

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CIVIL ACTION NO: 08-CVS-22632

IRVING EHRENHAUS, On Behalf of Himself
and All Others Similarly Situated

Plaintiff,

v.

JOHN D. BAKER, II, PETER C. BROWNING,
JOHN T. CASTEEN, III, JERRY GITT,
WILLIAM H. GOODWIN, JR., MARYELLEN
C. HERRINGER, ROBERT A. INGRAM,
DONALD M. JAMES, MACKEY J.
MCDONALD, JOSEPH NEUBAUER,
TIMOTHY D. PROCTOR, ERNEST S. RADY,
VAN I. RICHEY, RUTH G. SHAW, LANTY L.
SMITH, DONA DAVIS YOUNG, WACHOVIA
CORPORATION and WELLS FARGO &
COMPANY

Defendants.

**STIPULATION AND AGREEMENT OF
COMPROMISE, SETTLEMENT AND RELEASE**

The undersigned parties to the above action pending in the General Court of Justice, Superior Court Division, of the State of North Carolina, Mecklenburg County (the "Court"), by counsel identified below, have reached this Stipulation and Agreement of Compromise, Settlement and Release (with the exhibits hereto, the "Stipulation"), subject to approval by the Court:

WHEREAS:

A. On October 8, 2008, plaintiff Irving Ehrenhaus ("Plaintiff"), acting through his counsel ("Plaintiff's Counsel"), filed the above-captioned action (the "Action") on behalf of the

public shareholders of the common stock of Wachovia Corporation (“Wachovia”) against Wachovia, Wells Fargo & Company (“Wells Fargo”), and members of Wachovia’s Board of Directors (the “Individual Defendants”) (together, “Defendants”) (Plaintiff and Defendants together are hereinafter referred to as the “Parties”);

B. When filed, the Action challenged the proposed merger of Wachovia into Wells Fargo, as contemplated in the Agreement and Plan of Merger, dated as of October 3, 2008, between Wachovia and Wells Fargo (the “Merger Agreement”), under the terms of which Wachovia’s public shareholders would receive 0.1991 of a share of Wells Fargo common stock in exchange for each share of Wachovia common stock that they owned (the “Merger”);

C. At the same time as the execution of the Merger Agreement, Wachovia and Wells Fargo entered into a Share Exchange Agreement, dated as of October 3, 2008, pursuant to which Wachovia exchanged 10 shares of Series M, Class A Preferred stock of Wachovia representing 39.9% of the total voting power of Wachovia capital stock (the “Series M Shares”), for 1,000 shares of Wells Fargo common stock;

D. On October 20, 2008, Wachovia issued the Series M Shares to Wells Fargo and filed a certificate of amendment with the North Carolina Secretary of State containing the terms of the Series M Shares, which do not permit Wachovia to redeem the Series M Shares for a period of 18 months after the occurrence of certain events referred to in the certificate (the “18 Month Tail Provision”);

E. On October 24, 2008, Plaintiff made a Motion for Expedited Proceedings and for Preliminary Injunctive relief seeking to invalidate the issuance of the Series M Shares, the 18 Month Tail Provision, and the “fiduciary out” provision of the Merger Agreement;

F. By Order & Opinion dated November 3, 2008, the Court denied Plaintiff’s request

for expedited discovery, but granted an expedited briefing and hearing schedule on Plaintiff's Preliminary Injunction Motion;

G. On November 13, 2008, Defendants filed their Answers to the complaint (the "Complaint") that had been filed in the Action;

H. After full briefing, a hearing was held before the Court on November 24, 2008, on Plaintiff's Motion for Preliminary Injunction;

I. Wachovia scheduled a special meeting of Wachovia's shareholders to vote on the Merger for December 23, 2008, and filed and disseminated a Definitive Proxy Statement (the "Proxy Statement") on November 24, 2008;

J. By Order & Opinion dated December 5 (the "December 5 Order"), the Court granted in part and denied in part Plaintiff's Preliminary Injunction Motion;

K. In its December 5 Order, the Court denied preliminary injunctive relief as to the issuance and voting of the Series M Shares and the "fiduciary out" provision, but granted preliminary injunctive relief as to the 18 Month Tail Provision;

