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Attorneys for Plaintiff **Vladimir Gusinsky Revocable Trust**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Vladimir Gusinsky Revocable Trust, Plaintiff, v. **Carrie Tolstedt**, **John D. Baker II**, **Elaine L. Chao**, **John S. Chen**, **Lloyd H. Dean**, **Elizabeth A. Duke**, **Susan E. Engel**, **Enrique Hernandez, Jr.**, **Donald M. James**, **Cynthia H. Milligan**, **Federico F. Peña**, **James H. Quigley**, **Stephen W. Sanger**, **John G. Stumpf**, **Susan G. Swenson**, and **Suzanne M. Vautrinot**, Defendants, and **Wells Fargo & Company**, Nominal Defendant.	CASE NO. **STOCKHOLDER DERIVATIVE COMPLAINT** **JURY TRIAL DEMANDED**

I. INTRODUCTION

"Tolstedt … is the woman behind every interaction that Wells Fargo's 22 million retail households have with the bank."

- FORTUNE MAGAZINE[1]

"If you're going to use clawbacks, this would be the situation[.]"

- Sheila Bair, former chair of the Federal Deposit Insurance Corporation[2]

1. This is a stockholder derivative action on behalf of nominal defendant Wells Fargo & Company ("Wells Fargo" or the "Company") against the Company's Board of Directors (the "Board" or the "Director Defendants") and the former head of its Community Banking segment, Carrie Tolstedt.

2. During her nine-year tenure as the head of Community Banking, Tolstedt's subordinates engaged in widespread fraud by the illegal practice of secretly opening unauthorized deposit and credit card accounts for Wells Fargo customers. Over 1.5 million deposit accounts and over 560,000 credit card accounts were opened without customer authorization. As a result of this misconduct, which netted the Company slightly more than $2 million in additional fees (which are now being refunded), the Company has been forced to pay regulatory penalties of $185 million.

3. Approximately 5,300 low-level employees who served under Tolstedt were fired. But the buck has stopped there. Unlike the tellers and low-level bank managers who were summarily terminated, Tolstedt has been permitted to retire with dignity and a giant sum of money—ushered off into the sunset with

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[1] *Most Powerful Women*, FORTUNE MAGAZINE (2015).

[2] Matthew J. Belvedere, *If ever there's a case for clawbacks, Wells Fargo is it: Ex-FDIC chair*, CNBC (September 13, 2016).

glowing praise and a retirement package worth in excess of $120 million.

4. It doesn't have to be this way. Wells Fargo's executive compensation policies include strong clawback provisions that permit the bank to recoup RSR awards, performance shares awards, and all equity awards granted under the Long-Term Incentive Compensation Plan for shocking failures of oversight like those present here.

5. The Board's refusal to do so constitutes a breach of their fiduciary duties to shareholders. Plaintiff asks for injunctive relief—to prevent additional payments to Tolstedt—and damages.

II. PARTIES

6. Plaintiff Vladimir Gusinsky Revocable Trust has held the Company's common stock continuously at all relevant times.

7. Nominal Defendant Wells Fargo & Company is a Delaware-incorporated company that maintains its corporate headquarters in San Francisco, California.

8. Defendant Carrie Tolstedt is a Company officer who served as the head of its Community Banking segment from 2008 through July 31, 2016 and remains employed with the Company.

9. Defendant John D. Baker II has been a member of the Company's Board since 2009.

10. Defendant Elaine L. Chao has been a member of the Company's Board since 2011.

11. Defendant John S. Chen has been a member of the Company's Board since 2006.

12. Defendant Lloyd H. Dean has been a member of the Company's Board since 2005.

13. Defendant Elizabeth A. Duke has been a member of the Company's Board since 2015.

14. Defendant Susan E. Engel has been a member of the Company's Board since 1998.

15. Defendant Enrique Hernandez has been a member of the Company's Board since 2003.

16. Defendant Donald M. James has been a member of the Company's Board since 2009.

17. Defendant Cynthia H. Milligan has been a member of the Company's Board since 1992.

18. Defendant Federico F. Peña has been a member of the Company's Board since 2011.

19. Defendant James H. Quigley has been a member of the Company's Board since 2013.

20. Defendant Stephen W. Sanger has been a member of the Company's Board since 2003.

21. Defendant John G. Stumpf has been a member of the Company's Board since 2006 and its Chief Executive Officer since June 2007.

