

THE ROSEN LAW FIRM, P.A.

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*[Proposed] Lead Counsel for
 Lead Plaintiff and the Class*

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

GUOFENG MA, Individually and on Behalf of All Others Similarly Situated,)))	Case No. 3:20-cv-03697-RS
Plaintiff,)))	NOTICE OF MOTION AND MOTION OF MOVANT GEORGE KWINECKI FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
v.)))	CLASS ACTION
WELLS FARGO & COMPANY, CHARLES W. SCHARF, and JOHN R. SHREWSBERRY,))))))	Judge: Richard Seeborg Hearing: September 10, 2020 Time: 1:30 p.m. Ctrm: Courtroom 3, 17th Floor (San Francisco)
Defendants.)))	

PLEASE TAKE NOTICE that on September 10, 2020 at 1:30 p.m. before the Honorable Richard Seeborg in the San Francisco Courthouse, Courtroom 3 – 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff George Kwinecki (“Movant”) will, and does move this Court for an order granting the Motion: (a) appointing Movant as Lead Plaintiff; and (b) approving Movant’s selection of The Rosen Law Firm, P.A. (“Rosen Law”) as Lead Counsel.

This Motion is brought pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B) on the grounds that: (1) Movant should be

1 appointed as Lead Plaintiff for the class of securities purchasers of Wells Fargo & Company
2 (“Wells Fargo” or the “Company”) between April 5, 2020 and May 5, 2020, both dates inclusive
3 (“Class Period”), as Movant timely made this Motion, has the largest financial interest, and
4 otherwise satisfies the pertinent requirements of Federal Rule of Civil Procedure 23; and (2)
5 Movant’s selection of Rosen Law as Lead Counsel should be approved as the firm is well-
6 qualified with extensive experience in cases of this type.

7 In support of this Motion, Movant files herewith a memorandum of points and authorities,
8 the Declaration of Laurence M. Rosen, the certification of Laurence M. Rosen pursuant to LR 3-
9 7(d), a certification pursuant to LR 3-15, and a proposed order.

10 **STATEMENT OF ISSUES TO BE DECIDED**

11 (1) Whether the Court should appoint Movant as Lead Plaintiff pursuant to 15 U.S.C.
12 78u-4(a)(3)(B); and

13 (2) Whether the Court should approve Movant’s selection of Rosen Law as Lead
14 Counsel for the class pursuant to 15 U.S.C. 78u-4(a)(3)(B)(v).

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff George Kwinecki (“Movant”), respectfully submits this memorandum in support
3 of his motion for an Order, pursuant to Section 21D of the Securities Exchange Act of 1934 (the
4 “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the
5 “PSLRA”):

6 (1) appointing Movant as Lead Plaintiff for all persons other than defendants who
7 purchased or otherwise acquired the securities of Wells Fargo between April 5, 2020 and May 5,
8 2020, both dates inclusive (the “Class Period”), seeking to recover damages caused by
9 Defendants’ violations of the federal securities laws (the “Class”); and

10 (2) appointing The Rosen Law Firm, P.A. (“Rosen Law”) as Lead Counsel for the
11 Class.

12 **I. CLAIMS ASSERTED**

13 This action was commenced on June 4, 2020 in this Court against Defendants for claims
14 under Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder.
15 That same day, a PSLRA early notice was issued advising potential Class members of, among
16 other things, the claims alleged in the action and the 60-day deadline for Class members to move
17 to be appointed as lead plaintiff. A copy of the early notice is attached as Exhibit 1 to the
18 Declaration of Laurence M. Rosen filed herewith (“Rosen Decl.” or “Rosen Declaration”).

19 Wells Fargo is a diversified financial services company that provides banking, investment,
20 mortgage, and consumer and commercial finance products and services to individuals, businesses,
21 and institutions in the U.S. and internationally. The complaint alleges that throughout the Class
22 Period, Defendants made materially false and misleading statements and/or failed to disclose
23 material adverse facts about the Company’s business, operations, and prospects. Specifically,
24 Defendants made false and/or misleading statements and/or failed to disclose that: (1) Wells
25 Fargo planned to, and did, improperly allocate government-backed loans under the Paycheck
26 Protection Program (“PPP”), and/or had inadequate controls in place to prevent such
27 misallocation; (2) the foregoing foreseeably increased the Company’s litigation risk with respect
28 to PPP allocation, as well as increased regulatory scrutiny and/or potential enforcement actions;

1 and (3) as a result, the Company’s public statements were materially false and misleading at all
2 relevant times.

