UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Evelyn Carter, Michelle Phillips, and Eileen Wasserman, On behalf of themselves and all others similarly situated, (CKK) Plaintiffs, v. Wells Fargo Advisors, LLC, Wells Fargo & Co., Wachovia Securities, LLC, a wholly owned subsidiary of Wells Fargo & Co., and Wachovia Corporation, Defendants.	NO. 1:09-CV-01752 CLASS ACTION

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FINAL APPROVAL OF THE CLASS SETTLEMENT

Pursuant to the terms of this Court's January 25, 2011 Preliminary Approval Order regarding the Stipulation of Class Action Settlement, Plaintiffs Evelyn Carter, Michelle Phillips and Eileen Wasserman (collectively, "Plaintiffs"), in their capacity as representatives of the Class, respectfully submit this memorandum and the accompanying Declaration of Cyrus Mehri ("Mehri Decl.") (Exhibit A), in support of final approval of the Settlement.[1]

This action arises from Plaintiffs' allegations that Wells Fargo Advisors, LLC, Wells Fargo & Co., Wachovia Securities, LLC, a wholly owned subsidiary of Wells Fargo & Co., and Wachovia Corporation (collectively, "Defendants") discriminated

[1] All capitalized terms used herein are the same as those used in the parties' Settlement Agreement ("S.A."). The Settlement Agreement is Docket Entry No. 35-1.

against them and other similarly situated female Financial Advisors ("FAs") in the terms and conditions of their employment on the basis of their gender.

The proposed thirty-two-million-dollar settlement is fair, adequate, and reasonable. It is the product of extensive bargaining by both sides for more than three years with the assistance of a respected mediator. And, it reflects a significant achievement by creating long-lasting programmatic relief that will benefit female financial advisors currently employed by Defendants.

This Court found the Settlement within the range of fair, reasonable and adequate when it granted Preliminary Approval on January 25, 2011. Following the Court's Preliminary Approval Order, the parties and the Claims Administrator complied with the notice plan and engaged in additional notice as ordered by the Court on March 15, 2011. Class members have responded favorably to the settlement. Notably, no objections have been raised about the settlement, and less than two percent of the proposed class has submitted requests for exclusion. In light of the significant litigation risks posed by continuing litigation and the possibility of no recovery at all on behalf of the Class, the Settlement is fair, reasonable, and adequate, and, accordingly, should be finally approved.

The history of this litigation and the terms of the Settlement are described in detail on pages two through eleven of Class Counsel's Memorandum in Support of the Motion for Preliminary Approval. (Docket. No. 32-4.) This extensive history is summarized below.

I. FACTUAL AND PROCEDURAL BACKGROUND

In early 2005, Plaintiffs Carter and Phillips each filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging that Wachovia

Securities[2] discriminated against them on the basis of their gender. Subsequently, they amended their EEOC charges to allege that Wachovia Securities discriminated against them and a class of similarly situated female FAs throughout the United States. In 2007, Plaintiff Wasserman filed a similar charge of class-wide gender discrimination against Wachovia Securities.

Defendants' denied the allegations of discrimination, and further denied they had engaged in wrongdoing of any kind. Nevertheless, in an effort to determine whether they could settle the above-referenced allegations of class-wide gender discrimination prior to the commencement of litigation, the parties' counsel, who are experienced class action attorneys, commenced settlement discussions in June 2007. (Mehri Decl. ¶ 6.) Later, the parties engaged the services of Margaret Shaw, Esq. of JAMS (New York office), a highly experienced professional mediator, skilled in the mediation of complex class actions, including employment discrimination litigation. (Mehri Decl. ¶ 13.)

To evaluate the merits of the class claims as to both liability and damages, Class Counsel sought, and Defendants produced, policy documents regarding Defendants' employment practices and electronic data concerning FA employment history and earnings. (Mehri Decl. ¶¶ 12, 14.)