22. Defendant Susan G. Swenson has been a member of the Company's Board since 1998.

23. Defendant Suzanne M. Vautrinot has been a member of the Company's Board since 2015.

24. Baker, Chao, Chen, Dean, Duke, Engel Hernandez, James, Milligan, Peña, Quigley, Sanger, Stumpf, Swenson, and Vautrinot are, collectively, the "Board" or the "Director Defendants."

III. SUBSTANTIVE ALLEGATIONS

A. The Improper Sales Practices

25. On September 8, 2016, the Consumer Financial Protection Bureau ("CFPB") announced that Wells Fargo Bank, N.A. (a wholly owned subsidiary of the Company) had agreed to a consent order that would result in a fine of $100 million dollars for "the widespread illegal practice of secretly opening unauthorized deposit and credit card accounts." According to the CFBP, "[s]purred by sales targets and compensation incentives, [Wells Fargo] employees boosted sales figures by covertly opening accounts and funding them by transferring funds from consumers' authorized accounts without their knowledge or consent, often racking up fees or other charges." The Company agreed to pay an additional $35 million penalty to the Office of the Comptroller of the Currency, and another $50 million to the City and County of Los Angeles. The consent order[3] (which Plaintiff hereby incorporates by reference as though fully set forth herein) found as follows.

a. From January 2011 through 2016 (the "Relevant Period"), thousands of employees of the

[3] *In the Matter of Wells Fargo Bank, N.A.*, Admin. Proceeding 2016-CFPB-0015, Consent Order.

Community Bank Regional Bank Branch Network of the Company engaged in "Improper Sales Practices," meaning any of the following: (1) opening any account without the consumer's consent; (2) transferring funds between a consumer's accounts without the consumer's consent; (3) applying for any credit card without the consumer's consent; (4) issuing any debit card without the consumer's consent; and (5) enrolling any consumer in online-banking services without the consumer's consent.

b. During the Relevant Period, the Company terminated roughly 5,300 employees for engaging in Improper Sales Practices. The Company performed an analysis of the period from May 2011 through July 2015 which concluded that "its employees opened 1,534,280 deposit accounts that may not have been authorized and that may have been funded through simulated funding, or transferring funds from consumers' existing accounts without their knowledge or consent. That analysis determined that roughly 85,000 of those accounts incurred about $2 million in fees." The analysis concluded further that the Company's "employees submitted applications for 565,443 credit-card accounts that may not have been authorized by using consumers' information without their knowledge or consent. That analysis determined that roughly 14,000 of those accounts incurred $403,145 in fees."

c. During the Relevant Period, Company employees "requested and issued debit cards without consumers' knowledge or consent, going so far as to create PINs without telling consumers." They also, "created phony email addresses not belonging to consumers to enroll them in online-banking services without their knowledge or consent."

26. According to a "Quarterly Fact Sheet" issued by the Company for the second quarter of 2016, the Company has approximately 70 million customers—meaning that the 1,534,280 improperly opened

accounts would affect over 2% of all customers. Tolstedt's team included about 94,00 employees, meaning that the 5,300 fired employees accounted for over 5.5% of her total workforce.

27. The fraudulent practices were as obvious as they were widespread. The Improper Sales Practices were first reported by the Los Angeles Times in December 2013 in an extensive investigative report, titled "Wells Fargo′s pressure-cooker sales culture comes at a cost." Based on "a review of internal bank documents and court records, and … interviews with 28 former and seven current Wells Fargo employees who worked at bank branches in nine states," the Times reported that "the relentless pressure to sell has battered employee morale and led to ethical breaches, customer complaints and labor lawsuits …To meet quotas, employees have opened unneeded accounts for customers, ordered credit cards without customers′ permission and forged client signatures on paperwork. Some employees begged family members to open ghost accounts."