3 On April 19, 2020, after at least one lawsuit was filed against the Company, reports
4 emerged that Wells Fargo may have unfairly allocated government-backed loans under the PPP.
5 For example, *USA Today* reported that “[t]he lawsuit filed on behalf of small business owners on
6 Sunday alleges that Wells Fargo unfairly prioritized businesses seeking large loan amounts, while
7 the government’s small business agency has said that PPP loan applications would be processed
8 on a first-come, first-served basis.” According to the lawsuit, “[t]he move by Wells Fargo meant
9 that the bank would receive millions more dollars in processing fees,” and, “[m]aking matters
10 worse, Wells Fargo concealed from the public that it was reshuffling the PPP applications it
11 received and prioritizing the applications that would make the bank the most money.” Following
12 this news, Wells Fargo’s stock price fell more than 5% over two trading days to close at \$26.84
13 per share on April 21, 2020.

14 On May 5, 2020, Wells Fargo filed a quarterly report on Form 10-Q with the SEC,
15 disclosing, in addition to multiple PPP-related lawsuits initiated against the Company, that Wells
16 Fargo had “received formal and informal inquiries from federal and state governmental agencies
17 regarding its offering of PPP loans.” Following this news, Wells Fargo’s stock price fell by more
18 than 6% over two trading days from its closing price on May 4, 2020, closing at \$25.61 per share
19 on May 6, 2020.

20 As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the
21 market value of the Company’s securities, Movant and other Class members have suffered
22 significant losses and damages.

23 ARGUMENT

24 II. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF

25 The PSLRA sets forth procedures for the selection of Lead Plaintiff in class actions
26 brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA directs courts to
27 consider any motion to serve as Lead Plaintiff filed by class members in response to a published
28 notice of class action by the later of (i) 90 days after the date of publication, or (ii) as soon as

1 practicable after the Court decides any pending motion to consolidate. 15 U.S.C. § 78u-
2 4(a)(3)(B)(i) and (ii).

3 The PSLRA provides a “rebuttable presumption” that the most “adequate plaintiff” to
4 serve as Lead Plaintiff is the “person or group of persons” that:

5 (aa) has either filed the complaint or made a motion in response to a notice . . . ;

6 (bb) in the determination of the Court, has the largest financial interest in the relief
7 sought by the class; and

8 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
9 Procedure.

10 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002).

11 As set forth below, Movant satisfies the above criteria, having the largest financial interest
12 of any movant in this litigation, and is therefore the most adequate plaintiff and should be
13 appointed as Lead Plaintiff.

14 **A. Movant Is Willing to Serve as Class Representative**

15 Movant timely filed the instant motion in response to a PSLRA early notice, and filed
16 herewith a PSLRA certification attesting that Movant is willing to serve as a representative of the
17 Class and is willing to provide testimony at deposition and trial, if necessary. *See Rosen Decl.*,
18 Ex. 2. Accordingly, Movant satisfies the first requirement to serve as Lead Plaintiff for the Class.

19 **B. Movant Has the Largest Financial Interest in the Action**

20 The PSLRA requires a court to adopt a rebuttable presumption that “the most adequate
21 plaintiff . . . is the person or group . . . that . . . has the largest financial interest in the relief sought
22 by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii); *Cavanaugh*, 306 F.3d at 730. While the PSLRA
23 does not specify precisely how to calculate the “largest financial interest,” the movant’s
24 approximate losses in the subject securities is the best measure. *Richardson v. TVIA, Inc.*, 2007
25 WL 1129344 at * 4 (N.D. Cal. Apr. 16, 2007) (citing cases).

26 Movant lost approximately \$162,896.92 in connection with purchases of Wells Fargo
27 securities during the Class Period. *See Rosen Decl.*, Ex. 3. Movant is not aware of any other
28 movant that has suffered greater losses in Wells Fargo securities during the Class Period.

1 Accordingly, Movant satisfies the largest financial interest requirement to be appointed as Lead
2 Plaintiff for the Class.

3 **C. Movant Satisfies the Requirements of Rule 23 of the Federal Rules of Civil**
4 **Procedure**

5 The PSLRA further provides that, in addition to possessing the largest financial interest
6 in the outcome of the litigation, the Lead Plaintiff must “otherwise satisf[y] the requirements of
7 Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Federal
8 Rule of Civil Procedure Rule 23(a) provides that a party may serve as a class representative if the
9 following four requirements are satisfied:

10 (1) the class is so numerous that joinder of all members is impracticable, (2)
11 there are questions of law or fact common to the class, (3) the claims or
12 defenses of the representative parties are typical of the claims or defenses
13 of the class, and (4) the representative parties will fairly and adequately
14 protect the interests of the class.

