it
12 appears likely that there will be an “unduly burdensome duplication of labor and expense” or
13 conflicting results if the cases are conducted before different judges. *See* Docket Entry No. 36; Civil
14 L.R. 3-12(a)(2). New Orleans concurred with the City of Detroit’s administrative motion. On
15 May 28, 2009, the Court issued a Related Case Order, granting the City of Detroit’s administrative
16 motion, and relating the two actions. As part of this motion, the Public Funds seek to consolidate all
17 related actions.

18 Pursuant to the PSLRA, this Court must appoint the “most adequate plaintiff” to serve as Lead
19 Plaintiff. 15 U.S.C. § 77z-1(a)(3)(B)(i). In that regard, the Court is required to determine which
20 movant has the “largest financial interest” in the relief sought by the class in this litigation and also
21 makes a *prima facie* showing that it is an adequate class representative under Rule 23 of the Federal
22 Rules of Civil Procedure. 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I). For the reasons set forth below, the
23 Public Funds believe that they are the “most adequate plaintiff[s]” by virtue of their significant
24 financial interest in Wells Fargo mortgage pass-through certificates. Specifically, the Public Funds
25 purchased approximately 33.7 million units of Wells Fargo mortgage certificates for more than

26
27 ² A copy of the notice published by New Orleans is attached as Exhibit B to the Stickney Decl.

1 \$33.6 million.³ The Public Funds further satisfy the relevant requirements of Rule 23 of the Federal
2 Rules of Civil Procedure as their claims are typical of the other members of the proposed class, and
3 they will fairly and adequately represent the class.

4 In this regard, the Public Funds have conferred telephonically in advance of this motion and
5 agreed to jointly seek appointment as Lead Plaintiffs for the benefit of the class. The Public Funds
6 are, moreover, public institutional investors, experienced in conducting and supervising counsel in
7 complex securities litigation, and are therefore the paradigmatic Lead Plaintiffs under the PSLRA.
8 Lastly, the Public Funds have selected and retained Bernstein Litowitz, a law firm with substantial
9 experience in prosecuting securities class actions to serve as Lead Counsel for the class.
10 Accordingly, the Public Funds respectfully request that the Court appoint them as Lead Plaintiffs and
11 otherwise grant their motion.

12 II. STATEMENT OF FACTS

13 Wells Fargo Bank, N.A. (“Wells Fargo Bank”) is one of the largest diversified financial
14 services companies in the United States, and the parent company of Wells Fargo. Through its various
15 subsidiaries, including Wells Fargo, Wells Fargo Bank originated and/or purchased residential
16 mortgage loans through bulk purchases for securitization or resale. Many of the mortgage loans
17 originated or purchased by Wells Fargo Bank were pooled together by Wells Fargo and deposited
18 into qualifying special purpose entities and sold to investors in the form of certificates.

19 Wells Fargo filed with the SEC the Offering Documents under the Securities Act, and
20 indicated its intention to sell mortgage pass-through certificates through a series of issuing trusts.
21 The certificates would then be issued pursuant to the registration statements and accompanying
22 prospectuses, also filed with the SEC, generally explaining the structure of the issuing trusts and
23 providing an overview of the certificates. The certificates were ultimately sold to investors pursuant
24 to a series of prospectus supplements, which were also filed with the SEC and incorporated by
25 reference into the Registration Statement.

26 _____
27 ³ Copies of the Certifications of the Public Funds are attached as Exhibit C to the Stickney Decl.

1 The certificates in each issuing trust were supported by pools of mortgage loans, entitling
2 investors to receive monthly distributions of interest and principal on cash flows from such
3 mortgages. As the original borrowers on each of the loans pay their mortgages, distributions are
4 made to investors in accordance with the terms of the certificates. If borrowers fail to pay back their
5 mortgages, default, or are foreclosed, the losses flow to investors based on the seniority of their
6 certificates.

7 The Offering Documents included several representations regarding: (i) the underwriting
8 standards used by the loan originators; (ii) the standards and guidelines used when evaluating and
9 acquiring the loans; (iii) the appraisal standards used to value the properties collateralizing the loans,
10 and the corresponding loan-to-value ratios of the loans; (iv) the credit enhancement supporting the
11 loan securitization process; and (v) the pre-established ratings assigned to each tranche of certificates
12 issued pursuant to the Offering Documents. The Offering Documents, however, failed to disclose
13 that the loan originators had systematically failed to follow their stated and pre-established
14 underwriting and appraisal standards, as well as loan purchasing guidelines. Likewise, the underlying
15 mortgages were based on collateral appraisals that overstated the value of the underlying properties.