28. The pressure to engage in cross-selling came straight from the top. In an earnings call with analysts on March 10, 2011, the Company's CEO, Stumpf, stated "You have heard me talk in the past about our goal being 8 products, and already 25% of our customers have 8 or more. The reason we picked 8, it rhymed with great. If we could′ve found something to rhyme with 10 we would have picked 10."

29. According to a complaint filed by the Los Angeles City Attorney's Office on May 4, 2015 (which Plaintiff hereby incorporates by reference as though fully set forth herein),[4] "Wells Fargo knew, or in the exercise of reasonable care should have known, that its employees open unauthorized accounts. For example:

a. Customers often enter Wells Fargo's branches to complain about unauthorized accounts; many victims have even contacted Wells Fargo management by telephone.

b. Wells Fargo has access to, and frequently monitors, actions taken on its computers by

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[4] *People v. Wells Fargo & Company, et al.*, No. BC580778 (Sup. Ct. Los Angeles County).

employees. Wells Fargo has been put on notice by unusual activity such as: numerous accounts being opened on January 1, a bank holiday; numerous unfunded accounts; frequent reopening of closed accounts; and customer accounts with the only account activity being Wells Fargo fees.

c. Wells Fargo requires that all new customer accounts be approved by a branch manager or assistant manager, thereby providing Wells Fargo management with a clear record of the number and types of accounts opened for each customer.

d. Wells Fargo is also aware its daily, weekly and monthly quotas are unrealistic for employees during normal working hours, since they have generated numerous complaints and lawsuits by employees.

e. Online banking accounts are often opened by Wells Fargo with obviously false customer contact information such as noname@wellsfargo.com.

f. Wells Fargo has terminated and/or otherwise disciplined a number of employees for gaming, but far fewer than have actually engaged in the practices, given Wells Fargo's widespread imposition of the quota system.

30. The complaint went on to state that "the policies that encourage these tactics continue, and employees who engage in them continue to be rewarded monetarily, and even promoted. Wells Fargo has not altered its quota system, nor has it reduced the pressure it has applied to its management and employees to reach their quotas, and the gaming that has been its inevitable result."

B. Tolstedt Knew Of Or Deliberately Ignored The Improper Sales Practices

31. The Company has three operating segments for management reporting purposes: Community Banking; Wholesale Banking; and Wealth and Investment Management. At all relevant times, the Community Banking group was led by Tolstedt who served as "Senior Executive Vice President

(Community Banking)" from June 2007 through to July 31, 2016. All of the Improper Sales Practices occurred within the Community Banking segment.

32. According to a September 19, 2016 story in the WALL STREET JOURNAL, Tolstedt was a micromanager with an "obsessive attention to detail":

> Inside Wells Fargo & Co., some executives called Carrie Tolstedt 'the watchmaker' for her obsessive attention to detail in running the firm's sprawling retail-banking operation.
> …
>
> Ms. Tolstedt was known by many executives and employees in the bank to be a tireless worker, spending nights and weekends on the job and poring over even small details. For instance, leases for branches, known as 'stores' inside the bank, would sometimes sit for months on her desk on the 12th floor of the bank's headquarters at 420 Montgomery St. in San Francisco, a current executive said. This was because Ms. Tolstedt insisted on signing every one, even though others in the bank already had run the numbers, the executive added.
>
> Ms. Tolstedt also insisted on approving every 'administrative assistant' position that would be posted to recruiting because she didn't want nonproducing resources on the books, this person said. Her operational reviews with regional bank executives would dive into the nitty-gritty of line items, including debit cards, credit cards, online bill pay and checking accounts.
>
> …
>
> Ms. Tolstedt would sometimes focus too much on day-to-day operations, according to current and former executives. That is part of the reason she wasn't a candidate considered to succeed Mr. Stumpf, who is expected to retire in the next few years, a person familiar with the discussions said. In her performance appraisals, a common improvement point was to delegate more, this person added.