On September 15, 2009 – while the parties' mediation efforts were ongoing – Plaintiffs commenced this action. In their Class Action Complaint, Plaintiffs asserted both class and individual claims against Defendants pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), *et seq.*, ("Title VII"), and parallel

[2] After Plaintiffs filed their respective charges of discrimination, Wachovia Securities acquired A.G. Edwards, another retail brokerage firm. Thereafter, Wells Fargo & Co. acquired Wachovia Corporation, including its subsidiary Wachovia Securities, which is now known as Wells Fargo Advisors.

state and local laws prohibiting gender discrimination. The Complaint alleged that Defendants afforded fewer business opportunities to female FAs compared to their male counterparts. The Complaint further alleged that female FAs were disadvantaged with respect to career advancement, distribution of accounts, work assignments, signing bonuses, partnerships, team arrangements, compensation, and other terms and conditions of employment. In addition to the class claims, Plaintiffs asserted individual, non-class claims, including retaliation and age discrimination. (Mehri Decl. ¶ 15.)

On February 5, 2010, Defendants filed their Answer to the Complaint, denying the allegations and asserting numerous affirmative defenses. In their Answer, Defendants specifically denied engaging in a pattern or practice of gender discrimination against Plaintiffs or any similarly situated current or former female FAs, and further denied that Plaintiffs or putative class members are entitled to the relief requested. (Mehri Decl. ¶ 16.)

On December 22, 2010, after vigorous arm's length negotiations, the parties executed the proposed Settlement Agreement (Docket No. 32-1), which was later revised after conferring with the Court (Docket No. 35-1). (Mehri Decl. ¶ 18.) The material terms of the Settlement Agreement are summarized below. All parties and their counsel recognize that, in the absence of an approved settlement, they would face a long litigation course, including motions to dismiss, motions related to class certification, formal discovery, motions for summary judgment, trial and potential appellate proceedings that would consume time and resources and present each of them with ongoing litigation risks and uncertainties. The parties desired to avoid these risks and uncertainties, as well as the consumption of time and resources, and ultimately determined that an amicable

settlement pursuant to the terms and conditions of the attached Settlement Agreement would be more beneficial to them than continued litigation. (Mehri Decl. ¶¶ 32, 49.) Class Counsel asserts that the terms of the Settlement Agreement are in the best interests of the class and are fair, reasonable, and adequate. (Mehri Decl. ¶¶ 20, 50.)

II. SUMMARY OF THE SETTLEMENT AGREEMENT PROVISIONS

A. General Provisions and Monetary Relief

To effectuate their proposed settlement, the parties seek provisional certification of a class defined as follows:

> All women who are or were employed in the United States as Financial Advisors by: (a) Wachovia Securities, LLC, or its successor Wells Fargo Advisors, LLC, at any time between March 17, 2003 and the date of Preliminary Approval (January 25, 2011); and/or (b) Wells Fargo Investments, LLC at any time between December 31, 2008 and the date of Preliminary Approval (January 25, 2011). Women who were employed as Financial Advisors by Prudential Securities Inc. or A.G. Edwards & Sons, Inc. are included only as of the effective date of the respective business consolidation or merger of these corporations with Wachovia Securities/Wachovia Corporation.

The parties seek certification pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3).

In addition to the significant, comprehensive injunctive relief described below, Defendants have established a "Settlement Fund" of $32 million. The Settlement Fund will:

a. cover all amounts to be paid to class members, including Plaintiffs;

b. cover all of Class Counsel's fees and costs, including those in connection with securing court approval of the settlement, the claims process and monitoring the consent decree; and

c. cover costs in connection with the settlement fund including, but not limited to, those related to notice, claims processing, legal advice relating to the establishment of the qualified settlement fund and tax treatment and tax reporting of awards to claimants, preparation of tax returns (and the taxes associated with such tax returns), and other fees and expenses,

except that Defendants are separately paying the cost of the Claims Administrator.[3]

Thomas Warren of Settlement Services, Inc. in Tallahassee, Florida is serving as the Claims Administrator and one of the Trustees of the Settlement Fund. The Settlement directs the Claims Administrator to apply a formula to determine each Claimant's monetary award from the Settlement. The parties have agreed that the formula will be based on the following: (i) Claimant's length of tenure (e.g., weeks worked) for Defendants as a Financial Advisor during the Class Period; (ii) facts in support of Claimant's individual claims of gender-based discrimination, if any; (iii) the extent of claims the Claimant is releasing; and (iv) Claimant's contributions to the prosecution of this action, if any. (S.A. §IX.D.) The parties agreed that Class Counsel, along with the Claims Administrator, will develop a distribution formula and propose the distribution formula to the Court. (*Id.*) The proposed distribution formula is described below.