16 III. ARGUMENT

17 The PSLRA permits any member of the class to move for appointment as Lead Plaintiff
18 within 60 days of the publication of notice that the first action asserting substantially the same claims
19 has been filed. *See* 15 U.S.C. § 77z-1(a)(3)(A). The Public Funds satisfy this deadline by making
20 this motion.

21 A. The Public Funds Should Be Appointed Lead Plaintiffs

22 The Public Funds respectfully submit that they should be appointed Lead Plaintiffs because
23 they are the movant “most capable of adequately representing the interests of class members.”
24 15 U.S.C. § 77z-1(a)(3)(B); 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA establishes a presumption that
25 the “most adequate plaintiff” is the movant that “has the largest financial interest in the relief sought
26 by the class” and “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
27 Procedure.” 15 U.S.C. § 77z-1(a)(3)(B); *see also In re Cavanaugh*, 306 F.3d 726, 730 (9th Cir.

1 2002); *In re Versata, Inc. Sec. Litig.*, No. C 01-1439 SI, 2001 WL 34012374, at *7 (N.D. Cal.
2 Aug. 20, 2001) (members of moving group with largest collective financial interest were presumptive
3 lead plaintiffs); *Lax v. First Merchs. Acceptance Corp.*, No. C 2715, 1997 U.S. Dist. LEXIS 11866, at
4 *3 (N.D. Ill. Aug. 6, 1997) (same).

5 1. The Public Funds Have The Largest
6 Financial Interest In The Relief Sought

7 The Public Funds should be appointed Lead Plaintiffs because they have the largest financial
8 interest in the relief sought. 15 U.S.C. § 77z-1(a)(3)(B)(iii). Courts generally look to four factors
9 (often referred to as the *Lax* analysis) in determining which movant has the largest financial interest in
10 the litigation. *Richardson v. TVIA, Inc.*, No. 06-07307, 2007 U.S. Dist. LEXIS 28406 (N.D. Cal.
11 Apr. 16, 2007) (noting that courts have typically considered the “*Olsten-Lax*” factors to determine who
12 has the largest financial interest). Under the four-factor analysis, courts consider the following to
13 determine the largest financial interest: “(1) the number of shares purchased during the class period;
14 (2) the number of net shares purchased during the class period; (3) the total net funds expended during
15 the class period; and (4) the approximate losses suffered.” *In re Olsten Corp. Sec. Litig.*, 3 F. Supp. 2d
16 286, 295 (E.D.N.Y. 1998) (citing *Lax*, 1997 U.S. Dist. LEXIS 11866, at *17). Here, the Public Funds
17 acquired approximately 33.7 million units of Wells Fargo mortgage certificates pursuant and traceable
18 to the false and misleading Offering Documents. The Public Funds sold approximately 11.7 million
19 units of Wells Fargo certificates, and, therefore, had net purchases of 21.9 million units. The Public
20 Funds expended more than \$33.6 million on its purchases of Wells Fargo certificates. To the best of
21 their knowledge, there are no other applicants who have sought, or are seeking, appointment as lead
22 plaintiff that have a larger financial interest arising from the purchase of Wells Fargo mortgage
23 certificates. Accordingly, the Public Funds believe that they have the largest financial interest of any
24 qualified movant seeking appointment as Lead Plaintiff.

25 2. The Public Funds Are An Appropriate Lead Plaintiff Group

26 The appointment of a group of class members as the Lead Plaintiffs is appropriate, as this
27 Court and others have recognized. *See Versata, Inc.*, 2001 WL 34012374, at *6 (“This Court
28

1 therefore finds that under appropriate circumstances small groups, whether or not they have any pre-
2 litigation relationship, can aggregate their financial losses.”).⁴

3 Here, the Public Funds agreed to jointly seek appointment as Lead Plaintiffs to ensure that a
4 broad base of Wells Fargo certificate purchasers would actively direct this litigation and to ensure
5 that the claims related to the particular certificates that each of the Public Funds purchased are
6 maintained. As a result, the Public Funds authorized counsel to seek joint appointment as Lead
7 Plaintiffs on behalf of the Public Funds. See Joint Declaration of Jerome Davis, Osey McGee, Jr., Joe
8 T. San Agustin, and Robert L. Gaumer in Support of the Public Funds’ Motion for Appointment as
9 Lead Plaintiffs (the “Joint Declaration”) at ¶¶6-7 (documenting the Public Funds’ decision to act
10 jointly in this case and their plans for joint oversight of the prosecution of the litigation). Such
11 declarations and intra-group discussions are widely accepted as adequate evidence in support of a
12 Lead Plaintiff group. See *Versata, Inc.*, 2001 WL 34012374, at *7; *Varghese*, 589 F. Supp. 2d at 392,
13 citing *Reimer v. Ambac Fin. Group, Inc.*, Nos. 08 Civ. 411, et al., 2008 WL 2073931, at *3 (S.D.N.Y.
14 May 9, 2008); *In re Nature’s Sunshine Prods., Inc.*, No. 2:06-CV-267 TS, 2006 WL 2380965, at *1
15 (D. Utah Aug. 16, 2006); *Local 144 Nursing Home Pension Fund v. Honeywell Int’l, Inc.*, No. 00-
16 3605, 2000 WL 33173017, at *4 (D.N.J. Nov. 16, 2000). The conclusion that the Public Funds have
17 acted and will continue to act independently of counsel is bolstered by the experience of these funds
18 supervising counsel’s prosecution of complex securities litigation. Because the Public Funds are a
19 small, cohesive group of public pension funds which have provided evidence of the manner in which
20 they have determined to work together and their plan for joint oversight of the prosecution of this
21 litigation, their financial interest is properly aggregated for purposes of this motion.

