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January 21, 2005

Writer's Direct Dial Number
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Via Hand Delivery

Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549



05002654

Re: * Wells Fargo Funds Trust *
Registration Nos. 333-74295; 811-09253
Wells Fargo Variable Trust
Registration Nos. 333-74283; 811-09255
Wells Fargo Master Trust
Registration No. 811-09689

JAN 21 2005

Dear Ladies/Gentlemen:

Pursuant to Section 33 of the Investment Company Act of 1940, we are transmitting herewith for filing a copy of the following pleading:

Class Action Complaint for Damages: Fayette James and George McWilliams bringing suit on behalf of themselves and all others similarly situated vs. Robert C. Brown, J. Tucker Morse, Thomas S. Gordon, Peter G. Gordon, Richard M. Leach, Timothy J. Penny, Donald C. Willeke, Karla M. Rabusch, Stacie D. DeAngelo, C. David Messman, Wells Fargo & Company, Wells Fargo Fund Management, LLC, Wells Capital Management, Inc., Cooke and Biehler, L.P. and John Does No. 1 through 100, as defendants.

We understand that this filing will be logged into your system as Form type 40-33. If you have any questions, please contact the undersigned at the number indicated above.

Very truly yours,

Steven G. Cravath

cc: Francis E. Dalton
Linda B. Stirling
Robert Lamont

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1 against the Defendant directors, investment advisors, and affiliates of the Funds alleging that
 2 the Defendants breached fiduciary duties and duties of care owed directly to the Plaintiffs and
 3 members of the Class, including duties arising under Sections 36(a), 36(b), and 47(b) of the
 4 Investment Company Act of 1940 (ICA), 15 U.S.C. § 80a *et seq.*, by failing to ensure that the
 5 Funds participated in securities class action settlements for which the Funds were eligible.
 6 Fayette James and George McWilliams and file on their own behalf, as well as representatives
 7 of a Class of all persons who owned Funds at any time during the time period of January 10,
 8 2001 to the present. Plaintiffs seek compensatory damages, disgorgement of the fees paid
 9 to the investment advisors, and punitive damages.
 10

11
 12 2. Over 90 million Americans entrust their savings to the directors and advisors of
 13 mutual funds. Mutual funds are so attractive and popular because they purport to provide
 14 professional money management services to investors who otherwise would not be able to
 15 afford such services. Rather than select and monitor the securities that make up her portfolio,
 16 an investor pools her money with other investors in a mutual fund and entrusts complete
 17 control and dominion over her investments to the directors and advisors of the mutual fund.
 18 As a result of this relationship of special trust, directors and advisors of mutual funds owe a
 19 fiduciary duty directly to each individual investor in the fund and are required to act with the
 20 highest obligations of good faith, loyalty, fair dealing, due care, and candor.
 21

22 3. "A mutual fund is a 'mere shell,' a pool of assets consisting mostly of portfolio
 23 securities that belong to the individual investors holding shares in the fund." *Tannenbaum v.*
 24 *Zelner*, 552 F.2d 402, 405 (2d Cir. 1977). Each investor who pools his money with others in
 25 a mutual fund owns a proportionate share of the total assets of the mutual fund. The value
 26 of each investor's portion of those pooled assets is determined by taking the market value of
 27
 28

1 all of the fund's portfolio securities, adding the value of any other fund assets, subtracting fund
2 liabilities, and dividing the result by the number of shares outstanding. *United States v.*
3 *Cartwright*, 411 U.S. 546, 548 (1973). This so-called "per share net asset value" (NAV) is
4 computed daily so that any gain or loss in fund assets is immediately allocated to the individual
5 investors as of that specific date. Accordingly, mutual funds are unlike conventional
6 corporations in that any increase or decrease in fund assets is immediately passed on or
7 allocated to the fund investors as of the date of the relevant recalculation of the NAV. 4 .

9 In the mid to late 1990s, the number of investor securities class action lawsuits against
10 publicly traded companies alleging violations of the Securities Act of 1933 and the Securities
11 Exchange Act of 1934 (collectively the "Securities Acts") exploded.¹ In the fall of 2001, suits
12 brought pursuant to the Securities Acts became magnified by the popular press after the
13 corporate scandals and misdeeds at Enron, WorldCom, Tyco, and Adelphia. When a recovery
14 is achieved in a securities class action lawsuit, investors who owned shares in the company
15 settling the lawsuit have the option to either: (1) opt-out of the class action and pursue their
16 own remedy or (2) remain in the class and participate in the recovery achieved. The process
17 by which a member of the class collects the money to which he is entitled is intentionally quite
18 simple in order to encourage participation. A class member completes a short form called a
19 Proof of Claim and submits it to the Claims Administrator. After the Claims Administrator
20 receives all Proof of Claim forms, it disperses money from the settlement fund to those
21 persons and entities with valid claims.
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23
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27 ¹ There were 1,517 federal class action lawsuits brought under the Securities Acts between
28 1996 and 2003. *Securities Class Action Case Filings, 2003: A Year in Review*. Cornerstone Research.