33. Given her attention to detail, the extraordinarily widespread nature of the Improper Sales Practices, the Los Angeles Times report, and the lawsuit by the City of Los Angeles, the only plausible conclusion is that Tolstedt either knew of and condoned the Improper Sales Practices or acted in bad faith by ignoring them in a grossly negligent abdication of her fiduciary duties.

34. Tolstedt's annual compensation from 2011 through 2015 was as follows:

Year	Base Salary	Annual Incentive Award	Performance Share Award	RSR Award	Total
2015	$1,700,000.00	$850,000.00	$5,500,000.00	$1,000,000.00	$9,050,000.00
2014	$1,700,000.00	$1,300,000.00	$5,500,000.00	$1,000,000.00	$9,500,000.00
Year	**Base Salary**	**Annual Incentive Award**	**Long-Term Equity Incentive Award**		**Total**
2013	$1,700,000.00	$1,530,000.00	$5,500,000.00		$8,730,000.00
2012	$1,700,000.00	$1,530,000.00	$5,500,000.00		$8,730,000.00
2011	$1,700,000.00	$1,400,000.00	$5,500,000.00		$8,600,000.00

35. In explaining their incentive compensation decisions for Tolstedt in the Company's annual proxy filings, the Board repeatedly emphasized cross-selling metrics—the precise problem that gave rise to the Improper Sales Practices:

a. In the annual proxy filed March 15, 2012, the Company stated "Under Ms. Tolstedt's leadership in 2011, the Community Bank achieved significant strategic objectives, including completing the conversion of Wachovia's banking stores, ***record cross-sell results***, maintaining solid customer service scores, growing market share in key businesses, significant deposit growth, positioning the Community Bank for future growth, and improved credit quality."

b. In the annual proxy filed March 14, 2013, the Company stated "Ms. Tolstedt led Community Banking, combined with Consumer Lending and other business lines, to achieve net income of $10.5 billion in 2012. Under her leadership, Community Banking achieved a number of strategic objectives, including ***record cross-sell and record deposit levels***, and the launch of several successful mobile banking initiatives."

c. In the annual proxy filed March 18, 2014—several months after the Los Angeles Times' investigative report highlighted the Improper Sales Practices—the Company stated "Ms.

Tolstedt led Community Banking, combined with Consumer Lending and other business lines, to achieve net income of $12.7 billion in 2013. Under her leadership, Community Banking achieved a number of strategic objectives, including ***record cross-sell and deposit levels***, superior customer-experience rating with Wells Fargo stores at the end of 2013, and the significant growth of several successful mobile banking initiatives following their launch in 2012."

d. In the annual proxy filed March 17, 2015, the Company stated "Ms. Tolstedt led Community Banking, which combined with Consumer Lending and other business lines, achieved net income of $14.2 billion in 2014. Under her leadership, Community Banking achieved a number of strategic objectives, including ***continued strong cross-sell ratios***, record deposit levels, and continued success of mobile banking initiatives."

e. In the annual proxy filed March 16, 2016, the Company abruptly deleted references to cross-selling metrics, stating "Ms. Tolstedt led Community Banking, which combined with Consumer Lending and other business lines, achieved net income of $13.5 billion in 2015, down from $13.7 billion in 2014. Under her leadership, Community Banking achieved a number of strategic objectives, including record deposit levels reflecting continued growth in primary checking customers, and continued success in increasing online and mobile banking customers."