Following the Claims Administrator's determination as to the monetary award, if any, that should be paid to each Claimant from the Settlement Fund, the Claims Administrator shall send a Notice of Award to each eligible Claimant, along with a Named Plaintiff Release or a Class Member Release, whichever is applicable. Within a reasonable time period after receipt of an executed Named Plaintiff Release from a Named Plaintiff or an executed Class Member Release from a Class Member, the Claims Administrator shall send the Named Plaintiff or Class Member her award payment. (S.A. §§IX.C. & IX.D.) Any Named Plaintiff who does not execute and timely deliver an

[3] Though the parties initially anticipated that the Settlement Fund would pay for costs of the Claims Administrator, Defendants have agreed to pay these costs separately. The Court incorporated this change in its March 15, 2011 Order (Docket No. 44). Defendants also will be responsible for their share of payroll taxes and will pay the same separate and apart from the Settlement Fund.

executed Named Plaintiff Release,[4] and any Class Member who does not execute and timely deliver an executed Class Member Release[5] to the Claims Administrator within six (6) months of the date the Notice of Award was mailed to her shall be ineligible for, and forever barred from receiving, monetary relief under this Settlement Agreement, even if said Named Plaintiff or Class Member has not opted out. Any undistributed funds that remain after six (6) months from the mailing of the Notice of Award due to uncashed checks shall be distributed to 501(c)(3) organizations advancing career opportunities for women, including career opportunities in the financial services industry,

B. Injunctive, Programmatic Relief

The parties negotiated and agreed that extensive injunctive relief will be implemented by Defendants, and will remain in place for a period of at least four years.[6] The injunctive relief impacts numerous policies and practices of the Defendants and is aimed at improving and enhancing the experiences of female financial advisors at Wells Fargo Advisors/Wachovia and reducing discrimination. The programmatic relief includes, but is not limited to Defendants' agreement to:

A. Continue to implement revised Financial Advisor Book Reassignment (FABR) policies which govern the distribution of accounts of departing FAs, retiring FAs, and departing team members and record any exceptions to the use of FABR for account distributions. The FABR policies will be posted on the Company's intranet site;

[4] The Named Plaintiff release is a general release written general release of all claims, known and unknown, against Defendants which have accrued up to and including February 14, 2011. (Docket No. 35-1, Ex. 2.)

[5] The Class Member Release is a release of all gender discrimination claims, known and unknown, against Defendants which have accrued up to and including February 14, 2011. (Docket No. 35-1, Ex. 1.)

[6] The Programmatic Relief is described in further detail on pages 18 through 34 of the Settlement Agreement. (Docket No. 35-1.)

B. Implement policies and programs to handle account assignments in WBS and call-ins and walk-ins to PCG;

C. Implement a method to adjust FABR ranking factors that measure performance from the previous twelve-month period to exclude Company-approved leaves of absences;

D. Upon request, make available to FAs their individual ranking and, without identification of any particular FA by name, the actual distributions at the time a distribution is made;

E. Track by gender up-front or signing bonuses offered to hired lateral FAs;

F. Provide on an annual basis communications to employees regarding equal employment opportunity and anti-harassment policies;

G. Provide diversity training to Field Management and train hiring managers to encourage a diverse pool of candidates for interviews;

H. Post Field Management job opportunities on the internal job bank, excluding selection decisions made as part of a restructuring, consolidation, or reorganization, and encourage a diverse pool of applicants for the Branch Management Leadership Program;

I. Assess Field Management's performance regarding diversity as a material component of the leadership factor or people factor, on which PCG and WBS Field Management is evaluated;