1 5. Defendants serve in various capacities as mutual fund directors, advisors, and
2 affiliates as will be identified herein. The Funds were putative members of dozens of class
3 actions brought under the Securities Acts, by virtue of Funds owning the securities against
4 which the suits were brought. However, upon information and belief that the allegations are
5 likely to have evidentiary support and upon the representation that they will be withdrawn or
6 corrected if reasonable opportunity for further investigation or discovery indicates insufficient
7 evidentiary support (hereafter "upon information and belief"), Defendants failed to ensure that
8 the Funds participated in (or opted out of) many of these class action settlements. As a result,
9 because of Defendants' refusal to complete and submit a short form, monies contained in
10 dozens of Settlement Funds, which rightfully belonged to the Funds' investors have gone
11 unclaimed. Defendants' failure to protect the interests of Fund investors by recovering monies
12 owed them is a breach of the fiduciary duty they each owe directly to Plaintiffs and members
13 of the Class.
14

15
16 6. The class period begins January 10, 2001. On or before that date, the
17 Defendants began the illegal conduct complained of herein. The Class consists of all persons
18 who owned one of the Funds at any time between January 10, 2001 through January 10, 2005
19 and who suffered damages thereby.²
20

21 JURISDICTION AND VENUE

22 7. This court has jurisdiction over the subject matter of this action pursuant to
23 Section 36(b) and 44 of the Investment Company Act, 15 U.S.C. § 30a-35(b) & -43, and 28
24

25
26 ² Because the full extent of Defendants' breaches of fiduciary duty have yet to be revealed or
27 have subsequently stopped, the Class Period will be expanded forward to include the period of time between
28 January 10, 2005 and the date of the cessation of the unlawful activities detailed herein.

1 U.S.C. § 1331(a). This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a),
2 over the state law claims asserted herein because they arise out of a common nucleus of
3 operative facts and are part of the same case or controversy as plaintiffs' federal claims.

4
5 8. Venue is proper in this District because the acts and omissions complained of
6 herein occurred in this District and Parent Company Defendant was, at all relevant times, and
7 still is, headquartered in San Francisco, California.

8 9. In connection with the acts and practices alleged herein, Defendants directly or
9 indirectly used the instrumentalities of interstate commerce, including the mail systems,
10 interstate telephone communications, and the facilities and instrumentalities of the national
11 securities markets and national securities exchanges.
12

13 PARTIES

14 Plaintiffs.

15 10. A. Plaintiff Fayetteta James resides in Dallas County, Texas and at all relevant
16 times owned one of the Funds.

17
18 B. George McWilliams resides in Colbert County, Alabama and at all relevant
19 times owned one of the Funds.

20 Defendants.

21 11. Defendant Wells Fargo & Company is the ultimate parent of Wells Fargo Fund
22 Management, LLC and Wells Capital Management, Inc. Through its subsidiaries and
23 divisions, Defendant markets, sponsors, and provides investments advisory, distribution and
24 administrative services to the Wells Fargo Family of Funds, which consists of approximately
25 55 funds. Wells Fargo & Company shall be referred to herein as the "Parent Company
26
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1 Defendant." Wells Fargo & Company maintains its principal executive offices at 420
2 Montgomery Street, San Fransisco, California, 94163.

3 12. Robert C. Brown, J. Tucker Morse, Thomas S. Goho, Peter G. Gordon, Richard
4 M. Leach, Timothy J. Penny, Donald C. Willeke, Karla M. Rabusch, Stacie D. DeAngelo, C.
5 David Messman are each members of the Board of Directors for the Funds. The Funds'
6 Board of Directors oversee the management of the Funds. Collectively, these defendants shall
7 be referred to as the "Director Defendants."
8

9 13. A. Defendant Wells Fargo Fund Management, LLC is a registered
10 investment advisor and has the responsibility for the day-to-day management of the Wells
11 Fargo Family of Funds. Wells Fargo Fund Management, LLC has approximately \$22 billion
12 in assets under management in total. Wells Fargo Fund Management, LLC is located at 525
13 Market Street, San Francisco, California 94163.
14

15 B. Defendant Wells Capital Management, Inc. is a registered investment
16 advisor and has the responsibility for the day-to-day management of the Wells Fargo Family
17 of Funds. Wells Capital Management, Inc. is located at 525 Market Street, San Francisco,
18 California, 94163.
19

20 C. Defendant Cooke and Bieler, L.P. is a registered investment advisor an
21 has the responsibility for the day-to-day management of the Wells Fargo Family of Funds.
22 Cooke and Bieler is located at 1700 Market Street, Philadelphia, PA 19103.
23

24 Collectively, Wells Fargo Fund Management, LLC, Wells Capital Management, Inc.,
25 and Cooke and Bieler, L.P. shall be referred to as the "Advisor Defendants."
26

27 14. The true names and capacities of Defendants sued herein as John Does 1
28 through 100 are often active participants with the above-named Defendants in the widespread

1 unlawful conduct alleged herein whose identities have yet to be ascertained. Such
2 Defendants served as fiduciaries on behalf of fund investors. Plaintiffs will seek to amend this
3 complaint to state the true names and capacities of said Defendants when they have been
4 ascertained.