L. On December 11, 2008, Plaintiff filed a Motion To Amend and Supplement the Complaint (the "Motion to Amend"), attaching a proposed supplemental and amended complaint (the "Amended Complaint"), which sought to add Robert Steel as a Defendant; delete G. Kennedy Thompson as a Defendant; add details concerning the Merger and the circumstances surrounding the events alleged in the Complaint that became part of the record in the preliminary injunction proceedings; and add a claim alleging that the Proxy Statement is legally deficient in that it allegedly contains material false and misleading statements and omits material information that would influence a decision of Wachovia's shareholders to vote for or against the Merger;

M. On December 11, 2008, Plaintiff also filed a Notice of Dismissal of G. Kennedy

Thompson Without Prejudice, notifying the Parties and the Court that pursuant to Rule 41 of the North Carolina Rules of Civil Procedure that Plaintiff had dismissed Defendant G. Kennedy Thompson from the Action;

N. Following the filing of the Motion to Amend, counsel for Defendants and Plaintiff's Counsel engaged in extensive arm's-length negotiations concerning a possible settlement of the Action;

O. On December 17, 2008, the Parties, through their counsel, entered into a memorandum of understanding ("MOU") setting forth an agreement in principle on the terms and conditions for the settlement of the Action;

P. Prior to entering into the MOU, Plaintiff had made an investigation as to the publicly available information concerning the Merger, including, without limitation: reviewing documents filed with the U.S. Securities and Exchange Commission (the "SEC"), including the Proxy Statement; analyst reports; affidavits and exhibits thereto that were submitted by the Parties in this Action; numerous news articles; and letters from, and conversations with, shareholders and governmental officials; and consulting with a financial advisor;

Q. Pursuant to the MOU, on December 17, 2008, Defendants filed an SEC Form 8-K and issued a press release that contained additional disclosures to the Proxy Statement that had been requested by Plaintiff;

R. Also, in the MOU, Wachovia and Wells Fargo agreed not to appeal from the portion of the Court's Order dated December 5, 2008, that enjoins the 18 Month Tail Provision. Wells Fargo for its part also agreed to waive the enforceability by Wells Fargo of the 18 Month Tail Provision to the extent enjoined by the Court's Order, effective upon execution of the MOU;

S. Following the negotiation of the substantive terms that are the basis for the

settlement, the parties negotiated at arms' length and in good faith the amount of the attorneys' fees, costs and expenses to be paid to Plaintiff's counsel by Wells Fargo, subject to approval by the Court;

T. On December 23, 2008, Wachovia's shareholders approved the Merger by 76 percent of the votes entitled to be cast by holders of Wachovia's outstanding shares of common stock and Series M preferred stock, including a majority of the outstanding shares of Wachovia's common stock. On December 31, 2008, the Merger was consummated;

U. Following the execution of the MOU, and to provide additional basis for Plaintiff's confirmation of the fairness of the proposed settlement, Plaintiff's counsel conducted a further investigation of the facts and circumstances underlying the claims asserted in the Action as contemplated by the MOU, which included, among other things, reviewing and analyzing over 9,500 pages of documents and conducting depositions of (1) Bruce Helsel, Executive V.P. and Head of Corporate Development for Wells Fargo; (2) Robert Steel, a director of Wachovia as well as its President and CEO; (3) Gary Barancik, a representative of Perella Weinberg, one of Wachovia's financial advisors; and (4) John Mahoney, a representative of Wachovia's other financial advisor, Goldman Sachs.

V. Based on a thorough investigation of the additional facts developed in the confirmatory discovery referenced in ¶ U above, the investigation, events, filings, negotiations, and agreements described above, and an analysis of applicable law, Plaintiff's counsel have determined that a settlement of the Action on the terms and conditions reflected in this Stipulation (the "Settlement") is fair, reasonable, adequate, and in the best interest of the Class (as defined below); counsel for Plaintiff has entered into this Stipulation after taking into account, among other things, (i) the risks of continued litigation; (ii) the desirability of permitting

the Settlement to be consummated as provided by the terms of this Stipulation; and (iii) the conclusion of counsel for the Plaintiff that the terms and conditions of the Settlement are fair, reasonable, adequate and in the best interests of the Class (as defined below); and

W. The Defendants, to avoid the costs, disruption, and distraction of further litigation, and without admitting the validity of any allegations made in the Action, or any liability with respect thereto, have concluded that it is desirable that the claims against them be settled on the terms reflected in this Stipulation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in consideration of the benefits afforded herein, that the Action shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions, and further subject to the approval of the Court and pursuant to Rule 23 of the North Carolina Rules of Civil Procedure:

SETTLEMENT CONSIDERATION

1. In consideration for the settlement and dismissal with prejudice of the Action and release provided herein:
 - a. Wachovia and Wells Fargo agreed not to appeal, and did not appeal, from the portion of the Court's Order dated December 5, 2008, that enjoins the 18 Month Tail Provision. Wells Fargo for its part also agreed to waive, effective upon execution of the MOU, the enforceability by Wells Fargo of the 18 Month Tail Provision to the extent enjoined by the Court's Order.
 - b. Defendants agreed to provide, and did provide, additional disclosures (the "Additional Disclosures") not set forth in the Proxy Statement to Wachovia's shareholders as set forth in a Form 8-K together with a press release referencing

such disclosures, which were issued and filed with the SEC on December 17, 2008, by Wachovia and included on Wachovia's website.

2. Defendants hereby acknowledge that the efforts of Plaintiff's Counsel in the Action were the sole cause of the benefits described in Paragraph 1(a) and (b) above.

3. Defendants have denied, and continue to deny, that any of them has committed or has threatened to commit any wrongdoing, violations of law or breaches of duty to the Plaintiff, the Class, or anyone else. Defendants are entering into the Settlement solely because they believe it will eliminate the uncertainty, distraction, burden and expense of further litigation.

4. The provisions contained in this Stipulation shall not be deemed a presumption, concession or admission by any Party of any fault, liability or wrongdoing, or lack thereof, as to any facts or claims that have been or might be alleged or asserted in the Action, or any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal or administrative, for any purpose other than as provided expressly herein. Without limitation, Defendants' agreement to make the additional disclosures as provided in Paragraph 1(b) shall not be deemed a concession, or create a presumption or admission, that those additional disclosures were required by any applicable legal requirement.

DISMISSAL OF THE ACTION

5. The Action shall be dismissed with prejudice, without fees or costs, except as expressly provided in this Stipulation.

6. Subject to Final Court Approval (as defined below) of the Settlement, the judgment approving the Settlement shall provide for the complete discharge, dismissal with

prejudice, settlement and release of, and an injunction barring, all claims, demands, rights, actions or causes of action, rights, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, matured or unmatured, that have been or could have been asserted in the Action or in any court, tribunal or proceeding (including, but not limited to, any claims arising under federal or state statutory or common law relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws or otherwise) by Plaintiff or on behalf of any member of the Class, whether individual, class, derivative, representative, legal, equitable or any other type or in any other capacity against Defendants or any of their families, parent entities, associates, affiliates or subsidiaries and each and all of their respective past, present or future officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, insurers, consultants, accountants, investment bankers, commercial bankers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, personal representatives, estates, administrators, predecessors, successors and assigns (collectively, the "Released Persons"), which have arisen or could have arisen out of the allegations asserted in the Action, and including without limitation any claims in any way related to: (i) the Merger, the Merger Agreement, the Share Exchange Agreement or any amendment thereto; (ii) the fiduciary obligations of any of the Defendants in connection with the Merger, the Merger Agreement, and the Share Exchange Agreement; (iii) any discussions or negotiations in connection with the Merger, or Merger Agreement, the Share Exchange Agreement, or any amendment thereto; (iv) the issuance and terms of the Series M Shares; (v) the amendment to Wachovia's articles of incorporation with respect to the issuance of the Series M Shares; (vi) the Proxy Statement or

any amendment or supplement thereto; and (vii) the disclosure obligations of any of the Defendants in connection with the Merger, the Merger Agreement, the Share Exchange Agreement, and any discussions or conduct preparatory thereto (collectively, the “Released Claims”); provided however, that the Released Claims shall not include: (i) the right of the Plaintiff or any members of the Class to enforce in the Court the terms of the Stipulation; or (ii) the claims asserted by plaintiffs in the Amended Class Action Complaint for Violations of the Federal Securities Laws, dated December 15, 2008, in Lipetz v. Wachovia Corp. et al., Civil Action No. 08-6171 (RJS) (S.D.N.Y.).

CLASS CERTIFICATION

7. Solely for the purpose of consummating and effectuating the proposed Settlement, the parties agree that the Action shall be conditionally certified as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure on behalf of a non-opt-out class consisting of all holders of common stock of Wachovia, including, without limitation, beneficial holders and holders of record, at any time during the period from and including September 16, 2008 (the date Wachovia held a board meeting to consider possible strategic options and retained financial and legal advisors to explore such options), through December 31, 2008, the date of consummation of the Merger, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, and excluding Defendants, their families, and affiliates (the “Class”).