J. Require that all new team arrangements be in writing and contain dissolution and dispute resolution provisions;

K. Provide a seminar at least every other year about teams hosted by the Women's Initiative or by a program of comparable efficacy;

L. Retain an external Settlement Monitor ("Monitor") to evaluate the Company's efforts to satisfy its obligations under the Settlement. The Company will provide the Monitor with various information, reports, and data during the term of the Agreement. The Monitor will also provide semi-annual reports to Class Counsel and the Company on the items monitored;

M. Retain an Industrial Psychologist to provide advisory services and make state of the art and innovative recommendations designed to further attract, promote, retain, and increase the books of business of women FAs;

N. Develop a system of internal data collection and monitoring to assist the Company in complying with the terms of the Agreement;

O. Meet with Class Counsel at least once semi-annually regarding compliance with the Agreement.

It is the opinion of Class Counsel that the programmatic relief will have significant benefits for the Class. (Mehri Decl. ¶ 21.)

C. Attorneys' Fees & Expenses

The parties negotiated and agreed that Class Counsel may petition the Court for an award of past and future attorneys' fees and expenses in the amount of 30% of the $32,000,000 monetary settlement plus an annual payment during each of the four years of the term of the Settlement in the amount of $320,000 in the first year and in the amount of $200,000 for the next three years, plus interest, if any, accruing on those amounts, to cover future fees and expenses relating to monitoring and enforcing the Settlement. Class Counsel's memorandum in support of its request for attorneys' fees and expenses is filed herewith.

III. CLASS COUNSEL HAS COMPLIED WITH THE COURT-ORDERED NOTICE PROVISIONS AND THE RESPONSE OF THE CLASS HAS BEEN FAVORABLE

On February 14, 2011, the Claims Administrator mailed the court-approved notice and claim forms to approximately 2,570 individuals whose names were on a Class list provided by Defendants. (Patton Decl. ¶ 5.)[7] The list provided by Defendants also

[7] Mark Patton works for the Claims Administrator. His declaration is attached hereto as Exhibit B.

contained social security numbers, and last known addresses of the 2,570 individuals. The notice was mailed to the last known addresses of these individuals. (*Id.*) The notice contained information regarding the nature of the action, the definition of the class, the binding effect of a class judgment, and described how to object, opt out, submit a claim and/or appear at the fairness hearing. The notice did not contain an estimated number of class members.

After Notice was mailed, Defendants performed a quality control check of the Class list that had been provided to the Claims Administrator. Defendants discovered that the list provided to the Claims Administrator contained approximately 80 individuals who do not meet the Class definition (who should not have received notice) and inadvertently omitted approximately 570 Class Members (who should have received notice but did not). Defendants notified Class Counsel of the inaccuracies in the Class list on March 7, 2011. (Mehri Decl. ¶ 35.)

The parties notified the Court of the inaccuracies with the initial Class list. On March 15, 2011, the Court approved a revised notice plan, including a new notice and an insert titled "Second Mailing", as well as new deadlines for opt-out requests, objections, and claim forms. (Docket No. 44.) On March 18, 2011, the Claims Administrator mailed the newly approved notice to all Class Members. (Patton Decl. ¶ 8-9.) Also on March 18, 2011, the Claims Administrator mailed Class Members who had received the first notice the court-approved insert titled "Second Mailing." (*Id.* ¶ 9; Docket No. 43-4.) Individuals who sent requests to opt-out of the Settlement between February 14, 2011 (the date the first notice was mailed) and March 18, 2011 (the date the second notice was mailed) were required by the Court to send their requests to opt-out again. Under the

court-approved notice, objections and requests to opt-out of the Settlement were due on May 5, 2011.

One hundred twenty (125) of the notice packages were returned to Claims Administrator as undeliverable. (Patton Decl. ¶ 11.) When the Claims Administrator searched for updated address information, 107 addresses were found by using a locator service. (*Id*.) The Notice was mailed to these 107 Class Members as their information was obtained on a rolling basis. (*Id.* ¶ 11.) Of the 107 Notices that were re-mailed based on the trace search, 11 have been returned as undeliverable. (*Id.* ¶ 12.)