5
6 15. Collectively, all Defendants named above shall be referred to herein as
7 "Defendants."

8 **CLASS ACTION ALLEGATIONS**

9
10 16. This action is brought by Plaintiffs as a class action, on their own behalf and on
11 behalf of all others similarly situated, under the provisions of Rule 23 of the Federal Rules of
12 Civil Procedure for compensatory and punitive damages, forfeiture of all commissions and
13 fees paid by the Class, costs, and attorneys fees. Plaintiffs seek certification of this action as
14 a class action on behalf of all persons owning one of the Funds at any time between January
15 10, 2001 through January 10, 2005, and who were damaged by the conduct alleged herein.
16 This case is properly brought as a class action under Rule 23 of the Federal Rules of Civil
17 Procedure for the reasons set forth in the following paragraphs.

18
19 17. The members of the Class are so numerous that joinder of all members is
20 impracticable. While the exact number of the Class members is unknown to Plaintiffs at this
21 time and can only be ascertained through appropriate discovery, Plaintiffs believe that there
22 are tens of thousands of members in the proposed Class. Record owners of the Funds during
23 the relevant time period may be identified from records maintained by the Defendants and
24 may be notified of the pendency of this action by mail, using a form of notice similar to that
25 customarily used in securities class actions.
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1 18. Plaintiffs' claims are typical of the claims of the members of the Class as all
2 members of the Class are similarly affected by Defendants' wrongful conduct that is
3 complained of herein.

4 19. Common questions of law and fact exist as to all members of the Class and
5 predominate over any questions solely affecting individual members of the Class. Among the
6 questions of law and fact common to the Class are:
7

8 (a) Whether Defendants owe the investors in the fund a fiduciary duty to submit
9 Proof of Claim forms on behalf of the Funds in settled securities cases;

10 (b) Whether Defendants owe the investors in the fund a duty of care to act in a
11 reasonable manner to protect and maximize Fund investors' investments by
12 participating in settled securities class actions;

13 (c) In which securities class action settlements the Funds were eligible to
14 participate;

15 (d) Whether Defendants submitted Proof of Claim forms (or opted out of the class
16 action and pursued their own remedy) for those securities class action
17 settlements in which Funds were eligible to participate;

18 (e) To what extent the member of the Class have sustained damages and the
19 proper measure of such damages.
20

21
22 20. The claims of the Plaintiffs, who are representatives of the Class herein, are
23 typical of the claims of the Class in that the claims of all members of the Class, including the
24 Plaintiffs, depend on a showing of the acts or omissions of the Defendants giving rise to the
25 right of the Plaintiffs to the relief sought herein. There is no conflict between any individual
26
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28

1 named Plaintiff and other members of the Class with respect to this action, or with respect to
2 the claims for relief set forth herein.

3 21. The named Plaintiffs are the representatives parties for the Class and are able
4 to and will fairly and adequately protect the interests of the Class. The attorneys for the
5 Plaintiffs are experienced and capable in civil litigation and class actions.
6

7 22. A class action is superior to all other available methods for the fair and efficient
8 adjudication of this controversy since joinder of all members is impracticable. Furthermore,
9 as the damages suffered by individual Class members may be relatively small, the expense
10 and burden of individual litigation make it virtually impossible for members of the Class to
11 individually redress the wrongs done to them. There will be no difficulty in the management
12 of this action as a class action. A class action will redress the Defendants' wrongful conduct
13 described herein.
14

15 SUBSTANTIVE ALLEGATIONS

16 23. At all relevant times during the Class Period, the Wells Fargo Family of Funds
17 held assets of approximately \$22 billion. Approximately 37 of the 55 Wells Fargo Funds have
18 the stated investment objective of owning equity securities, varying among the funds as to the
19 preferred market capitalization and market sector of the companies owned. As such,
20 throughout the Class Period, the Wells Fargo Funds held billions of dollars of investments in
21 equity security traded on the United States' stock exchanges.
22

23 24. During the Class Period, hundreds of securities class action cases were settled
24 (the "Securities Class Actions"). Of the Securities Class Actions, the Funds were eligible to
25 participate in the recovery in a significant number of the cases by virtue of their ownership of
26 the securities during the requisite time period of each case. While not an exhaustive list, upon
27
28

1 information and belief, the Funds owned shares and had valid claims in many, if not all, of the
 2 following securities class action cases:

Case Style	Class Period	Deadline to Submit Proof of Claim
In re Accelr8 Technology Corp. Securities Litigation	10/7/97 - 11/16/99	6/16/2003
In re Acrodyne Communications, Inc.	1/1/98 - 8/14/00	8/24/2001
Lewis v. Advanced Technical Products, Inc. et al.	4/22/98 - 4/28/00	2/1/2003
In re Allaire Corporation Securities Litigation	12/7/99 - 9/18/00	12/18/2003
In re Anicom, Inc. Securities Litigation	2/17/99 - 7/18/00	1/24/2003
In re Applied Digital Solutions Litigation	1/19/00 - 5/21/02	3/15/2004
In re ATI Technologies, Inc. Securities Litigation	1/13/00 - 5/24/00	5/26/2003
Bryant v. Avado Brands, Inc., et al. (Applesouth)	5/26/95 - 9/24/96	3/5/2003
In re Avant! Corporation Securities Litigation	6/6/95 - 12/6/95	7/19/2001
In re Bergen Brunswig Corp. Securities Litigation	3/16/99 - 10/14/99	8/13/2001
In re Brightpoint, Inc. Securities Litigation	1/29/99 - 1/31/02	8/29/2003
Sinay v. Boron LePore & Associates, Inc. et al.	5/5/98 - 2/4/99	7/17/2002
In re California Software Corporation Securities Litigation	2/9/00 - 8/6/00	3/26/2002
In re Campbell Soup Co. Securities Litigation	9/8/97 - 1/8/99	7/10/2003
Katz v. Carnival Corporation et al.	7/28/98 - 2/28/00	2/6/2004
In re CHS Electronics, Inc. Securities Litigation	8/7/97 - 5/13/99	3/31/2002
Deborah Anderton v. ClearOne Communications, Inc. et al.	4/17/01 - 1/15/03	4/8/2004
Sherma v. Cole National Corporation, et al.	1/31/98 - 5/16/03	10/28/2003
In re Commtouch Software LTD. Securities Litigation	4/19/00 - 2/13/01	9/3/2003
In re Conseco, Inc. Securities Litigation	4/28/99 - 4/14/00	11/30/2002

1	In re Covad Communications Group Securities Litigation	4/19/00 - 6/24/01	2/4/2003
2			
3	In re Cutter & Buck Inc. Securities Litigation	6/1/00 - 8/12/02	1/12/2004
4	Graf v. CyberCare Inc. et al.	1/4/99 - 5/12/00	1/24/2003
5	Mailey v. DelGlobal Technologies Corporation et al.	11/6/97 - 11/6/00	1/7/2002
6	In re Dollar General Corporation Securities Litigation	3/5/97 - 1/14/02	7/8/2002
7	In re DOV Pharmaceutical, Inc. Securities Litigation	4/25/02 - 12/20/02	6/16/2003
8			
9	In re DPL, Inc. Securities Litigation	11/15/98 - 8/14/02	3/1/2004
10	In re DrKoop.Com, Inc. Securities Litigation	6/8/99 - 12/7/02	1/14/2002
11	In re ECI Telecom LTD Securities Litigation	5/12/00 - 2/14/01	1/14/2003
12	In re eConnect, Inc. Securities Litigation	11/18/99 - 3/13/00	10/12/2001
13			
14	In re Mex. Corporation Securities Litigation	4/9/01 - 5/23/01	1/16/2004
15	In re Emulex Corporation Securities Litigation	1/18/01 - 2/9/01	10/27/2003
16	In re Engineering Animation Securities Litigation	2/19/98 - 10/1/99	6/1/2001
17	In re Envoy Corporation Securities Litigation	2/12/97 - 8/18/98	2/20/2004
18	In re Federal-Mogul Corp. Securities Litigation	10/22/98 - 5/25/00	1/9/2004
19	In re Fidelity Holdings, Inc. Securities Litigation	6/24/99 - 4/17/00	4/21/2003
20	In re Finova Group Inc. Securities Litigation	1/14/99 - 11/13/02	9/30/2002
21	In re Flir Systems, Inc. Securities Litigation	3/3/99 - 3/6/00	5/3/2001
22	In re FPA Medical Management, Inc. Securities Litigation	1/3/97 - 5/14/98	11/25/2003
23			
24	In re Gateway, Inc. Securities Litigation	4/14/00 - 2/28/01	9/30/2002
25	In re Gliatech Inc. Securities Litigation	4/9/98 - 8/29/00	5/3/2003
26	Pirelli Armstrong et al. v. Hanover Compressor Co., et al.	5/4/99 - 12/23/02	3/12/2004
27	Warstadt et al. v. Hastings Entertainment, Inc., et al.	6/12/98 - 5/2/00	4/24/2003
28			