14 Fed. R. Civ. P. 23(a).

15 In making its determination that a movant satisfies the requirements of Rule 23, the Court
16 need not raise its inquiry to the level required in ruling on a motion for class certification – a
17 *prima facie* showing that a movant satisfies the requirements of Rule 23 is sufficient. *Cavanaugh*,
18 306 F.3d at 730-31. At the lead plaintiff stage, “[t]he typicality and adequacy requirements of
19 Rule 23 are the main focus...” and “[e]xamination of the remaining requirements [of Rule 23] are
20 deferred until the lead plaintiff moves for class certification.” *Richardson*, 2007 WL 1129344, at
21 * 4 (citing *Cavanaugh*, 306 F.3d at 730).

22 Movant fulfills all of the pertinent requirements of Rule 23. Movant shares substantially
23 similar questions of law and fact with the members of the Class, and Movant’s claims are typical
24 of the members of the Class. Movant and all members of the Class allege that Defendants violated
25 the Exchange Act by publicly disseminating false and misleading statements about Wells Fargo
26 and its business. Movant, as did all of the members of the Class, purchased Wells Fargo securities
27 at prices artificially inflated due to Defendants’ misrepresentations and omissions, and was
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1 damaged thereby. These shared claims also satisfy the requirement that the claims of the
2 representative parties be typical of the claims of the Class.

3 Thus, the close alignment of interests between Movant and other Class members, and
4 Movant’s desire to prosecute this action on behalf of the Class, provides ample reason to appoint
5 Movant as Lead Plaintiff.

6 **D. Movant Will Fairly and Adequately Represent the Interests of the Class and Are**
7 **Not Subject to Unique Defenses**

8 The presumption in favor of appointing Movant as Lead Plaintiff may be rebutted only
9 upon proof “by a purported member of the plaintiffs’ class” that the presumptively most adequate
10 plaintiff:

11 (aa) will not fairly and adequately protect the interests of the class; or

12 (bb) is subject to unique defenses that render such plaintiff incapable of
13 adequately representing the class.

14 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

15 Movant’s ability and desire to fairly and adequately represent the Class has been discussed
16 above. Movant is not aware of any unique defenses that Defendants could raise against Movant
17 that would render him inadequate to represent the Class. Accordingly, the Court should appoint
18 Movant as Lead Plaintiff for the Class.

19 **III. MOVANT’S SELECTION OF COUNSEL SHOULD BE APPROVED**

20 The PSLRA vests authority in the Lead Plaintiff to select and retain lead counsel, subject
21 to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should only interfere with
22 the Lead Plaintiff’s selection when necessary “to protect the interests of the class.” 15 U.S.C. §
23 78u-4(a)(3)(B)(iii)(II)(aa).

24 Movant has selected Rosen Law as Lead Counsel. The firm has been actively researching
25 the Class’ and the Movant’s claims – reviewing publicly available financial and other documents
26 and gathering information in support of the claims against the Defendants. Furthermore, the firm
27 is experienced in the area of securities litigation and class actions, having been appointed as lead
28 counsel in securities class actions in this District and in numerous courts throughout the nation.

1 Rosen Law has prosecuted securities fraud class actions and other complex litigation and has
2 obtained substantial recoveries on behalf of investors. The resume of the firm is attached as
3 Exhibit 4 to the Rosen Declaration.

4 As a result of the firm's experience in litigation involving issues similar to those raised in
5 this action, Movant's counsel has the skill and knowledge that will enable it to prosecute this
6 action effectively and expeditiously. Thus, the Court may be assured that by approving Movant's
7 selection of counsel, the members of the Class will receive the best legal representation available.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Movant respectfully requests that the Court issue an Order: (1)
10 appointing Movant as Lead Plaintiff of the Class; (2) approving Rosen Law as Lead Counsel; and
11 (3) granting such other relief as the Court may deem to be just and proper.

12
13 Dated: August 3, 2020

Respectfully submitted,

14 **THE ROSEN LAW FIRM, P.A.**

15 /s/Laurence M. Rosen

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24 *Lead Plaintiff and the Class*
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PROOF OF SERVICE

I, Laurence M. Rosen, hereby declare under penalty of perjury as follows:

I am the managing partner of The Rosen Law Firm, P.A., with offices at 355 South Grand Avenue, Suite 2450, Los Angeles, CA 90071. I am over the age of eighteen.

On August 3, 2020 I electronically filed the following **NOTICE OF MOTION AND MOTION OF MOVANT GEORGE KWINECKI FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

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

Executed on August 3, 2020

/s/Laurence M. Rosen _____
Laurence M. Rosen