Class Counsel used the LEXIS-NEXIS SmartLinx tool to search for updated addresses for the remaining individuals for whom the Claims Administrator could not locate a trace address. (Mehri Decl.¶ 40.) Where phone numbers were located, Class Counsel made efforts to call these Class Members of the Class Members and obtain updated addresses. (*Id.*) Based on Class Counsel's search, they provided updated addresses for five Class Members to the Claims Administrator to resend the Notice. (*Id*.)

Because the resending of the undeliverable notices was delayed, the Claims Administrator sent the five notice packages via priority mail, with a brightly colored insert instructing Class Members to contact Class Counsel if they anticipated any problems meeting the deadlines. (Patton Decl. ¶ 11.) As of May 24, 2011, there are only 24 Class Members, less than one percent of the Class, for whom the Claims Administrator or Class Counsel could not find what appear to be accurate addresses. (Patton Decl. ¶ 12.)

Since approximately February 14, 2011, the Notice also has been posted on a website about this class action, www.wachoviagenderdiscrimination.com and on the

websites of Class Counsel Mehri & Skalet at www.findjustice.com/sub/Wachovia.jsp and Sprenger + Lang at www.sprengerlang.com. On all three websites, individuals can read the Notice of Class Action, Proposed Settlement Agreement & Settlement Hearing; the March 15, 2011 Order regarding additional notice; the Settlement Agreement; and the January 25, 2011 Preliminary Approval Order. (Mehri Decl. ¶ 37.) In addition, the Complaint and Claim Form are available at www.wachoviagenderdiscrimination.com.

Class members have responded favorably to the Settlement. The Class consists of approximately 3,057 female financial advisors. No Class Member has objected to the Settlement.[8] Less than 2% of the Class has sent requests to opt-out of the Settlement, only 47 financial advisors. A list of individuals who have asked to opt-out of the class action Settlement is attached hereto as Exhibit C. Approximately 1,234 individuals have submitted Claim Forms as of May 25, 2011 and the Claim Form deadline is not until June 20, 2011. (Patton Decl. ¶ 13.)

Three individuals who received the first notice mailed on February 14, 2011 sent requests to opt-out prior to the mailing of the second notice and did not send a second request to opt-out after the second notice was mailed as required by the insert entitled "Second Mailing". Despite this technical deficiency, Class counsel recommends that these three individuals be treated as though they opted out of the Settlement unless they submit a claim form by the claim form due date of June 20, 2011. (Mehri Decl. ¶ 47.)

[8] As explained in Class Counsel's May 20, 2011 pleading (Docket No. 45), one potential Class Member submitted letters opting-out of the Settlement Class that also contain the word "object" in the subject line. The text of her letters begins with the required opt-out language from the Notice verbatim. The Notice explains that "Class Members who submit timely and valid requests for exclusion will have *no right to object to the Settlement* in court and will no longer be represented by Class Counsel." (Notice (Docket No. Docket Nos. 35-2 & 43-3) at 8 (emphasis added).) Thus, the parties have treated her submission as a request for exclusion with an explanation rather than as an objection.

VI. THE COURT SHOULD APPROVE THE SETTLEMENT

A. Standard for Approval of a Class Settlement

Approval of a class action settlement is governed Fed. R. Civ. P. 23(e). Rule 23(e) provides, in relevant part, that:

> The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
>
> (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

The ultimate purpose of the fairness hearing is for the Court to make a final determination that the proposed settlement is "fair, reasonable, and adequate" as required by Fed. R. Civ. P. 23(e)(2). *Osher, et al., v. SCA Realty I, Inc*., 945 F. Supp. 298, 304 (D.D.C. 1996).