1	White v. Heartland High-Yield Municipal Bond Fund, et al.	1/2/97 - 10/16/00	11/18/2002
2			
3	In re HI/FN, Inc. Securities Litigation	7/26/99 - 11/7/99	9/20/2003
4	In re Homestore.com, Inc. Securities Litigation	1/1/00 - 12/21/01	12/5/2003
5	In re IBP, Inc. Securities Litigation	2/7/00 - 1/25/01	10/31/2003
6	Fogel v. Information Management Associates, Inc., et al.	8/12/99 - 11/18/99	1/17/2003
7			
8	In re InaCom Corp. Securities Litigation	11/9/98 - 5/17/00	2/12/2003
9	In re Independent Energy Holdings PLC	2/14/00 - 9/8/00	12/3/2002
10	In re InterSpeed, Inc. Securities Litigation	9/24/99 - 10/6/00	8/10/2001
11	In re IXL Enterprises, Inc. Securities Litigation	11/30/99 - 9/1/2000	8/20/2003
12	Garza v. JD Edwards & Company et al.	1/22/98 - 12/3/98	5/6/2002
13	In re JDN Realty Corporation Securities Litigation	2/15/97 - 4/12/00	12/15/2001
14	Harold Rутtenberg, et al. (Just for Feet, Inc.)	4/12/99 - 11/3/99	11/13/2002
15	In re L90, Inc. Securities Litigation	4/28/00 - 5/9/03	5/18/2004
16	In re Landry's Seafood Restaurants, Inc. Sec. Litigation	12/19/97 - 9/18/98	7/19/2002
17	In re Legato Systems, Inc. Securities Litigation	4/22/99 - 5/17/00	9/30/2002
18	Molholt v. Loudcloud Inc., et al.	3/8/01 - 5/1/01	10/29/2003
19	In re Lucent Technologies Inc. Securities Litigation	10/26/99 - 12/21/00	3/31/2004
20			
21	In re M&A West, Inc. Securities Litigation	10/4/99 - 12/28/00	3/4/2004
22	Dusek v. Mattel, Inc., et al.	2/2/99 - 10/1/99	10/23/2003
23	Haack v. Max Internet Communications, Inc., et al.	11/12/99 - 5/12/00	11/25/2002
24			
25	In re Medi-Hut Co., Securities Litigation	11/7/99 - 8/19/03	7/2/2004
26	In re Medirisk, Inc. Securities Litigation	5/4/98 - 6/30/98	4/30/2004
27	In re MicroStrategy Inc. Securities Litigation	6/11/98 - 3/20/00	9/3/2001
28			

1	In re Mitek Systems, Inc. Securities Litigation	12/27/99 - 9/29/00	4/8/2002
2			
3	In re MP3.Com, Inc. Securities Litigation	1/13/00 - 9/7/00	8/9/2001
4	In re Mpower Communications Corp. Securities Litigation	2/4/00 - 9/7/00	8/29/2003
5	In re MSC Industrial Direct Co., Securities Litigation	1/11/99 - 8/5/02	4/30/2004
6	In re MTI Technology Corp. Securities Litigation, II	7/22/99 - 7/2/00	9/2/2003
7	In re Navigant Consulting, Inc. Securities Litigation	1/1/99 - 11/19/99	3/22/2001
8	In re NetEase.Com, Inc. Securities Litigation	7/3/00 - 8/31/01	6/13/2003
9	In re Netsolve Incorporated Securities Litigation	4/18/00 - 8/18/00	9/13/2002
10	In re Network Associates Inc. Securities Litigation	1/20/98 - 4/6/99	6/14/2002
11	In re Network Associates, Inc. II Securities Litigation	4/15/99 - 12/26/00	3/2/2004
12			
13	New Era of Networks, Inc.	10/29/98 - 7/6/99	12/31/2001
14	Norman v. New Era Of Networks, Inc., et al.	10/18/00 - 1/5/01	8/12/2002
15	In re Newpower.Holdings, Inc. Securities Litigation	10/5/00 - 12/5/01	4/7/2004
16	In re Nice Systems, Ltd. Securities Litigation	11/3/99 - 2/7/01	5/1/2003
17	In re Nike, Inc. Securities Litigation	6/29/00 - 2/26/01	3/10/2003
18	Stuart Markus, et al v. The Northface, Inc.	4/24/77 - 4/1/99	5/24/2001
19	In re Northpoint Communications Group, Inc. Sec. Litigation	8/8/00-11/29/00	2/11/2004
20	In re Nuance Communications, Inc.	1/31/01 - 3/15/01	12/15/2003
21	In re On-Point Technology Systems, Inc. Securities Litigation	5/19/97 - 4/7/00	8/21/2001
22			
23	In re Onyx Software Corporation Securities Litigation	Pursuant to 2/2001 Offering	6/28/2004
24			
25	In re Optical Cable Corporation Securities Litigation	6/14/00 - 9/26/01	11/1/2002
26	In re Oxford Health Plans, Inc. Securities Litigation	11/6/96 - 12/9/97	7/11/2003
27	In re Paradyne Networks, Inc. Securities Litigation	3/20/00 - 9/28/00	7/12/2004
28	In re Party City Corporation Securities Litigation	2/26/98 - 3/18/99	8/12/2003