SUBMISSION AND APPLICATION TO THE COURT

8. As soon as practicable after this Stipulation has been executed, the Parties shall apply jointly for an Order substantially in the form attached hereto as Exhibit A (the “Preliminary Approval Order”):

- a. preliminarily approving the Settlement;
- b. (i) conditionally certifying the Class, pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, solely for the purpose of consummating and effectuating the proposed Settlement, and (ii) conditionally certifying Plaintiff Irving Ehrenhaus as representative of the Class and Plaintiff's counsel Wolf Popper LLP as counsel for the class;
- c. directing that a hearing be held by the Court (the "Settlement Hearing") to determine, among other things:
 - i. whether the Court should approve the Settlement (including Plaintiff's counsel's fees and expenses) and enter the Order and Final Judgment referenced below dismissing the Action with prejudice and on the merits, each party to bear its own costs (except as expressly provided herein) and extinguishing and releasing any and all Settled Claims as against any and all Released Persons;
 - ii. whether the Class should be permanently certified; and
 - iii. such other matters as the Court may deem necessary and appropriate; and
- d. approving the form of the notice of the Settlement (the "Notice") and providing that a copy of the Notice, substantially in the form attached hereto as Exhibit B, be mailed in accordance with such orders of the Court concerning the Notice.

NOTICE

9. Wells Fargo shall pay all reasonable costs and expenses incurred in providing the Notice to the members of the Class, and shall provide said notice in accordance with such orders of the Court concerning the Notice. Plaintiff and Plaintiff's counsel shall not be liable for such notice costs and expenses. At least ten (10) calendar days prior to the Settlement Hearing (as

defined in paragraph 10 hereof), counsel for Wells Fargo shall file with the Court an appropriate affidavit with respect to the preparation and mailing of the Notice.

ORDER AND FINAL JUDGMENT

10. If the Court approves the Settlement (including any modification thereto made with the consent of the parties as provided for herein) following a hearing (the "Settlement Hearing") as fair, reasonable, adequate and in the best interests of the Class, the parties shall jointly request that the Court enter an Order and Final Judgment substantially in the form attached hereto as Exhibit C (the "Order and Final Judgment").

CONDITIONS OF SETTLEMENT

11. This Settlement (except for the provisions of Paragraphs 1(a) and 9) shall be null and void and of no force and effect if the Settlement does not obtain Final Court Approval for any reason. As used herein, "Final Court Approval" of the Settlement means that the Court has entered an order approving the Settlement and dismissing the Action with prejudice, and that such order is finally affirmed on appeal or is no longer subject to appeal and the time for any petition for reargument, appeal, or review, by certiorari or otherwise, has expired.

12. In the event the Settlement becomes null and void, neither this Stipulation nor the MOU shall be deemed to prejudice in any way the respective positions of the Parties with respect to the Action, and neither the existence of this Stipulation nor the MOU nor their contents (including any documents or testimony created or exchanged between the Parties pursuant to this Stipulation or the MOU) shall be admissible in evidence or shall be referred to for any purpose in the Action or in any other litigation or proceeding.

ATTORNEYS' FEES

13. As part of the terms and conditions of this Stipulation, Wells Fargo agrees to pay to Plaintiff's Counsel, for their efforts in achieving the benefits of the Settlement of this Action,

the sum of \$1.975 million, for their fees and litigation-related expenses, subject to Court approval of the Settlement contemplated by this Stipulation. Wells Fargo shall make payment to Wolf Popper LLP of the fees and expenses provided in this paragraph within five days of the Court's order approving the Settlement, subject to Plaintiff's Counsel's obligation to repay such amount as may become necessary should the Settlement not obtain Final Court Approval or the fees and expenses become reduced or modified on any appeal. Except as provided herein, the Released Persons shall bear no other expenses, costs, damages, or fees alleged or incurred by the named Plaintiff, by any member of the Class, or by any of their attorneys, experts, advisors, agents or representatives unless ordered by the Court. The obligation of Wells Fargo to pay such fees and expenses is subject to and conditioned upon the withdrawal or dismissal of any other pending litigation relating to the Settled Claims. Defendants agree promptly to seek dismissal of any such other pending litigation in the event that Plaintiff's Counsel's best efforts do not result in such withdrawal or dismissal.