There is no obligatory test to be performed by the Court in determining whether the settlement is fair, reasonable and adequate; instead, the Court must consider the facts and circumstances of the case and exercise its discretion in determining whether it should approve a proposed settlement. *Blackman v. District of Columbia*, 454 F.Supp.2d 1, 8 (D.D.C. 2006), citing *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), *aff'd* 206 F.3d 1212 (D.C. Cir. 2000). Three over-arching judicial principles provide guidance. First, the courts favor compromise of complex litigation to obviate the uncertainties of the outcome and to avoid wasteful litigation and expense. *See, e.g., Mayfield v. Barr*, 985 F.2d 1090, 1092 (D.C. Cir. 1993) (noting the "interest in encouraging settlements,

particularly in class actions, which are often complex, drawn out proceedings demanding a large share of finite judicial resources.")

Second, the purpose of requiring court approval of the settlement of a class action is to ensure that the interests of the nonparty class members are protected. *See Blackman v. District of Columbia*, 454 F. Supp. 2d 1, 7-8 (D.D.C. 2006) ("In deciding whether to approve a proposed settlement, the Court must protect the interests of those unnamed class members whose rights may be affected by the settlement of the action.")

Third, in evaluating a settlement under these principles, a court also should leave considerable discretion to the litigants and their counsel. *United States v. District of Columbia*, 933 F. Supp. at 46-47 ("the function of the reviewing court is not to substitute its judgment for that of the parties to the decree, but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy"). There is a presumption that settlements reached as a result of arm's length negotiations are fair and reasonable. *Radosti v. Envison EMI*, 717 F. Supp. 2d 37, 56 (D.D.C. 2010) (granting final approval to class action settlement that was the result of arm's length negotiations by experienced counsel); *see also Newberg on Class Actions* § 11.41 at 11-88 (3d ed. 1992).

Several years ago, this Court found a similar class action settlement on behalf of female financial advisors that was negotiated at arm's length, to be fair and reasonable. *Augst-Johnson v. Morgan Stanley & Co.*, No. 06-1142, (D.D.C. Oct. 26, 2007) (order certifying class and granting final approval of class action settlement). (Docket No. 32-7.)

B. The Settlement is Fair, Reasonable and Adequate

1. The Settlement Provides Exceptional Relief to the Class.

In assessing the fairness, adequacy and reasonableness of a settlement, "[b]y far the most important factor is a comparison of the terms of the . . . settlement with the likely recovery that plaintiffs would realize if they were successful at trial." *Blackman*, 454 F. Supp. 2d at 8, 13 ("the most important metric of the fairness, reasonableness, and adequacy of a class settlement is how the relief secured by the settlement compares to what the parties could have obtained at trial").

The Settlement should be preliminarily approved because it is the same or more favorable than the relief Plaintiffs and the Class are likely to achieve through trial. Moreover, the settlement will result in conservation of judicial resources as well as those of the parties.

As set forth above in detail, this Settlement implements comprehensive, valuable injunctive relief to the entire class and addresses the compensation claims at issue in this action and this relief is likely greater than the injunctive relief that would be fashioned by the Court after a trial. In particular, Defendants have agreed to revise its account distribution system to ensure fairness by altering the factors used and weighting more heavily criteria that reflect recent performance. The Settlement provides for a fair and transparent account distribution system. This system will be reviewed and monitored by a jointly-selected Industrial Psychologist, with all findings and recommendations provided to an external, independent, and jointly selected Monitor and the parties. The Settlement also provides for a process by which counsel for the parties shall monitor the impact of this system on female Financial Advisors and modify the system if they agree

that modifications are necessary. In the event the parties do not agree to proposed modifications and certain specified conditions are met, the Agreement provides for resolution through binding mediation before a neutral mediator. The Settlement also addresses major factors of broker compensation, including up-front bonuses, teams, the Sunset Program, and books of business formerly serviced by retiring Financial Advisors who are not participating in the Sunset Program.

The Settlement requires Defendants to implement measures designed to retain and promote women. For example, the Settlement incentivizes Branch Managers to diversify the Financial Advisor position by instituting a diversity component to their performance evaluations. Other systematic relief includes posting of Field Management positions; diversity training for Field Managers; safeguards for complaints of gender discrimination, gender bias, and/or retaliation against financial advisors; and communication of Defendants' non-discrimination policies to all employees. The programmatic relief in this settlement likely surpasses in scope what plaintiffs and the class could achieve if they went to trial and won.