1	In re P-COM, Inc. Securities Litigation	4/15/97 - 9/11/98	3/15/2002
2	In re Penn Treaty Schwab Corporation Sec. Litig.	7/23/00 - 3/29/01	2/23/2004
3	In re PeopleSoft, Inc. Securities Litigation	5/27/98 - 1/28/99	9/4/2001
4	In re Performance Technologies, Inc. Securities Litigation	2/2/00 - 5/19/00	7/18/2003
5			
6	In re PhyCor Corporation Securities Litigation	4/22/97 - 9/22/98	8/5/2002
7	In re Pilot Network Services, Inc. Securities Litigation	8/11/98 - 10/17/00	5/2/2002
8	In re PSS World Medical, Inc. Securities Litigation	10/26/99 - 10/3/00	5/14/2004
9			
10	In re Reliance Securities Litigation	3/14/95 - 11/14/97	3/23/2002
11	In re Rent-Way Securities Litigation	12/10/98 - 10/27/00	11/23/2003
12			
13	In re Rite Aid Corporation Securities Litigation	5/2/97 - 11/10/99	6/30/2003
14	In re Robotic Vision Systems, Inc. Securities Litigation	1/27/00 - 5/15/01	8/11/2003
15			
16	Paul Ruble v. Rural / Metro Corporation et al.	4/24/97 - 6/11/98	12/15/2003
17	Stanley v. Safeskin Corporation, et al.	2/18/98 - 3/11/99	4/28/2003
18	In re Sagent Technology Inc. Securities Litigation	10/21/99 - 4/18/00	5/27/2003
19	In re SCB Computer Technology, Inc. Securities Litigation	11/19/97 - 4/14/00	3/20/2002
20			
21	Lone Star et al. v. Schlotzsky's Inc., et al.	9/24/1997	5/23/2002
22	In re Select Comfort Corporation Securities Litigation	12/3/98 - 6/7/99	4/30/2003
23	In re Sensormatic Electronics Corp. Securities Litigation	8/8/00 - 4/26/01	11/14/2003
24	Steinbeck v. Sonic Innovations, Inc. et al.	5/2/00 - 10/24/00	6/21/2004
25	Klein v. Southwest Gas Corporation, et al.	12/14/98 - 1/21/00	11/5/2001
26			
27	In re Starnet Communications Int'l, Inc. Sec. Litigation	3/11/99 - 8/20/99	9/20/2002
28	In re Steven Madden Ltd. Securities Litigation	6/21/97 - 6/20/00	6/18/2004

1	In re Supervalu, Inc. Securities Litigation	7/19/99 - 7/25/02	8/2/2004
2	In re Sykes Enterprises, Inc. Securities Litigation	7/27/98 - 9/18/00	4/9/2003
3	In re Synsorb BioTech, Inc. Securities Litigation	4/4/01 - 12/10/01	1/10/2004
4	In re Take Two Interactive Software, Inc. Securities Litigation	2/24/00 - 12/17/01	1/2/2003
5			
6	In re Team Communications Group, Inc. Securities Litigation	11/19/99 - 3/16/01	8/22/2002
7			
8	In re Telxon Corporation Securities Litigation	5/21/96 - 2/23/99	6/11/2004
9	Spiegel v. Tenfold Corporation, et al.	5/21/99 - 4/12/01	1/9/2003
10	In re THG, Inc. Securities Litigation	10/26/99 - 5/24/00	6/30/2003
11	In re Turnstone Systems, Inc. Securities Litigation	Pursuant to 9/2/00	10/31/2003
12			
13	In re Tut Systems, Inc. Securities Litigation	7/20/00 - 1/31/01	6/21/2004
14	In re UniStar Financial Service Corp. Securities Litigation	10/15/98 - 7/20/99	8/17/2001
15	In re US Franchise Systems, Inc. Securities Litigation	5/6/99 - 10/29/99	6/5/2002
16	In re US Interactive, Inc. Securities Litigation	2/10/00 - 11/8/00	12/2/2003
17	O'Neal Trust v. VanStar Corporation, et al.	3/11/96 - 3/14/97	11/26/2001
18	Rasner v. Vari-L Company, Inc. et al.	12/17/97 - 7/6/00	5/5/2003
19	Helwig v. Vencor, Inc. et al.	2/10/97 - 10/21/97	6/14/2002
20			
21	In re Versata, Inc. Securities Litigation	3/2/00 - 4/30/01	3/17/2003
22	In re Vesta Insurance Group, Inc. Securities Litigation.	6/2/95 - 6/28/98	10/17/2002
23	In re Vision America, Inc. Securities Litigation	11/5/98 - 3/24/00	7/30/2002
24	In re Vision America, Inc. Securities Litigation	4/24/99 - 3/24/00	10/8/2003
25	In re The Warnaco Group, Inc. Securities Litigation	9/17/97 - 7/19/00	3/5/2004
26	In re Waste Management Inc. Securities Litigation	6/11/99 - 11/9/99	7/15/2002
27	In re Westell Technologies, Inc. Securities Litigation	6/27/00 - 11/18/00	8/31/2003
28	In re Ziff Davis Inc. Securities Litigation	4/29/98 - 11/8/98	4/5/2002