EFFECT OF RELEASE

14. The release contemplated by the Settlement extends to claims that Plaintiff, for himself and on behalf of the Class, the Company and its stockholders, did not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into the release, except as specifically excluded in paragraph 6 above. Plaintiff, each member of the Class, the Company and its stockholders shall be deemed to waive any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person's release of unknown claims. Plaintiff, for himself and on behalf of the Class, the Company and its stockholders, shall be deemed to relinquish, to the full extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

In addition, Plaintiff, for himself and on behalf of the Class, the Company and its stockholders, also shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiff, for himself and on behalf of the Class, the Company and its stockholders, acknowledges that members of the Class and/or other Company stockholders may discover facts in addition to or different from those that he now knows or believes to be true with respect to the subject matter of this release, but that it is his intention, as Plaintiff and on behalf of the Class, the Company and its stockholders, and subject to the limitations herein, to fully, finally and forever settle and release any and all claims released hereby known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts.

BEST EFFORTS

15. In addition to the actions specifically provided for in this Stipulation, the Parties will use their reasonable best efforts from the date hereof to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable laws, regulations and agreements to consummate and make effective the Stipulation (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement) and the dismissal with prejudice of the Action. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and

the Settlement and to use their best efforts to effect the consummation of this Stipulation and the Settlement, and to obtain the dismissal with prejudice of the Action.

16. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

STAY OF PROCEEDINGS

17. Subject to Court approval, all proceedings in the Action, except for proceedings related to the Settlement, shall be suspended until such proceedings are concluded.

NO WAIVER

18. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party.

19. No waiver, express or implied, by any Party of any breach or default by any other Party in the performance by the other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

SUCCESSORS AND ASSIGNS

20. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors and assigns.

GOVERNING LAW

21. This Stipulation and the Settlement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to North Carolina's principles governing choice of law. The Parties agree that any dispute arising out of or relating

in any way to this Stipulation or the Settlement shall not be litigated or otherwise pursued in any forum or venue other than the Court, and the Parties expressly waive any right to demand a jury trial as to any such dispute.

NON-ASSIGNMENT OF CLAIMS

22. This Stipulation will be executed by counsel for the Parties to the Action, each of whom represents and warrants that they have the authority from their client(s) to enter into this Stipulation and bind their clients thereto. Plaintiff's counsel represents and warrants that Plaintiff is a member of the Class and is the only holder and owner of his claims and causes of action asserted in the Action, and that none of Plaintiff's claims or causes of action referred to in any complaint or amended complaint in the Action or this Stipulation have been assigned, encumbered or in any manner transferred in whole or in part.

ENTIRE AGREEMENT

23. This Stipulation constitutes the entire agreement among the Parties with respect to the subject matter hereof, and may be modified or amended only by a writing signed by the signatories hereto.

COUNTERPARTS

24. This Stipulation may be executed in any number of actual, telecopied, or emailed (pdf) counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each actual, telecopied, emailed (pdf) counterpart may be joined together and attached and will constitute one and the same instrument.

Dated: April 15, 2009

HUNTON & WILLIAMS, LLP

ROBINSON, BRADSHAW & HINSON,
P.A.

By: /s/ T. Thomas Cottingham, III by permission

T. Thomas Cottingham, III
N.C. State Bar No. 16439
Bank of America Plaza, Suite 3500
101 South Tryon Street
Charlotte, North Carolina 28280
(704) 378-4700

By: /s/ Robert Fuller by permission

Robert W. Fuller
N.C. State Bar No. 10887
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
(704) 377-2536

Attorneys for the Individual Defendants

WACHTELL, LIPTON, ROSEN & KATZ

By: /s/ Paul K. Rowe by permission

Paul K. Rowe
admitted pro hac vice
51 West 52nd Street
New York, New York 10019
(212) 403-1000

Attorneys for Defendant Wells Fargo & Company

GREG JONES & ASSOCIATES, P.A.

WOLF POPPER LLP

By : /s/ Gregory L. Jones

Gregory L. Jones
N.C. State Bar No.13001
3015 Market Street
Wilmington, N.C. 28403
(910) 251-2240

Attorneys for Plaintiff

By: /s/ Chet B. Waldman

Robert M. Kornreich
admitted pro hac vice
Chet B. Waldman
admitted pro hac vice
845 Third Avenue
New York, New York 10022
(212) 451-9612

Attorneys for Plaintiff