The monetary relief to the Class is also fair and adequate. The parties determined approximate economic damages and loss from the data provided by Defendants during the mediation sessions. With the exception of adjustments for continued losses up to and including final disposition, the economic damages as calculated today are as they would be upon conclusion at trial. (Mehri Decl. ¶¶ 12, 17.) The portion of the settlement fund covering economic damages and loss will be distributed pursuant to criteria enumerated in the Notice and Claim Forms. The criteria will include factors such as length of service and individual experiences of alleged gender discrimination. If this case went to trial and

judgment, the Court would likely base monetary allocations to individual class members on the same or similar criteria adopted by the parties through settlement.

2. The Monetary Relief is Substantial and Will Be Fairly Allocated Among Named Plaintiffs and Class Members.

The Settlement Agreement provides substantial monetary relief. The total fund created by the Settlement will be $32 million plus interest. The monetary relief achieved here compares favorably with other similar settlements in the industry. (Mehri Decl. ¶ 20.)

In order to claim monetary benefits, the Class members must complete a short claim form. Each Class member's monetary recovery will be determined based on: length of tenure (e.g. weeks worked) at Wachovia/Wells Fargo as a Financial Advisor; facts in support of their individual claims of gender-based discrimination; contributions to the prosecution of this matter; and the extent of claims released in the Settlement. (S.A. §§IX.C & IX.D.)

The Claims Administrator and Class Counsel proposed that the Claims Administrator should assign Claim Forms value based on a points system. (Mehri Decl. ¶¶ 26-28.) The Claims Administrator will allocate one point to each claimant for each week worked as a Financial Advisor, between March 17, 2003 and January 25, 2011, for a maximum of 410 points. The Claims Administrator will allocate up to 50 additional points for describing claims of gender-based discrimination and up to 20 additional points for describing claims of sexual harassment on the Claim Form. Class members may receive up to 30 additional points if they provide information on the Claim Form regarding allegations termination or constructive discharge allegedly resulting from gender-based discrimination. Claimants who allege that they reported discrimination to

Defendants will be eligible for up to 15 additional points. Finally, Claimants who allege that they experienced physical or emotional harm in relation to discrimination will be eligible for up to 30 additional points.[9] (Mehri Decl. ¶ 27 (a)-(f).) Class Members are not required to provide information regarding their experiences and individual allegations, however, and may participate in the Settlement based solely on their length of service as employees of Defendants during the Class period.

Individuals who provided Class Counsel with information to assist with the investigation and prosecution of this matter, including Named Plaintiffs and other individuals, will be eligible to receive additional points. Finally, Named Plaintiffs who will execute a more general release and are releasing additional claims will be awarded additional points. (Mehri Decl. ¶ 27 (g)-(h).)

Class Counsel recommends that it be required to provide the Court a status report regarding the Claims Administrator's final allocation of points and proposed monetary awards so that the Court can approve the monetary allocations prior to distribution. (Mehri Decl. ¶ 28; *see also* Proposed Administrative Order § III(B), filed herewith.)

3. The Reaction of the Class Supports Approval of the Settlement

Class members have responded favorably to the Settlement. The Class consists of approximately 3,057 female financial advisors. Less than two percent of the Class has sent requests to opt-out of the Settlement, only 47 financial advisors. No Class Member has objected to the Settlement. This weighs in favor of approval of the Settlement. *See, e.g. Bynum v. District of Columbia*, 412 F.Supp.2d 73, 77 (D.D.C. 2006)(" low number of opt outs and objectors … supports the conclusion that the terms of the settlement were

[9] In order to more objectively score the physical or emotional harm section of the Claim Form, the Claims Administrator plans to send a standardized follow-up form to each Claimant who made these allegations to request additional information. (Mehri Decl. ¶ 27(f).)

viewed favorably by the overwhelming majority of class members"); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 378 (D.D.C. 2002)("existence of a relatively few objections certainly counsels in favor of approval"). Class Counsel, who are experienced in litigating employment discrimination and class action cases, respectfully submit that this proposed settlement is in the best interest of the Class. (Mehri Decl. ¶ 50.)