1 25. If the Defendants had submitted Proof of Claim forms on behalf of the Funds in
2 these cases and all others to which the Funds had valid claims, the settlement funds would
3 have increased the total assets held by the Funds, and such increase would have been
4 allocated immediately to the then-current investors upon the recalculation of the Net Asset
5 Value (NAV).
6

7 26. However, upon information and belief, the Defendants failed to submit Proof of
8 Claim forms in these cases and thereby forfeited Plaintiffs' rightful share of the recover
9 obtained in the securities class actions.
10

11 27. By virtue of their position as investment advisors to the Funds with complete
12 control of Plaintiffs' investments, the Investment Advisor Defendants (and any sub-advisors
13 and affiliates) directly owed Plaintiffs and other fund investors a fiduciary duty to act in their
14 best interests. *See McLachlan v. Simon*, 31 F.Supp.2d 731, 737 (N.D. Cal. 1998). Likewise,
15 Directors of mutual funds owe a fiduciary duty directly to the person who invests in the Funds.
16 *See Id.*
17

18 28. Plaintiffs entrusted Defendants to fulfill their fiduciary duties and not knowingly
19 to refuse to recover money rightfully belonging to the Fund investors at the time of settlement
20 disbursement. As the Fund investors' fiduciary, only Defendants were able to submit the
21 necessary Proof of Claim forms to recover the share of the settlements allocated to the Fund
22 and Fund investors in the securities class action suits. Plaintiffs did not receive notice of the
23 proposed settlements nor did they have the option of submitting a Proof of Claim form in their
24 individual capacities as individual investors. Plaintiffs and member of the Class trusted
25 Defendants to carry out this simple task on their behalf, and, on information and belief,
26 Defendants failed to do so. By failing to submit Proof of Claim forms, Defendants breached
27
28

1 the fiduciary duty and standard of care that they owed directly to Plaintiffs and members of the
2 Class.

3
4 **Standing.**

5 29. The Funds were all created and sponsored by the Parent Company Defendant.
6 The day-to-day operations of the Funds are managed by the same Investment Advisor or a
7 sub-advisor who reports to the Advisor. The Funds have the same directors who meet for all
8 the funds at once. All of the contracts for all of the Funds are identical for the purposes of this
9 action. The Funds share many expenses between and among one another. The same policy
10 or custom related to participation in securities class action settlements applies to all the Funds.
11 Plaintiffs therefore bring this action on behalf of all the Funds.
12

13 **COUNT I**
14 **BREACH OF FIDUCIARY DUTY**

15 30. Plaintiffs repeat and re-allege each of the preceding allegations as though fully
16 set forth herein.

17 31. All of the Defendants owed fiduciary duties directly to Plaintiffs and members of
18 the Class and were required to act with the highest obligations of good faith, loyalty, fair
19 dealing, due care, and candor.

20 32. As set forth above, on information and belief, the Defendants breached the
21 fiduciary duties they owed directly to Plaintiffs and members of the Class by failing to submit
22 Proof of Claim forms or to otherwise participate in settled securities class actions and thereby
23 recover money rightfully belonging to the Fund investors. Plaintiffs and members of the class
24 have been injured as a direct, proximate, and foreseeable result of such breach on the part
25 of the Defendants and have suffered substantial damages.
26
27
28

1 33. Because the Defendants breached their fiduciary duties owed directly to Plaintiffs
 2 and members of the Class, Plaintiffs are entitled to compensatory damages, and Defendants
 3 must forfeit all fees and commission they received from Plaintiffs and members of the Class.
 4
 5 See *J.C. Peacock, Inc. v. Hasko*, 196 Cal.App.2d 353, 358 (1961) (quoting the RESTATEMENT
 6 (SECOND) AGENCY § 469 (1958) (“An agent is entitled to no compensation for conduct which
 7 is disobedient or which is a breach of his duty or loyalty; if such conduct constitutes a willful
 8 and deliberate breach of his contract of services, he is not entitled to compensation even for
 9 properly performed services for which no compensation is apportioned”).

10 34. Because the Defendants acted with reckless and willful disregard for the rights
 11 of Plaintiffs and members of the Class, the Defendants are liable for punitive damages in an
 12 amount to be determined by the jury.
 13

14 **COUNT II**
 15 **NEGLIGENCE AGAINST ALL DEFENDANTS**

16 35. Plaintiffs repeat and re-allege each of the preceding allegations as though fully
 17 set forth herein.

18 36. Defendants owed a duty of care directly to Plaintiffs and members of the Class
 19 to act in a reasonable manner and to protect and maximize each individual’s investments in
 20 the Funds. By failing to submit Proof of Claim forms or to otherwise participate in settled
 21 securities class actions, on information and belief, Defendants did not conform to the duty they
 22 owed. As a direct and proximate result, Plaintiffs and members of the Class have been
 23 damaged by millions of dollars.
 24

25 **COUNT III**
 26 **VIOLATION OF SECTION 36(a) OF THE INVESTMENT COMPANY ACT**

27 37. Plaintiffs repeat and re-allege each of the preceding allegations as though fully
 28 set forth herein.