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24 ⁴ See also *In re McDermott Int’l, Inc. Sec. Litig.*, No. 08 Civ. 9943 (DC), 2009 WL 579502, at *2
25 (S.D.N.Y. Mar. 6, 2009) (“The majority of courts ... permit [] unrelated investors to join together as a
26 group seeking lead-plaintiff status on a case-by-case basis, if such a grouping would best serve the
27 class....”), quoting *Varghese v. China Shenghuo Pharm. Holdings, Inc.*, 589 F. Supp. 2d 388, 391-92
(S.D.N.Y. 2008); *City of Brockton Ret. Sys. v. Shaw Group, Inc.*, No. 06 Civ. 8245(CM)(MHD), 2007
28 WL 2845125, at *3 (S.D.N.Y. Sept. 26, 2007) (“[I]t is evident that the court may appoint multiple
persons – whether individuals or entities – as lead plaintiffs.”).

3. The Public Funds Otherwise Satisfy The Requirements Of Rule 23

In addition to possessing the largest financial interest in the outcome of the litigation, the Public Funds also satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. On a motion to serve as Lead Plaintiff, the movant must only make a preliminary showing that it satisfies the typicality and adequacy requirements of Federal Rule of Civil Procedure 23. *See Richardson*, 2007 U.S. Dist. LEXIS 28406, at *15 (citing *Cavanaugh*, 306 F.3d at 730). Here, the Public Funds unquestionably satisfy both requirements.

The Public Funds' claims are typical of the claims of other purchasers of Wells Fargo mortgage certificates. Generally, the test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citing *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)); *see also Richardson*, 2007 U.S. Dist. LEXIS 28406, at *17 (typicality satisfied where the proposed lead plaintiff shared substantially similar questions of law and fact with other members of the class and the claims arose from the same course of conduct by defendants). The Public Funds' claims in this action arise from the very same course of conduct as the claims of the other members of the class – *i.e.*, the purchase of Wells Fargo certificates that were secured by assets that had a much greater risk profile than represented in the Offering Documents.

The Public Funds likewise satisfy the adequacy requirement of Rule 23. Under Rule 23(a)(4), the representative parties must fairly and adequately protect the interests of the class. This requirement is met if "there are no conflicts between the representative and class interests and the representative's attorneys are qualified, experienced, and generally able to conduct the litigation." *Richardson*, 2007 U.S. Dist. LEXIS 28406, at *16 (citing Fed. R. Civ. P. 23(a)(4); *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)). The Public Funds easily satisfy the elements of the adequacy requirement. The Public Funds' interests are perfectly aligned with those of the other members of the class and are not antagonistic in any way. There are, furthermore, no facts suggesting that any actual or potential conflict of interest or other antagonism exists between the Public Funds

1 and other class members. The Public Funds submitted certifications and a joint declaration affirming
2 the understanding of the duties owed to class members through their commitment to oversee the
3 prosecution of this class action. *See* Joint Declaration at ¶¶6-7. Through those certifications and the
4 Joint Declaration, the Public Funds accept the fiduciary obligations they will assume if appointed
5 Lead Plaintiffs in this action. *Id.*

6 Further, the Public Funds are a classic example of the sort of Lead Plaintiff envisioned by
7 Congress in its enactment of the PSLRA – sophisticated institutional investors with real financial
8 interests in the litigation. *See* H.R. Conf. Rep. No. 104-369, at 34, 104th Cong. 1st Sess. (1995),
9 reprinted in 1995 U.S.C.C.A.N. 679, 690 (explaining that “increasing the role of institutional
10 investors in class actions will ultimately benefit shareholders and assist courts by improving the
11 quality of representation in securities class actions”); *Armour v. Network Assocs.*, 171 F. Supp. 2d
12 1044, 1051 (N.D. Cal. 2001) (quoting *Bowman v. Legato Sys.*, 195 F.R.D. 655, 659 (N.D. Cal. 2000))
13 (“As an institutional investor with a large financial stake in the outcome of this litigation, [Movant]
14 ‘is exactly the type of lead plaintiff envisioned by Congress when it instituted the lead plaintiff
15 requirements.’”).