4. Further Litigation Posed Significant Risks

The "risk, expense, complexity, and likely duration of further litigation" also are factors to be considered in assessing a proposed settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also Radosti*, 717 F. Supp. 2d at 59 (considering the litigation status of the case and the ability of counsel to assess the risks of litigation). The factual and legal issues in this case are complex, as demonstrated by the parties' years of negotiations, including the exchange of policy documents and human resource database information, and the terms of the Settlement Agreement itself. Any liability phase trial of plaintiffs' claims - which involve thousands of Class members - would also be complex and would require substantial additional preparation and many fact and expert witnesses. Remedial phase proceedings would add to this complexity. All of these complex proceedings would be expensive and would result in significant delay before any potential recovery. Plaintiffs and the Class in this case face particularized risk of continued litigation due to the upcoming gender discrimination class action decision expected by the Supreme Court in the coming weeks. *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010), *cert. granted*, 131 S. Ct. 795 (2010).

Litigating the case to trial also presents substantial risks. Although Plaintiffs and

Class Counsel believe Class members' claims are strong, it is clear that Defendants would put on a vigorous defense, and it would ultimately be up to the fact-finder to determine, for example, whether these employers acted with a prohibited discriminatory intent or whether its policies had a prohibited discriminatory impact that cannot be defended on job relatedness or business necessity grounds.

In contrast to the complexity, delay, risk and expense of continuing litigation, the proposed settlement will yield a prompt, certain, and substantial recovery for Class members.

5. The Parties Conducted Extensive Investigations and Analysis and the Settlement was Reached through Arm's Length Negotiations

As described above, the parties engaged in extensive arm's length negotiations for over 3.5 years under the supervision of an experienced employment discrimination class action mediator, Margaret Shaw, Esq. of JAMS. The extensive data and document exchange during negotiations allowed Class Counsel — who are experienced employment discrimination attorneys — to assess the strengths and weaknesses of the claims against Defendants and the benefits of the proposed settlement under the circumstances of this case. (Mehri Decl. ¶¶ 12, 14, 20.) As a result of discovery exchanges and communications with Class members, Class Counsel were well informed regarding the potential monetary damages to the Class and Defendants' policies and practices and relied on that information in negotiating the terms of the Settlement Agreement. (*Id.*)

In sum, the, proposed Settlement Agreement is the non-collusive result of extensive factual and legal analysis and protracted arms' length negotiations between experienced and well-informed counsel under the supervision of an experienced

mediator.

V. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

The Court's January 25, 2011 preliminary approval order conditionally certified a Settlement Class under Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), defined as:

> All women who are or were employed in the United States as Financial Advisors by: (a) Wachovia Securities, LLC, or its successor Wells Fargo Advisors, LLC, at any time between March 17, 2003 and the date of Preliminary Approval; and/or (b) Wells Fargo Investments, LLC at any time between December 31, 2008 and the date of Preliminary Approval. Women who were employed as Financial Advisors by Prudential Securities Inc. or A.G. Edwards & Sons, Inc. are included only as of the effective date of the respective business consolidation or merger of these corporations with Wachovia Securities/Wachovia Corporation.

(*See* Docket No. 37 at 2.) The Court also appointed the Named Plaintiffs as Class representatives and Plaintiffs' counsel as Class Counsel. (*Id.* at 2-3.)

For the reasons stated herein, in Plaintiffs' Memorandum and Points of Authority in Support of Preliminary Approval and in the Court's January 25, 2011 Order, the Court should grant final certification to the Settlement Class and should confirm the appointment of the Class representatives and Class Counsel.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the following: (1) an order approving Class Representatives, certifying the Class, appointing Class Counsel, approving the Settlement Agreement, approving the plan of allocation of the monetary relief among the Class, and listing the individuals who have excluded themselves from the Class; and, (2) an order approving proposed Administrative Order, which will facilitate the administration of the Settlement Fund.

DATED: May 25, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2011, a true and correct copy of the foregoing was filed electronically using the CM/ECF system, which will send notification of such filing to the following:

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