1 38. Under Section 36(a) of the ICA, all of the Defendants are deemed to have a
2 fiduciary duty to the Plaintiffs and all members of the Class.

3 39. On information and belief, all Defendants breached their fiduciary duty arising
4 under Section 36(a) of the ICA by failing to submit Proof of Claim forms or to otherwise
5 participate in settled securities class actions and thereby recover money rightfully belonging
6 to the Fund investors and which would have been immediately allocated to investors through
7 the recalculation of the Net Asset Value.
8

9 40. Plaintiffs and members of the Class have been injured as a direct, proximate,
10 and foreseeable result of such breach on the part of the Defendants and have suffered
11 substantial damages.
12

13 **COUNT IV**
14 **VIOLATION OF SECTION 36(b) OF THE INVESTMENT COMPANY ACT**
15 **(AGAINST ADVISOR DEFENDANTS AND PARENT COMPANY DEFENDANT)**

16 41. Plaintiffs repeat and re-allege each of the preceding allegations as though fully
17 set forth herein.

18 42. Under Section 36(b) of the ICA, the Advisor Defendants, the Parent Company
19 Defendant, and other affiliates of the Advisor Defendants are deemed to have a fiduciary duty
20 with respect to the receipt of compensation for services, or of payments of a material nature,
21 paid by the Fund and Fund investors.

22 43. The Advisor Defendants, the Parent Company, and other affiliates, upon
23 information and belief, breached their fiduciary duty arising under Section 36(b) of the ICA by
24 failing to submit Proof of Claim forms or to otherwise participate in settled securities class
25 actions and thereby recover money rightfully belonging to the Fund investors and which would
26 have been immediately allocated to the individual investors through the recalculation of the
27 NAV.
28

1 44. Plaintiffs and members of the Class have been injured as a direct, proximate,
 2 and foreseeable result of such breach on the part of the Defendants and have suffered
 3 substantial damages.

4
 5 **COUNT V**
 6 **VIOLATION OF SECTION 47(b) OF THE INVESTMENT COMPANY ACT**
 6 **(AGAINST ADVISOR DEFENDANTS AND PARENT COMPANY DEFENDANT)**

7 45. Plaintiffs repeat and re-allege each of the preceding allegations as though fully
 8 set forth herein.

9 46. Pursuant to Section 47(b) of the ICA, 15 U.S.C. 80a-46(b), any contract made
 10 in violation, or performance of which results in violation, of the ICA is declared unenforceable.
 11

12 47. For reasons alleged herein, the Agreements between the Advisor Defendants
 13 (and the Parent Company and other Affiliates) and the Funds were performed, on information
 14 and belief, in violation of the Investment Company Act and are therefore unenforceable.

15 48. Under Section 47(b) of the ICA, 15 U.S.C. 80a-46(b), the advisory agreements
 16 may be voided, and the Advisor Defendants, the Parent Company Defendant, and other
 17 affiliates are liable to return to the Funds and Fund investors all of the fees and consideration
 18 of any kind paid to them during the time period that the violations occurred.
 19

20 49. Plaintiffs demand a jury trial.

21 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- 22 (a) Recognizing, approving and certifying the Class as specified herein.
 23
 24 (b) In favor of the Class for compensatory and punitive damages, forfeiture of all
 25 commissions and fees paid by the Class, plus the costs of this action together with
 26 reasonable attorneys fees.

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(c) For such other and further relief as this Court deems just.

Dated: January 10, 2005



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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

FILED

JAN 10 2005

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

FAYETTA JAMES

Plaintiff(s)

-v-

ROBERT C. BROWN

Defendant(s)

C 05-00154 SBA

ORDER SETTING INITIAL CASE MANAGEMENT
 CONFERENCE

IT IS HEREBY ORDERED that this action is assigned to the Honorable Sandra Brown Armstrong. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the handbook entitled "Dispute Resolution Procedures in the Northern District of California" and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients must familiarize themselves with that rule and with the handbook entitled "Dispute Resolution Procedures in the Northern District of California."

CASE SCHEDULE [ADR MULTI-OPTION PROGRAM]

Date	Event	Governing Rule
01/10/2005	Complaint filed	
04/20/2005	Last day to meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR LR 3-5
04/20/2005	Last day to file Joint ADR Certification with Stipulation to ADR process or Notice of Need for ADR Phone Conference	Civil L.R. 16-8
05/04/2005	Last day to complete initial disclosures or state objection in Rule 26(f) Report, file/serve Case Management Statement, and file/serve Rule 26(f) Report	FRCivP 26(a)(1) Civil L.R.16-9
05/11/2005	Case Management Conference in Courtroom 3, Oakland at 3:00 PM	Civil L.R. 16-10