16 Finally, the Public Funds have demonstrated their adequacy through the selection of Bernstein
17 Litowitz to represent the class. As discussed more fully below, Bernstein Litowitz is highly qualified
18 and experienced in the area of securities class action litigation and has repeatedly demonstrated an
19 ability to conduct complex securities class action litigation effectively.

20 B. The Court Should Approve The
21 Public Funds’ Selection Of Lead Counsel

22 The Court should approve the Public Funds’ choice of the law firm of Bernstein Litowitz to
23 serve as Lead Counsel. Pursuant to Section 27(a)(3)(B)(v) of the Securities Act, 15 U.S.C. § 77z-
24 1(a)(3)(B)(v), the Lead Plaintiff is to select and retain Lead Counsel to represent the class, subject to
25 Court approval. The Public Funds have selected and retained the law firm of Bernstein Litowitz.

26 Bernstein Litowitz is among the preeminent securities class action law firms, having been
27 appointed sole or co-lead counsel in numerous complex securities class actions in this District and

1 around the country. *See, e.g.*, Bernstein Litowitz’s Firm Biography, attached as Exhibit D to the
 2 Stickney Decl. Bernstein Litowitz served as lead counsel in *In re McKesson HBOC Securities*
 3 *Litigation*, No. 99-20743 (N.D. Cal.), in which settlements totaling in excess of \$1 billion – one of
 4 the largest recoveries in securities class action history – were obtained for the class. Other examples
 5 in which courts have recognized Bernstein Litowitz as adequate and qualified class counsel in
 6 securities class actions include *In re WorldCom, Inc. Securities Litigation*, No. 02-CV-3288
 7 (S.D.N.Y.) and *In re Refco, Inc. Securities Litigation*, No. 05-CV-8626 (S.D.N.Y.). Accordingly, the
 8 Court should approve the Public Funds’ selection of Bernstein Litowitz as Lead Counsel for the class.

9 C. All Related Actions Should Be Consolidated

10 As discussed above, there are at least two related securities class action pending in the
 11 Northern District of California on behalf of investors who purchased Wells Fargo pass-through
 12 securities:

<u>Abbreviated Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
<i>General Retirement System of the City of Detroit v. The Wells Fargo Mortgage Backed Securities 2006-AR18 Trust, et al.</i>	09-CV-1376 (SI)	3/27/09
<i>New Orleans Employees’ Retirement System v. Wells Fargo Asset Securities Corporation, et al.</i>	09-CV-1620 (SI)	4/13/09

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 19 “When actions involving a common question of law or fact are pending before the court, it
 20 may order . . . all actions consolidated.” Fed. R. Civ. P. 42(a). The pending actions present virtually
 21 identical factual and legal issues, arising out of the same alleged course of misconduct – the purchase
 22 of Wells Fargo pass-through securities issued from misleading Offering Documents. Accordingly,
 23 consolidation is appropriate “in the interest of judicial economy and to relieve the parties and absent
 24 class members of the burdens associated with participating in duplicative litigation.” *Takeda v.*
 25 *Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129, 1130 (C.D. Cal. 1999). “Indeed, the Private Securities
 26 Litigation Reform Act of 1995 (PSLRA) provides that consolidation should occur when the various
 27
 28

1 securities class actions assert substantially the same claim.” *Casden v. HPL Techs., Inc.*, No C-02-
2 3510 VRW, 2003 U.S. Dist. LEXIS 19606, at *5 (N.D. Cal. Sept. 29, 2003).

3 IV. CONCLUSION

4 As explained above, the Public Funds are the “most adequate plaintiff.” The Public Funds
5 have the “largest financial interest” arising out of the purchase of Wells Fargo mortgage certificates
6 by virtue of, among other things, the purchase of approximately 33.7 million units of Wells Fargo
7 mortgage certificates. The Public Funds further satisfy the relevant requirements of Rule 23 of the
8 Federal Rules of Civil Procedure as adequate class representatives with claims typical of the other
9 purchasers of Wells Fargo mortgage certificates. Accordingly, the Public Funds respectfully request
10 that the Court: (1) appoint the Public Funds as Lead Plaintiffs; (2) approve the selection of Bernstein
11 Litowitz to serve as Lead Counsel; and (3) consolidate all related actions.

12 Dated: June 1, 2009

Respectfully submitted,

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