36. On July 12, 2016, the Company issued a glowing press release announcing Tolstedt's retirement:

> Wells Fargo & Company (NYSE:WFC) announced today that Carrie Tolstedt, the company's head of Community Banking, has decided to retire at year's end after a long and successful career, and effective July 31st will be succeeded by Mary Mack, who currently serves as president and head of Wells Fargo Advisors, the company's national retail brokerage.
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> Tolstedt is a 30-plus year veteran of financial services with 27 years at Wells Fargo. Following the company's 2008 merger with Wachovia Corp., she was instrumental in

> building the nation's largest retail branch network with 6,000 locations and 13,000 ATMs in 39 states and the District of Columbia. The Community Bank enjoys industry leadership in many areas, including retail deposit market share, debit card transaction volume, small business lending and mobile banking. Additionally, Tolstedt's team is a leader in building and deepening customer loyalty and team member engagement across the business, which today serves more than 20 million retail checking households and 3 million small business owners, and employs 94,000 team members.
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> "A trusted colleague and dear friend, Carrie Tolstedt has been one of our most valuable Wells Fargo leaders, a standard-bearer of our culture, a champion for our customers, and a role model for responsible, principled and inclusive leadership," said John Stumpf, Wells Fargo's chairman and chief executive officer. "Because of her passion for serving our customers, wherever and however they chose to receive their banking services – online, in branches, or via mobile phones – Carrie leaves Wells Fargo uniquely positioned to continue to be a leader in retail banking, no matter how the future of banking evolves. We share in the pride that she has for the legacy, accomplishments and talent that she will leave behind."
>
> Tolstedt, a native of Nebraska who joined Wells Fargo as a Norwest Bank team member in 1986, has been a banking industry fixture, having been recognized since 2003 by American Banker as one of the "Most Powerful Women in Banking" and included four times in Fortune magazine's "50 Most Powerful Women in Business." Through her transition to retirement, she will continue to report to Tim Sloan, the company's president and chief operating officer, working closely with him and Mack, who also will report to Sloan. Mack's successor in her Wells Fargo Advisors role will be announced at a later date.
>
> "Wells Fargo has been my life's passion, because I have loved the opportunity to help others succeed financially, which is the very essence of why we do what we do each day at this great company," Tolstedt said. "The journey has been made all the more rewarding by the incredible Wells Fargo people I've had the privilege to call my colleagues, friends and family. This franchise has never been stronger for the opportunities that lie ahead, and I am simply grateful to have been a part of it."
>
> Stumpf said the transition from Tolstedt to Mack also has all the hallmarks of Wells Fargo's commitment to stable, long-range succession planning.
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> "Both of these individuals represent the best that our industry has to offer in terms of business acumen, operational know-how, organizational savvy and leadership skills, because over the course of their careers they have had the diversity of experiences that positioned them well for any number of top leadership roles at our company," Stumpf said. "Our team has tremendous confidence that Mary will continue the tradition of excellence and commitment to our company's vision that so characterized the Community Banking team led by Carrie."

37. On September 12, 2016, FORTUNE reported that "When Tolstedt leaves Wells Fargo later this year, on top of the $1.7 million in salary she has received over the past few years, she will be walking away

with $124.6 million in stock, options, and restricted Wells Fargo shares. Some of that hasn't vested yet. But Tolstedt gets to keep all of it because she technically retired. Had she been fired, Tolstedt would have had to forfeit at least $45 million of that exit payday, and possibly more." These egregious payments (the "Retirement Package") will come at the expense of the Company and its stockholders.

38. On September 21, 2016, Defendant Stumpf testified before the United States Senate Committee on Banking, Housing, and Urban Affairs. While being questioned by Senator Elizabeth Warren, Stumpf admitted that accountability had not reached the senior ranks of the Company:

> **Warren**: Have you fired a single senior executive? And by that, I don't mean regional manager or branch manager. I'm asking about the people who actually led your community banking division or your compliance division.
>
> **Stumpf**: We've made a change in our regional — to lead our regional banks —
>
> **Warren:** I just said I'm not asking regional managers. I'm not asking about branch managers. I'm asking if you have fired senior management, the people who actually led community banking division, who oversaw this fraud or the compliance division that was in charge of making sure that the bank complied with the law.
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> **Stumpf:** Carrie Tolsted —
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> **Warren:** Did you fire any of those people?
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> **Stumpf:** No.
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> **Warren:** No. OK, so you haven't resigned, you haven't returned a single nickel of your personal earnings, you haven't fired a single senior executive. Instead evidently your definition of "accountable" is to push the blame to your low-level employees who don't have the money for a fancy PR firm to defend themselves. It's gutless leadership.

39. The Director Defendants did not have to allow this to happen. As set forth in its most recent annual proxy, "Wells Fargo has strong recoupment and clawback policies in place … The Company has multiple recoupment or clawback policies and provisions in place that are applicable to our executive officers." In particular, the Company has the contractual authority to clawback RSR awards, performance shares awards, and all equity awards granted under the Long-Term Incentive Compensation Plan:

a. For misconduct which has or might reasonably be expected to have reputational or other harm to the Company or any conduct that constitutes "cause,";

b. For misconduct or commission of a material error that causes or might be reasonably expected to cause significant financial or reputational harm to the Company or the executive's business group;

c. For improper or grossly negligent failure, including in a supervisory capacity, to identify, escalate, monitor or manage, in a timely manner and as reasonably expected, risks material to the Company or the executive's business group;

d. Where an award was based on materially inaccurate performance metrics, whether or not the executive was responsible for the inaccuracy; and

e. Where the Company or the executive's business group suffers a material downturn in financial performance or suffers a material failure of risk management.

40. The Director Defendants, however, have failed to invoke this clear contractual authority. Instead, they have showered Tolstedt with praise and money. This is a violation of their fiduciary duties to the Company.

IV. DEMAND WOULD HAVE BEEN FUTILE

41. Demand would have been futile because the Director Defendants are incapable of impartially considering it. The vast majority of the Director Defendants have been on the Board throughout the Relevant Period and are deeply implicated in this disaster. Their conscious decision to permit payment of the Retirement Package and refusal to seek a clawback is a breach of fiduciary duty that creates a serious risk of liability for each of the Director Defendants and disables them from disinterested consideration of any demand.

V. CLAIMS FOR RELIEF

Count 1
Breach of Fiduciary Duty Against Tolstedt

42. Tolstedt was, at all relevant times, an officer of the Company and owed fiduciary duties to Wells Fargo and its stockholders.

43. Tolstedt engaged in a systematic and sustained failure to exercise oversight, thereby breaching her fiduciary duties of care and good faith.

44. The Company was forced to pay large fines for the misconduct that occurred as a result of her lapses; it paid her grossly excessive compensation for her inadequate services; and it is going to pay her a grossly excessive Retirement Package as her restricted stock vests.

45. The Company was and will be damaged thereby.

Count 2
Breach of Fiduciary Duty Against The Director Defendants

46. The Director Defendants have, at all relevant times, been directors of the Company and owed fiduciary duties to Wells Fargo and its stockholders.

47. The Director Defendants have breached and are continuing to breach their fiduciary duties, including by failing to to act in good faith, by permitting the payment of the Retirement Package to Tolstedt and by failing to seek clawback of prior compensation paid to Tolstedt.

48. The Company has been damaged thereby.

Count 3
Injunctive Relief Against All Defendants

49. The Director Defendants intend to cause the Company to pay Tolstedt the Retirement Package, even though it (and her prior compensation) is subject to clawback. The Company will be damaged thereby.

50. Monetary damages will be inadequate as Tolstedt will likely expend a significant amount of money

defending herself against potential civil and/or criminal charges. Only by enjoining the payment of the Retirement Package can the Company and its shareholders be protected.

VI. JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims so triable.

Dated: September 21, 2016

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VERIFICATION

I, Vladimir Gusinsky, Trustee for the Vladimir Gusinsky Revocable Trust, under penalty of perjury, state as follows:

Vladimir Gusinsky Revocable Trust is the Plaintiff in the above-captioned action. As its Trustee, I have read the foregoing Complaint and authorized its filing on behalf of Vladimir Gusinsky Revocable Trust. Based upon the investigation of my counsel, the allegations in the Complaint are true to the best of my knowledge, information and belief.

DATED: September 21, 2016

V. Gusinsky

Vladimir Gusinsky, Trustee for
Vladimir Gusinsky Living Trust